

April 2006

# Report

of the Strategic Management Review



**Queensland**  
Government

Office of the  
**Queensland Ombudsman**

Commissioned by the Queensland Government  
pursuant to the *Ombudsman Act 2001*

**STRATEGIC      REVIEW**  
of  
**THE OFFICE OF THE QUEENSLAND OMBUDSMAN**  
and  
**THE OFFICE OF THE INFORMATION COMMISSIONER**

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24 April 2006

The Honourable Linda Lavarch, MP,  
Attorney-General and Minister for Justice,  
State Law Building,  
50 Ann Street,  
Brisbane Q 4000

Dear Minister,

I am pleased to provide to you, my Report on the Strategic Review of the Office of the Queensland Ombudsman, which has been conducted in accordance with the relevant sections of the *Ombudsman Act 2001* and also in accordance with the terms of my appointment as reviewer.

I have appreciated the opportunity to undertake this review. It has been a significant undertaking but one that was made easier by the co-operation and assistance I received from many quarters during the course of the review, in particular from the Ombudsman and his staff.

I believe that the 70 recommendations together with other relevant comments contained in the Report will provide an appropriate framework on which the Ombudsman and his staff can build for continuing success in the future.

Yours sincerely



(Henry Smerdon)

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## Acronyms and Definitions Used in this Report

ART	Assessment and Resolution Team
CSCT	Community Services and Corrections Team
EEO	Equal Employment Opportunity
FOI	Freedom of Information
FTE	Full Time Equivalent
HR	Human Resources
LCARC	Legal, Constitutional and Administrative Review Committee
LGIT	Local Government and Infrastructure Team
MOU	Memorandum of Understanding
OPSME	Office of Public Service Merit and Equity
The Office	The Office of the Queensland Ombudsman
The Act	Ombudsman Act 2001
Forster Review	The Strategic Management Review of the Ombudsman's Office Undertaken by Mr Peter Forster (Consultancy Bureau Pty Ltd) in 2000.
Davies Inquiry	The Queensland Public Hospitals Commission of Inquiry Chaired by the Hon G Davies, QC.

## Section A: Executive Summary

### Introduction:

This report has been prepared pursuant to the requirement in the *Ombudsman Act 2001* that a strategic review of the Ombudsman Office be undertaken every 5 years. The last review was undertaken in 2000.

The terms of reference for the review were approved by the Governor in Council on 8 September 2005.

The review process involved discussions with relevant agencies and other stakeholders including the Legal, Constitutional and Administrative Review Committee (LCARC) of the Parliament, interviews and focus groups with staff, visits to other jurisdictions namely New South Wales, Victoria and New Zealand as well as examination of various documents and other information provided by the Ombudsman.

No formal public submissions were invited or complainant or agency surveys undertaken (primarily because the Office had conducted such surveys recently and the results were still current). A very small number of unsolicited representations were received directly and LCARC passed on representations that had been received by it over the past year or two. These were helpful and informative to the process.

A sample of complaint files was also examined.

By way of general conclusion, it must be said that the Office has come a long way since the Forster Review in 2000 and the Ombudsman, David Bevan, and his staff should be commended for the progress that has been made.

It is also fair to say that in a number of areas there is still a degree of work to be done and these are identified in the report.

The Office is now giving some priority to the legislated objective of improving the quality of decision-making and administrative practice in agencies.

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

The Office can and should play a very positive role in improving the quality of decision-making and administrative practice in agencies for the greater public sector good.

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. It will not achieve this though without some significant cultural changes.

The following summary of the report and associated recommendations represent a précis only of what has been a detailed process of evaluation of the issues. It needs to be read in conjunction with the relevant sections of the report proper.

## Section C: Strategic and Operational Issues

### C.1 Role of the Office of the Ombudsman:

The Ombudsman's Office was first established in 1974, focusing on investigation of administrative actions.

In more recent times, the Ombudsman has become increasingly involved in improving the quality of decision-making and administrative practices in agencies.

The number of complaints coming to the Ombudsman has been declining in recent years, although the reasons for the decline are not clear. There is some expectation that the Ombudsman's work with administrative improvement initiatives may be helping.

Given the number of administrative decisions made each year the number of complaints coming to the Ombudsman (7867 in 2004-05) is actually relatively small and of these complaints received, only a fraction (117 in 2004-05) require formal investigation.

Agencies generally accepted the need for and value of the role the Ombudsman and his Office plays in the overall accountability processes of government.

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

### C.2 Intake Process and the Role of ART:

ART was established in 2002 and now has 14 staff members. Most complaints to the Office are received through and resolved in ART.

In normal situations, ART is sufficiently well-resourced to cope with the intake. In busy periods, calls to ART are sometimes not returned for up to 48 hours and this needs to be addressed. Also, a number of complainant calls (less than 200 per year) are not able to be returned for various reasons.

Complainants are also referred back to the agency if the complainant has unresolved redress opportunity with the agency. Unfortunately, up to half the complainants referred back do not contact the agency and are lost to the system. This also needs to be addressed as a matter of urgency.

As a guideline, if complaints received by ART cannot be dealt with in less than 4 hours, they are generally referred to one of the two investigative teams. Whether a complaint is referred or not is decided by a Case Management Committee that meets twice a week.

I do not see a role for a committee consisting of the Ombudsman, Deputy Ombudsman and the Assistant Ombudsman in charge of ART and the decision should be left with the Assistant Ombudsman in charge of ART.

While other options were examined, a fully-staffed ART is the preferred model for handling the intake and early resolution of complaints received. ART is a pressure environment and staff do need to be adequately supported.

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.

Recommendation 3: The role of the present Case Assessment Committee should be reviewed with a view to the Committee being disbanded. Decisions in regard to allocation of complaints to the investigative teams should be made by the Assistant Ombudsman responsible for ART, if necessary, in consultation with the Deputy Ombudsman.

Recommendation 4: All staff in ART should have access to appropriate training and skills development having regard to the particular demands and pressures of working in ART in a close client contact environment. A staff rotation policy should also be developed and implemented to ensure that staff have the opportunity to work in both ART and the investigative teams. Such a policy needs to take account of any potential impact on day to day operations of both ART and the investigative teams.

### **C.3 Assessment and Investigation Process:**

There is a recognition within the Office that there needs to be a more informal investigative approach to complaints received.

Too often the Office is perceived as adversarial, legalistic and bureaucratic.

The progress that has been made in recent times with the use of informal resolution techniques to resolve complaints needs to be constantly reinforced. There needs to be less formal correspondence and more informal communication (telephone, face to face meetings etc) with both complainants and agencies.

Files are generally well-managed, assisted by the fact that most files are now electronically kept. The Catalyst case file management data base system is reasonably well-developed, although a little cumbersome at times. It does provide a range of valuable management reports.

The more complex complaint files are subject to a case management plan, which includes guiding time lines for steps in the process and which is followed by investigators and monitored by supervisors. It is still, to a degree, bureaucratic in its approach. It is due for review in 2006 and the Ombudsman should look to further simplify the processes.



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.

Recommendation 6: The processes and procedures applied to the conduct of investigations should ensure that bureaucracy is kept to the absolute minimum consistent with appropriate resolution of complaints.

#### C.4 Role of “Own Motion” Investigations:

The Ombudsman should make more use of the powers in the Act to undertake investigations on his own account. It is a power used to varying degrees in other jurisdictions.

The Ombudsman has undertaken some high profile “own motion” investigations in recent times but needs to ensure that such investigations are completed in shorter time frames.

Judicious use of “own motion” investigations, well-targeted, can contribute to better decision-making and administrative practices in agencies. There needs to be mechanisms within the Office to identify potential systemic issues early.

These “own motion” investigations are in addition to routine situations where a complaint resolution is found to have wider applicability than just one complainant.

The role of the Major Projects Unit in these investigations is supported on the basis that teams are formed for “own motion” investigations rather than permanent staff in major projects.

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.

### **C.5 Corrective Services:**

Prisoner complaints are the largest source of complaints to the Office. Potentially this could diminish with legislative and other changes taking place in the Corrective Services area.

The Ombudsman should continue to liaise with the Chief Inspector of Prisons in regard to the changes.

Regular visits to prisons should be maintained using appropriately skilled staff.

**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.

**Recommendation 12:** The Prisoner Phone Link continue to be maintained as an important means whereby prisoners can have their grievances considered by an independent agency.

### **C.6 Regional Visits Program:**

While no longer a significant source of complaint intake, regional visits are important and should be continued as a means of servicing the needs of rural and regional Queensland.

The Office has recently put in place on a trial basis, a revised strategic approach for regional visits which focuses more on administrative improvement initiatives and raising the profile of the Office and its work rather than complaint intake.

The trial should be evaluated after a reasonable period.

The Office needs to ensure that the particular needs of the prison system are taken account of, if necessary by undertaking separate visits rather than as part of the regional visit.

**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 14:** The current trial of a modified regional visit format should be evaluated after a reasonable period and changes made where appropriate consistent with an over-riding objective of servicing the needs of rural and regional Queensland.

Recommendation 15: The requirement that visits to correctional facilities take place within the normal regional visit program be reviewed on the basis that visits to correctional facilities should be conducted by appropriately skilled and experienced staff.

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

### C.7 Demand Management:

A key strategy to reduce demands on the Office is assisting agencies to develop processes and procedures for making better decisions in the agency itself.

The Ombudsman's good decisions training program is well-regarded by agencies and demand for courses to be run by the Office is increasing.

The Office has also conducted a complaints management project which is designed to assess whether an agency has a complaints management system that meets appropriate standards and what might need to be done to raise the standard.

It is important that the positive value of good complaint management processes is communicated to all agencies. OPSME could assist by issuing an appropriate standard to require all agencies to have complaint management processes in place that comply with relevant standards.

In taking on complaints, the Ombudsman also needs to be mindful of the provisions in the legislation which enable him to refuse to investigate complaints that are frivolous, vexatious or trivial. Increasingly, Ombudsmen in other jurisdictions are concerned about 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 utilized in other areas.

The Ombudsman needs to consider the issues and monitor developments in other jurisdictions.

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

Recommendation 18: Developments in other jurisdictions that are designed to maximise the effectiveness of application of scarce available resources to resolving substantive complaints, particularly where these have implications for better decision-making and complaint handling in agencies, should continue to be monitored and evaluated in the context of existing powers in the *Ombudsman Act 2001*.

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.

Recommendation 22: The Ombudsman should seek additional funding from Treasury to ensure that Phase two of the Complaints Management Project is completed in a timely manner.

### **C.8 Timeliness:**

Timeliness was an issue in 2000 and while much progress has been made, it is still an issue with complainants and agencies.

The implementation of service standards is positive but the standards need to be rigorously measured and monitored.

The Ombudsman needs to ensure an appropriate service culture exists which results not only in expeditious resolution of complaints but timely dealing with matters during the resolution process. Files should not be left idle for any reason, including the absence of the relevant officer on leave.

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.

Recommendation 24: A credible set of performance indicators needs to be developed to measure the effectiveness of the espoused "Service Standards". The Office is also encouraged to publish these in the annual report.

### **C.9 Audit of Complaint Management Systems:**

The Complaint Management Project demonstrated that an audit of complaint management processes and procedures was valuable, particularly as it showed that most agencies left a lot to be desired in this area.

Audits of agencies will become more important if and when the OPSME issues the appropriate standard on complaint management processes.

The Ombudsman could consider using the "own motion" investigative power in appropriate circumstances to undertake such audits.

The potential for a possible role for the Auditor-General also needs to be considered.

Recommendation 25: The Ombudsman should continue to explore options for implementing a system of audits of complaint management systems within agencies.

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.

#### C.10 Survey of Persons Referred to Agencies:

The survey results were quite disappointing as it showed that too many people referred back to an agency by the Office following a complaint, in fact did not contact the agency.

At the time, 65.7% of the respondents had either:

- not tried to use the agency’s complaint process, or
- had not contacted the Ombudsman’s Office even though they had tried to use the agency’s complaint process, but not received a decision they considered to be fair and reasonable.

The recommendations from the survey are actively being implemented, although they really could go further.

Greater effort needs to be made to have the complainant’s issue brought to the agency’s attention and dealt with and for some follow up mechanism to be put in place, that is not too bureaucratic and resource intensive.

The Office needs to develop suitable procedures to obtain regular feedback from complainants who are referred back to agencies.

Recommendation 28: The Ombudsman should continue to implement the recommendations of the Referred to Agency Research Report.

Recommendation 29: In appropriate cases, complainants who are to be referred back to the agency concerned, should have the option of agreeing to have the Ombudsman’s Office provide their contact details and other information to the relevant agency so that the agency can contact the complainant.

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 31: The Office should continue with the Referred to Agency Research Reports but evaluate the costs and benefits of undertaking the research on a more frequent basis.

Recommendation 32: Suitable mechanisms that can be put in place to receive more regular feedback from complainants who are referred back to the agency concerned should be investigated.

### **C.11 Complainant Surveys:**

A major Complainant Satisfaction Survey was undertaken in 2004 which demonstrated significant improvement in many areas. Areas for further work were identified and are being addressed and should continue to be addressed through the strategic and operational planning process.

The Office also needs to follow up on the survey by implementing processes to obtain more regular feedback from complainants. This could be achieved by a short questionnaire sent to complainants once a file is closed seeking their views on the service received and how the Office performed generally.

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.

### **C.12 Benchmarking:**

Ideally, benchmarking data should be available to assist management to assess the efficiency and effectiveness of its investigative processes.

Unfortunately there is very little enthusiasm for any form of national benchmarking and it remains for the Ombudsman to maintain dialogue with his colleagues in other jurisdictions to identify any opportunity for sharing relevant data.

In the meantime, the Office should continue to develop the capability of Catalyst to produce appropriate performance data.

Recommendation 35: The Ombudsman continue to explore opportunities with his counterparts in other jurisdictions for the sharing of performance information that is relevant to benchmarking the performance of the Office.

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.

### **C.13 Vexatious Complainants:**

While not significant in terms of numbers, every jurisdiction can point to complainants who could be defined as vexatious and who take up a disproportionate amount of time and resources. No jurisdiction has in place any significant strategy to deal with this issue.

It is really a matter for the Ombudsman to monitor individual situations and ensure staff receive appropriate training to deal with them.

### **C.14 Separation of Ombudsman and Information Commissioner:**

The separation of the two Offices is now largely complete and has been well-accepted by agencies.

There are no negatives that have been brought to my attention.

## **Section D: Organisational and Administrative Issues**

### **D.1.1 Structure:**

The staffing structure of the Office needs to better reflect the twin objectives of investigation of administrative decisions and administrative improvement in agencies.

I have proposed that there be an investigations function which would embrace the three investigative teams – CSCT, LGIT and ART. Each team would be headed by an Assistant Ombudsman who in turn would report to a Deputy Ombudsman. The investigative function is mature and does not need the direct oversight of the Ombudsman.

The other functions – Administrative Improvement Unit (currently named Major Projects Unit), Communication and Research Unit and Corporate Services Unit – would report direct to the Ombudsman given their strategic importance at this time.

The single Deputy would replace the current two Deputy model which will have ramifications for the current holders of these positions.

The structure needs to be supported by greater delegation of authority and empowerment of staff.

The proposed model would be consistent with modern management practices that organizations operate with flatter structures and more staff empowerment.

The new structure would better address concerns about the bureaucratic style of operation and the need for greater delegations.

It must be said that the proposed structure is not a reflection on the current Deputies but rather a view that the Office would be better served by a different model, more reflective of the strategic direction and priorities of the Office.

Recommendation 37: The structure of the Office should be changed to better reflect the key deliverables of the Office, namely investigation of administrative decisions and improvement in the quality of decision-making and administrative practice in agencies.

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.

Recommendation 40: The current administrative improvement priorities such as good decisions training, complaint management, complaint analysis and research, “own motion” investigations etc should be drawn together under the leadership of an Assistant Ombudsman. Given the strategic importance of these issues going forward, the position should report to the Ombudsman direct.

Recommendation 41: The Advice and Communication Unit should be renamed Communication and Research Unit and be refocused with responsibilities for both internal and external communication and relationships. The Unit should report directly to the Ombudsman.

Recommendation 42: The Corporate Services Unit should report directly to the Ombudsman.

#### **D.1.2 Budget Issues:**

The great bulk of the Office budget is required for staff related expenses and the opportunity for savings really revolves around whether the staff numbers are correct.

While I have some concerns about the level of resources devoted to corporate services, my assessment is that overall the resource position is tight but sustainable.

There is opportunity to reengineer the investigative processes by greater use of informal resolution which could release some resources. Similarly, there is opportunity to reengineer some activities in the corporate support area eg support for Catalyst. However any savings would need to be directed to administrative improvement initiatives.

A sustainable argument for additional resources from Treasury is difficult other than for administrative improvement initiatives which have a reasonable recoverable element and identified future benefits.



Recommendation 43: A budget proposal should be developed for consideration by Treasury which addresses demands for administrative improvement training initiatives, the benefits that may flow to the budget as a whole from the initiatives, the potential recoveries from agency participants together with potential savings able to be met from within the Office by rationalising the management structure and processes.

### **D.1.3 Workloads:**

Workloads in general are declining as complaint numbers decline which has enabled resources to be devoted to administrative improvement.

Workloads for some individual officers in ART seem high and need to be closely monitored.

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.

## **D.2 Staffing:**

### **D.2.1 Remuneration and Reward Structures:**

While staff believe they are under-remunerated, my assessment is that relative to other similar professional-type positions in the public sector, remuneration is within acceptable and comparable ranges.

I have suggested that the Office may want to consider a more flexible pay scale which could be taken up with the Public Service Commissioner, although the implementation potentially raises significant practical issues.

The new staffing structure and potential changes to delegations and job descriptions may require a reevaluation of the levels of key positions.

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.

### **D.2.2 Training and Development:**

Staff have access to reasonable levels of appropriate training and development, provided both internally and externally.

As an objective, the Office should look to achieve a level of commitment to training and development that equates to 1.5 per cent of the annual budget.

**Recommendation 46:** The Office should have as a key objective, a level of commitment to training and development that equates to at least 1.5 per cent of the annual budget of the Office.

### **D.2.3 Staff Turnover and Recruitment:**

Staff departures have been higher than normal in the recent past eg 19% in 2004-05 and 14% to 31.1.06.

The Office has been able to recruit staff to replace those who have left.

There is no evidence to suggest that the abnormal staff turnover is symptomatic of deeper issues. On the contrary, past staff at the focus group were complimentary of the Office.

Exit interviews did not suggest any problem that needed to be addressed. However departures need to be closely monitored.

**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.

### **D.2.4 Delegations:**

As mentioned previously, the proposed new structure will only work if there is in place appropriate delegations that empower and enthuse staff.

Management reviewed delegations following the outcome of the recent staff survey. I have some concerns that the revised delegations do not go far enough to achieve the outcome that is needed to take the Office forward. Further work needs to be done.

Delegations are a significant concern of staff at all levels.

Delegations also need to be supported by appropriate training and development.

**Recommendation 48:** The further review of delegations be undertaken to fully reflect the need to provide maximum opportunity for staff to make decisions consistent with their skills and experience and developmental needs.

Recommendation 49: All staff should have access to appropriate training and development to ensure skill levels are appropriate.

#### **D.2.5 Secondments:**

A targeted program of secondments and interchange could have benefits for both agency staff and staff of the Office.

Such a program should have clearly stated objectives, one of which would be the overall enhancement of decision-making in agencies and the investigative processes of the Office.

All agencies interviewed expressed some interest in the proposal and it should be investigated.

Recommendation 50: The implementation of a targeted program of secondments and interchange should be investigated in consultation with agencies. Such a program should have clearly stated objectives and be appropriately funded. Key objectives should be the overall enhancement of decision-making in agencies and the investigative processes within the Office.

#### **D.2.6 Gender/Equity Considerations:**

The Office currently has a reasonable overall gender balance but with too few female staff in senior positions in the Office and an over-representation at lower levels.

There is no suggestion that the imbalance is brought about by inappropriate HR policies.

Nevertheless, the Ombudsman should examine current recruitment and selection of staff to ensure no gender bias exists, directly or indirectly, particularly in regard to females.

While many standard EEO reporting requirements do not necessarily apply to the Office, the Office should take the initiative and publish more data in relation to EEO and staff generally.

Recommendation 51: Existing policies and procedures in regard to recruitment and selection of staff should be reviewed to ensure that females are not disadvantaged or deterred from applying, particularly for senior positions.

Recommendation 52: Existing HR policies, practices and procedures should be reviewed to ensure that they appropriately address EEO issues.

Recommendation 53: The strategic planning process for the Office should also address EEO issues in a meaningful way.

Recommendation 54: Consideration should be given to publishing more comprehensive and appropriate information on EEO and staff generally in the annual report.

### **D.3 Governance:**

#### **D.3.1 Structures:**

The Office currently has a suite of governance processes and procedures suitable for its purposes.

The current Ombudsman Management Group and Senior Officers Group have considerable over-lapping membership. While the focus of each is said to be different, I see considerable merit in merging the two groups, particularly under the proposed structure.

The Office currently does not have an Audit Committee along the lines that most larger agencies have in place. This is understandable given the small size of the Office. However there would be benefits to the Office if it did decide to go down this path.

The setting up of an Audit Committee could be further investigated.

The single Management Group should also have some responsibility and participation in the budget management and development processes.

Recommendation 55: The operations and functions of the Ombudsman Management Group and Senior Officers Group should be reviewed with a view to merging the two Groups under an appropriate charter.

Recommendation 56: The establishment of an Audit Committee for the Office, with an independent Chair and one other independent member under a suitable charter should be investigated. The Committee would also be responsible for the internal audit oversight.

Recommendation 57: The charter of the Ombudsman Management Group include specific responsibilities for participation by the Group in the budget development and monitoring processes.

#### **D.3.2 Strategic and Operational Planning:**

The Office has a well-developed strategic and operational planning process. It is nevertheless a top-down driven process and would benefit from greater recognition of the involvement and input from staff at all levels. Ultimately all staff must own the strategic plan which is difficult if the staff don't have cause to exhibit ownership.

The Office has started to move in this direction by inviting staff representatives on the Staff Consultative Committee to attend strategic planning sessions, but it needs to go further.

It is also suggested that the Office look at the administrative justice goal in the current plan to give greater emphasis to the legislated objective of investigating administrative actions.

Recommendation 58: During the next strategic plan review, the emphasis given in Goal 1 to achievement of administrative justice should be reconsidered with a view to giving greater emphasis to the legislated objective of investigating administrative actions.

Recommendation 59: The Ombudsman and senior management should ensure that they maximise opportunities for staff input during the strategic planning process from all levels of the organisation. They should also ensure that appropriate feedback strategies are in place and implemented.

#### **D.4 Corporate Services:**

##### **D.4.1 Relationship with Information Commissioner:**

The Information Commissioner is proceeding down the path of having Queensland Parliamentary Services provide all corporate services. The Office will lose some \$86400 per annum in service payments.

It is highly improbable that the Office can adjust costs to reflect this loss of income.

Given the move by the Information Commissioner, the Office should investigate whether it should adopt a similar strategy ie full or partial outsourcing of corporate services.

##### **D.4.2 Accommodation:**

The current Office accommodation on three non-contiguous levels is inefficient and needs to be rationalized, particularly after the separation of the Information Commissioner's Office and their intended move to new premises.

The Office lay-out is also dated and not conducive to a good working environment.

The Ombudsman has been investigating alternative premises and this should continue.

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.

## **Section E: Communication Issues**

### **E.1 Building Relationships:**

While the Office has endeavored to raise its profile through publications and the administrative improvement initiatives, more can and should be done.

Agencies are also of the view that the Office needs to lift its profile and visibility.

It is a leadership issue which the Ombudsman needs to address by various strategies.

**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.

### **E.2 Staff Survey:**

The staff survey in 2005 was a very useful exercise and the Ombudsman has in place a reasonable process to deal with the outcomes of the survey. There is a demonstrated commitment to implementation of change.

Staff surveys need to be undertaken on a regular basis, preferably every 2 years and should be appropriately benchmarked for comparative purposes.

**Recommendation 63:** The process that has been put in place to address issues raised in the staff survey should be completed as soon as possible and the agreed strategies implemented in a timely manner.

**Recommendation 64:** A staff survey should be undertaken at least every two years and the survey results should be capable of benchmarking to measure movements in key indicators over time.

### **E.3 Relationship with LCARC:**

There is active and regular interaction between LCARC and the Ombudsman which is beneficial to the accountability mechanisms of government.

### **E.4 Relationship with Agencies:**

Some aspects of the relationship have been outlined in other sections of the report.

Given that every agency is different, with different styles of interacting with the Office, there would be value in the Office entering into Memorandums of Understanding certainly with the larger agencies to clearly set out the policies, protocols, practices and processes that the agency and the Office would follow in resolution of complaints as well as other relevant matters.

The Ombudsman also needs to examine the structure of the annual complaint reports to agencies to ensure that they address any agency concerns about format.

**Recommendation 65:** The Ombudsman should investigate with agencies the desirability of formally entering into a Memorandum of Understanding (MOU) which would clearly set out the policies, protocols, practices and processes that the Office and the agency would follow in the resolution of complaints received by the Ombudsman. The MOUs would replace any existing informal agreements.

**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.

#### **E.5 Relationship with the Crime and Misconduct Commission:**

There is regular interaction between the two agencies and the process seems to work well from both sides.

The relationship with the CMC might also benefit from entering into a Memorandum of Understanding.

**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.

#### **E.6 Role of Community Liaison Officers:**

The Ombudsman should look at whether there would be benefits in the Queensland context if liaison officers were to be appointed for particular groups eg youth, indigenous and ethnic groups.

Such appointments are made in other jurisdictions with some success.

**Recommendation 68:** The need for and desirability of appointing liaison officers for groups with potential special needs including youth, indigenous and ethnic groups, having regard for the success of these appointments in other jurisdictions, should be investigated.

## **Section F: Forster Report Implementation**

The 2000 Forster Strategic Review Report contained 97 recommendations and was presented on 19 June 2000.

The Office generally has been diligent in its implementation of the accepted recommendations.

LCARC has been active in monitoring progress.

The Office certainly derived significant benefits from the review and is a quite different organization as a result.

## **Section G: Davies Report**

The Report of the Commission of Inquiry into Queensland Public Hospitals proposed that the Ombudsman be given an oversight role with respect to public interest disclosures not involving misconduct. The Ombudsman could investigate the disclosure or refer it back to the agency for investigation.

There may well be significant resource implications if the recommendations are accepted and implemented.

There is no estimate available at this time and the Ombudsman needs to keep the matter under review and keep Treasury apprised of developments.

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.

## **Section H: Legislative Issues**

There are a number of legislative matters that the Ombudsman raised during the course of the review and which in general are worthy of support.

The key proposed changes relate to undertaking administrative audits, providing for an agency to issue an apology without fear of an express or implied admission of guilt, and removing the need to give written reasons in all cases for non-investigation.

Bringing staff of the Office within the public service could also be dealt with at the same time.

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.



### **Section I: Internal Reviews**

While not a legislated right, it has been the practice of the Office to facilitate an internal review of an Office decision where the complainant seeks one. It is undertaken by a senior officer.

I support the concept of internal review which is consistent with the practice applying in agencies generally.

It might be possible for some of the reviews to be undertaken by external consultants in appropriate circumstances subject to confidentiality and security concerns being addressed.

However, on balance, I am inclined to the view that the most cost effective solution is the current practice of having a senior officer in the Office undertake the review.

### **Section J: Response by the Ombudsman to the Draft Report**

Section 85 of the Act requires that the Ombudsman and the Minister receive a copy of the draft report, which was provided to each of them on 15 March 2006. The Ombudsman may provide comments on the draft report within 21 days of its receipt.

During the 21 day period, a number of minor changes were discussed and resolved informally with the Ombudsman. These changes in no way altered the substance of the report or its recommendations.

A formal response was provided by the Ombudsman to the reviewer on 4 April 2006.

The Ombudsman's response was generally positive in terms of the report and recommendations.

The Ombudsman's concerns in regard to the adequacy of resourcing are appreciated and in several places in the report I have supported approaches to Treasury for additional funding for specific initiatives (see Recommendations 20 and 43). I have also acknowledged in the report that further reallocation of resources from the investigative function to initiatives such as administrative improvement could impact on this function.

The Ombudsman does not share my view that having regard for the apparent situation in other jurisdictions such as New Zealand, the relative share of total resources devoted to the investigative function could increase although I have made no specific recommendation. The lack of national benchmarking makes meaningful comparisons very difficult, which I have acknowledged in the report. It is a matter that the Ombudsman could pursue independently with other Ombudsmen.

Some concern was expressed about my comments that the Ombudsman may need to assess whether greater use needs to be made of the discretionary powers not to investigate. It is a difficult issue and one that is increasing concern as overall budget pressures increase. My comments/observations were meant to be suggestive rather than recommendatory and it is a matter for the Ombudsman to consider in individual cases, having regard for the role of the Ombudsman and the best use of resources available to undertake that role.

No changes have been made to the draft report in the light of the Ombudsman's formal comments and hence his response is included in full as **Attachment G**.

## Section B: Introduction

### B.1 Background:

Section 83 of the *Ombudsman Act 2001* (“the Act”) provides for strategic reviews of the Ombudsman Office to be conducted at least every five years. The strategic review is to include a review of the Ombudsman’s functions as well as the performance of those functions to assess whether they are being performed economically, effectively and efficiently.

The review is to be conducted by an appropriately qualified person appointed by the Governor in Council. The terms of reference for a strategic review as well as the terms and conditions of appointment of the reviewer are to be determined by the Governor in Council.

The Minister (in this case the Attorney-General and Minister for Justice) must consult with the parliamentary committee (the Legal, Constitutional and Administrative Review Committee, (“LCARC”)) and the Ombudsman about the appointment of the reviewer and the terms of reference for the review.

On 8 September 2005, the Governor in Council approved that Mr Henry Robert Smerdon be appointed to undertake the strategic review in terms of the legislation.

### B.2 Terms of Reference:

The terms of reference for the conduct of this review were also approved by the Governor in Council on 8 September 2005.

The Scope of the Review was defined as:

*“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.”*

The full scope of the Terms of Reference, including the Methodology to be employed and the matters to which particular reference was to be given, is set out in Attachment A of this Report.

### B.3 Review Process:

Section 84 of the Act provides for the reviewer to have the powers of an authorized auditor in terms of the *Financial Administration and Audit Act 1977*. However, I have had the utmost co-operation and assistance from all stakeholders and at no stage have I been constrained or hindered in the conduct of the review such that consideration needed to be given to the use of these formal powers.

The review process has been a genuinely consultative and co-operative one and I have appreciated the ready assistance I have received.

While the terms of reference approved by the Governor in Council do provide some guidance in terms of methodology, I have been largely free to determine the methodology to be used to undertake the review within the broad framework provided.

It should be noted that I was also appointed by the Governor in Council to undertake concurrently with this review, a similar strategic review of the Office of the Information Commissioner pursuant to the *Freedom of Information Act 1992*. The two reviews have been conducted independently and separate reports have been prepared with respect to each Office.

In the interests of efficiency of time and for cost saving reasons, the visits to interstate and overseas jurisdictions included both Ombudsman and Information Commissioner aspects. Also in conducting interviews with agencies and other stakeholders, the agenda included matters pertinent to both the Ombudsman and the Information Commissioner.

It has been particularly useful to the process for each review to have the one person conduct them. Care has been taken to ensure that the reviews have proceeded quite independently except as outlined above.

The review process broadly embraced the following:

- An initial round of interviews with the Ombudsman and the Director-General of the Department of Justice and Attorney-General.
- Opportunity was afforded to all staff of the Office of the Ombudsman ("the Office") to meet with me either in a focus group or an informal interview situation. Most staff participated in these processes.
- All staff who had left the Office in the previous five years were given the opportunity to participate in a focus group. Ten former staff members responded positively to the invitation and attended the focus group, which was a very constructive and informative meeting.
- Visits were arranged to agencies responsible for ombudsman legislation in New South Wales, Victoria and New Zealand. These visits were very productive and helpful to the process.

- Meetings were arranged with a number of agencies which interact with the Office. In all cases, the Director-General, Acting Director-General or equivalent, plus other relevant staff, attended the meetings. A list of agencies participating in this process is set out in Attachment B.
- A sample of eighty files was examined in detail. The sample covered both open and completed files and files dealt with by both the Assessment and Resolution Team (ART) and the investigative teams. While not large, the sample was sufficiently representative for the purposes of the review.
- Meetings/briefings were also conducted with LCARC which also passed on for consideration, a number of representations that had been made to it by various individuals in recent years. I am grateful for the co-operation I have received from the Chair, Dr Lesley Clark and members of her Committee.
- Apart from the meetings and interviews, there was also a large range of written material available to me, either provided by the Ombudsman or other stakeholders, including staff, or publicly available. Other jurisdictions were also generous with their time and provided very valuable information and input.

While a number of representations were received in various ways on issues of concern, public submissions were not invited and public meetings were not conducted in regard to the review. I do not believe that this compromised the process in any way or detracted from the final outcome.

A client survey was not conducted as the Office had undertaken a comprehensive survey of clients in 2004, the results of which were available to me and in my view still relevant. I did not consider it necessary to undertake a further expensive survey at this time.

Similarly, a major agency survey was conducted in 2005, the results of which were contemporary and available to me. I did not see it as necessary to undertake a similar survey other than via the normal interview processes.

The Ombudsman did not provide a formal submission but did provide extensive written and other material to support the review process and deliberations as well as a very detailed briefing at the outset of the review. Regular meetings were held with the Ombudsman during the review process.

I need to place on record my appreciation of the ready co-operation and assistance I received from the Ombudsman and his staff.

## Section C: Strategic and Operations Issues

### General

The objects set down in section 5 of the *Ombudsman Act 2001* are:

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

There is therefore the dual function of investigating decisions and also improving the decision-making processes of government.

An agency for the purposes of the legislation includes departments, local government and public authorities.

Administrative action is defined to include both decisions as well as failure to make decisions, and can include making of recommendations, formulation of a proposal or intention.

Unlike the situation with the Information Commissioner, whose decisions are effectively binding on the agencies in that the decision of the Information Commissioner takes the place of the agency decision, the Ombudsman has recommendatory power only and decisions are not binding on the applicant or agency concerned.

This lack of a binding power has given rise to comments particularly from dissatisfied applicants, that the Ombudsman is effectively a “toothless tiger”. However, the Ombudsman does have a significant moral suasion power, which should not be underestimated and it is very rare that the Ombudsman’s recommendations are not taken up.

The Ombudsman can initiate an investigation in several ways, including:

- an administrative action being referred from the Parliament or a statutory committee of the Parliament;
- a complaint being lodged by an affected party;
- independently by the Ombudsman.

Independent investigations or “own motion” investigations are a reasonably common feature of other jurisdictions but not so commonly used in Queensland.

There are a number of administrative actions that are not subject to the Ombudsman, and these include:

- a decision made by a Minister or Cabinet or a decision that the Ombudsman is satisfied has been taken for implementing a decision made by Cabinet;
- a decision of a tribunal or mediator under the *Disputes Resolution Centres Act 1990*;
- operational actions of the police service, particularly where the Crime and Misconduct Commission can investigate;
- actions of the Auditor-General.

### C.1 Role of the Office of the Ombudsman:

The Ombudsman's Office was first established in Queensland pursuant to the *Parliamentary Commissioner Act 1974* and was originally called the Parliamentary Commissioner for Administrative Investigations (Ombudsman).

For the majority of time since it was established, the Office has been focused on the investigation of administrative actions. It has only been since the 2001 amendments to the legislation that the role of the Office has expanded to include not only investigation of administrative actions but also improving decision-making in the public sector.

The expectation of the general public is that the Ombudsman is available as a means of ensuring that any concerns they might have about the legality, reasonableness or justness of an administrative action can be properly and independently reviewed. In this way, the public sector can be held accountable for its administrative actions and decisions that affect members of the public.

If the role and functions of the Ombudsman's Office are being properly carried out, there is a much higher level of confidence by the public at large that the standards of public sector administration are appropriate.

It is particularly important and timely that the Ombudsman become increasingly involved in the improvement of decision-making in the public sector. Ideally, in a perfect world, the agencies should be making good decisions all the time and the role of the Ombudsman should be superfluous. Unfortunately this is not the case and for a whole variety of reasons, agencies make decisions which in hindsight could have been better, hence the need for some form of review.

It does need to be said and acknowledged though that given the number of administrative actions taken by agencies each year, the number that are subjected to some form of review process is actually quite small and the number found to involve some form of maladministration, even smaller.

The number of complaints lodged with the Office has been declining with a significant decline in 2004-05, as follows:

**Table 1: Complaints Lodged With Ombudsman's Office**

Year	Corrective Services	Other	Total
2002-03	1501	7239	8740
2003-04	1387	7591	8978
2004-05	1335	6532	7867

Source: *Ombudsman Annual Reports*

The decline in the number of complaints lodged has been one of the factors that has enabled the Office to reduce the number of open files on hand at the end of the year. For example, at 30 June 2005, the Office had 398 open files on hand compared with 1369 files on hand at 31 March 2000 at the time of the last review.

It is not clear what has caused the decline in complaints coming in from the general public, particularly in respect of State and Local Government agencies other than Corrective Services.

It is not possible to say whether the trend is a longer term one although the number of complaints recorded with the Ombudsman's Office in the current year to date are consistent with this downward trend. At 28 February 2006, lodgments totaled 4956.

The decline in numbers, with a relatively static work force, means that workloads are decreasing and more of officers' time can be devoted to other Office priorities, including administrative improvement.

There does seem to be a greater focus within many agencies on better complaint management practices which should see many complaints previously going to the Ombudsman resolved at the agency level.

It is also worthwhile to note that the great majority of complaints are resolved informally and very few carry through to formal investigation.

The situation in 2004-05 in respect of the 7949 complaints finalized is summarized in the following Table 2:

**Table 2: Analysis of Complaints Finalised – 2004-05**

Referred for internal review by agency	2595
Outside jurisdiction	1646
Await outcome of agency's current decision process	643
Complaint to be put in writing	455
Investigation unnecessary or unjustifiable	400
Appeal right to be exhausted	329
Other	378
	<b><u>Sub-total</u> 6446</b>
Resolved Informally	1272
Withdrawn by complainant on assessment	114
	<b><u>Sub-total</u> 7832</b>
Formal Investigation	117
	<b><u>Total</u> 7949</b>

*Source: 2004-05 Ombudsman Annual Report*



In the case of “Formal Investigation”, the Ombudsman conducts the investigation by formally interviewing witnesses, obtaining statements or requiring an agency to provide a written report responding to the complaint.

Of the 117 complaints formally investigated, only 6 established a case of maladministration, while of the 1272 cases involving informal resolution, only 24 cases of maladministration were established.

In the great majority of cases, no maladministration was established. This is consistent with the Office’s emphasis on using informal processes to resolve complaints wherever possible.

In many cases, there was no need to make a finding of maladministration because, as a result of the Ombudsman’s intervention, the complainant’s concern was addressed in whole or part.

While the legislation prescribes an investigative role for the Ombudsman, it is clear that a considerable part of the resources of the Office are devoted to pointing complainants and to some extent agencies, in the right direction.

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

There is a role for the Ombudsman going forward and the current role as defined is appropriate.

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

## C.2 Intake Process and the Role of ART:

The legislation provides that a complaint about an administrative action of an agency can be made:

- orally or in writing,
- by any person apparently directly affected by the action, and
- must be made within one year after the day the complainant first had notice of the action.

The Ombudsman can

- decline to accept an oral complaint,
- accept a complaint from a person apparently representing the complainant, and
- in special circumstances accept a complaint outside a period of one year.

The Ombudsman also has the power to help a person put a complaint in writing.

All new complaints, both oral and written are received in ART where they are assessed and either resolved in the team or reallocated to one of the investigative teams.

“Guidelines for Assessment of Complaints” have been established and are applied by ART in deciding whether to refer a matter to an investigative team. The criteria applied include the level of seriousness and complexity of the complaint and whether the complaint appears to involve systemic issues.

In relation to complex complaints, ART applies a general rule of thumb that a complaint will be referred to an investigative team if it would take longer than 4 hours to resolve the matter.

ART was established in April 2002 by the current Ombudsman because of his concerns that the Office was not dealing with the complaints workload effectively and in a timely manner. ART’s impact is reflected in the significant reduction in the number of open complaints from 820 at 30 June 2002 to 398 at 30 June 2005.

The ART team has 14 staff members headed by an Assistant Ombudsman. The team includes a Senior Investigator whose role includes the assessment of all written complaints as well as 5 investigative staff, 4 inquiry staff and 3 support staff.

Apart from the normal flow of complaints, ART also services the Prisoner Phone Link.

Telephonic communication now drives a lot of the business of ART and as might be expected, work flows are uneven and can lead to significant stressful situations.

From time to time, the volume of telephone calls cannot be dealt with by available staff and a queuing system operates. Names and contact details are taken and recorded in the Office’s case management database on the basis that someone will get back to the person at the earliest opportunity.

Unfortunately, returning calls can be a problem. Although most calls are returned the same day, it can take up to 48 hours to return the call, which causes a degree of anxiety with the complainant. Intake officers make three attempts to contact the caller including, in the majority of cases, by leaving phone messages on answering machines and voicemail. If these attempts are unsuccessful, the file is closed and no further action is taken.

The danger with a three unsuccessful call-backs policy is that persons with genuine complaints can be denied the opportunity to have their complaint investigated or at least discouraged from pursuing the matter. This is not really acceptable.

Fortunately, this appears to occur in a relatively small number of cases. While exact numbers are not available, the Ombudsman advises that it is less than 200 per year, which in my view is still too high.

The New South Wales Ombudsman's Office in effect operates a call centre type operation where all callers receive some level of assistance. There are 7 dedicated staff in the centre and resources are supplemented if demand requires it on a temporary basis. They therefore do not have the queuing consequences evident with the Queensland system.

A call centre type operation has merit and should be investigated by the Ombudsman. There would need to be sufficient staff available to resource the centre and additional resources able to be accessed in periods of high demand.

The call centre type facility could still reside within ART as there is some merit in having investigators available to resolve matters quickly.

It would require additional resources to staff a call centre facility appropriately. I have some concerns about the capacity of the Office to devote sufficient resources under existing arrangements within the Office.

The alternative to ART would be to have the ART investigators relocated to the investigative teams so that what remained was essentially the New South Wales model.

While the model in New South Wales appears to work well, there is no reason why ART, amended as proposed, prima facie would not also work well.

The Ombudsman has advised me that as a result of recent changes in procedures in ART, amended by my raising the issue, close to 50% of all calls received by ART (in addition to those dealt with by Reception) are now handled immediately. This is a move in the right direction and I encourage the Office to work towards responding immediately to all complaints by telephone.

**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.

As indicated earlier, the great majority of the complaints received during the year are resolved within ART with very few complaints requiring formal or informal investigation or resolution.

Where the Assistant Ombudsman (ART), after applying the Assessment Guidelines to a matter, believes that it should be referred to an investigative team, the matter is submitted to a Case Assessment Committee that meets twice a week to approve the allocation of complaints to the investigative teams. The Committee consists of the Ombudsman, Deputy Ombudsman responsible for ART, the Assistant Ombudsman in charge of ART and a Senior ART Investigator.

The Case Assessment Committee was established to:

- inject additional expertise into the assessment process,
- inform the Ombudsman of significant cases received by the Office, including complaints referred by Members of Parliament,
- make adjustments to the threshold for referring complaints to the investigative teams in light of their current workload.

However, I have great reservations about the need for this committee to continue. I do not see it as a particularly good use of either the Ombudsman's or Deputy Ombudsman's time. I am assured that the meetings do not involve an excessive amount of time. However this is not the point. It really should be a matter for the Assistant Ombudsman in charge of ART to decide whether a matter should be handled by ART or not. The Assistant Ombudsman should have the authority to make this judgement and for it to be accepted by his or her peers.

If the investigative teams feel they are being disadvantaged by the process eg a suspicion that the Assistant Ombudsman in charge of ART is off-loading files, this matter should be dealt with as a management issue.

Recommendation 3: The role of the present Case Assessment Committee should be reviewed with a view to the Committee being disbanded. Decisions in regard to allocation of complaints to the investigative teams should be made by the Assistant Ombudsman responsible for ART, if necessary, in consultation with the Deputy Ombudsman.

I considered at some length, the desirability of having all investigations handled by the investigative teams rather than having some in ART and some in the investigative teams ie retain ART as purely an intake facility. However ART has been successful in dealing expeditiously with the great majority of complaints with a reasonably high level of complainant satisfaction.

The availability of appropriate skills to the ART team is always going to be problematic requiring careful management. The stresses of work load and of having to attempt to resolve issues quickly and accurately, make it imperative that the majority of staff be relatively experienced. Specialist areas like local government or corrective services require particular attention.

Senior management within the Office need to ensure that the staff of ART are properly supported with appropriate training and skills development, particularly to handle difficult complainants. I understand that the Office has recently approved a policy on debriefing ART officers, which provides for a range of informal and formal strategies to respond to difficult complainants and other stressful situations.

An external provider has also been engaged to undertake twice yearly training sessions to support the strategies.

A rotation policy might also be helpful although this does not happen in New South Wales, where staff with particular skills in negotiation and conflict resolution are found to be valuable.

I also believe the processes of ART would be enhanced if ART had access to another senior investigative officer for the more complex matters that are still capable of resolution in ART as proposed in Recommendation 2.

**Recommendation 4:** All staff in ART should have access to appropriate training and skills development having regard to the particular demands and pressures of working in ART in a close client contact environment. A staff rotation policy should also be developed and implemented to ensure that staff have the opportunity to work in both ART and the investigative teams. Such a policy needs to take account of any potential impact on day to day operations of both ART and the investigative teams.

### C.3 Assessment and Investigation Process:

In the great majority of cases, the complaint can be resolved by telephone contact with the agency concerned. For example, as indicated earlier in this report, “resolution” of 7949 cases in 2004–05 as defined by the Ombudsman includes

- referring matters back to the agency for internal review (2695),
- deciding the complaint is outside the Ombudsman’s jurisdiction (1646)
- awaiting the outcome of agency’s current decision processes (643)
- requiring the complaint to be put in writing (455)
- deciding investigation is unnecessary or unjustifiable (400)
- requiring appeal rights to be exhausted before investigation proceeds (329)

In most cases, the file can be closed fairly quickly and the Office has developed a reasonably good track record for dealing with these files.

The more complex matters are resource and time intensive and in many cases involve lengthy investigative processes.

There is a perception among some agencies that the Ombudsman’s Office is overly adversarial in its investigations, focussing unduly on the merits of the decision rather than the administrative processes giving rise to the decision. In the 80 or so files I examined, I did not find any significant evidence of this although at times, with the wisdom of hindsight, there may have been an alternative way of dealing with some issues.

There is a tendency in the two investigation teams to use more formal communication such as correspondence rather than face to face meetings. The Ombudsman advises that the transition to more informal investigative processes has been one of the most important business changes within the Office since the last strategic review of the Office in 2000.

However, the Ombudsman also acknowledges that the informal investigative approach needs to be continually promoted by supervisors. Staff should be encouraged to use a more informal process wherever possible, including mediation.

Where a complaint requires formal investigation, the responsible officer prepares a detailed case management plan. The Office has developed a comprehensive set of guidelines to assist the process although prima facie it does seem overly bureaucratic.

The case management plan is a relatively new innovation and already a decision has been taken to reduce the paperwork by doing away with detailed plans for comparatively simple files. It is therefore only in place for the more complex investigations. It is due for further review in 2006.

The concept of a case management plan being developed at the outset to guide management of the process has merit, particularly as time lines for progress are also included.

In the past there was a view that the Office went on an expensive process of advocacy for the complainant, to the extent of engaging expensive consultants to “test” the advice provided by agencies in some cases.

I did not find evidence of this but in a sample of only 1% of files, this was not necessarily large enough to totally discount this sort of action occurring. However I am assured by the Ombudsman that there had not been recourse to consultants in more recent times, except in a couple of cases, for legal advice.

While there have also been some views that the Office’s approach was unduly legalistic, again I found no real evidence to support this view.

I have concluded that, based on my examination of files and also discussion with agencies, the Office has made considerable progress in its dealings with complainants and agencies, although almost every agency thought even more use could be made of informal procedures including mediation and face to face contact, rather than correspondence.

The Forster Review drew attention to the fact that

*“the formal investigative philosophy adopted by the Queensland Office is effective in clarifying the merits of a particular complaint, but is excessively time consuming and at times results in an unhelpful adversarial relationship developing between the Ombudsman and agencies.”*

It is fair to say that the Office today is quite different to the one examined by Forster. It has come a long way but it is useful to remind itself of some of the key issues from the past to ensure that the advances are not lost.

My observations based on examination of files and from discussions is that the Office is still somewhat burdened by its own bureaucratic processes, including delegations, which will be discussed in another section.

The Office does utilise a reasonably good case file management data base system called Catalyst. It has been progressively developed in house based on commercially available software. The majority of files are managed on-line and not in hard copy and the data record is quite comprehensive. In my examination of files I did find the system a little cumbersome but that could have been due to lack of familiarity with the finer points of the system. Most staff were generally happy with the system.

Appropriate security safeguards exist and are supported by a well-documented IT plan.

The system does require on-going support and currently two staff in corporate services devote significant amounts of time to developing and maintaining the system.

Other jurisdictions have in recent times examined the Catalyst system and are considering adopting something similar for their own operations. The Catalyst system produces a number of valuable management reports to assist managers and staff.

I have no recommendation in regard to the use of the Catalyst system.

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.

Recommendation 6: The processes and procedures applied to the conduct of investigations should ensure that bureaucracy is kept to the absolute minimum consistent with appropriate resolution of complaints.

#### C.4 Role of “Own Motion” Investigations:

The Act authorises the Ombudsman to investigate an administrative action even though a specific complaint may not have been received. These are commonly referred to as “own motion” investigations.

Most Ombudsmen undertake such investigations although the extent depends on the particular jurisdiction. For example, the Victorian Ombudsman is quite active and initiated a number of “own motion” investigations in 2005 and intends to be even more active in the future. He sees these investigations as a valuable tool to raise the standard of administrative decision-making in agencies.

The New South Wales Ombudsman does use “own motion” investigations but is reluctant to overuse them.

The Victorian process for “own motion” investigations tends to be short and sharp whereas the New South Wales process can be slightly longer.



The Queensland Ombudsman does use “own motion” investigations on occasions, usually where systemic issues are involved. They usually arise in circumstances where the Ombudsman, having dealt with the complainant’s particular grievance, identifies systemic issues that need to be investigated. These tend to be more of a response to deficient administrative actions of a systemic nature rather than “own motion” investigations in the common use of that term.

The Ombudsman has undertaken 3 major investigations in recent years, each resulting in a substantive report to Parliament. Although it could be debated as to whether “technically” these were “own motion” investigations, they did look beyond the circumstances of the particular event and focus on systemic issues.

These were:

- Brooke Brennan Report (2002)
- Baby Kate Report (2003)
- Workplace Electrocution Report (2005)

The last Report was the culmination of four years of investigations into 9 separate electrocution incidents resulting in 12 deaths. It summarised the results of 8 large investigation reports provided to the Department of Industrial Relations between 2002 and 2004 in relation to those deaths, which led to a complete overhaul of the electrical safety framework in Queensland, including the legislation.

While the reports have been really worthwhile documents with well-received recommendations and findings, they would have had even more value if they could have been completed in a more timely manner.

The Office has set up a Major Projects Unit, the prime function of which is to undertake reviews of this nature, as a dedicated resource.

The Unit is headed by an Assistant Ombudsman and the only other permanent member is the officer responsible for managing the Good Decisions Training Program. The latter officer is not involved in major investigation projects. Investigators are appointed to the Unit for the purpose and duration of a particular investigation and then return to other investigative functions in the Office.

As I understand the situation with other jurisdictions, a special unit such as the Major Projects Unit does not exist with such reviews drawing on normal investigation resources when undertaken. The risk with special Units of this nature is that they start to justify their existence with activity, needed or not, and the skill set tends to get dated the longer personnel are away from the coal face.

On the other hand, when resources are drawn from normal activity to staff these special investigations, invariably normal workloads are affected although file reallocations and other strategies can help to manage such situations.



On balance, my inclination would be to not have a dedicated unit but ensure there was capacity in the system to meet these one-off demands. However the Unit does have responsibility for the Good Decisions Training Program and potentially other administrative improvement initiatives, which does need dedicated expertise. The Unit's name should be changed to Administrative Improvement Unit to better reflect its primary role.

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.

I have some sympathy with the Victorian Ombudsman's position that "own motion" investigations should be short, sharp and focussed.

My assessment is that more could be done by the Office to identify systemic problems, which might be the subject of "own motion" investigations. The systemic issues need not be ones that arise from complaints made to the Office, although this would be an obvious source. It is also possible for the Ombudsman and his team to be more proactive with agencies through liaison and informal discussion, to look at administrative systems, particularly affected by say recent legislative changes, to assess complaint handling processes.

I would therefore encourage the Ombudsman to increase his "own motion" investigations with such investigations being carried out in a timely manner using existing resources.

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.

### C.5 Corrective Services:

The prison system is the single largest source of complaints made to the Office – 1335 out of a total of 7867 received in 2004-05 or nearly 17%. In the previous year, the number received was 1387 out of 8978 complaints received or 15.5%.

Close to half of the complaints received from prisoners are made via the Prisoner Phone Link established in 2002.

Of the 1363 prisoner complaints finalised in 2004-05, approximately 45% were the subject of some form of investigation. Although only 9 cases of maladministration were established, in another 230 complaints, it was not necessary to make a finding of maladministration because as a result of the Office's intervention, the complaint was resolved. This is consistent with the recommendations in the Forster Review that the Office use informal processes wherever possible.

The Office visits each prison at least twice each year which is generally consistent with what happens in other jurisdictions. These visits are an important part of the regional visits program.

Apart from meeting with prisoners, part of the visit to a prison involves examining administrative processes within the prison.

The legislation covering prisons is proposed to be amended to provide formally for the appointment of a Chief Inspector of Prisons who would be responsible for:

- the investigation of serious incidents in prisons,
- audits of systems in prisons,
- the Official Visitors Program.

It is the intention that the Chief Inspector undertake a detailed audit of every prison facility every two years.

Clearly there is some overlap in the proposed roles of the Chief Inspector and the Ombudsman and there have already been discussions as to how the work of each can be focussed and not duplicated.

It is the view of the Corrective Services administration that the appointment of the Chief Inspector, the revamp of the Official Visitors Program and improved internal complaint system (together with some other amendments related to processes that previously gave rise to complaints), will see potentially a significant decline in the number of complaints lodged by prisoners.

While prima facie there is much logic in the view of the Corrective Services administration, only time will tell whether prisoner complaint numbers will decline and whether the current "trusted" role of the Ombudsman can be embraced by the Chief Inspector and his team.

There were also some concerns within the Office in regard to current arrangements with visits to prisons particularly in regional areas. There is prima facie some attraction to multi-skilled teams undertaking regional visits, including visits to prisons in the itinerary. On the other hand, for prison visits to be effective, the officers conducting those visits need to have some expertise and experience with prisons. Therefore if the officers conducting a regional visit do not have that expertise and experience, the prison in the region should be visited separately.

This aspect will be further discussed in the section dealing with the regional visits program.

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.

Recommendation 12: The Prisoner Phone Link continue to be maintained as an important means whereby prisoners can have their grievances considered by an independent agency.

#### C.6 Regional Visits Program:

The Office undertakes various visits to regional Queensland during the year. Originally such visits were an opportunity for the regional community to be made aware of the activities of the Office. They were also a source of complaint intake as people could have their complaints assessed and generally resolved on the spot or at least progressed.

With the advent of greater use of the telephone (toll free number) and the Internet, most complaints are dealt with in this way rather than during regional visits. For example, once it is known that the Ombudsman is coming to visit, most people, if they had not already done so, will telephone and register the complaint and be given advice or have their complaint resolved before the Ombudsman staff arrive in town.

Where a complainant needs to be interviewed in regard to the complaint, ART usually advises the regional visit organiser so an interview can be arranged or other investigations undertaken. Also officers take the opportunity while on a regional visit to try to resolve existing complaints with agency officers in the region.

Most jurisdictions undertake similar visits and tend to use them as an opportunity to raise the profile of the Office and to spread the word about how the Office can assist them.

The regional visits program in 2004-05 covered 58 cities and towns from Cooktown in the north, to Mt Isa in the north-west, Winton in the west and Cunnamulla in the south-west as well as major cities along the eastern seaboard and the south-east corner. Seventeen of those locations were the subject of two visits.

There is some concern that the regional visits program is not well focussed and needs clearer objectives. Also the cost of the program was estimated to be around \$140 000 in 2004-05 and perhaps could be better spent elsewhere.

The previous Forster Review strongly supported the continuation of the regional visits program as providing vital rural and regional access to the services of the Ombudsman. I see nothing that has happened in the intervening 5 years to change this conclusion. The increasing use of Emails to lodge complaints etc has changed the intake focus of the visits but does not impact on the wider objectives of such visits. That is not to say that changes cannot be made to the regional visits program to make them more relevant to the needs of the regional community.

The Office has recently put in place a modified regional visit format, embracing a more strategic approach to the planning of visits and the continued movement away from using visits as a conduit for receiving new complaints.

The essence of the new strategic approach involves:

- advertising the Ombudsman's complaint role throughout regions on a rotational basis inviting complainants to contact the Office on a toll-free number – but not nominating a particular day for a visit;
- assessing all complaints received normally;
- only visiting a region to
  - o investigate a complaint,
  - o conduct Good Decisions Training,
  - o address a seminar, workshop or conference,
  - o conduct a visit to a correctional facility.

There is no doubt that the regional visits program does have resource and staffing ramifications for the Office and the value of the visits from an Office point of view has probably declined. However, I believe the importance of being seen in regional areas must not be underestimated.

The new approach would see the Office much more active in seeking out opportunities to address forums and to target areas where an analysis of complaints suggests that the area would benefit from a visit, as well as seeking out opportunities for good decisions training sessions.

I have some concerns about the new approach, but given the nature of the trial, it should be allowed a reasonable opportunity to work and to be objectively assessed.

I also have some concerns that the continued inclusion of prison visits unnecessarily complicates the planning for the regional visit. There would seem to me to be a good argument to conduct the visits to correctional facilities separately using experienced staff. This would also free up the normal regional visit program to concentrate on issues such as good decisions training.

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 14: The current trial of a modified regional visit format should be evaluated after a reasonable period and changes made where appropriate consistent with an over-riding objective of servicing the needs of rural and regional Queensland.

Recommendation 15: The requirement that visits to correctional facilities take place within the normal regional visit program be reviewed on the basis that visits to correctional facilities should be conducted by appropriately skilled and experienced staff.

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

It was also brought to my attention during the course of the review that a practice existed that staff would return home by Friday evening to avoid the cost of weekend stays. Unless staff have sound reasons in a particular case for not staying the weekend, it would seem to be false economy to unduly cut short visits simply to ensure staff were not away more than a week. However this is a management issue, which one would hope could be addressed in the normal course.

### C.7 Demand Management:

Ombudsman Offices in other jurisdictions now give high priority to reducing demand for their services in part as a means of coping with funding pressures.

A key strategy is to improve decision making in agencies so that the demands for review by the Ombudsman are minimised.

The Queensland Ombudsman has been active in promoting good decision making in agencies and places significant importance on the good decision training program for agencies. The good decisions training program has been well received by agencies and most agencies interviewed were very happy to participate and indeed pay for the training they receive.

While prima facie better decisions taken in agencies should impact positively on demand, it is still too early to assess the longer term effects. The decline in complaints lodged in 2004-05 and continuing in 2005-06, while encouraging, is not necessarily linked to the good decisions training program or the Complaints Management Project undertaken by the Office.

Training is important but agencies also need to ensure that their complaint handling processes are well founded and operate within a positive culture where complaints are seen not as a negative but as an opportunity to learn and do better. Very few agencies actively imbed complaint handling within their strategic planning processes. Most agencies are aware of the need to better integrate this aspect in their strategic planning processes.

While training at the agency level is important to ensure better decisions are made at the coal face, the Ombudsman's Office also has the capacity to contribute to better demand management practices by more actively managing the level of complaints dealt with by the Office.

For example, section 23 of the Act provides power for the Ombudsman to refuse to investigate or continue to investigate, if the Ombudsman considers that:

- the complaint is trivial
- the complaint is frivolous or vexatious or is not made in good faith
- the complainant does not have a sufficient direct interest in the action
- the complainant has not exercised available rights of appeal or similar review
- investigation of the complaint is unnecessary or unjustifiable.

Similar provisions exist in most legislation relating to the Ombudsman and these provisions are increasingly being used to not investigate claims that while perhaps important to the individual, are not considered of sufficient merit to apply scarce resources to investigate. It is probably timely for the Ombudsman to assess whether he needs to make greater use of these powers in the future.

At the end of the day, scarce publicly-funded resources need to be applied where the greatest level of good can be achieved and this is not necessarily in investigating minor matters where failure to investigate would have little impact on the community or indeed the individual.

It should also be remembered that every investigation has a cost and in some cases the cost is significant. The cost must be funded by the taxpayer. It is hard to justify on economic grounds, the investigation of a complaint for an individual that involves small amounts of money or impact with no systemic significance.

The Queensland Ombudsman is monitoring these developments in other States and will need to keep the issue under close scrutiny.

A further strategy used by the Ombudsman to manage demand, particularly in the longer term, is to improve the complaint handling procedures and processes within agencies.

In March 2003, the Ombudsman launched the Complaints Management Project, which was designed to encourage and assist public sector agencies in Queensland (both state and local) to implement complaints systems that met recognised standards for good complaints management.

Eleven councils and agencies participated in phase one of the project with the report on phase one completed in December 2005 almost three years after the project was launched.

The process involved:

- an evaluation of the complaints handling processes within agencies against recognised Australian standards,
- suggestions for improving the standards and processes for handling complaints within agencies.

All agencies responded positively to the Project and indicated significant benefit from participation. Development of good standards and processes is important but it does require skilled, well-trained and committed people to implement them if proper effectiveness is to be achieved. By way of example, Queensland Health was one agency that participated and the standards and processes for complaint handling within the department, on paper, met Australia Standards. However the department's implementation appeared to be somewhat lacking if findings of the Davies Inquiry are correct.

The Ombudsman is to be congratulated on the Complaints Management Project. It is unfortunate though that it took so long from when it was launched to when it was completed. In saying this I recognise that to a significant extent, the time taken was dependent on the participating agencies completing the steps they needed to take under the review.

Phase two of the project was launched at a forum on 16 March 2006 and will cover all other agencies. A project plan has been developed which provides for the project's substantial completion by 30 June 2007.

In 2001, the Ombudsman assisted the then Department of Local Government and Planning to develop a publication to help and encourage local government to implement effective complaint management systems. That initiative provided some of the impetus for amendments to the Local Government Act in 2005 requiring all councils to establish a general complaints process by March 1, 2006.

Ideally all government departments and agencies should be required to develop a complaints management system that complies with the relevant Australian Standard. This would require the Public Service Commissioner to issue a directive under the *Public Service Act 1996* requiring departments and agencies to develop a compliant complaint management system by a specified date.

The Ombudsman has already made this recommendation in his report to Parliament on Phase 1 of the project in December 2005 and this should be followed up with the support of this review.

The matter has already been raised with the Public Service Commissioner by the Ombudsman and discussed further with the Commissioner during the course of this review. The discussions were encouraging.



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

Recommendation 18: Developments in other jurisdictions that are designed to maximise the effectiveness of application of scarce available resources to resolving substantive complaints, particularly where these have implications for better decision-making and complaint handling in agencies, should continue to be monitored and evaluated in the context of existing powers in the *Ombudsman Act 2001*.

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.

Recommendation 22: The Ombudsman should seek additional funding from Treasury to ensure that Phase two of the Complaints Management Project is completed in a timely manner.

### C.8 Timeliness:

The Office has certainly improved timeliness compared with the situation at the time of the last review. For example, in September/October 2001 the caseload exceeded 1700 complaints. As at 30 June 2005 there were only 398 open complaints. However, timeliness remains a concern for both agencies and complainants.

In 2004-05, of the 7949 complaints finalised, 5654 or more than 71% were finalised within 10 days. While this is quite a good outcome on the surface, these would largely consist of the types of complaints that require very little if any investigation eg referred back to the agency, out of jurisdiction etc. A better measure is the length of time it takes to resolve the more difficult complaints.

Desirably the vast majority of complaints should be resolved within 3 months of initiation and in 92% of cases this happens. 98% of complaints are finalised within 12 months of initiation.

Of the 398 files on hand at 30 June 2005 awaiting resolution, only 36 or 9% related to complaints that were more than one year old.

In 2004, the Office conducted 2 major surveys of complainants and agencies. The surveys replicated similar surveys conducted in 1998.



While the outcomes of these surveys are discussed later in this report, on the matter of timeliness, both agencies and complainants, while generally satisfied, expressed lower levels of satisfaction than with other aspects of service. For example, while more than 85% of agencies were very satisfied with aspects of service such as politeness, willingness to listen, professionalism, written and oral clarity, fairness and reasonableness, only 75% were satisfied with timeliness.

It must be said that 75% approval is still a quite reasonable result – but is not quite consistent with views expressed during interviews.

The Office needs to continue to work with agencies to ensure that the time taken to deal with complaints is appropriate.

So far as complainants are concerned, the level of satisfaction with most aspects of service, including timeliness, largely depends on whether the complainant obtained an outcome that they desired. For example, for clients who were satisfied with the outcome, 81.7% thought the time taken to complete was about right or less than they expected. For claimants dissatisfied with the outcome, only 36.5% thought the time taken to complete was about right or less than they expected.

It needs to be kept in mind when analysing these results that the great majority of complaints are resolved within 10 days (71%) or 3 months at worst (92%). One should expect a high level of satisfaction with the timeliness, if nothing else.

Timeliness is not just about how long it takes to complete a file but also about how long it takes the Office to deal with agencies and complainants on a day to day basis.

Agencies in particular are concerned that tight time lines are imposed on them but the Office seems to be able to dictate when it responds to matters.

Anecdotal evidence needs to be treated with some care but it is nevertheless useful feedback.

Clearly the Office has done much to improve its responsiveness and is to be commended for that. The current strategic plan incorporates up front, service standards, which the Office seeks to apply to its dealings with stakeholders. However, inclusion of service standards, while commendable, only goes part of the way. The Office must develop appropriate performance measures by which the standards can be regularly monitored.

By way of illustration, in the client survey conducted in 2004, the time taken to return an initial call was more than one day in over 60% of cases. This does need to be improved.

One issue surrounding timeliness that arose during my examination of files was that when staff were on leave or were otherwise not available, very little happened with the file. While there is supposed to be some monitoring of the situation to ensure files are not unnecessarily idle, it appears to break down on occasions.

Complainants are naturally distressed when their complaint goes literally “on hold” when the officer concerned is on leave or otherwise absent. This should not occur and steps must be taken, if necessary by strengthening existing procedures to ensure files are dealt with during the absence of the assigned officer.

**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.

**Recommendation 24:** A credible set of performance indicators needs to be developed to measure the effectiveness of the espoused “Service Standards”. The Office is also encouraged to publish these in the annual report.

### **C.9 Audit of Complaint Management Systems:**

The Complaint Management Project essentially was an audit or evaluation of the complaints management processes and procedures within agencies. The overall assessment was that the systems in place in agencies left a lot to be desired and significant improvement was required.

An audit of the systems and procedures within Prisons has been a feature of the Corrective Services visits for some time and generally add value.

There would be some merit in regular audits being conducted of agency complaints management systems to assess whether they are functioning as intended and achieving worthwhile outcomes in terms of good and fair decisions being made within government.

The Ombudsman’s Office has the skills and expertise within the broad public sector to undertake such audits although given the role of the Ombudsman in investigating complaints arising from and perhaps subject to the internal complaints handling processes of the agency, the Office would need to guard against any perception of lack of impartiality.

Ideally an independent agency should undertake such audits. During the course of the review, I did raise with the Auditor-General, the possibility of the Queensland Audit Office undertaking such audits. At this stage the Auditor-General and his staff are fully committed to implementing their performance management system audits as required by the recent strategic review of the Queensland Audit Office and there is therefore some reluctance to consider additional responsibilities at this time.

It also must be said that the implementation of a system of audits of complaint management systems will potentially have significant resource implications, which would need to be addressed in due course if the proposal is to proceed. It is not feasible at this time for the Ombudsman to conduct such audits from within the current resource base.

**Recommendation 25:** The Ombudsman should continue to explore options for implementing a system of audits of complaint management systems within agencies.

**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.

#### **C.10 Survey of Persons Referred to Agencies:**

In 2005, the Ombudsman’s Office completed a comprehensive survey of complaints that were referred back to the agency concerned for resolution. Given that a substantial number of complaints are referred back to the agency for resolution (2595 in 2004-05), it is a significant issue for the Office.

A sample of 350 complaints that had been referred back in 2003-04 were surveyed.

The Office is to be commended for undertaking this initiative as it has provided comprehensive information about a significant part of the Office’s operations.

Unfortunately, the survey results were quite disappointing:

- 46.8% of respondents did not in fact contact the agency concerned when referred back to it;
- just under a third of this group or 13.4% of the total number of respondents found other means to resolve their issue (which meant that 33.4% of respondents did not receive any assistance with what at the time was an issue sufficiently important to them to contact the Ombudsman’s Office);
- 53.2% of respondents actually went back to the agency concerned;
- of the 53.2% as at the time of the survey,
  - o 27.1% had received a decision;
  - o 20.3% were still waiting for a decision,
  - o 5.8% had given up.

Therefore, at the time of the survey, 65.7% of respondents had either:

- not tried to use the agency's complaint processes, or
- had not contacted the Ombudsman's Office even though they had tried to use the agency's complaint process but not received a decision they considered to be fair and reasonable.

To me, the fact that so many people enter the system and leave without achieving any satisfaction simply breeds a body of disaffected members of the community whose views of the Ombudsman's Office would be coloured by their experience.

The recommendations from the report are as follows:

- Review or develop a script for oral responses and standard content for written responses (including for email responses) to:
  - o Ensure complainants are provided with an adequate and consistent explanation of our request for them to contact the agency their complaint was about.
  - o Provide complainants with an understanding of the complaints process the agency should follow.
  - o Explain when it is appropriate to contact our office again, eg. If they are unable to obtain a decision from the agency within the agreed timeframe or they have received a decision they consider is not fair and reasonable.
- Provide customer service training to intake officers to ensure they have the skills necessary to effectively explain the referred back to agency policy and that they recognise and understand their part in helping complainants to receive administrative justice.
- Provide complainants with agency contact information including phone number and contact person if appropriate.
- Review messaging in publications to ensure the referred back to agency policy is adequately and consistently addressed.

The Ombudsman was concerned about the outcome of the survey and is actively implementing the recommendations. For example, relevant officers have been provided with customer service training and a major review of correspondence used by ART is under way.

My concern is that the recommendations do not go far enough.

There is something amiss with a system that effectively excludes so many people from it who otherwise may have a legitimate issue that needs to be addressed in some way.

One way the Ombudsman's Office can provide more direct assistance and help stem the flow of complainants from the system before their concerns are dealt with, is to proactively manage the relationship with the agency better.

It would seem quite easy to seek the approval of the complainant to provide their details to the agency concerned and to follow up with the agency to see if in fact the agency pursued the matter. If the complainant is not prepared to agree to details being provided, then one would have to question why. That would be a value judgment that the intake officer would have to make as to whether the complainant had genuine reasons for not wanting the Office to contact the agency.

If the complainant's details are provided to the agency, there would also need to be some follow up to ensure action was happening.

The Ombudsman is concerned that there would be significant resource implications in following this process in relation to every complaint referred to the agency complained of. For example, in 2004-05, 2595 complaints fell into this category. However, this process could be followed in a limited number of matters in accordance with criteria developed for the ART, such as, where the complainant requires special assistance in presenting their complaint to the agency or where the matter appears to be of some substance and urgency or in other cases where it was assessed as reasonable to do so.

Furthermore, if there were genuine reasons, the Office could perhaps deal with the matter itself rather than referring the complainant back to the agency.

While I accept that the proposal has potential resource implications, I am not persuaded that they are as severe as might be thought. For example, the follow up could be no more than a reminder letter to the agency asking for a report on whether the complainant contacted them or whether the agency contacted the complainant and what was the outcome, if any. It does not require an overly formal follow-up process. However, some culling could be helpful provided it did not materially impact on the over-riding objective of ensuring those currently "lost" on referral to agencies are provided with the opportunity of a hearing if they genuinely merit it.

I found it somewhat disturbing that more efforts are not made to resolve this issue given the results of the survey.

While the undertaking of the survey has much to commend it, and the quality and comprehensiveness excellent, such surveys are expensive, time consuming and the findings generally a little dated by the time they are completed.

The Office seems to have no mechanism to obtain more up to date feedback either from complainants or agencies. While ad hoc feedback can be somewhat problematic, it is useful information and provided it is analysed with the usual caveats, can make significant contributions to continuous improvement initiatives in an organisation.

For example, in the case of complainants referred back to an agency, a small questionnaire could be sent to them after say a month or so, seeking some feedback about the service provided by the Office and whether they contacted the agency etc.

I would expect such a questionnaire to have no more than 6 or 8 well-targeted questions and hence not be a burden on the complainant. These could be progressively recorded in some way.

It is acknowledged that such a survey process is not endowed with the statistical validity of the process used in the Referred to Agency Research Report, but at least it is feedback that is relevant and up to date.

Recommendation 28: The Ombudsman should continue to implement the recommendations of the Referred to Agency Research Report.

Recommendation 29: In appropriate cases, complainants who are to be referred back to the agency concerned, should have the option of agreeing to have the Ombudsman's Office provide their contact details and other information to the relevant agency so that the agency can contact the complainant.

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 31: The Office should continue with the Referred to Agency Research Reports but evaluate the costs and benefits of undertaking the research on a more frequent basis.

Recommendation 32: Suitable mechanisms that can be put in place to receive more regular feedback from complainants who are referred back to the agency concerned should be investigated.

### **C.11 Complainant Surveys:**

In 2004, the Office undertook a major Complainant Satisfaction Survey project. It followed a similar exercise in 1998. It was a key initiative of the 2004-2009 strategic plan.

The survey was a major undertaking with some 511 complainants interviewed by telephone.

The Office is to be commended for undertaking the survey.

Although I consider that a period of six years between surveys is too long, the Ombudsman has explained that after he commenced office in September 2001, a major restructure of the Office occurred in April 2002 and it was important for the new structure to bed down before undertaking the survey to gauge the impact of the new structure.

Table 3 below provides a comparison of the results of the 1998 Survey compared with the 2004 outcome.

**Table 3: Complainant Survey – Results Comparison 1998 and 2004**

	1998	2004
Overall satisfaction	44.4	53.7
Written correspondence easy to understand	75.1	90.7
Given clear reasons for decision	40.5	69.8
Sufficiently informed of progress	33.0	59.0
Satisfaction with time taken to complete	39.0	66.7
Decision was fair and reasonable	37.7	38.8
Staff were courteous	75.7	76.2
Provided helpful advice	52.5	50.3
Staff were professional	63.3	60.0

The Office could feel generally satisfied about the outcome of the survey as significant improvements in ratings occurred in a number of key areas, including overall satisfaction.

There was only marginal improvement or decline in key questions related to staff, which may indicate that staff were already performing well at the time of the original survey. On the other hand one might have expected some improvement on what are not strong scores.

The Ombudsman advised that the Complainant Satisfaction Survey had identified a range of opportunities for improving complainant satisfaction by the Office, including:

- better management of complainant expectations,
- improving accessibility of complainants to investigators,
- improving investigators' client service skills,
- taking more time to explain to complainants any options available for resolving their complaints,
- more effective communication of reasons for final decisions.

An action plan was developed in February 2005 outlining the key actions to be undertaken in 2005-06 to ensure the issues are addressed progressively during 2005-06. The strategic plan for 2005-2009 and operational plan for 2005-06 also addressed the issues although not in great detail.

Substantial progress has been made on implementing the actions identified as a result of the survey. For example, team service standards have been amended to provide for more timely updates to complainants and relevant staff participated in a course on customer service and effective listening.

It is somewhat disappointing that it has taken so long for the findings of the Report to be actioned. It is also difficult to identify in the operational plans for 2005-06 the specific actions, which address the issues identified above. Given the importance of the relationship with complainants, one might have expected greater prominence of the actions in key documents.

**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.

As with the Referred to Agency Report, the Office needs to consider what opportunities there might be for obtaining regular and up to date feedback from complainants in relation to their dealings with the Office.

Every complainant whose complaint results in some form of investigation by the Office, should be afforded the opportunity through a simple questionnaire, to provide feedback to the Office on their experiences.

It is acknowledged that such a format does have some shortcomings in terms of meaningful survey techniques and how much reliance can be placed on the data obtained. Even so, it is far better to get some feedback on what complainants are thinking and feeling rather than wait some years to be told.

To me, the Office should want to know what complainants thought about the service they received once a file is closed. It is simply a matter of identifying 6 or 8 key targeted questions that might summarise a complainant's experience.

Unfortunately, experience has shown that there is a reasonable correlation between the outcome a complainant achieves and his or her view of the service received.

If the complainant achieves a good outcome, then he or she is more likely to praise the service received and vice versa. For example, 59.1% of complainants who were very dissatisfied with the fairness and reasonableness of the final decision were also very dissatisfied with the service they received. On the other hand, 68.9% of complainants who were very satisfied with the fairness and reasonableness of the final decision were also very satisfied with the service they received.

Nevertheless I still believe opportunities for current feedback are important and need to be explored.



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.

### C.12 Benchmarking:

It was a recommendation of the Forster Review that:

“the Queensland Ombudsman participate in the National Performance Indicators project and introduce the suggested range of draft indicators for reporting performance information”

Since the Forster Review, the National Performance Indicators project has been abandoned. Part of the reason for lack of progress is the lack of consistency in terms of the operations of the various Ombudsman Offices and the level of their individual responsibilities.

I discussed the issue of benchmarking with each of the Ombudsmen in the jurisdictions I visited and I have to say the outcome was not encouraging as there is no great enthusiasm or interest in picking up the project.

I also requested the Ombudsman to liaise with his New South Wales counterpart as to the prospect of some limited exchange of performance data given the similarity of their operations. Again there seemed to be very limited opportunities for progress.

The Ombudsman’s Office does produce a range of performance data some of which is published in the annual report. The file management system, Catalyst, is capable of producing a range of data useful to the Office. The further development of this capacity is to be encouraged.

Recommendation 35: The Ombudsman continue to explore opportunities with his counterparts in other jurisdictions for the sharing of performance information that is relevant to benchmarking the performance of the Office.

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.

### C.13 Vexatious Complainants:

It is not unusual in a complaint environment to have individuals who, for a variety of reasons and circumstances, feel aggrieved by the actions of some agency and feel so strongly that they are prepared to go to extreme lengths to try to resolve an issue to their satisfaction, to the point where an ordinary person might question the balance and rationality of the action.

Often the action will involve many applications, correspondence and telephone calls around the same matter over a period of time in the hope that one of these will meet with some success and may involve a number of agencies providing for appeal mechanisms.

Often objectivity becomes a victim in the person's pursuit of what they perceive is injustice, inequity and lack of fairness, leading to a view that there is a wrong that needs to be righted.

Most investigative staff have had some experience with such individuals which can be frustrating, annoying, disturbing and in extreme cases frightening.

The Ombudsman's Office does provide training and support for officers to assist with dealing with such situations.

Because of the variety of circumstances that can arise under the broad heading of "vexatious complainant", it is difficult to develop a clear and consistent policy to deal with them. In jurisdictions I visited, all were very aware of the problem but no one had what they would see as a good solution. The general strategy was to identify as soon as possible, vexatious complainant situations and to close off communication firmly and finally. In most cases this does work but not always.

I think the problem is a difficult one and there is no ready answer or solution. Some tolerance is always going to be required and it is a matter of the experience and judgment of senior staff to determine when tolerance needs to be replaced by a firm rejection.

The Office does seem to deal with such complainants as well as might reasonably be expected and I have no recommendation here.

#### **C.14 Separation of Ombudsman and Information Commissioner:**

The establishment of the separate Office of the Information Commissioner is now complete except for the accommodation issue and final resolution of the provider of corporate services.

Agencies report no serious issues with the separation and are quite comfortable that the transfer has been smooth and trouble free. At the same time, no agency really had identified significant benefits from the change.

Part of the success can be attributed to the fact that the role and functions of Information Commissioner were always conducted separately and independently within the Office.

Apart from the issues I have already mentioned, there are no residual issues that need resolution.

## Section D: Organisational and Administrative Issues

### General:

The Office has been committed to the implementation of the recommendations of the Forster Review and it is clear that it has made significant improvements in the way the Office conducts its business and deals with staff.

It is a quite different organisation to the one reviewed by Forster in 2000.

Much of the improvement can be credited to the leadership of the current Ombudsman, David Bevan, who has been diligent in his approach to taking the Office forward.

That is not to say all is completely well with the organisation or that further improvements cannot occur.

In my discussions with staff and former staff, it became clear to me that there is an element of frustration about certain aspects of the way the Office operates. On the other hand there was also a strong sense of commitment to the organisation and its role in the overall public sector.

Most staff are passionate about the job they do and in part the frustration could be the by-product of a desire to achieve even bigger things for the Office.

### D.1 Organisation

#### D.1.1 Structure:

The structure of the Office is a matter that needs to be addressed.

For a staff numbering 49, having an Ombudsman, 3 Deputy Ombudsmen and 4 Assistant Ombudsmen as well as 2 Managers of specialist units (Advice and Communication, Corporate Services) does seem excessive.

It is accepted that one of the Deputy Ombudsman positions arises because of the return to the Office of the previous Deputy Information Commissioner. At the time of writing, the person had resigned and is currently seeking redeployment.

For all purposes, there are in effect 2 Deputies in the Office, which is a situation one would not normally find in such a small organisation.

Each Assistant Ombudsman is responsible for an investigation team eg ART, Major Projects, Local Government and Infrastructure, Community Services and Corrections.

In other jurisdictions, the situation in broad terms is –

- NSW (Staff of 182 including part timers, but with significant police responsibilities): Ombudsman, 2 Deputies (one a specialist position), 3 Assistant Ombudsmen (one a specialist for police);
- Victoria (Staff of 54, including some FOI responsibilities): Ombudsman, Deputy Ombudsman, Assistant Ombudsman.
- New Zealand (50 staff, including part timers but excluding 3 Ombudsmen): 3 Ombudsmen, Deputy Ombudsman, 2 Assistant Ombudsmen, General Manager.

One of the issues that came up regularly in discussions with staff and to some extent with agencies was the unduly bureaucratic style of operation and difficulties with delegations.

The difficulties are exacerbated by the fact that some staff with some responsibilities in both administrative improvement work and investigative work can have somewhat blurred lines of reporting, in some cases involving the Deputies.

While some of the issues can be resolved by some realignment of responsibilities, the perception remains of a top heavy management structure.

Modern organisations strive to achieve flatter management structures with less levels of command and reporting, delegating as much as possible to officers at the coal face. I have already referred to the concerns about delegations which will be dealt with later in this report.

In developing a structure suitable for the Office going forward, one needs to look at what the strategic objectives are. The Office has two fundamental roles – investigation of administrative decisions and administrative improvement in agencies – and the structure should reflect this.

On the investigation side, the current two team structure plus ART has generally worked well and I see no need for fundamental change.

At present, the Major Projects Unit embraces several key deliverables, namely:

- major investigations along the lines of the Workplace Electrocutions Project, and
- the Good Decisions Training Program.

While I have some concerns expressed previously about the Unit having major investigative responsibilities, on balance, a separate unit within the Office can be justified and should be headed by an Assistant Ombudsman as would the investigative teams. (See also Recommendation 7)

The Office currently has an Advice and Communication Unit. There is an argument that it should fit within the administrative improvement function. However communication is strategically an important issue for the Office and my recommendation is that it be a separate function reporting directly to the Ombudsman. I believe it should also be renamed as the Communication and Research Unit. It does have a close relationship with the Major Projects Unit and ideally should be located in close proximity.

I have considered at some length, the value of having two Deputies, one responsible for the investigation side and one responsible for administrative improvement, communication and also corporate services. However I am unconvinced that another significant layer of management would add value to the process, particularly in the area of administrative improvement.

It may be possible to construct a set of responsibilities for each position that would involve some strategic leadership, some line management responsibilities, and some high level specialist work, but that would move too far outside of the role one would normally expect a Deputy to perform.

In any case it was difficult to see what the Deputies are doing that could not be done by the Assistant Ombudsmen in an organisation committed to pushing more responsibilities down the line.

I also looked at the option of having no deputies and a series of Assistant Ombudsmen reporting directly to the Ombudsman. This model has much to commend it and in many ways would be my preference. However I do recognise that there are some sound reasons to have a designated Deputy eg the Governor in Council may appoint an Acting Ombudsman and desirably this should be the Deputy, who would need to have significant autonomy of operation to justify the position.

The investigation process is now reasonably mature. It remains the key function of the Office but does not need the day to day oversight of the Ombudsman. On the other hand, the administrative improvement projects, communication, community awareness, "own motion" investigations and research are all strategically important to the Office at this time and ought to require more of the Ombudsman's time and involvement.

My recommended structure for the Office is therefore to have a Deputy Ombudsman responsible for the 3 investigative units (ART, LGIT and CSCT) each of which would be headed by an Assistant Ombudsman. Reporting directly to the Ombudsman would be an Administrative Improvement Unit headed by an Assistant Ombudsman, a Communication and Research Unit headed by a Manager, and a Corporate Services Unit headed by a Manager. In regard to the latter, management of budget resources in particular

should be the direct concern of the Ombudsman, particularly in the small office environment.

Each Assistant Ombudsman and Manager would need to be given significant autonomy.

The Deputy Ombudsman's role would be more strategic, taking a whole of office focus to the delivery of the investigative function, with more responsibilities for the Assistant Ombudsmen, who in turn would need to delegate further down the line.

With a single Deputy, the position would need to be evaluated in accordance with normal processes and is likely to be valued slightly higher than the current Deputy Ombudsman position.

I am aware that the model I have proposed, should it be adopted, does have significant ramifications for the Office. However I am firmly of the view that going forward, a single Deputy model is more efficient and consistent with good management practice and broadly consistent with what happens in other jurisdictions (although this latter point is a comment and observation rather than a justification for my recommendation).

I am very mindful that the current incumbent Deputies are long-serving officers who have contributed much to the Office over the years and the structure should in no way be construed as a judgement on their performance and contribution. I have endeavoured to put aside personalities and look dispassionately and objectively at what I believe is in the best interests of the Office going forward.

A diagrammatic representation of the proposed new structure is set out in Attachment C of this Report.

Recommendation 37: The structure of the Office should be changed to better reflect the key deliverables of the Office, namely investigation of administrative decisions and improvement in the quality of decision-making and administrative practice in agencies.

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.

Recommendation 40: The current administrative improvement priorities such as good decisions training, complaint management, complaint analysis and research, "own motion" investigations etc should be drawn together under the leadership of an Assistant Ombudsman. Given the strategic importance of these issues going forward, the position should report to the Ombudsman direct.

Recommendation 41: The Advice and Communication Unit should be renamed Communication and Research Unit and be refocused with responsibilities for both internal and external communication and relationships. The Unit should report directly to the Ombudsman.

Recommendation 42: The Corporate Services Unit should report directly to the Ombudsman.

### D.1.2 Budget Issues:

There is certainly a strong prevailing view among staff that the Office is under-resourced and funded. The increased commitment the Office has given to administrative improvement initiatives has largely had to be resourced by reallocation from existing resources. There is a limit to how much the Office can accept the reallocation without impacting seriously on the core investigative function.

All agencies have been under pressure to carry out their core functions, which are generally increasing in demand, within constrained resources. The Ombudsman's Office can never stand apart from this process.

The administrative improvement initiatives have the capacity to actually generate considerable savings long term as agencies improve their decision making capabilities and hence reduce complaints. These demand management initiatives are therefore not only important to the Office but also important to the public sector as a whole.

The administrative improvement initiatives have a number of strands, including good decisions training, complaints management processes and better decision making systems in agencies. With good decisions training, there is a capacity to recover at least some of the costs from agencies participating.

I suggest that the Office develop a proposal for Treasury to consider which highlights the potential future savings from investment in the current initiatives of the Office. This could be coupled with some initiatives related to the audit of complaint management systems.

I have looked at the structure of the budget and there is little scope to achieve significant savings.

There is some prospect of funds being freed up if the model of one Deputy instead of three is accepted and implemented.

Apart from salary and related expenses which totalled \$4.550 million in 2004-05, the other major costs for the Office are:

- depreciation (\$0.27 million),
- lease costs (\$0.492 million), and
- supplies and services (\$0.482 million).

The above figures include the budget for the Office of the Information Commissioner for the first 8 months of 2004-05 before a separate Information Commissioner was appointed.

Within supplies and services there are a range of normal operating costs eg computer support, electricity, motor vehicle costs, travel, telephones, printing which might generate marginal savings at best. These costs are certainly not excessive relative to what occurs in other jurisdictions.

The real budget issue is whether the staff numbers are excessive for the tasks they are required to undertake.

I have some concerns that the Office is “over managed”. For example, staff involved in the Ombudsman’s Executive, Corporate Services Unit, and Advice and Communication Unit total 17.9 or 36 % out of a total of 49.7 at December 2005. If support staff and others not actively involved in the core investigative function are taken account of, the percentage actually involved in investigations is only around 50%.

The annual report of the New Zealand Ombudsman for 2004-05 on page 43 states: “*We aim to have as many as possible engaged directly in the process of complaint investigation and resolution. At 30 June the ratio of investigating staff to those engaged in support roles was 2.97:1*”. Prima facie this is somewhat different to the Queensland situation.

The New Zealand Office has similar staff numbers to Queensland but handles somewhat fewer complaints although their composition and measurement are also somewhat different. While it is difficult (for definitional reasons) to make direct comparisons using simplistic ratios, particularly as the Queensland Ombudsman’s Office, unlike the New Zealand Office, allocates significant resources to its administrative improvement program, maximising the number of investigative staff should continue to be a high priority for the Ombudsman.

My assessment is that the Office resource position is tight but is exacerbated by having too few resources engaged in the core investigative function.

It is not possible in the course of a review of this nature to re-engineer all processes related to the functions of the Office. The Ombudsman needs to adopt a different approach to many of the tasks by giving stronger focus to resolution rather than investigation.



At this stage, I think it is difficult to build a sustainable argument for additional resources for Treasury to consider other than in the context of administrative improvement initiatives.

Recommendation 43: A budget proposal should be developed for consideration by Treasury which addresses demands for administrative improvement training initiatives, the benefits that may flow to the budget as a whole from the initiatives, the potential recoveries from agency participants together with potential savings able to be met from within the Office by rationalising the management structure and processes.

### D.1.3 Workloads:

As discussed earlier in the report, the number of complaints being received by the Office has been declining in recent years.

As a result, the number of complaints finalised and files closed has also been declining.

At the same time the Office has also been able to reduce the number of open files on hand to 398 at 30 June 2005, which is quite low given the number of investigative staff.

One of the issues for staff during the staff survey was workload.

Given the declining complaint numbers, it is difficult to accept that the work load argument continues to have validity in general. That is not to say that individuals might not have particular workload issues.

Files closed in the past 3 years are as follows:

Year	Closed Complaints
2003	9175
2004	8548
2005	7654

The decline in just 3 years has been around 17%. If allowance is made for productivity improvements from better file management practices instituted by the Ombudsman, it is hard to see how an argument can be sustained that the staff are worse off now than they were 3 years ago.

Average file closures per investigative officer are difficult as the work load for each can be significantly affected by the type of file the officer receives. For example, an officer dealing with prisoner complaints in ART might close 800+ files in a year whereas another officer in an investigation team might be lucky to deal with 100 files of varying complexity and investigative demand.

Workloads in other jurisdictions are measured in differing ways that are not necessarily relevant to any Queensland data.

The Ombudsman has been able to divert staff from investigations to special projects in recent times with no visible impact on open file numbers.

There is no doubt that staff are concerned about workloads. However with further improvement in file management strategies and practices and the continuing decline in complaints received, additional resources could not be justified on work load arguments. In fact, I would have had some concern that with declining complaints, a judgement could be formed that the Office has too many staff. However the Ombudsman has been increasingly redeploying investigative resources to administrative improvement activities to meet a key legislated objective for the Office.

What is probably more important is the workload of individual officers, particularly in ART and these need to be closely monitored.

**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.

## **D.2 Staffing:**

### **D.2.1 Remuneration and Reward Structures:**

While staff are currently not part of the public service, the Office does employ staff on similar conditions to the public service, including remuneration.

There are currently 29 staff employed in the investigative area, with various assessed classification levels ranging from S01/S02 for Assistant Ombudsman, A07 for senior investigators, A06 for investigators and A04/A03 for inquiry officers in ART.

Staff generally believe they are under-remunerated for the work they perform, particularly given that quite a number have professional qualifications such as law. It is also pointed out that the Office regularly loses staff to other entities that pay more.

There is no doubt that the work can be taxing and demanding and particular issues arise in dealing with difficult complainants. There is also a high level of judgment required in many instances as well as familiarity with the application of the law in many situations.

However the application of the skills required is not that different, in principle, to what might reasonably be expected in other professional areas of the public service eg the Queensland Audit Office or the Information Commissioner's Office.

Retention of staff is an issue for most agencies that have professionally qualified staff who are in demand. It was an issue in my review of the Queensland Audit Office and is also a factor in my review of the Information Commissioner's Office.

Remuneration is important but is not usually the sole reason why staff depart.

In my experience where staff depart for seemingly higher paid positions, the position usually requires some special or additional attributes or responsibilities that support and justify a higher remuneration structure.

I have not attempted in the context of a broad strategic review to evaluate all positions in the Office. If the Office undertakes a significant review of delegations and structures within the Office as I have proposed, there would be a reasonable justification for reviewing the duty/responsibility statements of individual positions in the light of the new responsibilities.

However, my overall view is that the current classification structure is not inappropriate having regard for the recommendatory nature of the outcome of investigations and the remuneration structures generally for other similar organisations.

I have also looked at the issue of whether staff should progress automatically from one classification range to the next providing certain key performance requirements have been met. For example, an investigator could be employed at the A05 level and progress after gaining appropriate experience, training and skill enhancement to say an A06 level. Similarly, a senior investigator could be appointed initially at the A07 level and progress to an A08 automatically under certain conditions.

The success of such an arrangement really depends on having a relatively sophisticated and fully functioning personal performance review/planning system in place with good, measurable benchmarks for assessing performance. I am not convinced that this exists to the extent required yet in the Office, but there are encouraging signs.

This is a matter that should be taken up with the Office of the Public Service in the context of any move to bring staff within the public service.

**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.

### **D.2.2 Training and Development:**

Most staff were generally happy with the level of training and development support they receive. There was also general satisfaction with the process for identifying training and development needs and the range of course and other development opportunities available.

Expenditure on staff development and training has been :

- For 2003-04, \$52 000 or \$1 100 per staff member,
- For 2004-05, \$46 600 or \$950 per staff member.

The expenditure is essentially in respect of external providers and does not take account of the cost on internal training undertaken. The Ombudsman advised that the cost of internal training could be as much as \$20 000.

While this is commendable, in my view, the Office should be targeting at least 1.5 per cent of the annual budget or \$1500 per staff member given the importance of having well-skilled and trained staff. This is not yet being achieved.

The Office has a well-developed training and development plan as part of its overall planning process. It covers a range of opportunities appropriate to the needs of the Office.

**Recommendation 46:** The Office should have as a key objective, a level of commitment to training and development that equates to at least 1.5 per cent of the annual budget of the Office.

### **D.2.3 Staff Turnover and Recruitment:**

There has been an increase in staff turnover in recent times, as follows:

	Departures	Turnover %
2002-03	5	10%
2003-04	3	7%
2004-05	10	19%
2005-06 (to 31.1.06)	7	14%

Clearly staff turnover at the levels experienced recently is difficult to sustain in the longer term, particularly where the great majority of those leaving are investigators.

On the other hand, the Office has been able to recruit new staff to replace the staff who have left and there is no evidence that the new staff will not be more than adequate replacements for those who have departed.

In many ways, given the nature of the work, staff turnover need not be a negative. One of the issues for the Office is always going to be whether staff can be in the job too long given the nature of complaint processes.

The Office has in place appropriate policies and processes to deal with departures eg exit interviews. I have seen no evidence to suggest that the recent exodus is other than a cyclical issue and past staff who attended the focus group for past employees were generally complimentary of the Office and had left for personal reasons eg a career move, rather than dissatisfaction with the Office.

The Office should continue to closely monitor departures to ensure that any emerging systemic issue, not currently evident, can be dealt with.

A number of the staff have some legal training and this no doubt contributes to the quality of their performance. However, I do not see it as mandatory for staff to have significant legal or other professional qualifications. Staff need to bring to the task balance, good judgment, a desire to provide timely service to the complainant and independence. Critical thinking and analytical ability is also important.

The Office does seem to be able to recruit well and has in place appropriate policies and procedures for recruitment.

**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.

#### **D.2.4 Delegations:**

The proposed new structure will only work well if there is in place within the Office an appropriate set of delegations that empower and enthuse staff.

There was a very clear message to me from staff during the feedback process that there was a level of frustration with the bureaucracy and lack of delegations within the Office. This was also evident in the staff survey that was conducted last year.

My sense from these discussions was that even simple correspondence needed to be signed by an Assistant Ombudsman, which due to absences and other work pressures, often resulted in delays responding to the complainant and/or agency. A further point raised in focus groups was different style issues for letter writing, which staff had to manage and which often caused delays and frustrations.

To management's credit, the need to review delegations (which was raised as an issue during the recent staff survey) has been recognised and accepted and a process was put in place to review these. As a result, investigators have increased authority to initiate inquiries and sign correspondence. Investigators and inquiry officers in ART also have the authority in relation to telephone complaints, to decide how to respond to the complaint as well as the authority to close complaints.

However I have some concerns that the review may not go far enough to maximise the potential returns from empowering staff to take responsibility. My sense from discussions with Ombudsmen in other jurisdictions is that staff have significant autonomy to progress investigations on their own account with only moderate supervision, particularly for more experienced staff. I don't have that same sense in the Queensland Office.

If there are concerns that some staff are not ready or not sufficiently experienced to handle more responsibility, then this ought to be dealt with through personal performance reviews, appropriate training and skills development and fine tuning of work allocation practices. Staff generally should not be held back if the needs relate to a few and the few should not be disadvantaged when measures are available to address concerns.

Recommendation 48: The further review of delegations be undertaken to fully reflect the need to provide maximum opportunity for staff to make decisions consistent with their skills and experience and developmental needs.

Recommendation 49: All staff should have access to appropriate training and development to ensure skill levels are appropriate.

#### **D.2.5 Secondments:**

In discussions with agencies I raised the prospect of a program of secondments with the Office to ascertain if there was interest in a formalised program. Most agencies were keen to participate provided the term was shorter rather than longer with six months being the maximum any agency would be prepared to consider.

There would be considerable benefits to agency staff from such an arrangement. However there would be a not insignificant impact on the workings of the Office as staff, generally at the senior level, would be required to devote time and effort to the secondees as part of the training process. It is more likely that in reverse, Office staff seconded to an agency would be quite valuable to an agency even on a temporary basis.

The Ombudsman has expressed concern that once staff are seconded to an agency, there is a risk that they may be “poached “ by the agency.

I believe there is merit in the Office examining options for some form of secondment or interchange with agencies as a means of raising the overall quality of agency decision-making and also exposing Office staff to life at the coal face. I acknowledge the risks and difficulties but see many pluses in raising the profile of the Office and the awareness of what the Office is about.

Recommendation 50: The implementation of a targeted program of secondments and interchange should be investigated in consultation with agencies. Such a program should have clearly stated objectives and be appropriately funded. Key objectives should be the overall enhancement of decision-making in agencies and the investigative processes within the Office.

#### **D.2.6 Gender/Equity Considerations:**

One of the issues raised in the staff survey was gender-biased management.

The Ombudsman Office has a staff establishment of 49 FTEs. At 30 June 2005, of the 16 senior staff (ie A07) and above in the Office, only 3 were female one of whom was a comparatively recent appointee. For the balance of the staff ie 33, there were 23 females and 10 males. Of the 14 staff classified as A04 or lower, all were females.

At 31 January 2006, the number of staff had increased to 51.2 FTEs (excluding secondments) of whom 23.6 (FTE) were male and 27.6 (FTE) were female. The increase in staff is being funded by costs recovered for Good Decisions Training provided to agencies. The additional staff were engaged to compensate for the fact that investigative resources had been redeployed to provide that training.

The composition of the staff in terms of gender balance had not changed materially over the previous 7 months.

In examining the policies and procedures and other relevant documentation, which govern HR practices within the Office, I did not detect any inherent bias against either gender. The reality is that the gender balance outcome seems to have been a product of history rather than specific policy or process driven.

It is important and indeed government policy that gender balance be an important objective of HR policy. Gender balance is not simply about numbers but also opportunity and balance in participation in senior management. I encourage the Ombudsman to continue to try to attract qualified and suitable senior females to the Office to achieve better gender outcomes.

**Recommendation 51:** Existing policies and procedures in regard to recruitment and selection of staff should be reviewed to ensure that females are not disadvantaged or deterred from applying, particularly for senior positions.

In terms of equity, the Ombudsman has not regularly collected or published data in regard to indigenous employees, staff from non-English speaking background or staff with a disability.

The overall public service works to targets for these groups, which is realistic given the size of most agencies. In the case of the Ombudsman, with only 51 staff, the setting of targets becomes a little problematic.

At the very least though, the Office should have in place policies and procedures, which recognise an obligation to actively consider these groups in HR practices and procedures. Data collected at 31 January shows that the Office had no indigenous employees and no person with a disability and has 2 employees whose first language is a language other than English.

The New South Wales Ombudsman's Office provides an excellent reference model for the Queensland Ombudsman to consider both in terms of actual policies and procedures and also information that is published in the annual report. There appears to be strong commitment to EEO in New South Wales which the Ombudsman might give consideration to.

**Recommendation 52:** Existing HR policies, practices and procedures should be reviewed to ensure that they appropriately address EEO issues.

**Recommendation 53:** The strategic planning process for the Office should also address EEO issues in a meaningful way.

**Recommendation 54:** Consideration should be given to publishing more comprehensive and appropriate information on EEO and staff generally in the annual report.



**D.3 Governance:****D.3.1 Structures:**

The Office currently operates with a variety of committees as follows:

- an Ombudsman Management Group, comprising
  - o Ombudsman (Chair)
  - o Deputy Ombudsman (3)
  - o All Assistant Ombudsmen
  - o Manager, Advice and Communication
  - o Manager, Corporate Services
  - o Senior Business Systems Analyst (for Catalyst issues only)
- a Senior Officers Group, comprising
  - o All Assistant Ombudsmen
  - o Manager, Advice and Communication
  - o Manager, Corporate Services
- a Staff Consultative Committee, comprising
  - o 3 management reps, including Ombudsman
  - o 5 staff reps

There is also an Information Management Steering Committee, which is largely operational.

Each Committee operates under an agreed charter, meetings are held regularly and Minutes kept.

I question the desirability of having both the Ombudsman Management Group and the Senior Officers Group, the latter effectively being a subset of the former. It seems a little curious that one of the objectives of the Senior Officers Group is to “*provide information and make recommendations to the Ombudsman Management Group*”, of which they are already a key component.

I am of the view that the Ombudsman should review the operations of the two Groups with a view to rationalising membership. If there is a need for a senior officers’ group, an option might be to have a small group chaired by an Assistant Ombudsman on a rotational basis which would comprise representatives of senior staff below the Assistant Ombudsman level.

One advantage of such a group would be to give a greater sense of participation to the potential future “leaders” of the Office.

However it is a matter for the Ombudsman to consider.

The Office does not have an Audit Committee and it is problematic whether such a Committee could add value to a small organisation. On balance I would favour such a Committee being established. It could comprise an independent chair, another independent member

plus the Ombudsman and Deputy Ombudsman. There would be a small cost involved but perhaps worth it. The Committee would also oversight the internal audit function.

The charter for the Ombudsman Management Group includes as an objective “*ensure the efficient deployment of Office resources for operational purposes*”. It is not clear how far this extends in terms of budget preparation, management and oversight. It should be made clear, if that is the intention (which I think it should be) that the Group has a role to play in budget development and oversight.

Recommendation 55: The operations and functions of the Ombudsman Management Group and Senior Officers Group should be reviewed with a view to merging the two Groups under an appropriate charter.

Recommendation 56: The establishment of an Audit Committee for the Office, with an independent Chair and one other independent member under a suitable charter should be investigated. The Committee would also be responsible for the internal audit oversight.

Recommendation 57: The charter of the Ombudsman Management Group include specific responsibilities for participation by the Group in the budget development and monitoring processes.

Apart from the above, the Ombudsman has developed a range of policies and procedures to assist the overall operational and governance needs of the Office including a Succession Plan, a Communication and Information Devices Policy, a Client Service Charter, and Risk Management Plan.

The Ombudsman is to be commended for the diligent way he has addressed the many governance issues facing the Office.

### **D.3.2 Strategic and Operational Planning:**

The Ombudsman does have a reasonably well-developed planning process and has established a strategic plan covering the period 2005-2009.

The Plan defines the Mission of the Office as:

*“To promote high standards of administrative practice and decision-making in public agencies for the benefit of the community.”*

The Mission as drafted is appropriate although one would hope that the agencies as well as the community might benefit from high standards of administrative practice and decision-making.

The four goals identified as necessary to assist the Office to fulfil its mission are:

- **Goal 1:** To achieve administrative justice for members of the community in their dealings with State and local government agencies.
- **Goal 2:** To make a significant contribution to improving the quality of administrative practice in Queensland public agencies.
- **Goal 3:** To ensure a high level of awareness of our services and that they can be readily accessed by all members of the community.
- **Goal 4:** To ensure we exhibit best practice in our performance and are a progressive, responsive and cost-effective organisation.

Goals 2, 3 and 4 are generally appropriate although I would have preferred to see some reference in Goal 4 to a commitment to continuous improvement. However it is not a major issue.

Goal 1 highlights achievement of administrative justice for members of the community whereas the legislation is designed *“to give people a timely, effective, independent and just way of having administrative actions of agencies investigated”*. In reality, even though agencies accept the Ombudsman’s recommendations in nearly all cases, the Goal will always have some incapacity to being achieved because the Office has a recommendatory power only rather than a determinative one.

I suggest that the Ombudsman and his Office review Goal 1 during its next strategic planning process with the aim of giving greater emphasis to the investigative role rather than administrative justice.

The strategies for 2005–2009 which underpin the goals and the strategic initiatives and priorities for 2005–06 are generally satisfactory and aligned.

Appropriate performance measures have been developed for each Goal.

While the current strategic plan generally meets accepted standards for such documents, the real test is how well the plan is embraced in the day to day operations of the Office. There is some feeling among some staff that they are not part of the strategic planning process and that the plan itself “spends too much time on the shelf”.

Most organisations are confronted with situations where ownership of the strategic plan is said to be limited and is also said to be top down driven. This is largely because at the end of the day, decisions have to be made and outcomes achieved to finalise the plan, which not everyone will agree with. This does not diminish the value of the plan or its worth to the organisation.

The Ombudsman and senior management need to ensure that they do maximise opportunities for staff input from all levels of the organisation and that appropriate feedback strategies are in place and implemented, not just in the development phase but regularly during implementation.

The Ombudsman advises that the issue of staff involvement in the strategic planning process was also identified during a staff survey undertaken last year and that arrangements have already been made for staff representatives on the Staff Consultative Committee to attend the strategic planning sessions for the 2006-07 plan. I support this initiative.

There is a need also to ensure that staff feel a part of the process. While attendance of the staff representatives on the Staff Consultative Committee at planning sessions is a good step, there ought to be processes in place for broader staff input which the planning sessions can address as part of the process.

The Operational Plan for 2005-06 is quite detailed and well-developed and appropriate having regard to the current strategic plan.

The Office has a commitment to measuring and reporting performance and is to be commended for the level of performance reporting against goals and strategies that is included in the annual report.

Recommendation 58: During the next strategic plan review, the emphasis given in Goal 1 to achievement of administrative justice should be reconsidered with a view to giving greater emphasis to the legislated objective of investigating administrative actions.

Recommendation 59: The Ombudsman and senior management should ensure that they maximise opportunities for staff input during the strategic planning process from all levels of the organisation. They should also ensure that appropriate feedback strategies are in place and implemented.

#### **D.4 Corporate Services:**

##### **D.4.1 Relationship with Information Commissioner:**

Currently, the Office has an internal corporate services unit headed by a Manager, Corporate Services at A08 level. There are 8 staff in the Unit which also includes a support function for the Catalyst system.

Payroll services and other processing requirements are outsourced.

The number of staff within the Unit does not seem excessive although it is questionable in the longer term whether there is a need for 2 staff internally to support the Catalyst system.

The Information Commissioner has indicated that she proposes to replace the Office as the corporate services provider with another provider. The Information Commissioner currently pays \$7200 per month for the services the Office provides.

It is clear that if the Office does not receive the \$86 400 from the Information Commissioner's Office, it is not in a position to reduce costs to fully offset the revenue loss and the Office will need to cut costs elsewhere unless supplementation is provided through the Budget process by Treasury.

The Ombudsman should investigate in the light of developments with the Information Commissioner's Office, whether it would be more cost effective for the Office to outsource its corporate service requirements, wholly or partially, to its current provider, the Queensland Parliamentary Services.

Until the matter of whether the Information Commissioner uses the services of the Queensland Parliamentary Services finally is resolved, it is not possible to be prescriptive about how the Ombudsman's corporate services function should be delivered, although the Information Commissioner has indicated an intention to use the Parliamentary Services.

#### **D.4.2 Accommodation:**

The Office currently is spread across three floors which are not contiguous. One of the floors involves co-location with Commonwealth Ombudsman and also, at least for the moment, involves co-location with the Information Commissioner. The Information Commissioner is moving to another building in the near future.

Being located on different floors is inefficient and causes a number of operational problems. The layout of the Office is also quite dated and not consistent with modern office practices.

The lease for the space is due for renegotiation by 30 June 2006.

The Ombudsman was strongly of the view that a move to alternative accommodation had significant benefits for the Office. I agree and have supported the Ombudsman's initiative. Unfortunately, it is unlikely that the Office will be able to arrange alternative accommodation, fit out and move prior to 30 June so some extension of the lease seems the only option.

The Ombudsman should continue to pursue an alternative accommodation option.

**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.

## Section E: Communication Issues

### E.1 Building Relationships:

The Office has been active in trying to improve communication in many different ways. Publications such as Ombudsman News for local government and various articles in agency newsletters as well as *In touch* for internal purposes assist to spread the word about the Office and its activities.

The Regional Visits Program is also an important communication medium as are the training programs and complaint management initiatives. Officers also take the opportunity of addressing the Regional Managers Co-ordination Network wherever possible.

A range of helpful publications relating to the investigative process is also issued from time to time.

Annual Complaint Reports are also sent to agencies with significant numbers of complaints to help them understand what is happening and hopefully address some improvement initiatives.

The Office also has nominated liaison officers who help to maintain contacts with agencies and feedback from agencies suggest these are effective.

Interestingly, during the interviews with agencies, it was regularly commented that the Office needed to lift its profile. This is something that really starts at the top and perhaps the Ombudsman could undertake some regional visits.

The Ombudsman meets with some Directors-General of the larger complaint generating agencies each year to discuss the Complaints Reports prepared by his Office. On some occasions he also meets with agencies' senior executive groups. I support this liaison and suggest that it be conducted on a more regular basis so that Directors-General and their senior staff clearly understand the Ombudsman's role and the assistance his Office can provide. It is an initiative that has worked well for the Auditor-General.

The Office's web site has been redeveloped and is increasingly an important source of communication. It is generally effective, helpful and easy to negotiate but obviously needs to be kept under regular review.

**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.

## E.2 Staff Survey:

In 2005, the Queensland University of Technology was engaged by the Office to undertake a major staff survey. The results of the survey were available in mid-2005 and the Office has put in place a process of consultation with staff to develop strategies to address the issues raised in the report.

Generally the survey results were positive, eg:

- high performance organisation,
- shared values of fairness, independence and objectivity,
- positive interaction of staff,
- reasonable sharing of knowledge.

There were less than average results for areas such as:

- workload and staffing levels,
- management of poor performers,
- top heavy and gender biased management,
- respect and communication,
- opportunities for advancement, training and development.

While the consultation and development process is taking time, the Ombudsman and his management team have demonstrated a commitment to improvement and I saw no evidence that the process would not produce an outcome broadly consistent with staff expectations.

The staff representatives on the Staff Consultative Committee are monitoring implementation of actions to address issues identified in the survey. The Ombudsman advises that substantial progress has already been made.

Staff surveys are important and need to be undertaken regularly and be appropriately benchmarked to measure change over time. Ideally a survey should be undertaken at least every two years.

Recommendation 63: The process that has been put in place to address issues raised in the staff survey should be completed as soon as possible and the agreed strategies implemented in a timely manner.

Recommendation 64: A staff survey should be undertaken at least every two years and the survey results should be capable of benchmarking to measure movements in key indicators over time.

## E.3 Relationship with LCARC:

As is evident from the discussion in regard to implementation of the Forster review, the LCARC is active in its relationship with the Ombudsman and the Information Commissioner.

The Committee meets with the Ombudsman every six months with the format being a series of formal questions raised by the Committee on a variety of topics to which the Ombudsman provides a formal response. There is also a face to face meeting which gives members of the Committee an opportunity to ask questions of the Ombudsman and his staff.

A report is then presented to the Parliament in regard to the meeting.

In my examination of the proceedings of the Committee in regard to the Ombudsman, I was impressed with the diligence of the Committee members and the searching nature of the questions. The questions covered a wide range of very relevant issues and the fact that this occurs every six months can only be helpful and beneficial to the processes of government. There is also generally good follow up on the issues raised.

The Committee, its Chair Dr Lesley Clark and members past and present, are to be commended for the processes they have put in place for oversight of the two Offices.

I have no recommendations in regard to the Committee except to commend them for their work.

#### **E.4 Relationship with Agencies:**

The Office engages with agencies in a variety of ways some of which have already been outlined in other sections of this report.

It is important that agencies and the Office have a clear understanding and appreciation of each other's role so that investigation of complaints can proceed smoothly and expeditiously.

Every agency is different. In some cases, particularly where the agency is heavily regionalised, the agency may be quite comfortable with the Office going straight to the region from where the complaint originated to assist in the resolution process. In other cases, for example where an agency has established a strong central complaints management unit, the agency may require the Office to go through the central unit.

At the end of the day, the important issue is that the process is clear and meets the need of all stakeholders.

One of the ways agreement can be reached with agencies is via the entering into of a Memorandum of Understanding which would clearly define the policies, protocols, practices and procedures to be employed by the agency and the Office in the resolution of complaints. It would not be appropriate necessarily for every agency to enter into such an agreement. Rather, I would anticipate that only the dozen or so larger agencies in terms of complaint numbers would be involved.

Agency feedback would suggest that most agencies would welcome such an arrangement.



The Ombudsman has entered into various informal arrangements with several agencies and has a formal memorandum of understanding or protocol with three agencies. He had some concerns about whether such an arrangement would be too inflexible. However I believe it is important for the processes to be clearly enunciated so that there are no misunderstandings about the process. Hopefully it would also speed up the process.

Recommendation 65: The Ombudsman should investigate with agencies the desirability of formally entering into a Memorandum of Understanding (MOU) which would clearly set out the policies, protocols, practices and processes that the Office and the agency would follow in the resolution of complaints received by the Ombudsman. The MOUs would replace any existing informal agreements.

Agencies were also concerned about the structure of the annual complaint reports. While those concerned generally saw these as useful documents, they had reservations about the way the numbers were portrayed. For example, agency A might have X complaints lodged with the Ombudsman of which only a very small percentage are ever the subject of a formal investigation. They claim that the great bulk of the complaints are either referred back to the agency, which is able to resolve them quickly or they are not in jurisdiction or are withdrawn.

Agencies would prefer that more emphasis was given to the positive side of the situation ie the lack of need for formal investigation and the quick resolution on referral.

The Ombudsman does not accept that the statements have validity. He maintains that the annual complainant reports clearly explain any complaint statistics included. He also says that the reports clearly highlight the way in which his Office assesses complaints including those referred back to agencies.

While I have some sympathy with the agency position, on the other hand the agency should have in place policies and practices, which encourage customers to resolve their matter with the agency rather than having to go to the Ombudsman to get some action. In most cases the complainant has felt that he would not be treated justly and fairly by the agency and hence the complaint to the Ombudsman.

Agencies need to create a culture that encourages customers to believe that the agency will always treat them justly and fairly.

Nevertheless, the Ombudsman could consider possible changes to the complaints report to ensure that appropriate prominence is given to the positive aspects.

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.

### **E.5 Relationship with Crime and Misconduct Commission:**

There is regular interaction between the Office and the Commission and it was clear from my discussions that a good working relationship exists. Complainants often approach the Commission when in fact it is an Ombudsman matter and vice versa. These issues are dealt with speedily and efficiently.

The Ombudsman and the Chair of the Crime and Misconduct Commission are members of an informal Integrity Committee, which meets regularly to discuss issues of mutual concern.

There is no obvious overlap in responsibilities between the Office and the Commission and where any doubt exists, an informal process usually sees the matter resolved.

While not a matter of urgency, the Office and the Commission could consider entering into a Memorandum of Understanding so that the current arrangements and protocols might be documented for the future.

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.

### **E.6 Role of Community Liaison Officers:**

In New South Wales and Victoria, appointments have been made to liaison type positions for specific sections of the population eg youth, indigenous community, ethnic groups. They are said to be effective and important to the groups concerned. I have some concerns that it over focuses on particular groups, particularly as there is no strong evidence that I have seen that suggests that the needs of these groups for the services of the Ombudsman are being inadequately met.

Nevertheless, the Ombudsman should investigate the desirability of making similar appointments here. I do not believe they should involve additional staff but rather designating current staff or staff position as the liaison person.

Recommendation 68: The need for and desirability of appointing liaison officers for groups with potential special needs including youth, indigenous and ethnic groups, having regard for the success of these appointments in other jurisdictions, should be investigated.

## Section F: Forster Report Implementation

The previous strategic review was conducted by The Consultancy Bureau Pty Ltd (Director, Mr Peter Forster) and is commonly known as the Forster Review.

The final report was delivered to the Minister on 19 June 2000.

The reviewer also undertook a concurrent review of the Information Commissioner. At the time the Ombudsman was also the Information Commissioner and the two Offices integrated.

The reviews were conducted concurrently but independently and separate reports prepared.

The report on the Ombudsman's Office made 97 recommendations across a broad spectrum of issues, including:

- complaint handling methodologies and processes,
- early intervention and informal resolution approaches,
- demand management,
- delegations,
- management systems and processes,
- regional visits program,
- HR management issues,
- funding,
- Office structure,
- administrative efficiencies.

The current Ombudsman has had primary carriage of implementation of the recommendations and has been diligent in ensuring that all of the recommendations were addressed. In a couple of cases, the recommendations could not be progressed because of changes in circumstances since the review report was presented.

The Parliamentary Committee, LCARC, has also been diligent in monitoring the progress with implementation and provided a significant report on progress with implementation of the recommendations for both the Ombudsman and Information Commissioner and the following Committee Reports cover substantive discussion/ reports on progress:

- No 30 (8 August 2001) Progress report on implementation of the recommendations made in the Report of the strategic management review of the Offices of the Queensland Ombudsman and the Information Commissioner,
- No 34 (14 May 2002) Meeting with Queensland Ombudsman – 12 April 2002,
- No 37 (12 December 2002) Meeting with Queensland Ombudsman – 26 November 2002,
- No 43 (17 December 2003) Meeting with the Queensland Ombudsman (25 November 2003) and final report on implementation of recommendations made in the Report of the Strategic Management review of the Offices of the Queensland Ombudsman and the Information Commissioner.

It is clear from my reading of the Reports of the Committee that it took an active interest in the recommendations and their implementation through targeted questioning at the regular meetings with the Ombudsman/Information Commissioner.

In the Committee's Report to Parliament (No 43, December 2003) specifically in relation to the implementation of the recommendations of the Forster Review, the Committee stated:

*"The committee also notes that nearly all of the recommendations of the Strategic Management Review relating to the office have been implemented or substantially implemented. Similarly, most recommendations relating to the Office of the Information Commissioner have been implemented. The committee commends the Ombudsman and the staff of both the offices of the Ombudsman and Information Commissioner in the substantial effort which has been required to implement these recommendations. While this has meant that both offices have undergone significant structural and operational change, the positive results from this change are evident."*

It is a fair conclusion that the 97 recommendations of the Forster Review have been substantially implemented. The Office embraced the recommendations and their intent and today is a very different Office to the one that Forster reviewed in 2000. The recommendations provided an excellent base to take the Office forward.

That is not to say that the Office maximised all opportunities that the Review offered. Some of the issues which were high on the agenda of Forster are still part of the landscape of this review eg delegations. However, this has as much to do with changing circumstances rather than any lack of willingness of the Office to make changes.

## Section G: Davies Report

The Report of the Davies Commission of Inquiry into Queensland Public Hospitals was presented to the government on 30 November 2005.

While the Report and its recommendations are substantially about health and hospital matters, the report also makes reference to a possible expanded role for the Queensland Ombudsman in relation to supervision of public interest disclosures under the *Whistleblowers Protection Act 1994*.

A copy of the relevant extract from the Report is set out in Attachment D.

In his submission to the Inquiry, the Ombudsman had pointed to the lack of a central body charged with overseeing and managing public interest disclosures. He suggested that it would be appropriate for the Ombudsman to take on this role but only in respect of non-official misconduct matters as official misconduct disclosures would still rest with the Crime and Misconduct Commission.

The Davies Report seems to largely accept the Ombudsman submission with its primary recommendation in relation to whistleblowers being:

*“... 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.”*

Whether the government will adopt the particular recommendations of the Davies Report will not be clear for some time. Until the recommendations are accepted and underpinned by legislation, it is difficult for the Ombudsman to do much about the possible new role.

At this early stage it is difficult to estimate the potential impact on Office resources and operations. It is clear though that whatever the level of demand might be, it is difficult to see how the Office could undertake the function without additional resources being provided.

The Ombudsman should continue to monitor the situation and to keep relevant funding agencies apprised of the situation.

**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.

## Section H: Legislative Issues

The Terms of Reference for the review make reference, among other things, to examining whether any amendments to the Act might be necessary or desirable to enhance operational effectiveness.

The Ombudsman has raised with me by letter dated 8 February 2006, a number of possible amendments to the Act and a copy of the amendments proposed by the Ombudsman are set out in Attachment F.

In many cases it is difficult to see how they could come within the Terms of Reference.

I have no objection to any of the amendments proposed and the amendments related to administrative audits, opportunity for apology and giving written reasons in all cases for non-investigation are particularly important.

The capacity of the Office to undertake audits of administrative practices and procedures in agencies is going to be increasingly important to raising the standard of administrative practices in agencies and hopefully reduce demand on the services of the Ombudsman by the public.

The Ombudsman should discuss these developments with the Auditor-General to ensure no overlap with the Auditor-General's responsibilities for performance management system audits.

It is also important to make sure there are no impediments to an agency issuing an apology in appropriate circumstances without fear of express or implied admission of guilt.

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.

The Act also provides for appointment of staff under the Act rather than the *Public Service Act*. There is a view that the staff should be public servants and there appears to be no reason why this should not occur.

Becoming a public servant should in no way inhibit or hinder the staff undertaking their duties as before.

Having staff as public servants would be consistent with the situation in some other jurisdictions and I support such a move. The only concern would be to ensure that the operational independence of the staff of the Office are not affected.

**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.

## Section I: Internal Reviews

It is an administrative policy of the Ombudsman's Office that complainants should avail themselves of available internal review processes within an agency prior to the Ombudsman taking up the person's grievance for investigation.

In part this is to ensure that proper process is followed and that agencies have an opportunity to resolve matters before they are potentially taken up by the Office.

While agencies have various mechanisms in legislation to afford individuals an opportunity for a review of decisions made by an agency, there is no specific provision in the *Ombudsman Act* to afford individuals a similar opportunity to seek a review of a decision of the Office.

From time to time, complainants who are dissatisfied with a decision made by the Office seek to have the decision reviewed. As a matter of Office policy, where such an application is made, the Ombudsman usually refers the matter to a Deputy Ombudsman or other senior officer at least as senior as the officer making the original decision and an internal review is carried out, just as might occur in a normal agency.

In the 2004-05 year, the Office dealt with 52 applications for review of a decision.

As the Ombudsman is effectively the "last resort" for complainants, one could question why there needs to be an option for a further review process afforded to complainants. The reviews usually involve substantial time and effort of senior officers and in the end, the decision of the Office is usually upheld.

On the other hand, it would seem logical for complainants to be given similar opportunity for internal review as occurs in other agencies.

The two questions here are:

- is an internal review of the Ombudsman's decisions appropriate?
- if a review is appropriate, who is best to undertake it?

While I can understand why there might be considered a certain irony in the "umpire" reviewing its own decisions, I do not think it is unreasonable for complainants to be afforded the same opportunity with the Office as they might receive from an agency.

The alternative to an internal review by Ombudsman's officers is to have an external party undertake the review, although the person would need to be someone with particular and relevant skills.

Having an external party undertake the review would lend an air of true independence for the review. On the other hand, there would be issues of confidentiality and security that would need to be addressed.

On balance, I am inclined to the view that the most cost-effective solution is the current practice of having a senior officer in the Office undertake the review.

## Section J: Response by the Ombudsman to the Draft Report

Section 85(1) of the Act provides that the reviewer must give a copy of the proposed report on the review to the Minister and the Ombudsman. A copy of the draft report was delivered to the Minister and the Ombudsman on 15 March 2006.

Section 85(2) of the Act allows the Ombudsman up to 21 days after receiving the proposed report, to give the reviewer written comments on anything in the proposed report.

During the 21 day period allowed for by the Act, a number of minor changes were discussed and resolved informally with the Ombudsman. The agreed changes in no way altered the substance of the report or its recommendations.

The Ombudsman provided a formal response to the draft report on 4 April 2006. A copy of the response is included in this report as *Attachment G*.

The Ombudsman's response was generally positive in terms of the proposed report and its recommendations.

The Ombudsman had concerns in regard to the adequacy of resourcing. These concerns are appreciated. While no specific recommendation regarding the provision of additional funding is included in the report, in several places in the report I have supported approaches to Treasury for additional funding for specific initiatives eg Recommendations 20 and 43.

I have also acknowledged in the report that resources have already been diverted from the investigative function to administrative improvement initiatives and that further reallocation of resources from the investigative function could impact on this function.

The Ombudsman does not share my view that the relative share of total resources devoted to the investigative function could be increased having regard for the apparent situation in other jurisdictions such as New Zealand. The lack of national benchmarking data makes meaningful comparisons very difficult, which I have acknowledged in the report. It is a matter that the Ombudsman could pursue independently with other Ombudsman and I have no additional comment to make.

Some concern has been expressed about my comments that the Ombudsman may need to assess whether greater use needs to be made of the discretionary powers not to investigate. It is a difficult issue and one that is of increasing concern as overall budget pressures increase. My comments/observations were meant to be suggestive rather than recommendatory and it is a matter for the Ombudsman to consider in individual cases, having regard for the role of the Ombudsman and the best use of resources available to undertake that role.

I have made no changes to the proposed report in the light of the Ombudsman's formal comments and hence his response has been included in full in the report.



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