

# **Report on the Strategic Review of the Office of the Queensland Ombudsman**

**Report No. 15**

**Legal Affairs and Community Safety Committee**

**November 2012**

## Legal Affairs and Community Safety Committee

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### Acknowledgements

The Committee thanks those who briefed the Committee, and participated in the oversight process. In particular, the Committee acknowledges the assistance provided by Mr Henry Smerdon AM.

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## Abbreviations

Act	Ombudsman Act 2001
ART	Assessment and Resolution Team
CMC	Crime and Misconduct Commission
Committee	Legal Affairs and Community Safety Committee
HQCC	Health Quality and Complaints Commission
OCG	Office of the Coordinator-General
Office	Office of the Queensland Ombudsman
QAO	Queensland Audit Office
QUT	Joint submission by the Queensland University of Technology, Griffith University and the University of Queensland
Reviewer	Mr Henry Smerdon AM
Strategic Review Report	H Smerdon AM, <i>Strategic Review of the Office of the Queensland Ombudsman</i> , tabled in the Legislative Assembly on 17 May 2012
TMR	Department of Transport and Main Roads
2005-2006 Strategic Review	Strategic management review of the Office of the Queensland Ombudsman undertaken by Mr Henry Smerdon AM in 2005-2006
2011-2012 Strategic Review	Strategic review of the Office of the Queensland Ombudsman undertaken by Mr Henry Smerdon AM in 2011-2012

## Glossary

Administrative action	An administrative action is any action about a matter of administration, and includes: a decision and an act; a failure to make a decision or do an act, including a failure to provide a written statement of reasons for a decision; the formulation of a proposal or intention; the making of a recommendation, including a recommendation made to a Minister; and an action taken because of a recommendation made to a Minister. An operational action of a police officer or an officer of the Crime and Misconduct Commission is not an administrative action. <sup>1</sup>
Agency	An agency is any of the following entities: a department; a local government; or a public authority. An agency is taken to include an entity, other than an incorporated entity or an individual, established under an Act as a board, council, committee, subcommittee or other similar entity for helping, or for performing functions connected with, the agency. An individual is not an agency under the Ombudsman Act. <sup>2</sup>
Appropriate agency	For an investigation, means the agency by, in or for which the administrative action the subject of investigation was taken.
Complainant	Means a complaint made under section 20 of the Ombudsman Act. Unless this section otherwise provides, a complaint about an administrative action of an agency: (a) may be made orally or in written form; and (b) may be made by any person, or by any body of persons, whether incorporated or not, apparently directly affected by the action; and (c) must be made within 1 year after the day the complainant first had notice of the action.
Complaint	Means a complaint made under section 20 of the Ombudsman Act.
Strategic Review	Means a strategic review conducted under section 83 of the Ombudsman Act

<sup>1</sup> *Ombudsman Act 2001*, section 7.

<sup>2</sup> *Ombudsman Act 2001*, section 8.

## Chair's foreword

The Legal Affairs and Community Safety Committee (Committee) of the 54<sup>th</sup> Parliament is pleased to report on the Strategic Review of the Office of the Queensland Ombudsman.

The Committee benefitted from meeting with the Mr Henry Smerdon AM (Reviewer) and the Ombudsman, Mr Phil Clarke.

On behalf of the Committee, I also thank: Mr Andrew Brown, Deputy Ombudsman; Mr Peter Cantwell, Assistant Ombudsman, Intake and Engagement Unit; and Ms Diane Gunton, Manager, Corporate Services Unit, who met with the Committee. I also thank those individual/organisations who provided submissions.

The timely and accurate assistance provided by Hansard is greatly appreciated, as is the interest and dedication with which my fellow Committee members have embraced the Committee's functions regarding this review. I also thank the secretariat staff for assisting the Committee to realise its responsibilities.



Mr Ray Hopper MP

Chair

November 2012

## **Recommendations**

### **Recommendation 1**

**3**

The House note this Report.



## 1. Introduction

### 1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (Committee) is a portfolio committee of the Legislative Assembly which commenced on 18 May 2012 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.<sup>3</sup>

The Committee's primary areas of responsibility include:

- Department of Justice and Attorney-General;
- Queensland Police Service; and
- Department of Community Safety.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles; and
- for subordinate legislation – its lawfulness.

In addition to its portfolio committee responsibilities, the Committee also has oversight responsibilities of the Queensland Ombudsman, Office of the Information Commissioner, the Electoral Commissioner and the Criminal Organisation Public Interest Monitor.

The Committee must also deal with an issue referred to it by the Legislative Assembly or under an Act, whether or not the issue is within the Committee's areas of responsibility.<sup>4</sup>

This report is made in relation to the Committee's requirement to consider and report on a strategic review report referred to it under the *Ombudsman Act 2001* (Act).<sup>5</sup>

### 1.2 Conduct of the Strategic Review of the Office of the Ombudsman

Part 8, division 4 of the Act provides for a strategic review of the Ombudsman's Office to be conducted every five years. The strategic review includes a review of the Ombudsman's functions and a review of the Ombudsman's performance of the functions to assess whether they are being performed economically, effectively and efficiently.<sup>6</sup>

All such reviews must be undertaken by an appropriately qualified person (the reviewer), who provides a report on the strategic review.<sup>7</sup>

After first consulting with the Committee and the Ombudsman, the Governor in Council appoints the reviewer and decides the terms of reference for the strategic review.<sup>8</sup>

Once tabled in the Legislative Assembly, the strategic report of the reviewer is referred to the Committee. The Committee must consider that report and report on it, and make recommendations about it, to the Legislative Assembly.<sup>9</sup>

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<sup>3</sup> *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

<sup>4</sup> *Parliament of Queensland Act 2001*, section 92(2).

<sup>5</sup> *Ombudsman Act 2001*, section 85(7).

<sup>6</sup> *Ombudsman Act 2001*, section 83(8).

<sup>7</sup> *Ombudsman Act 2001*, section 83(4).

<sup>8</sup> *Ombudsman Act 2001*, section 83(4), (5) and (6).

<sup>9</sup> *Parliament of Queensland Act 2001*, section 92(2) and (3).

## Introduction

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The last strategic review report was tabled in the Legislative Assembly in May 2006 (2005-2006 Strategic Review).<sup>10</sup> The former Legal, Constitutional and Administrative Review Committee reported back to the Legislative Assembly on that strategic review report in December 2006.<sup>11</sup>

### 1.3 Functions of the Ombudsman

The functions of the Ombudsman are:

- *to investigate administrative actions of agencies:*
  - *on reference from the Assembly or a statutory committee of the Assembly; or*
  - *on complaint; or*
  - *on the Ombudsman's own initiative; and*
- *to consider the administrative practices and procedures of an agency whose actions are being investigated and to make recommendations to the agency:*
  - *about appropriate ways of addressing the effects of inappropriate administrative actions; or*
  - *for the improvement of the practices and procedures; and*
- *to consider the administrative practices and procedures of agencies generally and to make recommendations or provide information or other help to the agencies for the improvement of the practices and procedures; and*
  - *the other functions conferred on the Ombudsman under the Act or any other Act.*<sup>12</sup>

Subject to any other Act or law, the Ombudsman is not subject to direction by any person about the way the Ombudsman performs, the Ombudsman's functions or the priority given to investigations.<sup>13</sup>

The Ombudsman may investigate administrative actions of agencies at his discretion, including administrative actions which under any Act may be considered final or are unable to be appealed against, challenged, reviewed, quashed or called in question.<sup>14</sup>

The Ombudsman must not question the merits of a decision, including a policy 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.<sup>15</sup>

The Act also provides that the Ombudsman must not investigate an administrative action taken by various bodies or persons, for example, a tribunal, or a member of a tribunal, in the performance of the tribunal's deliberative functions or a person acting as legal adviser to the State or as counsel for the State in any legal proceedings.<sup>16</sup>

The current Ombudsman is Mr Phil Clarke. Mr Clarke was appointed in December 2010.<sup>17</sup>

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<sup>10</sup> H Smerdon, *Strategic Review of the Office of the Queensland Ombudsman*, April 2006.

<sup>11</sup> Legal, Constitutional and Administrative Review Committee, *Report on the Review of the Strategic Management Review Report – Office of the Ombudsman, April 2006; Report on the 2005-2006 Annual Report of the Office of the Ombudsman*, December 2006.

<sup>12</sup> *Ombudsman Act 2001*, section 12.

<sup>13</sup> *Ombudsman Act 2001*, section 13.

<sup>14</sup> *Ombudsman Act 2001*, section 14.

<sup>15</sup> *Ombudsman Act 2001*, section 16(1).

<sup>16</sup> *Ombudsman Act 2001*, section 16(2).

<sup>17</sup> Office of the Queensland Ombudsman, downloaded 31 July 2012 at:  
[www.ombudsman.qld.gov.au/AboutUs/OurOffice/OurOmbudsman/tabid/64/Default.aspx](http://www.ombudsman.qld.gov.au/AboutUs/OurOffice/OurOmbudsman/tabid/64/Default.aspx).

## 2. 2011-2012 Strategic Review

On 14 July 2011, following consultation with the former Legal Affairs, Police, Corrective Services and Emergency Services Committee, the Governor in Council appointed Mr Henry Smerdon AM (Reviewer) to undertake a strategic review of the Office of the Ombudsman and decided the terms of reference for the strategic review.

On 17 May 2012, the Attorney-General and Minister for Justice, the Honourable Jarrod Bleijie MP, tabled the Reviewer's report titled *Report: Strategic Review of the Office of the Queensland Ombudsman* (Strategic Review Report). The Strategic Review Report was referred to the Committee for its consideration and reporting.

After tabling of the Strategic Review Report, and in line with previous practice, the Committee determined that its review would include:

- questions of the Office of the Ombudsman and the Reviewer at public hearings; and
- consideration of written submissions.

On 20 June 2012, the Committee held public hearings with the Ombudsman and the Reviewer. In attendance with the Ombudsman were:

- Mr Andrew Brown, Deputy Ombudsman;
- Mr Peter Cantwell, Assistant Ombudsman, Intake and Engagement Unit; and
- Ms Diane Gunton, Manager, Corporate Services Unit.

The transcripts of the hearing with the Ombudsman and the Reviewer are attached at **Appendix B** and **Appendix C**, respectively.

The Committee received 13 public submissions as listed in **Appendix A**.

The Committee makes the following single recommendation.

### Recommendation 1

The House note this Report.

### 2.1 General comments

The terms of reference of the 2011-2012 Strategic Review are contained in Attachment A to the Strategic Review Report and include in its scope:

*The appointee will be required to generally assess, and provide advice and recommendations about, the functions and the performance of the functions of the Ombudsman and the Office of the Ombudsman in order to assess whether those functions are being performed economically, effectively and efficiently, as set out in section 83(8) of the Act.*

*In this context, the review is to examine all structural and operational aspects of the office, as well as its relationship with public sector entities, relevant Ministers, parliamentary committees, and the Legislative Assembly.<sup>18</sup>*

The Strategic Review Report contains 57 recommendations covering strategic, operational and organisational matters. The Committee notes the bulk of the recommendations are practical considerations for the Ombudsman's Office.

<sup>18</sup> H Smerdon AM, *Strategic Review of the Office of the Queensland Ombudsman*, May 2012, page 84.

The Committee was pleased to hear about the ‘*significant progress*’<sup>19</sup> identified by the Reviewer during the 2011-2012 Strategic Review. However, the Committee notes the Reviewer’s comments during its meeting with the Reviewer that:

[The Office of the Ombudsman] *had come a long way from where I was five years ago, although probably not as far as I thought. I made a comment in the report that I was a little disappointed at times when I was doing the review this time because the initial feeling was that certainly things had changed quite dramatically. They certainly had changed but not to the level that I thought they might have done.*<sup>20</sup>

The role of an Ombudsman is to ‘*investigate complaints by citizens against the government or its agencies.*’<sup>21</sup> The Committee agrees with the Reviewer that the role of the Ombudsman is not one of advocate and therefore supports the recommendation of the Reviewer not to extend the role of the Office to include an advocacy role on behalf of complainants.<sup>22</sup> In the Strategic Review Report, the Reviewer stated:

*... care must be taken not to be seen as an advocate for the complainant nor to encourage greater use of the Ombudsman rather than the proper channels available within an agency.*

...

*The independence of the role of the Ombudsman is seen as a very high priority by Ombudsmen and stakeholders alike. A client focus is important but should not be the over-riding remit of the Office to the detriment of the critical role agencies must play in resolving their complaints and learning from the process.*<sup>23</sup>

The Committee echoes the Reviewer’s encouragement of the Ombudsman to be ‘*careful to avoid any hint of an advocacy role.*’<sup>24</sup>

After considering all of the recommendations made by the Reviewer and the 13 public submissions made in relation to these recommendations to the Committee, the Committee makes a number of specific comments regarding certain of these recommendations in section 2.2 below.

## 2.2 Consideration of certain recommendations

### **Role of the Office of the Ombudsman**

**Reviewer Recommendation 1:** The current role of the Ombudsman in the overall accountability processes of Government, including the increasing role of the Ombudsman in administration improvement as it relates to good decision making and complaints management practices in agencies, is endorsed.

The 2005-2006 Strategic Review noted:

*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*

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<sup>19</sup> H Smerdon AM, *Strategic Review of the Office of the Queensland Ombudsman*, May 2012, page 2.

<sup>20</sup> *Transcript of Proceedings of meeting with Strategic Reviewer of the Office of the Queensland Ombudsman*, 20 June 2012, page 1.

<sup>21</sup> Macquarie Dictionary, downloaded 6 August 2012 at [www.macquariedictionary.com.au](http://www.macquariedictionary.com.au)

<sup>22</sup> H Smerdon AM, *Strategic Review of the Office of the Queensland Ombudsman*, May 2012, Recommendation 3.

<sup>23</sup> H Smerdon AM, *Strategic Review of the Office of the Queensland Ombudsman*, May 2012, page 3.

<sup>24</sup> H Smerdon AM, *Strategic Review of the Office of the Queensland Ombudsman*, May 2012, page 30.

*and government through its administrative improvement work with agencies. It will not achieve this though without some significant cultural changes.*<sup>25</sup>

This challenge appears to have been met, with some success, in the time since the 2005-2006 Strategic Review. In the Strategic Review Report, the Reviewer stated:

*The workload of the Ombudsman's Office has increased quite dramatically in the past few years which does suggest that there is a high acceptance in the community of the importance of the role of the Ombudsman. "Contacts" within the Office have increased by more than 75% in the past 5 years. There were 20383 "contacts" in 2010/11.*<sup>26</sup>

In the Strategic Review Report, it is noted:

*There is a concern that there has been such a dramatic increase in the number of "contacts" from say just five years ago without a parallel increase in complaint numbers. There can be many reasons why many of the "contacts" do not result in some form of complaint being made. There is a strong possibility that there is a lack of understanding by the individual as to which organisation or entity is the best or most appropriate to contact to solve their particular problem and the Ombudsman seems the easiest and most obvious place to start.*

*My own observations, having examined a sample of Office files created in recent times, is that the contacts with the Office are in the majority of cases unrelated to the core activities of the Office and are generally intended for other bodies or regulators, either at Commonwealth or State level. These "contacts" are placing an increasing burden on the Office generally and the Assessment and Resolution Team (ART) in particular.*

*However it does serve to highlight that the general public value an Ombudsman type role and look to it to solve many of their problems and complaints, whether the Ombudsman has the power to do so or not.*<sup>27</sup>

In its submission, the Health Quality and Complaints Commission (HQCC) made the following statements regarding the role of the Office of the Ombudsman:

*The HQCC supports the current role of the Ombudsman.*

*Like the Office of the Ombudsman, the HQCC receives a significant proportion of enquiries that are outside of its jurisdiction.*

*The HQCC has partnered with the Queensland Ombudsman and its fellow complaint agencies to promote the 'It's OK to complain' message. In addition, the HQCC promotes its specialist health complaint resolution, management, investigation and quality monitoring and improvement services to healthcare consumers, healthcare providers and the broader community.*

*Despite these promotional efforts, clients are not always sure which agency to approach with their concerns. Effective and efficient referral processes between agencies are essential to support clients in raising their concerns with the right agency.*<sup>28</sup>

The Committee considers the Ombudsman's Office has successfully raised its profile within the community over the past 5 years, however notes the increasing burden on the Ombudsman's Office relating to the high number of "contacts" made to it that are not within the remit of the Ombudsman's Office to resolve.

<sup>25</sup> H Smerdon AM, *Strategic Review of the Office of the Queensland Ombudsman*, April 2006, page 5.

<sup>26</sup> H Smerdon AM, *Strategic Review of the Office of the Queensland Ombudsman*, May 2012, page 2.

<sup>27</sup> H Smerdon AM, *Strategic Review of the Office of the Queensland Ombudsman*, May 2012, page 28.

<sup>28</sup> Health Quality and Complaints Commission, Submission 10, page 4.

The Committee supports the endeavours of the Office of the Ombudsman to raise the community's understanding as to what issues are within the remit of the Ombudsman's Office to resolve. The Committee also agrees with the HQCC that it is imperative to ensure that referral processes between agencies are effective and complainants are appropriately directed to the correct agency.

***Extension of the roles and responsibilities of the Ombudsman to include an advocacy role***

**Reviewer Recommendation 3:** The possible extension of the current roles and responsibilities of the Ombudsman to include an advocacy role on behalf of complainants is not supported.

In his Strategic Review Report, the Reviewer stressed that:

*... care must be taken not to be seen as an advocate for the complainant nor to encourage greater use of the Ombudsman rather than the proper channels available within an agency.*<sup>29</sup>

The Brisbane City Council observed:

*It is noted that the Ombudsman's Office has, by necessity, increased its role as a 'referral point' for complaints and requests for actions. Clearly, many government bodies and agencies have complex structures and customer service systems and the average person finds it more convenient to have their individual questions answered or needs addressed through the Ombudsman's Office.*

*With the increasing public awareness of the role of the Ombudsman, the Office is gaining popularity as the first option for obtaining advice or lodging a grievance about public sector agencies. This is clearly reflected in the Report, which states that 'contacts' within the Office have increased by more than 75% in the past five years.*

...

*Council would submit that there have been occasions where it would appear that the Ombudsman is taking on the role of advocate for the complainant. Council supports the view that the Ombudsman should remain an impartial review body and not advocate for complainants under any circumstances.*<sup>30</sup>

The Committee endorses recommendation 3. As highlighted above, the Committee considers it would be inappropriate (and inadvisable) for the Ombudsman to assume an advocacy role since this would directly conflict with its core investigative functions and responsibilities.

The Committee is confident that the Office of the Ombudsman is able to strike an appropriate balance between assisting complainants who have issues about a particular agency and maintaining an important client focus, but not taking on the role of advocate for the complainant.

***Audits of complaint management systems in agencies including complainant appeal processes***

**Reviewer Recommendation 6:** The Ombudsman should ensure that any audits of complaint management systems in agencies include an examination of the effectiveness of complainant appeal processes.

In its submission, the HQCC stated:

*The HQCC supports fair and open decision-making. Clients may apply for a decision the HQCC has made about a complaint to be reviewed.*

...

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<sup>29</sup> H Smerdon AM, *Strategic Review of the Office of the Queensland Ombudsman*, May 2012, page 3.

<sup>30</sup> Brisbane City Council, Submission 12, pages 2-3.

*Clients who remain dissatisfied following the HQCC's internal review may appeal a review decision through the Queensland Ombudsman. The HQCC's policy and procedures are made available to enable the Ombudsman to independently review the HQCC's administrative decisions.<sup>31</sup>*

In this regard, in a joint submission by the Queensland University of Technology, Griffith University and the University of Queensland (QUT), they submitted:

*Recommendation 6 ... may suggest an expanded remit of the Ombudsman.*

...

*The concern in relation to [this] recommendation and suggested amendments is the implication that the Ombudsman is moving from a facilitating and advisory role to an auditing and enforcement role. Universities are already subject to the audit and compliance requirements of various external entities. To add another potential audit obligation ... would increase the burden on universities.<sup>32</sup>*

While the comments made by QUT in its submission are noted, the Committee concurs with the Reviewer's recommendation 6 that audits of complaint management systems in agencies should include complainant appeal processes. The Committee does not consider the recommendation expands the remit of the Ombudsman but allows the Ombudsman to satisfy itself that the whole of an agency's complaint management system is effective.

The Committee considers that genuine appeal processes are essential to the complaint resolution process and endorses the Reviewer's recommendation that the Ombudsman should examine appeal processes when auditing complaint management systems.

#### **Shared call centre facility for receipt of contacts and complaints**

**Reviewer Recommendation 9:** The Ombudsman should continue to explore with the heads of other agencies co-located with the Ombudsman, opportunities for a small shared call centre type facility for receipt of "contacts" and complaints.

In the Strategic Review Report, it is noted:

*Many of the "contacts" within the Ombudsman's Office relate to other agencies and [are] not within the jurisdiction of the Ombudsman.*

...

*... the issue is whether there is merit in looking at an alternative call centre or receipt and referral mechanism which may provide a better more relevant service to the community.<sup>33</sup>*

In relation to this recommendation, the Crime and Misconduct Commission (CMC) states that:

*Like the Ombudsman, the CMC spends considerable time and resources on telephone contact with complainants who are complaining about matters that are determined to not be within the CMC's jurisdiction. While it is accepted that this time could be better spent on dealing with more serious allegations of misconduct, the CMC would suggest that detailed consideration be given to recommendation 9 to explore opportunities for a call share arrangement with other agencies. The CMC is of the view that any short term cost advantages need to be considered against the associated key risks presented by*

<sup>31</sup> Health Quality and Complaints Commission, Submission 10, page 4.

<sup>32</sup> Joint submission by the Queensland University of Technology, Griffith University and The University of Queensland, Submission 9, pages 2-3.

<sup>33</sup> H Smerdon AM, *Strategic Review of the Office of the Queensland Ombudsman*, May 2012, page 4.

*outsourcing complaints management. Particular risks include the potential for an inadequate level/ quality of service impacting adversely on the Ombudsman's public profile, and under-estimated costs effectively diluting any business case for outsourcing.*<sup>34</sup>

The HQCC also expressed the following concerns:

*The HQCC does not support a shared call centre model as proposed.*

*Firstly, people contacting the HQCC expect to discuss their often complex healthcare issues with staff who have the clinical understanding and complaint triage skills to appropriately respond to their complaint. It is the HQCC's view that a shared call facility is unlikely to be cost-effective or provide the level of specialist service needed. It is likely to result in duplication of services, delays in complaint processing and may serve to increase confusion among clients attempting to distinguish between complaint agencies.*

*Secondly, the HQCC is of the view that the shared call centre model does not support the independence of the Ombudsman in reviewing government agency administrative decisions.*

*Consider the following scenario. A client makes a healthcare complaint to the HQCC via the shared call centre. The complaint is assessed by the HQCC and closed. The client appeals the HQCC's decision. The appeal is reviewed by the HQCC and the original decision is upheld. The client wishes to complain to the Ombudsman and is then advised to telephone the same number they called originally to contact the HQCC. The client could be forgiven for questioning the independence and administrative separation of the Ombudsman when it shares a contact centre with an agency it oversees.*

*... The HQCC is concerned that a combined call centre would impact the independence of the Ombudsman to oversee government complaint agencies with which the Ombudsman operates the call centre.*

*As [it] relate[s] to the HQCC, recommendation 9 ... would not be practical or viable.*<sup>35</sup>

The Committee is of the view that further analysis would be needed by the Ombudsman's Office and the other agencies that might possibly be involved to determine whether a shared call centre model would be a positive measure:

- a. to ensure that individuals are directed to those agencies with the appropriate jurisdiction to consider their complaints at the earliest possible juncture; and
- b. to also make the best use of available resources.

The Committee will continue to monitor and discuss with the Ombudsman any potential resource implications for the Office resulting from consideration of this recommendation, and any effect on quality of service.

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<sup>34</sup> Crime and Misconduct Commission, Submission 8, pages 1-2.

<sup>35</sup> Health Quality and Complaints Commission, Submission 10, page 5.



**Upgrade of [www.complaints.qld.gov.au](http://www.complaints.qld.gov.au) website**

**Reviewer Recommendation 10:** As a matter of priority, the Ombudsman should address with the relevant agencies, the upgrade of the current [www.complaints.qld.gov.au](http://www.complaints.qld.gov.au) website to include relevant telephone numbers at least as well as a better organisation of brochures and other information that directly links on the site to the relevant agency.

In his Strategic Review Report, the Reviewer observed that:

*The majority of "contacts" relate to out of jurisdiction matters or are premature in their approach to the Ombudsman.<sup>36</sup>*

The Strategic Review Report points out that, where possible, these persons are referred onto the appropriate agency.

In relation to the possible upgrading of the current complaints website, the CMC supports this on the basis that:

*From the original six partner agencies, the site has expanded to now include links to additional independent complaint agencies ...*

*Website statistics for the last financial year indicate that 12,701 people visited the site in 2011-2012.*

*The CMC is aware that both the portal and the brochures are scheduled to be reviewed and evaluated in 2012, and we will work with the Ombudsman and the other complaints agencies to ensure this cost effective initiative is maintained to best practice.<sup>37</sup>*

The Committee welcomes the proposed upgrade of the [www.complaints.qld.gov.au](http://www.complaints.qld.gov.au) website and considers it will bring genuine benefits. This step is a positive way of ensuring that, where possible, complaints are referred to the appropriate agency.

**Central facility for receipt of individual complaints**

**Reviewer Recommendation 11:** Consideration might also be given by the appropriate Government agencies to the setting up of a central facility for receipt of complaints generally from individuals who feel they have been adversely affected by the way a Government service is delivered to them or affected by an administrative decision of an agency.

The setting up of a central facility for the receipt of complaints generally from individuals who feel they have been adversely affected by delivery of a Government service or an administrative decision of an agency was unsupported by submitters.

QUT advised the Committee:

*The Ombudsman has previously advocated the development of a centralised approach to the management of complaints by universities; however, this raises significant concerns for our institutions. Our universities instead take successful localised approaches to the management and resolution of complaints generally, the vast majority of which are informally resolved without the need for escalation to more formal processes. Imposing a 'one size fits all' set of complaints management standards and practices, which are applicable to universities as well as other, very different, public sector entities, may*

<sup>36</sup> H Smerdon AM, *Strategic Review of the Office of the Queensland Ombudsman*, May 2012, page 4.

<sup>37</sup> Crime and Misconduct Commission, Submission 8, page 2.

*unnecessarily formalise the currently successful approaches to complaints management undertaken by our universities.*<sup>38</sup>

In its submission, the HQCC raised the following concerns:

*Enquiries and complaints received by the HQCC are about healthcare, healthcare services or healthcare practitioners ... The HQCC employs a dedicated team of expert triage officers, some with clinical experience, who efficiently and effectively deal with the specialist types of complaints and contacts received.*

*It should also be noted that unlike the Ombudsman, clients may complain to the HQCC without having previously complained to the healthcare provider.*

...

*It is also important to note that the HQCC's independent oversight of health services extends well beyond the services of government agencies. ...A significant proportion of the complaints we receive...come from non-government areas in the form of private hospitals, private practitioners and alternative practitioners*<sup>39</sup>.

While the Committee agrees there is merit in considering alternative receipt and referral mechanisms in view of the significant resource implications for the Ombudsman in being a primary point of contact, the Committee notes the concerns raised in the submissions and does not support the recommendation that agencies consider the development and implementation of a central facility for the receipt of individual complaints.

***Amendment of Ombudsman Act to provide the power for development of complaint management standards governing complaint management systems and monitoring thereof***

**Reviewer Recommendation 12:** Consideration be given to amending the *Ombudsman Act 2001* to provide the necessary power and authority for the Ombudsman to develop and set appropriate complaint management standards governing complaint management systems and for the monitoring thereof.

The Reviewer noted in his 2011-2012 Report that:

*The Ombudsman has an important role to play in setting standards for complaint handling processes and would seem the most appropriate body to do this particularly as it should also have an auditing role to ensure that the standards are all being observed.*

*The Complaints Standards Authority in the Scottish Ombudsman's Office could provide a good model.*<sup>40</sup>

The amendment of the Act to provide the power for development of complaint management standards and monitoring was supported by the Department of Transport and Main Roads (TMR). The Department submitted:

*With the introduction of a complaints standards authority, greater consistency and standardised process modelling for managing complaints across government will be achieved. TMR supports the recommendations made relating to section D.5 of the report.*<sup>41</sup>

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<sup>38</sup> Joint submission by the Queensland University of Technology, Griffith University and The University of Queensland, Submission 9, page 2.

<sup>39</sup> Health Quality and Complaints Commission, Submission 10, page 5.

<sup>40</sup> H Smerdon AM, *Strategic Review of the Office of the Queensland Ombudsman*, May 2012, page 5.

<sup>41</sup> Department of Transport and Main Roads, Submission 7, page 1.

While the CMC was generally supportive about this proposed amendment to the Ombudsman's powers, it did impose some qualifications on its response, as follows:

*While we welcome any recommendation which would provide the necessary power and authority for the development and setting of complaint management standards, and the possible establishment of a Complaints Management Authority within the Office of the Ombudsman, the CMC notes that there are a number of oversight agencies, including the CMC who have responsibilities in this area.*

...

*If recommendations 12, 13 and 14 were to be implemented the CMC would recommend consultation take place between the Ombudsman and the CMC to ensure our organisations do not duplicate effort and resources.<sup>42</sup>*

However, three submissions addressed reservations about this recommendation.

In its submission, the University of Queensland noted:

*In providing the Ombudsman with the power to develop complaint management standards may undermine the independence of the Ombudsman and conflict with the Ombudsman's duties to the parliament. The executive is responsible for the daily administration of the government, which includes the setting of standards for complaint management. To implement this recommendation would result in the Ombudsman ... carrying out an executive function of the government.<sup>43</sup>*

In its submission, QUT noted that this proposal may have merit in relation to local Government entities, but not necessarily in the context of universities:

*... the development of complaints management standards and the establishment of a Complaints Standards Authority might all be sensible in relation to local Government entities which have centralised complaints handling systems; however these recommendations may be less easily applicable to universities, which have different resources and infrastructure, to other public sector entities to respond to complaints.<sup>44</sup>*

In its submission, HQCC noted the following overall concerns of the additional powers of the Ombudsman proposed in this recommendation:

*While the HQCC is a strong supporter of standards in driving improvement, the HQCC questions the need for additional standards, when complaints management standards already exist. The Ombudsman should carefully consider the regulatory and reporting burden the development, implementation and monitoring of standards would create in an environment of scarce resources for a system already adequately governed.<sup>45</sup>*

The Committee notes the Reviewer's suggestion that the Scottish Complaints Standards Authority could provide a model in setting standards for complaint handling processes. The Complaints Standards Authority is an internal unit of the Scottish Public Service Ombudsman and its role is:

*[to] provide further support to providers in improving complaints handling procedures. The CSA will work in partnership with individual public sector areas to oversee the process of developing model CHPs for each sector in line with the framework of the principles and guidance.*

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<sup>42</sup> Crime and Misconduct Commission, Submission 8, page 2.

<sup>43</sup> University of Queensland, Submission 6, page 1.

<sup>44</sup> Joint submission by the Queensland University of Technology, Griffith University and The University of Queensland, Submission 9, page 2.

<sup>45</sup> Health Quality and Complaints Commission, Submission 10, page 6.

*The vehicle for publicising the CSA's work is the SPSO's [Scottish Public Service Ombudsman's] website, [www.valuingcomplaints.org.uk](http://www.valuingcomplaints.org.uk). This site will be the resource for sharing learning from complaints and for helping public sector providers set up (or expand existing) networks for supporting complaint handlers. Through these networks, SPSO's training programmes and the learning from considering and investigating complaints, the CSA aims to help bring about a culture in which complaints are valued. Its goal is to bring into existence efficient, effective, standardised and fair complaints procedures across the public sector ,... that put the service user – the citizen and the customer – at the heart of the complaints process.<sup>46</sup>*

The Committee is of the view that this model deserves careful consideration. The early resolution of complaints is highly desirable and the development of complaint management standards could help address this issue. In addition, it is important that complaints made receive an effective, consistent response. This would be promoted by standardised processes for managing complaints across government.

The Committee considers further investigation of this issue is warranted, in particular understanding the regulatory and reporting burden which might result from the development of such standards.

***Complaint Standards Authority to develop, implement and monitor the standards set***

**Reviewer Recommendation 13:** Consideration also be given to establishing a Complaints Standards Authority within the Office of the Ombudsman to develop, implement and monitor the standards set.

In the context of recommendation 13, TMR made the following comment:

*With the introduction of a complaints standards authority, greater consistency and standardised process modelling for managing complaints across government will be achieved.<sup>47</sup>*

Other submissions - as outlined above in the commentary relating to recommendation 12 - were variously in support of or against the establishment of a specific complaints standards authority.

The Committee supports recommendation 13 and considers the establishment of such an authority within the Office of the Ombudsman to be of valuable assistance to its operations.

***Funding to set up the standard setting body, implement the standards and undertake audits of complaint management systems***

**Reviewer Recommendation 14:** Treasury give consideration to the provision of additional funding for additional resources for the Office to set up the standard setting body, to develop and implement the standards and to undertake audits of complaint management systems.

The Committee understands the challenges of the current economic climate in which all government and quasi-government bodies are operating, however the Committee supports the Reviewer's recommendation 14 and considers this to be an area worthy of additional funding.

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<sup>46</sup> <http://www.spsos.org.uk/files/webfm/Publications/CSA/nce-on-a-Model-Complaints-Handling-Procedure.pdf>, page 4, accessed 10/10/2012.

<sup>47</sup> Department of Transport and Main Roads, Submission 7, page 1.

**Extension of the role of the Ombudsman to include non-Government agencies**

**Reviewer Recommendation 15:** The Ombudsman should investigate as a matter of some priority, the efficacy of bringing within the scope of the *Ombudsman Act 2001*, non-Government agencies that receive significant Government funding for delivery of their services.

In relation to the Ombudsman and the non-government sector, the Reviewer suggested that the efficacy of extending its powers to non-Government agencies which are dependent upon considerable Government funding be assessed.

The Reviewer noted:

*The Auditor-General now has powers to “follow the dollar” in his auditing task and there would seem to be some logic in allowing those aggrieved by administrative decisions of a non-government agency that is substantially Government funded, to also have access to the Ombudsman.*

*I am also conscious of the trend to outsourcing of some Government services that may take away the opportunity for aggrieved persons to have their complaint heard, effectively losing that option when outsourcing occurs.*

*However it is a significant policy issue.*<sup>48</sup>

In its submission to the Committee, the Queensland Audit Office made the following observations regarding recommendation 15:

*This recommendation acknowledges the move to outsourcing public sector service provision, which the current mandate does not adequately address.*

*Should this recommendation be supported, in order for this mandate to be exercised effectively, regard would need to be given to whether:*

- *the Ombudsman has sufficient powers to access documents and individuals; and*
- *the powers are limited to matters related to the purpose for which the Government funding was provided, or broader powers across the entity’s operations.*<sup>49</sup>

In its submission, the CMC supported the recommendation that interested persons be given the opportunity to make complaints about non-Government organisations in receipt of significant Government funding, ‘in light of the recent changes to the integrity arrangements and powers conferred on the Auditor General’s Office to undertake audits on an NGO’.<sup>50</sup>

The Committee supports the implementation of recommendation 15, noting however that extending the Ombudsman’s powers to non-Government agencies may have significant implications for the structure, capacity and budget of the office. Additional funding is likely to be necessary before this recommendation could be realised to reduce the drain on investigative resources and help address workload issues.

Extending the Ombudsman’s jurisdiction to the non-government sector would allow the Ombudsman to keep pace with private operators who perform public functions. The use of joint ventures, strategic alliances and partnerships with non-government organisations have all changed the way in which the public sector operates. The implementation of this recommendation would assist the Ombudsman to continue to ensure that public monies are being used appropriately.

<sup>48</sup> H Smerdon AM, *Strategic Review of the Office of the Queensland Ombudsman*, May 2012, page 6.

<sup>49</sup> Queensland Audit Office, Submission 3, page 1.

<sup>50</sup> Crime and Misconduct Commission, Submission 8, page 2.

### **Board of advice**

**Reviewer Recommendation 16:** The Ombudsman should independently assess the relative merits of establishing a board of advice to assist the Ombudsman in the effective carrying out of his functions by providing objective advice particularly in regard to governance and planning issues, but with no role in complaint investigation and decision.

In his Strategic Review Report, the Reviewer observed that:

*While the Ombudsman has been well served over the years by the diligent work of the Parliamentary Committee in terms of reporting and monitoring and review of operations, there may be merit in the Ombudsman setting up an advisory type body ... to take some of the workload from the Committee and to allow the Ombudsman more regular access to a range of views, skills and feedback not otherwise readily available to him.*

*... There are models in both Queensland and overseas that could be examined eg in the UK and Scotland and locally with the Public Service Commission Advisory Board.<sup>51</sup>*

Regarding this proposal, the Queensland Audit Office noted:

*With regard to the option ... of establishing a board of advice ... [this is] consistent with the roles and responsibilities for audit committees established in the Audit Committee Guidelines: Improving Accountability and Performance issued by Queensland Treasury and Trade. As a department, the Ombudsman must have regard to these guidelines under s.35 of the Financial and Performance Management Standard 2009.*

*While acknowledging a board would operate in an 'advisory capacity' only, this role can be adequately provided for through the existing governance structure, including the operation of an effective audit committee and oversight by the Parliamentary committee. This arrangement may serve to better reflect the Ombudsman's role as an independent officer of the Parliament.<sup>52</sup>*

The Committee does not oppose the establishment of a "board of advice" as set out in the Reviewer's Recommendation 16, on the basis that the proposed role and responsibilities of such a board are demarcated and clearly separated from those currently performed by the Committee.

If the Ombudsman considers such a board would assist the Office of the Ombudsman in the areas highlighted by the Reviewer such as –

- *purpose, vision and values;*
- *strategic direction and planning;*
- *accountability to stakeholders, including stewardship of public funds; and*
- *internal control and risk management arrangements,<sup>53</sup>*

the Committee would support such a structure being established.

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<sup>51</sup> H Smerdon AM, *Strategic Review of the Office of the Queensland Ombudsman*, May 2012, page 6.

<sup>52</sup> Queensland Audit Office, Submission 3, page 2.

<sup>53</sup> H Smerdon AM, *Strategic Review of the Office of the Queensland Ombudsman*, May 2012, page 38.

**Expansion of the role of the Ombudsman's Office Audit Committee**

**Reviewer Recommendation 17:** Alternatively the Ombudsman should examine an expanded role for the Ombudsman's Office Audit Committee along the lines of the Scottish Ombudsman Office.

As an alternative to the Reviewer Recommendation 16 above, the Reviewer suggested that:

*The Ombudsman should examine an expanded role for the Audit Committee along the lines of the Scottish Ombudsman office.*<sup>54</sup>

The Committee notes that the Scottish Public Service Ombudsman office's Audit and Advisory Committee has a wide-ranging role. Its responsibilities include:

- overseeing the management of risk and audit issues;
- monitoring the integrity of the Ombudsman's financial statements;
- overseeing the management of Internal Controls, Performance Management, and Risk Management Systems;
- monitoring whistleblower protection;
- advising the Ombudsman in relation to the engagement of external auditors; reviewing and assessing internal audit requirements and approving annual internal audit work plans; reviewing all reports from those auditors; reviewing and monitoring the Senior Management Team's responsiveness to the findings and recommendations of the auditor;
- overseeing the Ombudsman's relationship with the external auditor;
- reviewing the effectiveness of the audit and raising any appropriate concerns with Audit Scotland; reviewing any representation letter(s) requested by the external auditor before they are signed by the Senior Management Team; and reviewing the letter and Senior Management Team's response to the auditor's findings and recommendations.<sup>55</sup>

The Committee is of the view that this model warrants consideration. It may be that some of the functions of the Scottish Public Service Ombudsman office's Audit and Advisory Committee are surplus to the needs of the expanded role for the Audit Committee as proposed by the Reviewer. The Committee would welcome further dialogue on this issue with the Reviewer following his visit to the Scottish jurisdiction.

**The Investigation Process**

**Reviewer Recommendation 23:** The Investigation Teams should continue to focus on the timely investigation of complaints, mindful of minimising a legalistic approach and keeping in mind the need for proportionality in the efforts and resources applied to resolving complaints.

In the context of this recommendation, QUT made the following comments:

*QUT, Griffith University and the University of Queensland have all observed that it can take a considerable amount of time for complaints to be considered by the Ombudsman's Office. Recommendation 23 speaks to the need for the Investigations Team to "continue to focus on the timely investigation of complaints, mindful of minimising a legalistic approach and keeping in mind the need for proportionality in the efforts and resources applied to resolving complaints". It could be argued in the university context that where trivial or straightforward complaints are investigated (for example, students who have been refused further enrolment because of repeated poor academic progress), a disproportionate amount of resource is being expended by both the Investigations Team and the responding university, to close out these complaints. This results in time delays as well as the unproductive use of resources, and developing a*

<sup>54</sup> H Smerdon AM, *Strategic Review of the Office of the Queensland Ombudsman*, May 2012, page 6.

<sup>55</sup> <http://www.spsso.org.uk/about-us/audit-advisory-committee>, accessed 9/10/2012.

*more streamlined procedure for trivial or 'routine' complaints might ease the resource burden being experienced by the Ombudsman's Office. Our universities would be happy to work with the Ombudsman's Office to agree such procedures for the more routine complaints that are received.*<sup>56</sup>

This recommendation was also supported by the Office of the Coordinator-General (OCG):

*The OCG accepts that the Ombudsman has an important function of investigating the administrative actions of agencies when a complaint is made. However, the OCG also supports the view of the reviewer that care must be taken by the QOO not to be seen as an advocate for the complainant not to encourage greater use of the QOO rather than the proper channels available within an agency. I am advised by Senior Officers within the OCG and the department that, in their experience, the QOO has appeared to step over this line and undertaken an investigation that was both time and resource intensive and very technical without regard to the best outcomes in terms of better administrative decision making.*<sup>57</sup>

In support of these comments, the OCG cited a specific investigation of the OCG by the Ombudsman's Office in a matter involving night time surface work on the Brisbane Airport Link project. In conclusion, the OCG noted that:

*Departments must be allowed to deliver services and perform their function without their resources being diverted unreasonably.*<sup>58</sup>

In this regard, the Reviewer noted as follows:

*I was impressed with the philosophy of the UK and Scottish Ombudsman Offices where there was a great deal of emphasis in the investigations process on timeliness and proportionality ie that all matters were dealt with as expeditiously as possible and that investigations had regard to the size and impact of the problem such that resources were applied to best effect rather than a "one size fits all" approach. It is a philosophy that the Queensland Ombudsman could well follow as a key part of developing a different culture and maximising use of available resources to achieve worthwhile gains.*<sup>59</sup>

The Committee unreservedly supports recommendation 23. The Committee notes that the Ombudsman is already conscious of the timeliness of investigations and strives to minimise the time taken to effectively resolve matters.

This said, as stressed by the Reviewer, it is important the Office '*consider carefully the outcome of the 2010 Complainant Survey and to deal positively with the findings so that the next Survey provides a more positive result. Part of the response should be to ensure that the investigation process is tight, relevant, not overly legalistic and conscious of the audience to be addressed.*'<sup>60</sup>

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<sup>56</sup> Queensland University of Technology, Griffith University and University of Queensland, Submission 9, page 3.

<sup>57</sup> Office of the Coordinator-General, Submission 13, page 2.

<sup>58</sup> Office of the Coordinator-General, Submission 13, page 3.

<sup>59</sup> H Smerdon AM, *Strategic Review of the Office of the Queensland Ombudsman*, May 2012, page 48.

<sup>60</sup> H Smerdon AM, *Strategic Review of the Office of the Queensland Ombudsman*, May 2012, page 9.



**Access to the Ombudsman's Services**

**Reviewer Recommendation 26:** The Ombudsman should appoint at least one and preferably two Indigenous Liaison persons to provide greater and more trusted connection with the indigenous communities throughout the State. Such connection should include greater visibility of the Ombudsman and the use of mediums such as the indigenous radio networks. Consideration should also be given to the appointment of a youth liaison person.

**Reviewer Recommendation 27:** The Ombudsman develop a targeted regional visits program over a 3 year period that would provide greater connection with the local communities throughout the State, with such visits to also focus on connection with the disadvantaged across the State. This expansion of the program would complement the excellent outcomes already being achieved with the existing targeted regional visits program largely based around corrective services facilities.

These two recommendations were supported by the CMC which noted as follows:

*A program by the Ombudsman's Office of systematic regional visits designed to raise awareness and address complaints informs and empowers regional populations. The proposal to improve the information needs of Indigenous Communities through employment of Indigenous staff is supported.*<sup>61</sup>

The Reviewer noted that his recommendation in the 2006 Review to appoint an indigenous liaison officer, while considered, had yet to be taken up.<sup>62</sup> In the 2012 Review, the Reviewer notes:

*While I am a little disappointed that the Office has not yet appointed for example, an indigenous liaison person, I applaud the efforts of the current Ombudsman to engage with the indigenous community through targeted publications including producing brochures in appropriate indigenous languages, through expansion of the regional visits program and through cross-cultural training for staff.*

*However much more needs to be done and I reiterate the views in my previous review that the appointment of at least one and preferably two liaison persons should be investigated and taken up with Treasury. New South Wales has had such a facility, now with four indigenous staff, for more than 10 years and it has been very successful in assisting members of the indigenous community to obtain justice opportunities comparable to the broader community.*<sup>63</sup>

The Reviewer does make specific mention that *'the Ombudsman has been very supportive of the need to more comprehensively address the indigenous access issue'*.<sup>64</sup>

In relation to regional visits, the Reviewer noted that there had been nine visits to correctional centres, 49 visits for regional training purposes and 14 visits associated with regional investigations.<sup>65</sup> The Reviewer noted that a significant proportion of the visits were in the South East Queensland region or along the Coast and that only one visit took place west of the Great Dividing Range, being in Mt Isa. The Reviewer concluded by stating:

*I encourage the Ombudsman to review the current program to provide a greater level of connection to the broader community throughout the State. These visits could focus not just on the broad community but on those disadvantaged in terms of access.*

<sup>61</sup> Crime and Misconduct Commission, Submission 8, page 3.

<sup>62</sup> H Smerdon AM, *Strategic Review of the Office of the Queensland Ombudsman*, May 2012, page 19.

<sup>63</sup> H Smerdon AM, *Strategic Review of the Office of the Queensland Ombudsman*, May 2012, page 49.

<sup>64</sup> H Smerdon AM, *Strategic Review of the Office of the Queensland Ombudsman*, May 2012, page 49.

<sup>65</sup> H Smerdon AM, *Strategic Review of the Office of the Queensland Ombudsman*, May 2012, page 50.

*This program need not be overly burdensome but rather a small expansion of what is currently being done but including more remote communities with relevant standard visit programs.<sup>66</sup>*

The Committee considers the Ombudsman should continue to investigate opportunities to improve communication with both Indigenous and regional stakeholders using all available means. However, the Committee appreciates that opportunities to do so are limited by currently available resources. The Committee notes and endorses the Reviewer's suggestion that the appointment of at least one and preferably two liaison persons should be investigated and taken up with Treasury. Liaison with this sector of the community, in particular, is critical to promote awareness of the Office and adequately inform Indigenous people about its functions. This is not an easy process.

The Committee is pleased to note the Ombudsman's commitment to this issue, and is pleased to see the rate of regional visits conducted by the Office. Conversely, as acknowledged by the Reviewer, it is important that these visits also include more remote communities. The Committee looks forward to discussing with the Ombudsman at future meetings measures put in place to address this issue.

### **Communication**

**Reviewer Recommendation 29:** The proposal by the Ombudsman for amendments to section 54 of the *Ombudsman Act 2001* to allow publication of reports administratively in appropriate circumstances is supported.

This recommendation stems from an issue that arose in communications between the Reviewer and the Ombudsman concerning access to reports. The Reviewer notes:

*The Ombudsman has proposed to me that the Act be amended to allow him to publish in the public interest or in the interests of any agency, organisation or person, a report on a matter arising out of the performance of the Ombudsman's functions.*

*At present the Ombudsman can only publish reports through the Speaker of the Parliament which can be a rather complicated process involving tabling and review. This is usually reserved only for significant reports on major investigations. Other reports can be published in summary form as a brief case report in the annual report or accessed on the web site in some instances.*

*From the point of view of transparency and accountability, there is considerable merit in what the Ombudsman proposes and I support the proposal. It would add to the overall communication strategy of the Office.*

*I might also mention that as the legislation currently stands, an internal investigation report, not tabled in the Parliament, theoretically cannot be released if a request is received for a copy. However under the Right to Information Act 2009, the Right to Information Officer in the Ombudsman's Office would be required to release the report if there was no exemption provision to deny access. This is quite untenable.<sup>67</sup>*

Two submissions, (University of Queensland; and Queensland University of Technology, Griffith University and the University of Queensland) were unsupportive of Reviewer Recommendation 29.

In its submission, the University of Queensland noted:

*The proposal to publish a report administratively is a significant power; it has the potential to impact not only on the executive (departments and agencies) but also on the*

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<sup>66</sup> H Smerdon AM, *Strategic Review of the Office of the Queensland Ombudsman*, May 2012, page 50.

<sup>67</sup> H Smerdon AM, *Strategic Review of the Office of the Queensland Ombudsman*, 2012, May 2012, pages 51-52.

*wider community. There is a real risk that the power to administratively publish reports of investigations will result in the politicisation of the Ombudsman's office.*

*This broad power to administratively publish reports is not required for the Ombudsman to carry out the functions of the Office. The University considers the current section 54 of the Ombudsman Act 2001 provides adequate checks and balances associated with the publication of Ombudsman's reports. Under this section, the Ombudsman may request the Speaker to authorise the Ombudsman to publish, in the public interest, various reports.<sup>68</sup>*

The University of Queensland also prepared a table (see Attachment A to submission) which summarised the reporting powers of Ombudsmen in other jurisdictions in Australia. It noted that 'other jurisdictions in Australia contain checks and balances similar to those currently existing in Queensland regarding the publication of Ombudsman reports'.<sup>69</sup>

In relation to the *Right to Information Act 2009* issue, the University of Queensland submitted as follows:

*It is worth noting that the Strategic Review considered it was an untenable situation to prevent the Ombudsman from publishing a report (except through the Speaker) administratively, but to require the Ombudsman to release the report under the Right to Information Act 2009 (RTI Act). It should not be forgotten that access under the RTI Act is subject to the application of various tests to ensure the protection of the rights and privileges of individuals and other entities. Given the nature and type of investigations conducted by the Ombudsman, it is quite possible that reports may contain exempt information. In this regard, the Legal Affairs and Community Safety Committee should give little weight to this argument in determining whether or not to amend section 54 of the Ombudsman Act 2001.<sup>70</sup>*

In the context of recommendation 29 and the *Right to Information Act 2009* issue, in their submission, the Queensland University of Technology, Griffith University and University of Queensland made the following points:

*There is, therefore, concern that reports may be published by the Ombudsman without an entity's associated response, and report observations, recommendations or conclusions may be taken out of context by the general public. The Ombudsman has suggested in Appendix D of the report that the corollary to giving the Ombudsman this power is to amend the Right to Information Act 2009 to exempt Ombudsman reports from the ambit of the RTI Act. It seems that these two recommendations in tandem provide considerably expanded powers to the Ombudsman without articulating what checks and balances there will be in the system to ensure this power is consistently used in the public interest.<sup>71</sup>*

The Committee shares the concerns raised by The University of Queensland and QUT that allowing the publication of reports administratively could lead to politicisation of the Ombudsman and circumvent the appropriate checks and balances that have been put in place. Additionally, it would be difficult to ensure that the power was consistently used in the public interest.

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<sup>68</sup> University of Queensland, Submission 6, page 2.

<sup>69</sup> University of Queensland, Submission 6, page 2.

<sup>70</sup> University of Queensland, Submission 6, page 2.

<sup>71</sup> Queensland University of Technology, Griffith University and University of Queensland, Submission 9, page 2.

The Committee has considered these issues in the context of the comments made by the Reviewer and notes, in particular, the current impediments surrounding access to internal investigation reports.

On balance, the Committee supports the proposal by the Ombudsman for amendments to section 54 of the Ombudsman Act to allow publication of reports administratively in appropriate circumstances, on the proviso that such a power is limited to exceptional circumstances, for example, where there are compelling reasons why such publication should be allowed.

### **Education Issues**

**Reviewer Recommendation 30:** The Ombudsman is encouraged to continue to develop the training programs and courses that are useful to agencies and which ultimately will result in raising the standard and quality of decision-making in agencies.

**Reviewer Recommendation 31:** The Ombudsman should also ensure that the pricing of the training and other programs provided is appropriate and consistent with the general principle of cost-recovery.

**Reviewer Recommendation 32:** The Ombudsman should also consider whether the delivery of some programs might be better outsourced to an external provider(s).

A key recommendation by the Reviewer from his 2005-2006 Strategic Review was the expansion of the role of the Office of the Ombudsman in relation to education. The Reviewer was pleased to note that this recommendation has been implemented successfully by the Ombudsman's office.<sup>72</sup>

However, the Reviewer did make the following additional comments:

*I have some concerns about the pricing of the programs as to whether there is full cost recovery. The economics of each program should be regularly evaluated as well as the efficiency of delivery and the effectiveness of content.*

*While a significant number of agency staff have been through the programs, there still appears to be a high level of demand.<sup>73</sup>*

In the context of the educative training programs, TMR noted that:

*The Ombudsman is active in providing a variety of education and awareness programs to government agencies, in particular programs on good decision making.*

*The ongoing delivery of educational and awareness programs to government agencies by the Ombudsman is resource intensive, although beneficial to agencies. TMR commends the Ombudsman for the high quality of these programs and supports the continuation of this service.<sup>74</sup>*

The Committee regards the Ombudsman's training programs and courses as an excellent way of informing agency staff, whilst raising the profile of the office and promoting its services. However, the Committee notes that during its site visit to the Ombudsman's office, the Ombudsman mentioned that in recent months, demand for educational programs had dropped off, largely due to budget cuts by Government Departments and corporations.<sup>75</sup>

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<sup>72</sup> H Smerdon AM, *Strategic Review of the Office of the Queensland Ombudsman*, 2012, May 2012, page 52.

<sup>73</sup> H Smerdon AM, *Strategic Review of the Office of the Queensland Ombudsman*, 2012, May 2012, page 52.

<sup>74</sup> Department of Transport and Main Roads, Submission 7, page 1.

<sup>75</sup> Committee's on-site visit to the Ombudsman's Office on 22 August, 2012.

Given this change in circumstances since the 2011-2012 Strategic Review, the Committee supports recommendations 30-32, subject to the reservation that appropriate consideration being given to the current appetite for educational services.

### **Compliance**

**Reviewer Recommendation 33:** The Ombudsman should give greater priority to an increased level of targeted compliance auditing of complaint management systems within agencies and councils, if necessary by reallocation of resources, with further thought being given to more focussed audits to give greater coverage in a reasonable time frame.

The Department of Transport and Main Roads (TMR) was supportive of this recommendation, and commented as follows:

*The Ombudsman undertakes regular audits of complaints management systems throughout government and in 2010/11 undertook an audit of TMR's systems. This audit concluded that TMR was compliant with the requirements, but made certain recommendations for better practice. TMR acknowledges regular compliance audits are an important tool in identifying compliance levels and better practice.*<sup>76</sup>

However, the Queensland University of Technology, Griffith University and the University of Queensland was concerned that this recommendation suggested an expanded remit of the Ombudsman's powers and could imply that the Ombudsman is 'moving from a facilitating and advisory role to an auditing and enforcement role'.<sup>77</sup> In this regard, the Queensland University of Technology, Griffith University and the University of Queensland noted further that:

*Universities are already subject to the audit and compliance requirements of various external entities. To add another potential audit obligation, and further compliance obligations, would increase the burden on universities in accommodating such activities.*<sup>78</sup>

Concern was also raised by the Queensland Audit Office regarding the use of the term "audit" in this recommendation. Given the particular meaning given to this term by the audit profession, the Queensland Audit Office suggests the terms "review" or "assessment" might be more appropriate in this context and would also be consistent with the terminology used in the South Australian Ombudsman Act (see [Ombudsman Act 1972 \(SA\)](#), s14A).<sup>79</sup>

In relation to the concerns of the Queensland Audit Office concerning the terminology used in Recommendation 33, the Committee encourages the Reviewer (or any other person charged with this role in the future), in any future review, to consider using the term "review" instead of "audit" given the particular meaning given to that term by the audit profession.

In terms of Recommendation 33 that the Ombudsman should give greater priority to an increased level of targeted compliance reviews, the Committee notes, in particular, the concerns raised by Queensland University of Technology, Griffith University and the University of Queensland.

In light of these comments and those of the Reviewer in this area, the Committee recommends that the Office of the Ombudsman be given clearer legislative guidance as to its role in terms of "facilitating and advising" on the one hand and "auditing and enforcement" on the other.

<sup>76</sup> Department of Transport and Main Roads, Submission 7, page 1.

<sup>77</sup> Queensland University of Technology, Griffith University and University of Queensland, Submission 9, page 3.

<sup>78</sup> Queensland University of Technology, Griffith University and University of Queensland, Submission 9, page 3.

<sup>79</sup> Queensland Audit Office, Submission 3, page 2.

### ***“Own Initiative” Investigations***

**Reviewer Recommendation 34:** The Ombudsman continue to exercise the opportunity for “own initiative” investigations in appropriate circumstances ensuring that such investigations are undertaken in a timely manner with specific outcomes.

**Reviewer Recommendation 35:** The Ombudsman should consider the potential ramifications of undertaking targeted audits of identified service delivery programs in agencies as a means of minimising the risk of complaints arising from the delivery of the program. As part of the consideration process, the legislative capacity of the Ombudsman to undertake such reviews should also be clarified.

**Reviewer Recommendation 36:** The Ombudsman should also explore with the Auditor-General the ramifications of and any concerns he may have regarding a role for the Ombudsman in reviewing service delivery of an agency from the perspective of minimising future complaints. There would also be merit in the Ombudsman discussing the issue with his fellow Ombudsmen.

In regard to the recommendations concerning “own initiative” investigations of the Ombudsman Office, the CMC made the following comments:

*We note with interest the comments in the review report about pro-active steps that the Ombudsman could take where there is a judgment that administrative actions / processes supporting the delivery of a government program may give rise to an unnecessarily high level of complaints in the future (recommendations 34-36).*

*The issue arising is whether the Ombudsman’s remit should be broadened to audit the service delivery aspects of such a program.*

*While the report acknowledges the potential for overlap of jurisdictions and the need for clarity in the Ombudsman’s role, the CMC is of the view that should such a position be ultimately taken, it would be beneficial for it to be supported by statutory guidance as to how the various agencies co-operate and co-ordinate their activities.<sup>80</sup>*

In relation to Recommendation 35, the Queensland Audit Office again raised concern regarding the use of the term “audit” in this recommendation. Given the particular meaning given to this term by the audit profession, the Queensland Audit Office suggests the terms “review” or “assessment” might be more appropriate in this context and would also be consistent with the terminology used in the South Australian Ombudsman Act (see [Ombudsman Act 1972 \(SA\)](#), s14A).<sup>81</sup>

In relation to Recommendation 36, the Queensland Audit Office noted:

*We would be happy to discuss with the Ombudsman the ramifications of him reviewing the service delivery aspects of a Government program, and QAO’s existing role in undertaking performance audits under s. 37A of the [Auditor-General Act 2009].<sup>82</sup>*

In relation to the concerns of the Queensland Audit Office concerning the use of ‘audit’ the Committee maintains the same view as expressed in relation to Recommendation 33. In terms of the substance of Recommendations 34 and 35, the Committee supports the Ombudsman in conducting “own initiative” investigations as appropriate.

In relation to Recommendation 36, the Committee encourages the Ombudsman to discuss this issue with the Auditor-General and his fellow Ombudsmen as recommended by the Reviewer.

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<sup>80</sup> Crime and Misconduct Commission, Submission 8, page 3.

<sup>81</sup> Queensland Audit Office, Submission 3, page 2.

<sup>82</sup> Queensland Audit Office, Submission 3, page 2.

***Proposals for Legislative Change***

**Reviewer Recommendation 56:** The proposals by the Ombudsman for various amendments to the *Ombudsman Act 2001* as outlined in **Attachment D** are endorsed in principle.

The Committee has considered the Reviewer's suggested amendments set out in Part A of Attachment D to his report and also the proposed new sections set out in Part B of that attachment.

The Committee has carefully considered all the proposed legislative amendment and comments on those amendments in the following table.

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
<p>Amend s.5, s.6 and s.12 Objects and functions</p>	<p>Amend s.5(b) to provide:</p> <p>The objects of this Act are – ... (b) to improve the quality and <i>effectiveness</i> of decision making and administrative practice in agencies.</p> <p>Amend s.6(b)(ii) to provide:</p> <p>The objects of this Act are to be achieved by – ... (b) authorising the ombudsman - ... (ii) to make recommendations and provide advice, training or other help to agencies, generally or in particular cases, about ways of improving the quality of decision-making and administrative practices.</p> <p>Insert a new s.12(ca) to recognise the training function:</p> <p>The functions of the ombudsman are – ... (ca) to provide advice, training or other help to agencies to improve the quality of decision-making and administrative</p>	<p>Section 5(a) uses the word “effective” in terms of describing the investigative function of the Ombudsman. It is recommended that section 5(b) be amended to also incorporate the concept of “effectiveness” and to make clear that an object of the Act is to improve not only the quality of decision-making and administrative practice in agencies, but also the effectiveness of these actions.</p> <p>The Office is committed to providing training to agencies in making good administrative decisions. It also provides training and advice to agencies in establishing and maintaining internal complaints management systems. However, there is no clear authority under the Act to provide such advice other than as the result of an investigation or in making recommendations generally.</p> <p>For example, under s.12(c), the Ombudsman must first consider the practices and procedures of agencies, before making recommendations or providing information etc. It is recommended that clear authority be inserted in the Act to authorise the Office’s good decisions and complaint management training and any similar activities in the future which are designed to further the object of the Act as set out in s.5(b) “to improve the quality of decision-making and administrative practice in agencies”.</p>	<p>The Committee considers that when having regard to the <i>quality</i> of decision-making processes, it could reasonably be considered that the “effectiveness” of the process could be considered as part of assessing the quality.</p> <p>The Committee does not support the amendment.</p> <p>The Committee considers training to be an important part of the Ombudsman’s operations and supports the amendments.</p>



SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
	practices; ...		
Amend s.16(2)(b) What ombudsman may not investigate Jurisdiction over legal advisers	Make necessary amendments to clarify that the Ombudsman has jurisdiction to investigate administrative actions of a legal adviser to the State, except where the legal adviser is acting for the State in a legal proceeding.	The Ombudsman cannot investigate administrative action taken by a person acting as legal adviser to the State or as counsel for the State in any legal proceedings. Query whether the words “in any legal proceedings” apply to legal advisers or only Counsel?  If the words do not apply to legal advisers, the Ombudsman would be prevented from investigating administrative actions taken by the many in-house lawyers employed in the public sector. This appears to be inconsistent with the fact that the State or an agency required to provide information for an Ombudsman investigation is not entitled to claim any privilege it could claim in a legal proceeding (see s.45).	The Committee agrees with the submissions of the Coordinator General and the HQCC – in that it does not see the need for the proposed amendment.  The Committee does not support the amendment.
Amend s.20 Complaints	Amend s.20(3)(b) to read as follows: (3) Despite subsection (1), the ombudsman may –  (c) if the person who could have made a complaint under this Act has died or the ombudsman considers the person cannot, for any reason, act for himself or herself, accept a complaint from an individual who is, in the ombudsman’s opinion, suitable to represent the person (also a complainant).  Omit s.20(5)	There is currently inconsistency between s.20(3)(b) and s.20(5) regarding when a complainant can be represented by another person.  The Ombudsman’s view is that a complainant should represent him or herself in making a complaint unless the Ombudsman is satisfied that it is not reasonable for them to do so.	The Committee sees merit in clarifying the section and therefore supports the amendments.

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
Amend s.24 Investigations generally	<p>Renumber existing section as s.24(1) and insert new s.24(2) as follows:</p> <p>(2) The principal officer of the agency must give the ombudsman reasonable help in the conduct of an investigation conducted informally under s.24(1)(a).</p>	<p>Section 22(2) provides that the principal officer of the agency must give the Ombudsman reasonable help in the conduct of a preliminary inquiry. This needs to be extended to include the conduct of informal investigations.</p> <p>While part 4 powers are available for investigations, it is quicker and less resource intensive for both the Ombudsman and the agency being investigated if the Ombudsman conducts investigations informally (as permitted under s.24(a)).</p>	The Committee agrees with the reason set out by the Reviewer and supports the amendments.
Amend s.38 Contempt of ombudsman	<p>Amend s.38(g) to provide that a person is in contempt if the person, in contravention of an order of the Ombudsman (see suggested amendment to s.91 below), publishes or permits or allows to be published, information / reports provided by the Ombudsman.</p>	<p>At present, s.38(g) provides that a person is in contempt if he or she publishes, or permits or allows to be published, information given to the Ombudsman, in contravention of an order by the Ombudsman.</p> <p>The contempt needs to be expanded to cover the publication of a report or information provided by the Ombudsman where the Ombudsman has made an order prohibiting such publication.</p> <p>See the suggested amendment to s.91 below.</p>	The Committee agrees with the reason set out by the Reviewer and supports the amendments.
Amend s.45 Information disclosure and privilege	<p>Amend/clarify s.45(1) and/or (2) to provide that, if the Ombudsman considers that there are compelling public interest reasons favouring disclosure, the Ombudsman may disclose privileged material when reporting on the results of an investigation.</p>	<p>Sections 45(1) and (2) provide, inter alia, that agencies cannot rely on legal professional privilege to refuse to give to the Ombudsman privileged documents where such documents are relevant to a preliminary inquiry or an investigation by the Ombudsman.</p>	The Committee shares the views of the Coordinator General, HQCC and QUT. While the Committee considers there is a need for the Ombudsman to be able to access legal advice during the course of an investigation, the Committee is

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
		<p>This is to ensure that, in conducting the inquiry or investigation, the Ombudsman has access to all information, including legal advice, that an agency may have obtained and taken account of in handling a matter. In significant investigations, there may have been a substantial amount of legal advice sought and obtained by an agency, and it may have played a central role in influencing an agency's actions. It is important that the Ombudsman have access to this advice so as to be able to make an informed assessment of the reasonableness or lawfulness of an agency's actions.</p> <p>An issue has arisen regarding whether s.45 gives the Ombudsman authority then to disclose and discuss such legal advice in a report prepared at the conclusion of an investigation and that is to be made publicly available. That is, while an agency is compelled to give legal advice to the Ombudsman for the purposes of an investigation, it is arguable that the advice is provided only for that specific and limited purpose, and does not amount to a waiver of the privilege that exists in the advice vis-à-vis the world at large. As the privilege in the advice has not been waived, the Ombudsman is prevented from publicly disclosing it in a report.</p> <p>Agencies often maintain their claim to privilege in respect of legal advice that they have provided during an investigation. That is, while they accept that s.45 requires them to give the advice to the Ombudsman for the purposes of an investigation, they argue that this does not amount to a general</p>	<p>not convinced that there is a need for the Ombudsman to be able to disclose privileged material when reporting on results of an investigation.</p> <p>The Committee does not support the amendments.</p>

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
		<p>waiver of privilege, such that they do not consent to the public disclosure of the advice in an Ombudsman report.</p> <p>It is often difficult for the Ombudsman to meaningfully the actions taken by an agency in reliance on legal advice when the advice itself cannot be disclosed. The alternative argument is that s.45 operates to remove any right that an agency has to make a claim for privilege over legal advice, either for the purposes of an investigation, or in respect of any report that is prepared at the conclusion of an investigation.</p> <p>It is recognised that legal professional privilege is a substantive common law right that cannot be abolished by statutory provisions except by express language or clear and unmistakable implication. However, it is also recognised that the Ombudsman performs an important function in investigating complaints against government agencies and reporting on the results, and that this reporting function may be hampered in some instances if he is unable to discuss the legal advice relied upon by an agency. It is recommended that clear authority be inserted into the Act to authorise the Ombudsman, where he is satisfied that there are compelling reasons for doing so, to disclose the contents of legal advice in a public report.</p>	
	Amend s.45 to override privileges and to include appropriate protection for individuals where they provide information	The operation of the current s.45(4) is unclear. On its face, it seems that s.45(4) operates to prevent persons to whom investigation requirements are issued under division 4, from refusing to provide the	The Committee considers that any uncertainty in the provisions must be cleared up to ensure the section operates

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
	<p>in response to an investigation requirement.</p> <p>See, for example, ss.192-197 of the Crime and Misconduct Act 2001 or ss.94-96 of the Criminal Justice Act 1989 (repealed).</p>	<p>information on the grounds of self-incrimination. However, advice received from Senior Counsel about the operation of s.45 is that the better view is that a person can refuse to comply with an investigation requirement if to do so would tend to incriminate them.</p> <p>In other words, although the Act appears to say that a person does not have court equivalent privileges in responding to an investigation requirement under part 4, Counsel's view is that, for these protections to be overridden, clearer wording is required.</p> <p>This has the potential to limit the effectiveness of the Ombudsman's powers to obtain information, especially from public servants, as they could object to answering simply on the basis that to do so may incriminate them in a disciplinary breach.</p>	<p>as intended.</p> <p>The Committee supports the amendment .</p>
<p>Amend s.47 Protection of person helping ombudsman</p>	<p>Amend s.47 to provide protection for persons who:</p> <p>(a) may help the Ombudsman; or (b) are the subject of a reprisal because another person has helped or may help the Ombudsman</p>	<p>Section 47 makes it an offence for a person to cause or threaten to cause detriment to someone who gives the Ombudsman information or a document for the purposes of a preliminary inquiry or an investigation.</p> <p>However, it isn't an offence if a person causes or threatens detriment to someone:</p> <ul style="list-style-type: none"> <li>• in the belief that that the person may assist the Ombudsman; or</li> <li>• in the mistaken belief that the other person has assisted the Ombudsman.</li> </ul> <p>Nor does it create an offence where a person is the subject of a detriment or threat of detriment because another person (e.g., a relative) has helped</p>	<p>The Committee considers the additional categories of persons to whom section 47 applies, are warranted.</p> <p>The Committee supports the amendments.</p>

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
		<p>the Ombudsman.</p> <p>It is recommended that the section be amended to provide protection in these circumstances. It is also recommended that the section be amended to clarify that it protects complainants.</p>	
Amend s.50(4) Report and Recommendation	Amend s.50(4) to require council mayors to table the report at a Council meeting.	Where the Ombudsman sends a report about a local council to the CEO of the council, the CEO is required by s.50(4) to provide a copy to each councillor. However, there is no requirement for the Mayor to table the report at a council meeting to ensure that it is debated.	The Committee supports this amendment.
s.54 Other reports on authority of speaker	<p>Amend s.54 to provide: 54 Publication of other reports</p> <p>The ombudsman may, in the public interest or in the interests of any agency, organisation or person, publish, in a form the ombudsman considers appropriate, any report on a matter arising out of the performance of the ombudsman's functions whether or not the matters to be dealt with in the report have been the subject of a report tabled in the Assembly under this Act.</p> <p>As a corollary to giving the Ombudsman power to publish his reports administratively when he considers it appropriate, amend the <i>Right to Information Act 2009</i> to exempt Ombudsman reports from the ambit of the RTI Act.</p>	<p>At present, the Ombudsman is able to publish reports only through the Speaker (see ss.51, 52, 53 and 54). Because of the complicated process that is involved in tabling a report, only significant reports on major investigations are tabled for publication. Other reports of a more routine nature are summarised (in an anonymised form) in brief case reports contained in the Ombudsman's Annual Report.</p> <p>The Ombudsman is of the view that, in line with the government's policy of ensuring greater transparency and making as much information available to the public as possible on a routine, administrative basis, it is appropriate that the Ombudsman be given the discretion to publish routine investigative reports whenever appropriate, and in an appropriate form.</p> <p>Publication of these reports would enhance the transparency and accountability of the Office as well</p>	<p>The Committee does not consider that the process of tabling reports through the Speaker is complicated as suggested by the Reviewer.</p> <p>As a Parliamentary Officer, the Committee considers it appropriate that the Ombudsman tables reports (through the Speaker) in the Legislative Assembly.</p> <p>Similar to the provisions relating to the tabling of reports by the Information Commissioner, an alternate mechanism may be for the Ombudsman to provide less significant reports to the Chairperson of the</p>

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
		<p>as the agencies whose administrative actions are being investigated, and would assist the public to better understand the functions of the Ombudsman and the work that the Office performs on a daily basis. The Annual Report summaries that are currently prepared often are insufficient to discuss in a meaningful way the issues that the investigation dealt with.</p> <p>In addition, investigative reports are currently subject to the RTI Act. It has been the case where the Ombudsman has determined that it was not appropriate to seek publication of a report through the Speaker for a particular reason.</p> <p>However, the report is then released by a decision-maker under the RTI Act. By removing finalized investigative reports from the ambit of the RTI Act, and giving the Ombudsman a discretionary power to publish them administratively (in an appropriate form), control over the publication of the reports rests solely with the Ombudsman.</p> <p>While the Ombudsman considers it is appropriate that major reports on significant investigations that have wider implications for the public service should continue to be published formally through the Speaker under s.52, he considers that s.54 should be amended to give him the discretion to publish any other report on the Office's website.</p>	<p>Parliamentary Committee who must then cause the report to be tabled on the next Sitting Day.</p>
Amend s.65 Acting ombudsman	Amend s.65(1)(b) to remove the words "...or from the State..".	Section 65(1)(b) currently provides that the Governor in Council may appoint an Acting Ombudsman when the Ombudsman is absent from	The provision is clearly discretionary in that the Governor in Council <i>may</i>

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
		<p>Queensland. This has the potential effect of requiring acting arrangements to be put in place if, for example, the Ombudsman is in Sydney for the day on business. It is submitted that, if the ombudsman is interstate for a short period of time on business, he is still able to communicate with the Office and to perform his duties, and that acting arrangements are therefore unnecessary. It is recommended that s.65(1)(b) be amended to remove the reference to the Ombudsman being absent from the State.</p> <p>The provision would still operate to give the Ombudsman the discretion to put acting arrangements in place if he is absent from the State and he is satisfied that he is unable to perform the duties of his Office.</p>	<p>appoint a person to act as the Ombudsman during a vacancy...etc</p> <p>The provision does not use <i>must</i> and it is therefore not mandatory that the Governor in Council appoint an Acting Ombudsman. The Committee considers that the example provided where the Ombudsman may be out of the State for one day on business is a good example of where the discretion not to appoint an Acting Ombudsman would be exercised.</p> <p>The reference in the provision of being absent from the State is consistent with similar provisions applying to the Information Commissioner and the Parliamentary Crime and Misconduct Commissioner, both of which are also Officers of the Parliament.</p> <p>The Committee does not support the amendment.</p>
Amend s.86 Delegation	Amend s.86 to provide that: the Ombudsman can delegate functions as well as powers the Ombudsman can delegate, to	<p>Section 86 of the Act provides:</p> <p>The ombudsman may delegate the ombudsman's powers under this Act, other than the power to</p>	The suggested amendments are sensible and will improve the operations of the office.



SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
	<p>the Deputy Ombudsman and Assistant Ombudsmen, his powers under s.50(1), and s.51(1) and (2)</p>	<p>make a report or recommendation, to an officer of the ombudsman.</p> <p>Firstly, it is recommended that the provision be amended to include the delegation of functions, as well as powers (as is provided for chief executives under s.103 of the Public Service Act 2008). Secondly, in practice, the latter part of s.86 is problematic as it means that all reports containing an opinion that there has been maladministration, with or without recommendations, must go to the Ombudsman, even in straightforward cases. This creates a significant workload for the Ombudsman, and leads to delays in finalising matters.</p> <p>It is considered appropriate that the Ombudsman's powers under s.50(1) (giving a report and recommendations to the principal officer of an agency); and s.51(1) and (2) (requesting that the principal officer advise of the steps taken to give effect of the recommendations) be delegable to the Deputy Ombudsman and Assistant Ombudsmen.</p> <p>It is noted that, under the NSW Ombudsman Act, the Deputy and Assistant Ombudsmen have wide powers to make reports and recommendations (see s.8Aff).</p>	<p>The Committee supports the amendments.</p>
<p>Amend s.91 Prohibiting publication of information</p>	<p>Amend s.91 to make clear that the Ombudsman can prohibit the publication of information/reports provided to an agency or person by the Ombudsman.</p>	<p>At present, s.91 only authorises the Ombudsman to prohibit the publication of information given to the Ombudsman or the contents of a document produced to the Ombudsman. The Ombudsman cannot prohibit an agency or person from publishing</p>	<p>The Committee agrees with the reason set out by the Reviewer and supports the amendments.</p>

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
		<p>information the Ombudsman provides to the agency or person for the purposes of an investigation or in a report of the Ombudsman. The problems that can arise from this limitation are illustrated by a case in which the Ombudsman gave a report on an investigation of a complaint about a local council to the council, which then disclosed the complainant's name while discussing the report in public session.</p> <p>Amend s.93(1) Protection from Liability Amend s.93(1) to provide protection from civil liability for Ombudsman officers in respect of acts done negligently but honestly. Suggested amendment:</p> <p>93(1) An officer of the Ombudsman does not incur criminal or civil liability for any act, matter or thing done or omitted to be done under this Act or any other Act unless the act, matter or thing was done, or omitted to be done, in bad faith.</p>	
<p>Amend s.93(1) Protection from liability</p>	<p>Amend s.93(1) to provide protection from civil liability for Ombudsman officers in respect of acts done negligently but honestly.</p> <p>Suggested amendment:</p> <p>s.93(1) An officer of the Ombudsman does not incur criminal or civil liability for any act, matter or thing done or omitted to be done under this Act or any other Act unless the act, matter or thing was done, or omitted to be done, in bad faith.</p>	<p>The protection given in the current s.93(1) does not extend to acts done negligently but honestly. This protection existed in the repealed Parliamentary Commissioner Act 1974 (see s.29(1) and (2)).</p> <p>The justification for the change at the time was that Ombudsman officers would be protected in the same way as public servants are protected – that is, by a specific indemnity given by the Minister for Justice &amp; Attorney-General.</p> <p>However, the existing indemnity does not apply to officers of the Ombudsman and it is understood that the government does not intend to provide such an indemnity as the Ombudsman is an officer of the</p>	<p>The Committee considers that the protections provided to officers in other agencies should apply equally to officers of the Ombudsman.</p> <p>The Committee supports the amendments.</p>

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
		<p>Parliament and is not part of the Executive.</p> <p>Other agencies have the requested protection. See for example, s.265 of the <i>Anti-Discrimination Act 1991</i>.</p>	
<p>Divisions 2 and 3 of Part 8 Staff of the Office</p> <p>Amend s.76(3) Officers</p>	<p>Whether or not staff of the Office should become public servants</p> <p>Amend s.76(3) to give a clear head of power for conditions of service for officers of the Ombudsman to be decided by order of the Governor in Council (see for example, s.504(1) of the Land Act 1994; s.5A(2) of the Local Government (Queen Street Mall) Act 1981; s.3(2) of the Newstead House Trust Act 1939 and s.44 of the Constitution of Queensland Act 2001).</p>	<p>Recommendation 70 of the Smerdon Strategic Review report provided as follows:</p> <p>A review of the Ombudsman Act should be undertaken and progressed through normal channels.</p> <p>The review also should incorporate appropriate changes to the legislation to facilitate Ombudsman staff becoming public servants, with an appropriate recognition of operational independence.</p> <p>The Ombudsman has given careful consideration to this proposal and does not support it. In his view the proposal does not have appropriate regard to the fact that the Ombudsman is not part of Executive government but is an officer of the Parliament.</p> <p>Making the Ombudsman’s officers part of the public service would mean they would be bound by directives of the Public Service Commission, which creates at least the perception of a conflict in that the Ombudsman has jurisdiction over the administrative actions of the Commission (not including the decisions of its tribunals).</p> <p>The Ombudsman’s reputation for independence with the community relies substantially on the ability of his officers to be able to say to complainants that neither the Office nor they are part of the public service.</p>	<p>The Committee does not consider that this amendment is warranted.</p> <p>The Committee considers that the independence of the Office of the Ombudsman is paramount and does not see the requirement for its staff to become public servants as suggested.</p> <p>The Committee does not support the amendments.</p>

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
		<p>Advice received from the Executive Council Secretariat is to the effect that s.76(3), in its current form, does not contain a sufficient head of power to authorise the making of an order of council (which is a statutory instrument under the Statutory Instruments Act 1992) setting out terms and conditions of service.</p> <p>Rather, it is only sufficient to authorise the making of an Executive Council Minute, which is not a statutory instrument. A Minute does not gain the benefit of s.23(1) of the Statutory Instruments Act and therefore cannot automatically apply, adopt or incorporate any Act, statutory instrument, other law or document as in force at a particular time, or from time to time.</p> <p>This means that each time a relevant change to the Public Service Act and Regulation, the Public Service Award or any applicable Directives occurs, a new Minute must be prepared.</p> <p>By amending s.76(3) to permit conditions of service to take the form of an order in council, the resultant application of s.23(1) of the Statutory Instruments Act would avoid the Ombudsman having to prepare updated conditions of service each time an applicable section of the Public Service Act is amended, or a new Directive issued.</p>	
Insert new s.14A Administrative Audits	Insert a new provision, similar to s.14A of the South Australian Ombudsman Act 1972, that gives the Ombudsman jurisdiction to conduct a review of the administrative	Consistent with the Ombudsman's role of improving the quality of administrative practice in agencies, it would be of benefit to include a provision giving the Ombudsman power to conduct audits of agencies so	The Committee sees merit in inserting the new section and supports the amendment.

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
	practices and procedures of an agency, if the Ombudsman considers it in the public interest to do so.	as to identify any administrative practices and procedures in need of improvement.	
Insert new s.23A Ombudsman may issue direction in relation to an administrative act	Insert a new provision, similar to s.19A of the South Australian Ombudsman Act, that gives the Ombudsman authority to direct an agency to refrain from performing an administrative act for a specified period.	Such a power is needed to prevent an agency from performing an administrative act where the Ombudsman is satisfied that the act is likely to prejudice an investigation or proposed investigation, or the effect or implementation of a recommendation that the Ombudsman might make as the result of an investigation or proposed investigation.	The Committee sees merit in inserting the new section and supports the amendment.
Insert new s.64A Appointment	Insert a new section requiring the Ombudsman to make a declaration of interests in terms similar to s.12 of the Auditor-General Act 2009	<p>The Ombudsman Act currently contains no requirement for the Ombudsman to make a declaration of interests. Section 12 of the Auditor-General Act requires the Auditor-General to make a declaration of interests under a scheme that has appropriate regard to the independence of that office.</p> <p>An amendment in similar terms should be inserted in the Ombudsman Act to require the Ombudsman to make a declaration of interests to the Speaker, consistent with the Ombudsman's status as an officer of the Parliament.</p>	<p>The Committee agrees that as the Ombudsman is an officer of the Parliament, it would be appropriate for the Ombudsman to make the declaration of interests.</p> <p>The Committee supports the amendments.</p>
Insert new s.78A Staff of the Office	Insert a provision to give the Ombudsman's staff similar industrial appeal rights to officers of the Public Service Commission:	<p>While the Ombudsman does not agree with the recommendation of the Smerdon report that officers should become public servants, it is important to clarify the appeal rights of officers who are aggrieved by certain decisions made by the Ombudsman concerning their employment.</p> <p>As it is not appropriate for officers of the</p>	The Committee considers that the staff of the Ombudsman should have equivalent industrial appeal rights as appropriate for their employment status.

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
		<p>Ombudsman to have appeal rights to the Public Service Commission, it is suggested that they be given appeal rights to the Industrial Relations Commission in line with those appeal rights enjoyed by officers of the Public Service Commission.</p> <p>See s.215 of the <i>Public Service Act 2008</i>.</p>	<p>The Committee supports the amendment.</p>
<p>Insert new s.76(4) Criminal History Check</p>	<p>Insert a provision similar to s.160 of the <i>Public Service Act</i> and s.330 of the <i>Crime and Misconduct Act</i> to provide that a person may not be employed as an officer of the ombudsman if the person does not consent to a criminal history check.</p>		<p>The Committee supports the amendment.</p>
<p>Legal proceedings</p>	<p>Insert a provision similar to s.29(4) of the repealed Parliamentary Commissioner Act.</p>	<p>Under s.29(4) of the repealed Parliamentary Commissioner Act, the Ombudsman could not be called to give evidence or produce any document in court, or in any judicial proceedings, in respect of any matter coming to his or her knowledge in the exercise of his or her functions under that Act.</p> <p>However, that protection was omitted from the Ombudsman Act, for reasons which are unclear. Most other Ombudsman legislation in Australia contains such a protection – see s.35 of the NSW legislation; s.29(4) of the Victorian legislation; s.30 of the South Australian legislation; s.31(4) of the Northern Territory legislation; and also s.26(1)(b) of the New Zealand legislation. It is submitted that such a protection is appropriate for the Ombudsman, given the role he discharges and the fact that he is an officer of Parliament.</p> <p>In 2007, the Ombudsman was served with a Notice</p>	<p>The Committee considers the suggested provision should be inserted to ensure the Ombudsman cannot not be called to give evidence or produce any document in court, or in any judicial proceedings, in respect of any matter coming to his or her knowledge in the exercise of his or her functions under that Act.</p> <p>The Committee supports the amendment.</p>

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
		<p>of Non-Party Disclosure in connection with legal proceedings commenced against a government department by a former complainant to this office.</p> <p>The complainant was seeking to use, in his legal proceedings against the government department, investigative documents prepared or received by the Ombudsman. The Ombudsman relied on a number of grounds of objection in response to the Notice of Non-Party disclosure, including that s.92 prohibited disclosure of the requested documents.</p> <p>The complainant ultimately chose not to pursue the Notice. However, it is submitted that a specific provision, such as the repealed s.29(4), should be inserted into the Act to make the position clear.</p>	
Government-Owned Corporations (GOCs)	Widen the jurisdiction of the Ombudsman to include GOCs.	<p>At present, the Ombudsman Act has no application to GOCs. The Office frequently receives calls from persons inquiring whether we have jurisdiction to investigate a complaint against a GOC. Over the past 12 months, the Ombudsman has made several submissions (including submissions to the government's Integrity and Accountability Green Paper, and the Public Service Commission's review of the Whistleblowers Protection Act) calling for the government to give this Office jurisdiction to investigate the administrative actions of GOCs.</p> <p>The Ombudsman is firmly of the view that entities that carry out public functions using public funds and public infrastructure are accountable to the public for the way in which they perform those services and spend those funds, and should be</p>	The Committee supports appropriate amendments be made to widen the application of the Ombudsman Act to GOCs.

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
		<p>subject to all the usual accountability measures. The Ombudsman therefore recommended in his submission in response to the Green Paper that he be given jurisdiction to investigate the administrative actions of GOCs.</p> <p>In its response to the green paper, the government observed: GOCs are responsible for significant amounts of public money and should be subject to the highest levels of scrutiny and ethical standards In recognition of the need for high levels of scrutiny of GOCs, the government has committed to amending the <i>Government Owned Corporations Act 1993</i> to ensure that GOCs can be investigated by the CMC on misconduct matters.</p> <p>As matters stand, GOCs are audited by the Auditor-General and will soon be within the jurisdiction of the CMC. It is illogical that they are not also subject to the Ombudsman's jurisdiction (as is the case with the corresponding bodies in NSW).</p> <p>The Ombudsman remains of the view that all GOCs (whether or not they operate in a competitive environment) should be subject to his jurisdiction, and that he should have the ability to investigate maladministration, on complaint or on his own initiative.</p>	
Making and publishing standards	Insert a provision giving the Ombudsman power to make and publish complaint-handling standards for the public sector.	As a logical corollary to the complaint handling training and best-practice educative functions that the Ombudsman conducts across the public sector, it is recommended that consideration be given to giving the Ombudsman the power to make and	While the Committee agrees that such a provision could be beneficial, the Committee is cognisant of not increasing the regulatory burden for agencies that already have appropriate



SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
		<p>publish complaint-handling standards (similar to the power given to the Public Service Commission under the <i>Public Interest Disclosure Act 2010</i> to publish a Public Interest Disclosure Standard), binding on all public sector agencies that fall within the jurisdiction of the Ombudsman.</p> <p>The Ombudsman would have an oversight/audit role in ensuring that agencies implement, and adhere to, complaint-handling policies and procedures that comply with the Standard.</p>	<p>standards in place, that may not comply with other approved standards. Any such provision will need careful consideration to ensure that it does not create additional levels of compliance for agencies.</p>

**Appendix A – List of Submissions**

Sub #	Submitter
001	Murweh Shire Council
002	Department of National Parks, Recreation, Sport and Racing
003	Queensland Audit Office
004	Queensland Rail
005	Townsville City Council
006	The University of Queensland
007	Department of Transport and Main Roads
008	Crime and Misconduct Commission
009	Joint submission by the Queensland University of Technology, Griffith University, and the University of Queensland
010	Health and Quality Complaints Commission
011	Commission for Children and Young People and Child Guardian
012	Brisbane City Council
013	The Coordinator-General

## **Appendix B**

# **Transcript of Meeting with the Strategic Reviewer of the Office of the Queensland Ombudsman**



# ***LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE***

**Members present:**

Mr PW Wellington MP (Acting Chair)  
Miss VM Barton MP  
Mr WS Byrne MP  
Mr SK Choat MP  
Mr CJ Judge MP  
Mr TJ Watts MP  
Mr JR Woodforth MP

**Staff present:**

Mr B Hastie (Research Director)  
Ms S Hunter (Principal Research Officer)  
Mr P Rogers (Principal Research Officer)

## **MEETING WITH STRATEGIC REVIEWER OF THE OFFICE OF THE QUEENSLAND OMBUDSMAN**

### **TRANSCRIPT OF PROCEEDINGS**

**WEDNESDAY, 20 JUNE 2012**

**Brisbane**

## WEDNESDAY, 20 JUNE 2012

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Committee met at 9.02 am

### SMERDON, Mr Henry, Strategic Reviewer of the Office of the Queensland Ombudsman

**ACTING CHAIR:** Good morning everyone. I declare this hearing with Mr Henry Smerdon, the Strategic Reviewer of the Office of the Queensland Ombudsman, open. Thank you all for your attendance. My name is Peter Wellington, the member for Nicklin, and I am the deputy chair of this committee. Unfortunately the chair, Mr Ray Hopper, the member for Condamine, is not well and he sends his apologies. Other members of the committee present are: Mr Trevor Watts, the member for Toowoomba North; Mr Bill Byrne, the member for Rockhampton; Miss Verity Barton, the member for Broadwater; Mr Sean Choat, the member for Ipswich West; Mr Carl Judge, the member for Yeerongpilly; and Mr Jason Woodforth, the member for Nudgee. Mr Brook Hastie is our research director.

This meeting is being conducted in public and is being transcribed by Hansard. For the benefit of Hansard, I ask that everyone identify themselves when they first speak and to speak clearly and at a reasonable volume and pace.

The findings of this committee will be the subject of a report to the parliament. The committee may make recommendations about the issues it deals with. The committee intends to publish the transcript as part of its report.

I note that Mr Smerdon has been provided with a copy of the instructions to committees regarding witnesses. I now invite you to make an opening statement, following which the committee will ask some questions. Mr Smerdon, it is over to you. Is there anything you would like to share with us?

**Mr Smerdon:** Thank you. It will be a very brief opening statement because I think it is important that you ask the questions of me rather than me simply repeat what is in the report. I would just like to say that I did the review five years ago. I was asked to do the review again. It is always very challenging to undertake a review of your own review, which is quite interesting.

Looking at the Office of the Ombudsman, it is very important in the overall public administration of the state. It had come a long way from where I was five years ago, although probably not as far as I thought. I made a comment in the report that I was a little disappointed at times when I was doing the review this time because the initial feeling was that certainly things had changed quite dramatically. They certainly had changed but not to the level that I thought they might have done. I am very happy to assist the committee in its deliberations.

**ACTING CHAIR:** The government is certainly trying to find savings wherever possible. Do you see any opportunity for savings or do you believe that there needs to be additional funding and resources given to the Ombudsman's office?

**Mr Smerdon:** I think I have made comments in a number of sections of the report that the office should consult with Treasury about additional funding. I think the workload has increased quite dramatically over the last five years in terms of the number of contacts. I think it has gone up something like 75 per cent in five years. The resources available have gone up significantly less than that.

There are a number of initiatives that I have suggested that the Ombudsman should look at which I think would improve the overall delivery of the service to the community that I think would be of benefit. So, in terms of achieving savings, you never say never but my impression is that it is fairly tight to do the things that an Ombudsman's office needs to do.

**Mr BYRNE:** Henry, in terms of the ratio of workload against staff available, can you be more direct in the way in which you provide an opinion on that?

**Mr Smerdon:** If you look at the number of contacts—and contacts are probably the broadest measure you have in terms of the workload of the office—they have gone up something like 75 per cent in five years. I think the budget resources have gone up 15 or 16 per cent. I have a figure of 5.7 per cent in mind as well. So it has not kept pace. They have been able to adjust by dealing more expeditiously with the contacts. I have some concerns about how the contacts are measured. While 75 per cent is the broad number, as reflected in annual reports, I have some concerns about how that data is being captured. That is not significant. That is not going to reduce that level at which it has increased by any significant amount. It is simply a management issue about how they record the reports.

It is difficult to get very hard data because there is no exchange of information between the Ombudsmans' offices. It is something I encouraged in the previous report and I have repeated that encouragement in this report. In discussing it with other Ombudsmans' offices, both previously and in this review, the view is, 'We do similar sorts of things but we are all quite different.' No-one seems to have the courage or the leadership to say, 'We need, as a responsibility to the broader community, to get better data,' and that is a concern that I have.

**ACTING CHAIR:** I note that you have referred to the high turnover of staff. Can you add any information to that? Is it because of bad morale or is it simply part of the job that the staff are always moving on?

**Mr Smerdon:** I think it is a mix of factors that happen. I will give some general comments. If you look at the structure of the office, at the upper level there has been a continuity of staff there for quite a number of years now. They are all very experienced and very good at what they do, but it does provide a barrier if you want staff to progress through an organisation to the top level. I have suggested that the Ombudsman needs to look at that as part of his restructure of the office.

It is an office where people who join it are very passionate about what they do. If you speak to any of the staff in the office, they are extremely passionate about the things that they are working on and they believe in. They are very helpful in terms of what they do. I think they get to a point where they get frustrated with not being able to do the things they want to do. They are also very marketable. So an agency that is looking to improve its complaint handling procedures will obviously look to the Ombudsman's office for someone who has been trained in the processes, who has very skilled levels, and they also probably offer a little bit more money than the Ombudsman's office. So it is a great training ground for people. You are able to recruit at the bottom end and train them through to a point and then they will look around and say, 'Progression in this office is not all that great. We have this upper level that is static,' and they can get a two-grade increase from another department.

I think there has been a tremendous commitment by agencies to improve their complaints handling processes. I made a comment again in the report that agencies are now starting to recognise that complaints are not something to be tolerated but are actually a learning experience for them in how they can do business better, and that has permeated a lot of the conversations I have with agencies. There is a great commitment to improve that process, so they look for good people to help them do that.

**Mr WOODFORTH:** Further to that, is there an issue as to the high turnover then or is it okay? It does not hinder your performance.

**Mr Smerdon:** I would prefer that it was less. A 20 per cent turnover of staff is significant in terms of continuity. Has it significantly harmed the organisation? I do not think significantly, but you would want greater stability. So long as you are able to recruit people—I think the worry would be if you had a turnover and you could not recruit. I would prefer to see it down around 10 or 12 per cent, which would be much more normal. But in small organisations, particularly in a professional specialist organisation, a high turnover rate is not unusual.

**ACTING CHAIR:** It has been my experience that people who often end up taking their complaint to the Ombudsman are very angry and very frustrated, with all the letters and the backwards and forwards. Sometimes when my office has had to take matters up with the Ombudsman they have been so relieved that the person at the other end of the phone in the Ombudsman's office will take the particulars over the phone and follow it up without saying, 'Yes. Now can you put that in writing and send it to us and we will follow it up.' My experience has been that when people have to write another letter and repeat everything they have been saying they get totally frustrated and very angry. My view is that the Ombudsman's office do a wonderful job and, if we are losing staff simply because they are being headhunted, perhaps we need to look at trying to find ways to hold them in the Ombudsman's office.

**Mr Smerdon:** I think if you asked a staff member to remain for 40 years in the Ombudsman's office that stress level is quite high. I have sat in on some of the calls just to understand what drives people's emotions. It takes a rather special person sometimes to deal with a fairly angry person who probably has a justifiable complaint, but there are certain processes. I suppose one of the biggest frustrations is that they are supposed to have exhausted all appeal processes through the agency that they have a problem with. I guess that is the biggest issue for a complainant ringing the Ombudsman's office, being told, 'Sorry we can't help you. You need to go back to the agency,' when they have had a bad experience with the agency and they do not particularly like to go back to the individual.

In my discussion with agencies I have asked them to concentrate very much on making sure that their appeal processes were appropriate, that they were not putting people off by the way they handled the complaint in the agency. I have asked the staff in the Ombudsman's office as part of this process to perhaps be a little bit more accommodating and not simply say, 'You are out of jurisdiction,' or 'We cannot help you until you go back to the agency.' I made a point in the last review and again in this review about refer to agencies. I think that is a critical element of what the Ombudsman's office needs to do without going down the path of being an advocate for the complainant. The role of the Ombudsman's office is to be the independent arbiter and that needs to be preserved. But there are things that can be done that will assist the complainant to resolve their issue, rather than simply being palmed off.

**Mr CHOAT:** I note that you did refer to a quite negative staff survey outcome. As a former state government employee myself, over the years I have been subject to quite a number of these surveys which seek to find out how staff are feeling, the morale, and the culture of the organisation. Yet in my experience there is very limited action taken to deal with the findings of that survey. In some cases, I hasten to add, the findings have been slanted a certain way. What has the Office of the Ombudsman done in response to the survey findings? Has there been professional development for staff? Have there been any of those sorts of activities?

**Mr Smerdon:** It was an interesting scenario because what happened was that the survey was done in transition. The previous Ombudsman, David Bevan, retired and the new Ombudsman had only just arrived after the survey was undertaken, so he had to deal with the outcome. If you look at the survey results, there are quite a number of positives. The negatives were really about and directed at the senior management team and the way the communication took place within the agency. It was hard to get to the bottom of exactly why that happened, but there were a number of complaints about the way the senior management team operated—this is the team that has been there for a long period of time.

When the new Ombudsman came in he realised he had an issue, so he set up a series of teams which addressed five key issues. I have referred to those five key projects. My sense, six or eight months after the survey, is that that had settled the staff down. I think there is a far better communication process in place. It can still be improved, but I think the relationship had started to develop in a more meaningful way than what had happened in the past. I am not quite sure whether there was a history that got people to where they were. But certainly in the staff meetings that I had, both one on one and in the broader forums, there were concerns about the things that you would expect organisations to have concerns about.

I think the amount of spend on professional development, on training and development, had diminished in terms of a proportion of the budget. That caused a concern particularly amongst admin staff. There was some view that while the professional staff were getting some assistance, the admin staff, who do carry a heck of a workload in the office, were not being given a proper share of the training and development funds. I think that will change. I have had quite a strong recommendation that the funds going towards training and development needed to increase significantly. It was cut in response to a budget pressure. I think the staff are the most valuable asset that you have in that organisation. It is a people organisation. So they are addressing the issues. It has improved, but I think there is structural change that the Ombudsman needs to address, and I think I have made reference to it in the report. The option was for me to present a structure to the organisation and say, 'Look, you live with that'. That is not my style of doing things. I think the Ombudsman owns the position, he owns the office, and he needs to put in place a structure that will help him to deliver the services. If you start messing with that structure and telling him how to do it, what he is going to say is, 'Well, if I am not doing it you are at fault because you told me this is what I need to do to do it'. If you allow him the capacity to set up a structure that he feels will deliver the services, and I have set some principles in the report that I think he needs to follow, I think we are going to get a far better outcome.

**Mr CHOAT:** Has there been any follow-up survey since that one?

**Mr Smerdon:** Not as far as I am aware. Certainly not in the time that I was doing the work.

**Mr CHOAT:** And no plans for any, do you know?

**Mr Smerdon:** I think the response to the survey was not to do a further survey. The response was let us get some action. I think those five projects which I have outlined in the report have delivered a fair amount of action and I guess a more positive outcome for staff.

**Mr CHOAT:** I am sure with his background, training and development that should be something that comes very easily to him.

**Mr Smerdon:** Yes.

**Mr WATTS:** You talk about the culture and the office having a high turnover. You also talked about other agencies potentially taking the staff because they have the skill set they are looking for. Do you think there is any room to have some sort of job rotation with other agencies at that more junior level to both relieve the stress and to hold onto the staff?

**Mr Smerdon:** Prima facie, yes. I recommended that in the previous report. When I looked at the recommendations of the previous report and how they were implemented, they did start out having these exchanges with other agencies and for whatever reason the previous Ombudsman felt they were not getting the benefit out of that that they should. The risk was that they would send a person out to an agency on an exchange basis and the person would never come back.

**Mr WATTS:** They are losing them anyway?

**Mr Smerdon:** Yes. In fact, one of the lasses who has been in the Ombudsman's office for quite a while went to the Public Sector Commission and is not coming back; she now has a permanent position in the Public Sector Commission. That is the sort of thing that does happen. But I think the Ombudsman's organisation and the agencies would benefit by an exchange program, but because of the small nature of the organisation it has to be limited. I think if you had three or four staff out in an agency that would be the max that you would want to do.

**Mr WOODFORTH:** If I could just continue on the same line of questioning. I have listened to everything you have been saying. Do you have a middle management, a top management, problem? There are a few things that you have said that might lead to there being more of a problem upper management.

**Mr Smerdon:** The top management problem is more an operational issue. You have got top management who are very skilled and therefore you perhaps would not want to lose them, but if they have been in the same role for quite a number of years you get compression. So you get people moving up but there is really nowhere else for them to go. The top management team is the same team that was there Brisbane

five, six years ago. I am not saying you move people out, but there are ways that you can handle that process to allow opportunities for others to show their skills. I think in the principles that I have suggested to the Ombudsman he needs to restructure the office so that all the investigations are being done in a single unit rather than having three separate units because then you have got the old question of territory and turf wars: is this my problem or your problem. I think if you can resolve that so they are actually working as a team rather than as sort of a hierarchical reporting structure you are going to get a better outcome and some of the issues that deal with top management will dissipate.

**Mr WOODFORTH:** Just with my corporate background, is the culture being driven from the top management that says what the culture is meant to be?

**Mr Smerdon:** Yes.

**Mr WOODFORTH:** Because I have been in too many places where what the culture is the management are actually doing the opposite.

**Mr Smerdon:** The culture should be one of help and assistance to resolve complaints. In principle, I think top management subscribes to that. I would never be critical of the commitment of top management, but they have a certain way of doing things which I think needs some modification as part of the process and I think that modification can take place with a different structure.

**Miss BARTON:** I just have a couple of questions for you. The first question I have relates to recommendation 25 where you said that the Ombudsman should look at an increased regional visits program.

**Mr Smerdon:** Yes.

**Miss BARTON:** I wondered whether you had considered the possibility of decentralising somewhat and relocating some services to rural and regional areas on a permanent basis so that some regional centres feel that they actually have quite regular permanent access, particularly given that you say that the website is practical but it is certainly not outstanding. I wonder whether you had considered the prospect of permanent relocation of some services.

**Mr Smerdon:** I considered that both in the first review that I did five years ago and in this review. There is a trade-off. It means we establish an office in a regional centre—and you could not just do one, you would need three or four; it is an expensive proposition to have staff there and you have to be sure that is where your complaints are going to come from—or you have regional visits that are targeted, and there are a number of issues to be addressed with the regional visits. It is not simply a regional issue, there are a whole lot of issues around Indigenous, homeless and disabled people who also need to be brought within the loop. The quickest and the best way to do that is to get out to where they actually are. You cannot ask them to come from Longreach to Rockhampton, for example, to make a complaint or do it that way. I think these targeted regional visits—and they have to stop being on the coast, they actually have to get inland as well so that everyone is covered—are likely to produce a better, more cost efficient and effective result than if you established hard offices. I think hard offices are one thing, but you have got to get out to where people are. You will not get a homeless person, for example, coming to the office in Albert Street. You will not get them to come to an office in Rockhampton or Townsville. You have got to go where they are and understand what they are facing. This is a particular issue with Indigenous people, how to get Indigenous people to actually complain. They do not like filling in forms, they do not like writing letters, the telephone is a bit iffy and there is a trust issue that needs to be developed. They are probably the ones who have significant issues about complaints and the way agencies deal with them.

**Miss BARTON:** My other question relates to your recommendation about Indigenous liaisons. I can understand that, following on from what you were saying in terms of trust issues and so forth, but I do have general concerns about whether or not it creates this idea that it is not necessarily a meritocracy in some of these important roles in terms of a liaison position. You go on to say that there should also potentially be a youth liaison officer and that the Ombudsman's office needs to be very concerned about equal opportunity employment and so forth. I guess my concern is that that sends a message, and perhaps this is the perspective of a younger women, but to me it certainly seems to send the message that it is not necessarily about merit but to be looking like you are doing something politically correct. I just wonder, certainly in terms of having a youth liaison, what the benefits would be as opposed to choosing someone who has clear experience and who may still have the skills when it comes to relating with people across a broad spectrum. I do wonder whether what seems to me to be a minor thing actually outweighs a broad range of skills and experience.

**Mr Smerdon:** It was particularly directed at the Indigenous issue because of that potentially large number of complaints. The person would need to be fairly well trained. It is not sending just anybody out to do the liaison work, it is going out to the coal face and helping people. It comes back to this role of the Ombudsman. Is the Ombudsman there to advocate or help or is the Ombudsman there simply to arbitrate and do it in that normal sort of way you would expect the Ombudsman to do it? The liaison people in New South Wales, for example, spend a lot of the time on the road, coming up and talking to communities in regional Queensland, talking to Indigenous communities and trying to understand what their issues are and helping them if they have a concern about how they approach the Ombudsman's office. It is not to take away the role of the Ombudsman, but it is to facilitate their complaint. Should we do that or should we allow them to work under their own steam? I think I have heard enough from the Indigenous leaders to say that



is never going to work 100 per cent. So if you want them to have lack of access or access that everyone else ought to have and does not have. But it is not just an Indigenous issue, there are groups in the community that do not know, that do not understand, they are afraid of doing the things that they need to do to get satisfaction and justice from a decision that an agency has made. So, whether it is meritocracy—

**Miss BARTON:** I guess my concern stemming from that is that it is all about perspective for the general public. Maybe I am somewhat unusual, but I tend to be of the view that if we continue to have such affirmative action it means that the role of people who are genuinely meritorious from these groups—I guess my concern is that the public perspective is that they have not necessarily truly earned the position; they have just been granted it through affirmative action. I am not saying that would necessarily be the case, but my concern is that the public perspective tends to lean that way and that has certainly been my experience in terms of being a female. People just assume you get somewhere because you are a woman and that there is a push to push women into certain rules.

**Mr Smerdon:** I hope that is not the case. That certainly was not the intention of what I was talking about.

**ACTING CHAIR:** In your meeting with the staff, and I know the Ombudsman is like the citizen's defendant, the last advocate they can go to, do you believe that some of the staff are frustrated with legislation where their hands are a little bit tied where they would like to have more teeth, more powers, but the legislation does not go that far? Do you believe the legislation needs to be reviewed or is that outside the scope of what you were engaged to do?

**Mr Smerdon:** There are quite a number of amendments to the legislation that the Ombudsman had proposed and which I supported. That happened again in the previous review. Some of those amendments were taken up, others were not. I guess if I broadly looked at the staff and said what is the general feeling, the general feeling is they are very helpful and would like to be very helpful. They are passionate. They also understand that the advocacy role becomes a real issue. They would like to do more things. They recognise they need to stop short of being an advocate because that undermines the whole process. Advocacy is one thing, resolving the issue in the agency is by far the best solution because if you allow the agency off the hook how do they improve, what do they do to improve their services? One of the things that I recommended in the previous report, which I think has been taken up quite enthusiastically, is to get out there and have good decision training and good complaint management processes training for staff in the agencies. That has worked very well. I think the standard of complaint resolution in agencies has risen. Just from my discussions with directors-general and others I certainly get the impression that it has risen. I would prefer to see it there. The Ombudsman should not be the advocate that says bring all your complaints to me and if you do not get satisfaction at an agency I will resolve them. What I think you would find is that the agency would say, well, there is no point in us making good decisions, we will leave the Ombudsman to resolve all that, he has the staff, we can just do what we think is right and then let him resolve the other issues.

**Mr JUDGE:** Just tying in with that, how often are complaint satisfaction surveys undertaken?

**Mr Smerdon:** Every two or three years they will undertake them. It is a fairly major task to do. I think they have had four in the last eight or nine years.

**Mr JUDGE:** And the themes that arise from those surveys, are they clearly identified and action taken?

**Mr Smerdon:** Yes, there is a fairly comprehensive response to it. The last complaint survey suggested they were losing ground in some areas and that shook them a little bit. They have realised that where they thought they were making progress—for example, one of the things that the Ombudsman's office has had an issue with for a number of years is the legalistic nature of the responses they give back to complainants. The complainants do not really want to understand 10 pages of why they are being told no, they want a simple one-pager that says, 'We have looked at your complaint. This happened and for these reasons very quickly we cannot assist, full stop'. They tend to get legalistic because a lot of them have legal training.

**ACTING CHAIR:** Thank you, Mr Smerdon. We are about to have a meeting with our Ombudsman.

**Mr Smerdon:** I hope he tells you the same story.

**ACTING CHAIR:** No, no! On behalf of the committee, I would like to thank you for taking the time to visit and share your thoughts with us this morning. The time that has been allocated for our questioning has expired. The committee secretary will, in due course, provide you with a copy of the draft transcripts, once they are available, for you to make corrections if necessary. Again, on behalf of the committee, thank you for taking the time to join with us this morning. We wish you all the best for the future.

**Mr Smerdon:** Thank you and good luck with the hearing. I think the ombudsman is a very important part of public administration. I think it is great that you are dealing with it.

**ACTING CHAIR:** Thank you, Mr Smerdon.

**Committee adjourned at 9.31 am.**

## **Appendix C**

# **Transcript of Meeting with the Office of the Queensland Ombudsman**



# ***LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE***

## **Members present:**

Mr PW Wellington MP (Acting Chair)  
Miss VM Barton MP  
Mr WS Byrne MP  
Mr SK Choat MP  
Mr CJ Judge MP  
Mr TJ Watts MP  
Mr JR Woodforth MP

## **Staff present:**

Mr B Hastie (Research Director)  
Ms S Hunter (Principal Research Officer)  
Mr P Rogers (Principal Research Officer)

## **MEETING WITH QUEENSLAND OMBUDSMAN**

### **TRANSCRIPT OF PROCEEDINGS**

**WEDNESDAY, 20 JUNE 2012**

**Brisbane**

## WEDNESDAY, 20 JUNE 2012

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Committee met at 9.33 am.

**BROWN, Mr Andrew, Deputy Ombudsman**

**CANTWELL, Mr Peter, Assistant Ombudsman, Intake and Engagement Unit**

**CLARKE, Mr Phil, Ombudsman**

**GUNTON, Ms Diane, Manager, Corporate Services Unit**

**ACTING CHAIR:** Good morning, everyone. I declare open this hearing with the Office of the Queensland Ombudsman. I thank everyone for their attendance. My name is Peter Wellington, the member for Nicklin. I am the Deputy Chair of the committee. Unfortunately, our chairman, Mr Ray Hopper, the member for Condamine, is absent. Members of the committee are: Miss Verity Barton, the member for Broadwater; Mr Bill Byrne, the member for Rockhampton; Mr Sean Choat, the member for Ipswich West; Mr Carl Judge, the member for Yeerongpilly; Mr Trevor Watson, the member for Toowoomba North; Mr Jason Woodforth, the member for Nudgee; and Mr Brook Hastie, the research director, who is on my immediate left.

The meeting is being conducted in public and is being transcribed by Hansard. For the benefit of Hansard, I ask that everyone identify themselves when they first speak and to speak clearly and at a reasonable volume and pace.

The findings of this committee will be subject to a report to the parliament and the committee may make recommendations about the issues that are raised. The committee intends to publish the transcripts as part of its report. I thank everyone for attending. Mr Clarke, as Ombudsman, would you like to make an opening statement?

**Mr Clarke:** Thank you, Mr Deputy Chair. I would like to make a few opening comments. Firstly, I thank you for the opportunity to address the committee on the work of the Queensland Ombudsman's Office. It is about 16 months since I had the chance to address the previous committee, so it is good to get the opportunity to do that. I will introduce my colleagues who are with me: on my right is Mr Andrew Brown, the Deputy Ombudsman; to his right is Mr Peter Cantwell, the Assistant Ombudsman, Intake and Engagement Unit; on my left is Ms Di Gunton, the Manager of Corporate Services in the office.

I will not particularly address the questions on notice responses, because I will assume that the committee will ask any questions that they want about those questions on notice. I would like to take the opportunity to quickly outline for the committee the priorities for the Ombudsman's Office, my priorities and the office priorities, and indeed to talk about some of the things that have happened in recent times.

Throughout 2011, the work of the office concentrated largely on business as usual while we were awaiting the outcomes of the strategic review. The strategic review report, in its final form, was given to me in February for my comment, as is required under the Ombudsman Act. From that date, I have largely worked consistently or the office has worked consistently with the recommendations of the report to try to move those recommendations forward in the expectation that many of them are quite logical and agreeable to the office and, in our view, were things that we needed to do anyway. We are progressing that. I have not done that in any way to pre-empt the work of this committee and its consideration of the report, but there were some business improvement opportunities in that report that Mr Smerdon made and they were acceptable to us and we have found them logical, so we have attempted to progress them in the intervening few months.

Since late 2011, those changes have resulted in quite significant reductions in open cases in the office. In December, there were about 700 open cases in the office. After an intervention that we put in place in January of this year where we established a backlog team to specifically deal with those 700 open cases—which is quite a significant number in the office; it is about twice the size of our historic levels at any given time—and the introduction of a new intake unit in the office, that has now been reduced to about 200 open cases at the end of May. There has been a very significant improvement in the number of open cases in the office. I will not say that I think that 200 cases is typical of the number in the office. I think there was a significant backlog. We have dealt with that. But it is yet to stabilise as to what would be a typical number of cases, although I do expect that that would be something less than 300 on a sustainable basis.

We are required to develop a strategic plan in the office. That new strategic plan has been developed in line with the recommendations in the strategic review. In other words, we have focused on business improvement in the office in the new strategic plan. I have not got the plan with me today for the committee's consideration because it is still in the consultation process, as we are required to do as part of the budget process.

The report did make recommendations about employing additional staff. I have not done that in terms of employing additional staff. It would be somewhat frivolous at the moment to go into that space, so I have not chosen to do that. However, I have chosen to introduce a new newsletter in the office. I have copies here for the committee, at some stage, if you would like to see them. I make those available. That new newsletter is called *Community Perspective*. For some time the office has had a range of perspective newsletters for the state government, local government, the legal profession and Corrections. We are adding *Community Perspective* as a twice-a-year electronic publication. This one is produced in hard form, but it will be the only one that will ever be produced in hard form. It is really just to launch it, to send it out to everybody in the community who might have an interest in it. From then on it will be published twice a year as an electronic newsletter. Its purpose is to make sure that the community at large, and particularly those groups in the community that have direct dealings with community members or citizens, understand fully the work of the Ombudsman's Office and are aware of their rights in terms of seeking redress against decisions of public agencies, councils and universities for decisions about which they are aggrieved.

Part of the *Community Perspective* newsletter also sets out the due process for making complaints. We find in the office that a vast proportion of our complaints are made by people pre-emptively, so to speak, so they come to our office before they have been to the agency to give the agency an opportunity to solve the problem, et cetera. We also hope that the newsletter will be part of a broader strategy that will be about informing the community and citizens about how to make complaints in an effective way, so they can get their complaints dealt with in the most time-efficient but, from their perspective, also cost-efficient point of view. For example, if the complaint is out of jurisdiction for us, then citizens knowing that we will not be able to deal with it in a timely way is a very important thing, because it then gives them the opportunity to consider their other options. I am in the process of finalising the launching of that and letters will go out this week to key agencies.

We are also in the process of making some changes to our case management system beyond what was made and the answer to the question on notice that was provided to a previous committee in February. Those new case management changes really are about providing a more efficient process within the office and, subsequently, a more efficient service to complainants. Most of the changes, in fact all of the changes that we currently have in place have been progressed within the current budget. We expect, at the end of this financial year, to have a modest surplus in the operating budget for the office. Any of the changes that we have currently made are being made within that current budget allocation.

The changes that we have put in place include an office restructure. That office restructure commenced in May and was largely the result of the recommendations made by Mr Smerdon as part of his strategic review, and also a vacancy in the senior management structure of the office. The manager of our Communications and Research Unit took an opportunity to move to the Public Service Commission. I chose not to fill that job again and to reorganise the work in the office across the senior managers who were left in the office. That also provided an opportunity to make some changes which lined up with the strategic review. That has been in place now and operating for a little bit over a month and is proving quite satisfactory.

I have a couple of key statistics to update the committee from the responses that were made in the questions on notice. At 31 May of this year, the total cases received numbered 19,663, which compares to 18,068 for the same period last year. The cases closed is 19,743, which is up from 17,778 in the same period last year. Complaints received is 7,405, which compares to 7,282 for the previous period. Cases closed is 7,526, which compares to 6,994 for the like period in the previous year. In broad terms, all those things point to a continuing increase in the work coming into the office, both in the total number of contacts we have and in the number of complaints both received and closed.

At 16 June, five complaint cases were over 365 days in the office. The previous committee showed some concern at the number of cases over 365 days in the office. Those five cases are all in the final stages of being closed, either through final correspondence with the complainants or having draft reports and final proposed reports with agencies for their comment. I do expect that a significant number of those five, probably three or four of those five, will be closed before the end of this financial year. But there is some prospect that we will have one or two cases over 365 days at 30 June. I think that would still put us inside our 99 per cent or fewer than one per cent open at 365 days.

Just quickly on the training sessions so far delivered this year: 162 training sessions have been booked and 146 have been delivered which, of course, means that there are 16 remaining. The distribution of those training sessions: 108 were provided to state agencies, 22 to local councils and 23 were open sessions in which anybody can participate. The total number of officers trained was 2,527 for those sessions that have been delivered. That is marginally up on last year where we had just around about 2,400 participants in training programs. Those training programs resulted in regional visits and the training has been delivered in 23 training sessions across the state outside of South-East Queensland, including to Cairns, the Gold Coast, Rockhampton, Toowoomba, Caboolture, Townsville, Longreach, Nambour, Kingaroy, the Tablelands, Nambour, Maryborough, Mount Isa, and the Sunshine Coast. We try to get a reasonable distribution of our training programs.

**Mr WATTS:** Sorry, but just to ask a question, how many training sessions totally and how many outside the south-east corner?

**Mr Clarke:** The total number of training sessions delivered so far is 146. With regard to the number of training sessions outside of South-East Queensland, Peter, have you got that number?

**Mr Cantwell:** Outside of South-East Queensland?

**Mr Clarke:** There were 24 centres in which we delivered the training. I might ask Peter if he has the actual number of sessions that were delivered outside of South-East Queensland.

**Mr Cantwell:** Certainly. We did 23 regional trips, and we included the Gold Coast as one of those regional trips.

**Mr Clarke:** I might need to take that question on notice to the committee and provide a detailed response in terms of the distribution of that training. I am happy to do that, Mr Acting Chair, if that is acceptable to the committee.

**ACTING CHAIR:** Yes.

**Mr WATTS:** I want both the number and the number of people it was delivered to in the regions versus the south-east corner.

**Mr Clarke:** Yes. I am happy to provide that detail as soon as I can. Finally, just before I finish my comments, I wrote to the chair of the committee about a mistake that was an error that had been included in the annual report. I just note that that has come to my attention in the last few weeks. The corrections have been made in the online version of the annual report. I apologise to the committee for any inconvenience that that may have caused. It was a sincere error and has now been fixed. Apart from those comments, Mr Acting Chair, I am happy to invite my colleagues, if there is anything I have missed in those opening comments, to add anything. Thank you very much for the opportunity to make those opening remarks.

**ACTING CHAIR:** Thanks, Mr Clarke. I suppose people see the Ombudsman as the citizens' defender, the last chance they have to try to pursue an issue that they have no doubt often been pursuing for quite some time. Do you believe that the powers of the Ombudsman perhaps should be extended to expand the Ombudsman's role to be more of an advocate for a lot of these people who are really at the end of the line after spending a lot of time traditionally going through a whole range of complaint processes?

**Mr Clarke:** Thank you for the question. Certainly the Ombudsman Act provides me with very substantial powers, and those powers include, for example, that legal privilege is not applicable between state agencies, councils and my office. So I can see the vast majority, if not all, of the information I need. I cannot think of the circumstances right now where I have needed information that I could not get in resolving a complaint that we had decided to investigate. So I think the powers of investigation are quite substantial in the act and I at the moment do not believe there is a need to advocate for more powers.

The question about whether the Ombudsman should become an advocate I think is a very vexed question. Certainly there are people in the community who believe that the Ombudsman should be more of an advocate for their position. The role that we try to perform is one of fairness. So we try to balance out the due process that agencies, councils and universities are required to follow with not so much community expectation, because sometimes citizens' expectations are not well founded, shall I say. But indeed at the end of the day what we seek to make sure is that the citizen is treated fairly and that their concerns are treated in a sincere, appropriate, detailed way by the agencies. The way we have done that in recent times is to both make sure that we have good processes that we can provide to agencies in their process for managing complaints and indeed their process for conducting internal reviews. So I would not be in a position to advocate for my office taking on more of an advocacy role, but we will continue to work with agencies to make sure that that fairness principle is uppermost in the mind of agencies when they deal with their complaints and indeed when we deal with those complaints, should they arrive in our office.

**ACTING CHAIR:** Thank you. Earlier we heard from Mr Smerdon about a significant turnover of staff in your office. Do you have any views on perhaps how we can address that? If we are training staff to do a job and they are with us for a short period of time and they have to move on and we have to go back and train someone else, it is a waste of resources. My view is that if you have good staff you need to hold on to them to try to find out what the problem is. Do you have a comment on if there is a problem with the turnover of staff and, if there is, any suggestions on what perhaps we can recommend?

**Mr Clarke:** I cannot dispute the facts in Mr Smerdon's report. I do not dispute the turnover that he highlights in his report, and that is a challenge which is frequently had in small offices. My office, even though there are 55-plus full-time equivalents, is still a small office in public sector terms. We do bring young people into the office who come in with us, are trained as you say and then the opportunities in the office are somewhat restricted for their progression. That seems to me to be the most significant issue in terms of their career and the choices they make with their career. If they are with us for two, three or four years and are trained to become an investigator, say, in the office, then we already have a significant pool of senior investigators in the office and indeed a significant pool of assistant ombudsmen in the office. There has not been a substantial move in that senior group over time and that does provide some challenges with the junior officers seeing where their careers might progress in the office.

We attempt to deal with that by making sure that we provide the best working environment we can for those people. They are, in my view, fairly remunerated for the work they do. We are not an office that struggles with remunerating people fairly, so I do not think there is an opportunity there to pay people more,

for example, to hold on to them. I think that would introduce a range of other problems. So we attempt to make sure that we have the best possible working conditions. We also attempt to make sure that we provide, for example, ongoing career development opportunities for them. We make sure that our training budget is as robust as we can afford. This year we have spent substantial amounts of money on staff training, and that is all part of a strategy of making sure that we can retain good people.

The other thing you will note as one of the outcomes from the staff survey is that staff expressed a view that they wanted more involvement in the decision making in the office, and I have also taken steps to make sure that we have greater engagement with staff so that they get an opportunity to work across a spectrum of work so they are not trapped in one sort of work and their career is able to be developed. Beyond that, I am not sure that there is a great deal more that we can do for young people. Probably a price that we pay for being a good trainer is that we attract people. At the end of the day, it may well be a net benefit for the public sector at large that good people come through the office, are well trained and then move on to become senior officers in other parts of the public sector. That is a price that we pay but there may be a net benefit, although it would be almost impossible I think to try to quantify that.

**Mr WATTS:** Mr Clarke, do you think your success at maintaining upper and middle management is what is causing the problem for the more junior staff? There is in fact nowhere for them to go. Is there a possibility of having a formalised relationship with other agencies so that they can share the skills with the agencies that are potentially not solving the problems in the first place?

**Mr Clarke:** We are certainly very supportive of people taking relieving opportunities or moving between agencies, and we have quite a number of examples in the office where that already occurs. Right at the moment, just from memory, an investigator is on secondment to a state government agency. We have just had someone who has moved to another investigative body, so from us they have moved to HQCC, the Health Quality and Complaints Commission. We do not regard that essentially as a failure, because the Health Quality and Complaints Commission does very similar work to us and if they do a good job it is regarded by us as a benefit as well. So we would typically at any given time have two or three staff out of the office—and, again, we are only a small office—on secondment to other state agencies.

There is always a risk that they do not come back because if they are good and they fit well into that organisation they may well get an opportunity to stay there permanently. Again, that provides a net benefit to the organisation in that it builds our network into state agencies so we have someone in that state agency potentially working in their complaints area or regulatory area. It does provide us with a mechanism to enhance our relationships and overall in the public sector enhance the quality of the work that goes on in the complaints management type space. At the end of the day—it is perhaps a little bit of a long bow to draw—one of our objects under the Ombudsman Act is administrative improvement in agencies. So in some small way our staff in state agencies and councils and universities having a detailed understanding of our work is a net benefit for us as well.

**ACTING CHAIR:** Mr Clarke, I take you to your answer to question on notice No. 7 at page 6 at section B. The question asks if any significant systemic issues have emerged as a result of recent investigations of administrative actions. Section 7B talks about the issue of parental requirements of relinquishing the care of a child with disabilities. This issue is dear to my heart because in the past I have certainly raised this issue with a number of successive ministers. In that a recommendation was made that the practice of providing extended or full-time, out-of-home care to certain disabled children by way of a child protection order under the Child Protection Act be reviewed at the earliest opportunity. It is then stated that the department has accepted this recommendation and advised that it is currently reviewing the legislative and policy frameworks that underpin the provision of out-of-home care for children with a disability. Given that we have had an election and you strongly believe that there is a problem, how do you take that up with the government and the new minister?

**Mr Clarke:** I tend to work directly with chief executives of agencies. The act prescribes that in large part my dealings are with chief executives of agencies rather than ministers. It does not mean exclusively that I do not deal with ministers, but the vast proportion of our work tends to be with chief executives. The extent to which chief executives work with their ministers on the policy implications of our recommendations is largely determined by those agencies. As the committee will be aware, the Ombudsman does not have binding powers to make directions to agencies, but we are certainly very vigorous in our follow up of our recommendations. We are still following up recommendations from the Hendra review report, from the Airport Link report that was a public report and from a range of other reports that are made. We follow those recommendations quite diligently and will only really allow them to pass if there is either satisfactory implementation of the recommendation or there is some change of context which makes the recommendation no longer relevant.

In the case of, for example, this particular recommendation and similar other recommendations, at the moment there is a hiatus in implementation of some of those recommendations because they are awaiting consideration by the government of new legislation. As an example, I think in the Hendra report, for example, we made a number of recommendations which related to the new biosecurity act which was on the books of the previous government. We are now awaiting advice from the agency as to what the new government's intention is in terms of the biosecurity act. Once we know that, we will continue to press though for the original recommendations to make sure that they are reflected of that new legislation. So we have quite a significant monitoring and advisory process. That is probably the best response I can give you, Mr Acting Chair.

**Mr WATTS:** Just to clarify that, when you say you will push for them to be included, what process?

**Mr Clarke:** We have a follow-up process where we monitor the recommendations and whether there is a change of government has little impact upon the monitoring of those recommendations. We make the recommendations to the administration. For example, with regard to Hendra, if I could use that as an example, the current feedback process that I have with regard to the implementation of those recommendations in the latest report I received a couple of weeks ago is that a significant proportion of the recommendations have already been implemented, but there are a proportion of the recommendations which are awaiting consideration by the government of biosecurity legislation. If the government decides, for example, not to proceed with a new biosecurity act, if that was a decision government made at the time, then we would go back to the chief executive of the agency and ask, 'How else do you propose to deal with the recommendations that we have made in Hendra?' So we are not saying there has to be a new biosecurity act, but we are going to press to make the recommendations meaningful and the implementation meaningful with the administration. I hope that answers the question.

**Mr BYRNE:** You mentioned that you have 55 FTEs. You are in the process of developing a proposal for the budget. My question is about how much of your staff structure has been affected by the issues associated with contract or temporary employees. You also mentioned that you are going to have a modest surplus. Can you explain what is a 'modest' surplus and whether it is an impost on maintaining a certain level of surplus.

**Mr Clarke:** If I can answer the first part of that question about staffing levels, at the moment within the office, as I outlined in the first part of my opening comments, I have had one vacancy which was as a result of a senior officer moving to another agency. I chose not to refill that vacancy but to restructure the workforce. That had as much to do with the implementation of the strategic review as it did about maintaining that position vacant. At the moment, there are five temporary positions in the office that will complete between now and September. The consideration of how I deal with those ones will be done on a case-by-case basis in the office.

Across the government, as you know, there are financial pressures or budgetary pressures. They have not yet come to bear on my office. I do not have, at the moment, a set of strategic parameters from Treasury in terms of structuring the budget. At the moment, it seems that most of Treasury's effort is directed towards big state government departments and not small statutory offices such as my own. My expectation is that we will get that strategic framework, if I can call it that, or that budget framework, which might have it in, for example, expectations in terms of savings. If the Treasurer was going to do that, I am expecting that that would arrive in the office sometime in July.

**Mr BYRNE:** So what you are saying is that 10 per cent, roughly, of your 55 FTEs—

**Mr Clarke:** Is temporary.

**Mr BYRNE:** Is predisposed to a direction that may come on the basis of temporary cuts, let alone permanent FTEs, and you have received no direction or advice from your oversight regarding what needs to be done with those positions?

**Mr Clarke:** No, I have not received any direction. I am still a budget funded agency, though, and if there is a strategic budget framework that is eventually delivered to me, then I will have to try to construct my budget within that framework, obviously. The other opportunity does exist in the office, though, which is one that I have had preliminary discussions about and that is the potential, for example, if there are officers displaced across the broader public sector, for whether there would be opportunities in my office for those people to be employed. I think those discussions have actually been had with a range of agencies. I do not think they are exclusive to my office. So I have participated in those discussions and I have said that we are open to a continuation of those discussions. So if there is, for example, a temporary vacancy in my office, which might be filled by a permanent employee of some other state agency who is displaced if they have the skills to do the job, then I am certainly open to that discussion. But it has not been presented to me at this point in time.

**Mr BYRNE:** The other issue, again around the issue of efficiencies, is your program of interacting with regional areas, which is quite meritorious in its own right. Has that been impacted by any of the directions regarding travel limitations or travel reductions, entitlements and so forth?

**Mr Clarke:** The limitations in travel have been applied in my office, but not to operational travel. So travel for the purposes of conducting an investigation, conducting training et cetera has not been impacted. The only travel that has been impacted is either mine or the deputy's to engage with other Ombudsman's offices across the state. For example, we were both planning to travel to Darwin in July. We have withdrawn from that travel to Darwin. That is just by way some small example.

**Mr BYRNE:** Thank you.

**Mr JUDGE:** In relation to your comment before about your recommendations and departments not necessarily implementing them, is that information reported—as to what recommendations are and are not implemented—and fed back into government?

**Mr Clarke:** In specific terms, there is not yet a process. There is not currently a process for me to report to the parliament, for example, or to the government at large, or to this committee about specific recommendations. I have escalation powers under the act which allow me to escalate those things if I



believe that the chief executive has not been appropriate or been supportive in terms of the recommendations. So I can escalate it and that is really escalating it to the minister, escalating it to the Premier and ultimately escalating it to the floor of the parliament if I believe that that is necessary. That is not a practice that is common in the office.

**Mr JUDGE:** Do you think it would be beneficial in any way if those recommendations that were not implemented were fed back to the committee so that we could have a collective appreciation of what is not being done?

**Mr Clarke:** There are some limitations on what I can legally do. In particular, there are privacy provisions and confidentiality provisions in the act, specifically section 92, which basically tells me that I have to conduct my investigations in a confidential way. If that were to change, obviously, there would be an opportunity to do that. I am quite happy to provide as much detail as I can to the committee about specific recommendations, particularly if they do not relate to private citizens. I think there is an issue if they relate to the private citizens. But if it is particularly our own initiative investigation that I conduct with an agency or a council, the potential for me to brief the committee on recommendations in that space, I think, is quite reasonable and I would be happy to do that.

**Mr JUDGE:** I suppose where I was going with that question is that it was mentioned by the Acting Chair previously in relation to the recommendation for children in need of care. If that was a matter that we were aware of, it might be beneficial to this committee.

**ACTING CHAIR:** Thank you. I was just going to go back to that. So the recommendation from 7B is that the department has accepted your recommendation and advise that it is currently reviewing a legislative and policy framework that underpins the provision of out-of-home care for children with a disability. I believe there will be a significant financial implication of this to the budget. The budget is scheduled for September. My question is: if the department has simply acknowledged that and you have not had any follow-up about further information to flag that there might be something planned, what do you see as the next step? To be blunt, I believe this is a real issue that governments have successively said, 'We do not want to know about it.' Your recommendation really hits home with many families and I am keen to see how we can progress that in a responsible way. My question is: where do you see the next step to progress this?

**Mr Clarke:** I take the department at face value at the moment when they say they are actively considering it. Unless my colleagues have any advice to the contrary, we believe that they are actively considering it. One of the challenges, of course, in that space is that we do not control the legislative time frames et cetera. The government of the day controls those things. So if, for example, the agency said to us, 'Yes, the government accepts that they want to make some changes. However, the bill is not going to be in until the middle of next year,' there is little we can do about that other than say, 'We have agreement from the agency and they are progressing it.'

It potentially falls to me to voice dissatisfaction with the speed of that, if I wish to do it. Certainly, that is open to me to do. At the end of the day, what I try to do is balance that with maintaining a positive relationship with the agency so that if they say they are doing something and we can see that they are moving in that direction, we provide as much support to the agency to progress it as we can. But ultimately, we cannot determine that, except by those escalation processes that I alluded to before—if I potentially write to the minister, or the Premier, or to the Speaker expressing concern about the implementation of a recommendation. That would be an unusual step to take where an agency was demonstrating some commitment to progress.

**ACTING CHAIR:** So what is your plan now? So you have made these recommendations. It is almost to the end of June. What do you see as the next step?

**Mr Clarke:** At the moment we are awaiting—Peter might correct me if I am wrong here—a timetable from the department in terms of when they expect this matter to be dealt with. They have accepted it, as you can see, but we are now awaiting advice as to when they think it might progress.

**Mr Cantwell:** I can answer that. This particular recommendation is subject to a bimonthly implementation report to our office and we last had contact with the department approximately three weeks ago. So it has been followed up consistently in the last couple of months. It has reached a certain stage in relation to, as I understand, the preparation of legislation. That is where it is at and we are waiting for a further report from the department. So we have had several time frames with this particular recommendation and meetings with the department.

**ACTING CHAIR:** Thank you. There is no doubt that many people will be watching this space, if I can say that, and no doubt in a respectful way.

**Mr WATTS:** The escalation powers are discretionary and held by you; that is my understanding.

**Mr Clarke:** That is correct, yes.

**Mr CHOAT:** Just with regard to question on notice No. 14 and the reference is to agencies that may be highly represented in terms of issues on a consistent basis, you did outline that your staff met regularly with those agencies. What steps are taken, though, if you are consistently having to go back? In terms of levels of management, for example, is the relevant director-general informed that there is a recurrent issue that seems to be popping up?

**Mr Clarke:** There are a couple of issues in that space, if I might expand on those a little bit. One is that some agencies attract a great deal of complaints by the sheer nature of their work. For example, agencies like Transport and Education, it would be no surprise to the committee that they generate quite a number of complaints. So for those agencies that generate quite significant numbers of complaints we monitor that overall volume of complaints and report that back to the director-general's delegate in the office. I tend not to report that directly to the director-general; we have a delegated person who is nominated by the director-general and we deal with that person directly. We meet with that person and make sure they understand our position on those recommendations. For example, if the number of investigations being undertaken or referred by us is growing, we will seek to look at the process about how efficiently that is handled.

In recent times—in perhaps the last six months in the office—we have initiated a significantly more proactive approach to referring complaints directly to agencies for their attention. Previously, my office's approach would be to inform. Say, for example, someone had approached us with a complaint that had not yet been finalised—had not yet been through all the processes in the agency—we would tend to just point that out to them, tell them that they have to go to the agency, provide them with the contact details and send them off.

We know from our research that not all people went back to the agency to seek to get resolution. In fact, perhaps half or more of those who we provided that advice to did not follow up with the agency. So we have put in a more proactive approach now. We will refer matters directly, with the complainant's approval, to an agency. I think in recent times that is probably about four or five times as many as we have ever done before.

**Mr Cantwell:** Absolutely.

**Mr Clarke:** So we are now trying to facilitate a much more direct relationship between our office and agencies in terms of their responses. What that is tending to do with agencies is that, when a referral arises with us which is specific to a complaint—I will not say that they give it greater attention, because I do not know that to be the case; they may well be just giving it exactly the same attention as every other complaint gets—we obviously do that in a way that, if necessary, if we think it is warranted, we will follow up that complaint. There are a number of them which we have an active monitoring on even though they are not investigations that we are undertaking. We refer them to the agency and ask for a progress report in a month's time, or something along those lines.

**Mr CHOAT:** Like a follow-up.

**Mr Clarke:** There can be a follow-up. We do not do that all the time; it is just resource intensive to do that. I am not saying to the committee—and please do not misunderstand that we do it all the time; we do not. We do that where we can and where it is efficient to do it and where the complainant allows us to do it. Obviously, without the complainant's approval, we cannot do it and we do not and then we simply tell the complainant, 'Here is the contact. You can undertake that on your own behalf.' We think that is a positive step for complainants and it is tending, I think, to result in, at least those things that we have monitored, getting quite substantial and satisfactory responses from agencies in that space.

**Mr CHOAT:** Just on that note—and I do take into account that, as you said, half the people or more to whom you say, 'Look go back to the agency' do not do it and that could be through a sense of frustration—do you find that you doing the referral on behalf of that complainant has a more positive impact for the complainant in terms of, let us say for lack of a better phrase, the department takes it more seriously if it is coming from you as opposed to Bill Jones? Is there any evidence of that?

**Mr Clarke:** I think, to be honest, it is too early in the process for us to be able to draw those conclusions. We have really had the process in place for not more than about six months and in that time frame, as I said, we are getting quite positive feedback on its effectiveness. We are quite satisfied, for example, with the number of now much more satisfactory responses to complainants and we are getting quite positive feedback from those complainants. I would still have to say it is early days for us in that space and perhaps in 12 months time I might be able to give a more significant response. I will ask Peter to make a comment because he has responsibility for that area.

**Mr Cantwell:** We are certainly seeing an improvement in the quality of responses coming back from agencies. As part of what we have been doing, we have given state government agencies and councils a template or headings to follow in relation to what their review report should look like and that has certainly increased the quality, I think, of the work that has been done—what we are seeing certainly—and we have had a lot of complainants come back to us and tell us that the matter has been resolved because of the thoroughness of the internal review that has now been undertaken. Although we do not have any sort of detailed evidence on that, certainly I think the fact that we directly refer and we can directly refer electronically to a specific complaint portal, we know that it gets there. And now that we know that it gets there, instead of a complainant having to take it there, I think it has certainly increased complaint management review generally in the public sector and in local government since we have been very proactive in that space.

**Mr Clarke:** Can I add that one of the objects for the Ombudsman's role within the public sector is to improve administrative practice across the public sector. That is in parallel with our complaints management and investigations process. As I explained earlier, we have quite an extensive training

program in state agencies and councils to train officers. We see this process as being another brick in that wall, if I can use that analogy. So that we train people to do things in what we think is an appropriate way. We are now providing, if you like, more momentum for them to implement that training and we are providing models in terms of how they should respond. We think that is a more comprehensive process than has been there in the past.

**ACTING CHAIR:** Can I congratulate you on taking that initiative. I think it falls right into the government's agenda of cutting red tape. This goes to the heart of trying to cut that red tape bureaucracy. In my electorate of the Sunshine Coast significant infrastructure impacts on many, many residents and many have ended up in your office. There is no doubt about that whatsoever. Can I be so bold as to preempt that the outcome of this short circuiting, whereby you are now going to refer where possible those complaints direct to the agency, will have an amazing result. People who have been in my office have told me that initially the advice from your office was you have to go back and formalise the complaint to the agency. There is anger and frustration. They really see you as the last resort. If you can, where appropriate, take that complaint and refer it directly it will short-circuit and remove so much of that anxiety—that 'Oh, it's so hard'. Can I say well done. I think it is really good.

**Mr JUDGE:** That brochure that is going out will assist as well, am I understanding that correctly?

**Mr Clarke:** As I said, this community perspective is part of that response which is about informing the community about their rights. It is not my job or our office's job to tout for complaints. I am not seeking to do that.

**ACTING CHAIR:** I don't believe you have to.

**Mr CHOAT:** No.

**Mr Clarke:** We get more than enough entertainment from the complaints we already have, but I do think at large in the community there is a reasonably significant not misunderstanding I just think it is a lack of awareness of what processes are in place for having complaints dealt with. We also seek, as part of this process, to inform people about how they should initially make their complaints; some of those instances the chairman alluded to where they come to us, think that we will do certain things and then we say actually sorry we cannot just yet, it is too early for us to be involved. We seek to short circuit those things as well so that we provide the information to the complainant directly. The other thing we are doing in that space is we have made some changes to our website and to our telephone on-hold message in recent times as well. Again it is about managing our workload.

As I alluded to, we have a continuous increase in the number of contacts and number of complaints in the office. The complaints are, by their nature, work for us and they are core work for us and we will deal with those. Many of the complaints though, particularly what we call OOJs, out of jurisdiction contacts, in the past have soaked up significant proportions of resources. Mr Smerdon pointed to this in his report. Earlier on in the year we put in place firstly a change to our website so the front page of the website now basically says, 'Do you want to make a complaint? Go here.' When it is, 'Go here', it takes people to a series of self selecting menus so that if your complaint is about a telephone service, go to the Telecommunications Ombudsman, if it is about a banking service, go to the Financial Services Ombudsman. So we seek to direct people much more actively than what we have done in the past in the office.

We also changed our telephone on-hold message about a month ago I think it was and, indeed, if I can just quickly refer to some stats I have got here, we have received about a 38 per cent decrease in the calls received in the office and a 61 per cent drop in the out of jurisdiction cases which used to come in on the telephones. What that means, we hope, is that people are not getting less service, but that they do not have to sit on the phone and wait for one of our people to pick it up for a start, and typically they would have to wait some time to do that, but at the same time it also frees up staff within the office to deal with more complaints based work rather than out of jurisdiction advice. Both of those things have been put in place. They seem to be getting the outcome that we expect of them, which is to give people more timely advice, still allowing them to take their complaint to where they need to take their complaint to but they do not have to wait for someone in the office to give them that advice verbally. They have always been able to get it on the website, but lots of times people just want to make one phone call and if they make a phone call complaining about government they will ring us first almost universally even though there are a suite of industry based ombudsmen.

Many of the complaints or the contacts we get are outside of jurisdiction and they take time. Even if it is only four or five minutes for a phone call, those four or five minutes a day and the disruption that is associated with taking a call and the lag time and the lead time and making the record of the phone call and all those sorts of things mean that the reduction has led us to the situation where many of the email type complaints are now dealt with within 24 hours of receipt in the office and many of the written complaints in fact are dealt with within 24 hours of receipt in the office. That is the initial assessment. The assessment process is particularly of concern to me because that assessment process decides really whether we are going to take the matter on or not. I think a complainant's most significant issue in the first place is to find out whether the Ombudsman is actually going to do something for them, because if we are not going to do something for them for the various reasons that that can be, they may then seek to go and see their MP or they will seek to go to another agency or they might initiate legal action. They can do a whole range of things. That timeliness of that initial response is really quite important for the service that goes to citizens so we are trying to do that as well.

**ACTING CHAIR:** Just to clarify, where you refer them direct to the agency before the complaint has been exhausted, that does not need amendment to legislation?

**Mr Clarke:** No.

**ACTING CHAIR:** In relation to the issues which are out of jurisdiction, do you see a reasonable opportunity for a request for amendment to give you additional powers in some of those areas that currently you do not have the jurisdiction for, or do you believe that the matters that are outside your jurisdiction at the moment are able to be adequately dealt with by those other ombudsmen?

**Mr Clarke:** The only matter that I currently have under active consideration for a change in jurisdiction would be the application of the Ombudsman's powers to government owned corporations. At the moment we have very limited access to GOCs. The committee may recall that the CMC's legislation was amended to incorporate access to government owned corporations. I have a program of legislative reform which was provided to Mr Smerdon which he broadly endorsed and in that program of legislative reform is a reference to government owned corporations coming within the jurisdiction of the Ombudsman's office. Airport Link is a pretty good example. For example, the review on Airport Link, for us to be able to speak to some people who were interviewed as part of that process we had to rely on some different provisions in the Ombudsman Act to give us access to those people. Ultimately they agreed to participate so it did not diminish the report, but that would have been unnecessary if the Ombudsman had jurisdiction over government owned corporations.

**ACTING CHAIR:** Are you receiving advice from the department that they are favourably looking at that? Where is that at the moment?

**Mr Clarke:** At the moment it is still included in the strategic review recommendations in Mr Smerdon's report. I have submitted that program of legislative reform to the director-general of the department and asked him to identify where possible a vehicle for the progression of those legislative amendments. We are still in discussions with the department about that?

**Mr WATTS:** In terms of investigations that you have commenced, how does the budget process work for that and what then prompts you to do an own-motion investigation?

**Mr Clarke:** Own-motion major investigations in the office are typically handled by our major projects team. We have a small team who are dedicated to the conduct of those major investigations. It is not really subject to a budgetary consideration, it is subject to the capacity of that team to be able to undertake that work. Now, you might say well, yes, you could add people to that team or take them away from that team and that is true, I could. At the moment that team has been resourced as four people within the team and in relation to the ongoing work of that team, we set priorities for the team and give them their work according to those priorities. The process of selecting an own-motion investigation comes from a number of sources. One is the analysis of our complaints data. If we see patterns in the complaints data we may look at that and say, 'Hold on, there is something in this. We need to initiate an investigation in our own right'. If there is a particular contentious issue in the public arena we may decide to initiate an own-motion investigation in that space and, of course, if we have a referral we will undertake an investigation on referral from the parliament. Those things tend to be how we make those decisions.

At any given time the front-end process, if I can describe it that way, for an own-initiative investigation is quite comprehensive because the level of resourcing that is necessary to complete an own-initiative investigation of six to 12 months duration, and some of them more—Hendra, for example, was very substantial—is a big investment. So we tend to do quite a lot upfront before I initiate. So we will do an investigations phase and that may well determine that either some other agency in the public sector is looking at that, the agency themselves are looking at it and we might just satisfy ourselves with the work they are doing and have a monitoring role or a watching role to see whether that turns out how we expect it to turn out. So there is quite a lot more own-initiative work going on that is, if you like, not apparent because it does not result in a public report because we have done that work and pre-empted it, so to speak, and have been satisfied with what has been going on across the public sector. Most of that is invisible to the public at large and, indeed, to the committee.

**ACTING CHAIR:** If members do not have any further questions I invite them to stay with us for morning tea. Thank you, Mr Clarke, and your staff for spending time with us this morning. The committee secretariat will provide you with a copy of the draft transcript once it is available for you to make any corrections if necessary. I declare this section of the meeting closed.

**Committee adjourned at 10.30 am.**