
Strategic Review
of the
Office of the Queensland Ombudsman

Report by the Reviewer

Simone Webbe

January 2018

24 January 2018

The Hon. Y. D'Ath MP
Attorney-General and Minister for Justice
1 William St
BRISBANE QLD 4000

Dear Attorney-General

Strategic Review of the Office of the Queensland Ombudsman

I am pleased to provide you with my Report on the Strategic Review of the Office of the Queensland Ombudsman under section 85(4) of the *Ombudsman Act 2001*.

I record my appreciation for the Ombudsman's cooperation in the Review and for the many contributions by internal and external stakeholders during consultations.

The Strategic Review confirms the Ombudsman's essential role in the Queensland accountability and integrity system; commends the Ombudsman's ongoing successes against performance measures in dealing with complaints; and identifies operational and structural opportunities in advancing its other role under the Act in helping improve the quality of administrative practices and procedures, and generally in the economic, effective and efficient performance of the Ombudsman's functions.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Simone Webbe', written in a cursive style.

Simone Webbe
Reviewer
Strategic Review of the Office of the Queensland Ombudsman

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EXECUTIVE SUMMARY

The Strategic Review of the Office of the Ombudsman is required by the *Ombudsman Act 2001*. The last Strategic Review was five years ago and the next Strategic Review is due in seven years following amendments to the Act in 2017.

The Reviewer is required to assess and make recommendations about the Ombudsman's functions and whether those functions are being performed economically, effectively and efficiently. The Reviewer is also required to examine all structural and operational aspects of the Ombudsman as well as its relationships with external stakeholders.

The Reviewer has conducted a thorough review including undertaking an extensive consultation strategy with internal and external stakeholders to ensure a comprehensive consideration of current issues.

The Reviewer has concluded that the Ombudsman's role and functions in investigating administrative actions of agencies and in assisting agencies to improve the quality of administrative practices and procedures remain essential, and well-served, elements in the Queensland accountability and integrity system.

Furthermore, the Office of the Ombudsman has delivered ongoing success against its Service Delivery Statement performance measures, meeting and exceeding all its targets measuring efficiency and effectiveness in dealing with complaints. After five successive years since the last Strategic Review in which the Office dealt with all complaints within 12 months, no backlog in complaints for the Ombudsman is the new normal.

The Reviewer has inquired into the factors involved in these successes as well as potential risks to make recommendations to help anchor those successes for the future.

Some operational and structural opportunities have been suggested also for the Office in advancing its other role under the Act in helping improve the quality of administrative practices and procedures.

The Office of the Ombudsman enjoys productive and positive relationships with agencies and is well-respected by agencies for its professionalism, fairness and independence.

LIST OF RECOMMENDATIONS

Recommendation 1 (p.25)

The Ombudsman's role and functions in investigating administrative actions of agencies and in assisting agencies to improve the quality of administrative practices and procedures, are endorsed as essential elements in the Queensland accountability and integrity system.

Recommendation 2 (p.28)

In the Ombudsman's Service Delivery Statement as part of the annual reporting and budget cycle, a time target of 12 months from commencement to completion of an own initiative investigation should be included as a service delivery measure.

Recommendation 3 (p.28)

The Ombudsman's suggested legislative clarification to enable preliminary inquiries with agencies before commencing an own initiative investigation, is strongly supported.

Recommendation 4 (p.29)

Active engagement with agencies as early as practicable for own initiative investigations and other complex or systemic investigations, is supported.

Recommendation 5 (p.29)

The Office of the Ombudsman should formalise an integrated whole of Office approach for identification of issues which includes, encourages and facilitates the contribution of every staff member in recognition of the small size of the Office and the level of facility that all officers have in their various roles close to issues for contributing reasonable suggestions for consideration. The mechanism for contributions should be quick, easy and formally connected to the decision-making process.

Recommendation 6 (p.29)

The Major Investigations Team, in support of the Systemic Issues Assessment Committee (SIAC), should maintain the whole of Office master list of potential issues for all major and own initiative investigations, rather than separate lists being managed internally.

Recommendation 7 (p.30)

Development and approval of criteria to guide decision-making on when to commence (preliminary inquiries) or an own motion investigation and the process within the Office for that decision-making, is recommended.

Recommendation 8 (p.30)

The Ombudsman's suggestion to amend the *Ombudsman Act 2001* to insert a provision(s) which gives the Ombudsman a formal discretion, following consultation with the agency, to refer a matter to an agency for investigation with a report-back mechanism about the results of action taken, is supported.

Recommendation 9 (p.33)

There should be no fee charged to lodge a complaint with the Ombudsman. Access to the Ombudsman should also remain free to agencies for its advisory service and the current charging for accessible and low cost, but high quality training, is endorsed.

Recommendation 10 (p.33)

The Ombudsman is encouraged to continue to seek proportionate responses within cases particular to the facts of the individual case and to ensure on a regular basis that relevant officers are familiar with the Operational Instructions in this regard and are provided with opportunities to share experiences and learnings to calibrate and regularise the application of the Operational Instructions within the s.23 discretion.

Recommendation 11 (p.33)

The Ombudsman is encouraged to continue to consider whether there is a need to finish an investigation, even without an informal resolution, and whether enough impact has been achieved in proportion to the complaint for the matter to be finalised for being unnecessary or unjustifiable to continue.

Recommendation 12 (p.34)

The Ombudsman is encouraged to continue to discuss the “minor vs major” balance in his regular meetings with agencies to–

- identify any demand management opportunities to assist in addressing more minor matters before they become complaints to the Ombudsman;
- include feedback as part of the Ombudsman’s own ongoing informed calibration of the exercise of discretion under s.23; and
- keep dialogue and understanding open with agencies in explaining the merits of an investigation where differing perspectives arise.

Recommendation 13 (p.34)

The current community liaison objective and activity is supported in seeking to strike the right balance between informing of review rights and advising that those rights are subject to an assessment process.

Recommendation 14 (p.35)

The Office of the Ombudsman should continue a high priority for early resolution of complaints using informal mechanisms to save time and cost such as ensuring that phone contact in the first instance is preferred over written correspondence of either email or letter where practical and appropriate including a consideration of when it is suitable to the agency’s needs.

Recommendation 15 (p.36)

The Preliminary View letter initiative is supported and the Ombudsman is encouraged to consider agency feedback and understanding of that process, and the preferences generally for prior consultation on draft findings and recommendations in investigation reports and complaints management system reviews to assist in

aligning mutual expectations of the processes involved, and ensuring that the final report is informed by the agency's feedback on any administrative or legislative feasibility concerns in implementation.

Recommendation 16 (p.36)

The Ombudsman should be available when requested to advise the agency on the effectiveness of its implementation of particular rectifications (such as the re-wording of documents) without the need for a formal follow-up review process or any compromise to the Ombudsman's independence. In some cases, the Ombudsman may consider it appropriate to proactively offer its early advice and review on the implementation of particular rectifications in decision letters.

Recommendation 17 (p.37)

In addition to the regional visits program which seeks to actively engage with local councils, the Ombudsman should consider additional measures to keep in regular contact and information-sharing with local councils to ensure the Ombudsman's objectives, processes and requests are clear so that local councils are able to consider any adjustments in internal council processes that may be possible in appropriately managing risks with proportionate responses and avoiding unnecessary costs to the system.

Recommendation 18 (p.39)

The Ombudsman is encouraged to consider additional helpful strategies in support of agencies improving administrative practices and procedures through, for example, proactive knowledge management such as examining common areas of complaints to identify suitable opportunities for proactively reminding agencies in advance of known risk events of good practice and learnings from previous investigations.

Recommendation 19 (p.42)

Efforts by the Ombudsman to maintain engaged and active relationships with other external oversight bodies is supported. The Ombudsman should also review the Register of Liaison Agreements for the Office of the Ombudsman to update arrangements with other bodies as considered necessary in supporting the efficient and effective performance of the Ombudsman's functions.

Recommendation 20 (p.43)

Legislative amendment to enable the Office of the Queensland Ombudsman and the Queensland Audit Office to share complaints and investigation data and other systemic information in confidence is recommended, and should be supported by a formal Memorandum of Understanding including detail of the permissions, access protocols and confidentiality arrangements.

Recommendation 21 (p.43)

Ongoing free promotion of the complaints landscape presentation by the Office of the Ombudsman within communities and with local governments, including making it available on the website, is supported.

Recommendation 22 (p.44)

Reintroduction of the proposed legislative amendments in relation to the Ombudsman that were contained in Part 6 of the *Crime and Corruption and Other Legislation Amendment Bill 2017* of the 55th Parliament is strongly supported.

Recommendation 23 (p.44)

The Ombudsman should consult with agencies who also have investigative or monitoring powers in complex or difficult jurisdictions (e.g. juvenile detention) to ensure alignment of expectations in the scope of the Ombudsman's investigations and to avoid any unnecessary burden or duplication of effort for all parties. The Ombudsman should consider then entering suitable formal cooperative arrangements with relevant agencies to support efficient and effective coordination of outcomes.

Recommendation 24 (p.46)

An integrated Risk Management Framework for the Office of the Ombudsman is recommended. The broader remit for the Audit and Advisory Committee as set out in its Charter, and as reflected in the recently endorsed Strategic Internal Audit Plan, is supported and presents an opportunity for the Office to ensure the currency of an integrated risk management framework that includes a Register of Risks submitted for review in accordance with the Committee's Charter concerning risk management.

Recommendation 25 (p.47)

Where memoranda of understanding or relevant exchange of letters do not already exist, the Ombudsman should consult with individual agencies within its jurisdiction (that have substantial ongoing contact with the Office) to agree and exchange a written record of the mutual expectations and operational protocols intended for efficient and effective dealings.

Recommendation 26 (p.47-48)

The following principles should be included in considering new roles for the Ombudsman:

- It would be an inconsistent role for the Ombudsman if the new role would involve the possibility of Ministerial direction. There should be no compromise to the Ombudsman's independence which is fundamental as a parliamentary ombudsman.
- The new role should be a suitable fit in terms of the skills and mission of the Office of the Ombudsman.
- The new role should be adequately supported by corresponding resources, including for corporate services' support and in sustaining governance costs.

Recommendation 27 (p.49)

Suggested amendment to s.10(c) of the *Ombudsman Act 2001* to give the Ombudsman jurisdiction over non-government organisations and other providers of contracted service delivery is not supported at this time until its inclusion in a more comprehensive whole of government review of the accountability framework for contracted service-providers.

Recommendation 28 (p.52)

The Ombudsman's commitment to reducing out of jurisdiction numbers, improving business processes like automated telephone and online redirections is commended.

Recommendation 29 (p.53)

The Ombudsman's suggested clarification of s.16(2)(a) in the *Ombudsman Act 2001* to better define jurisdiction for "deliberative functions of tribunals" is supported.

Recommendation 30 (p.53)

Legislative amendment of the *Ombudsman Act 2001* to require at least that the Ombudsman be consulted prior to any person using the name "Ombudsman" similar to the New Zealand provision, or alternatively, similar provision to South Australia in not permitting use, is supported.

Recommendation 31 (p.55)

The ongoing program of client surveys is supported and should properly inform ongoing client service improvements.

Recommendation 32 (p.55)

The Office is encouraged to integrate significant issues in client feedback into the recommended Risk Management Framework for planning and review of service and operational improvements suggested by the survey feedback.

Recommendation 33 (p.64)

The Ombudsman should review and approve updated procedures managing the practice of direct referrals and direct referrals with report back, in consultation with staff and agencies to achieve improved efficiency, effectiveness and economy through–

- clarity of purpose, roles, thresholds, equity, procedures and client service involved;
- liaison protocols with agencies;
- accordant community liaison, external communications and education messages;
- the introduction and re-introduction of alternative client service initiatives such as fact sheets, phone transfers, and provision of enhanced information; and
- support to staff with effective tools to readily access the applicable information and protocols.

Recommendation 34 (p.64)

Recent rigour in reducing the volume and minor nature of direct referrals is supported. A clear formulation to support a consistent application of thresholds before a direct referral which responds to risk, and genuine need of complainants to be assisted in equitable access to administrative justice, is recommended. If the Ombudsman considers, on the request of an agency with a substantial volume of matters, that it is warranted to apply a lower threshold for direct referrals for that agency specifically, then this agreed variation of the threshold should be specified in the liaison protocol and should be scaffolded by implementation of the updated

procedures and communication templates to avoid confusion of roles and expectations.

Recommendation 35 (p.65)

On self-referrals and direct-referrals, the Ombudsman should inform the complainant that in addition to the provision where the Ombudsman refuses to investigate a premature complaint, the Ombudsman may also refuse to investigate a complaint under s.23 of the *Ombudsman Act 2001* for other reasons such as where the complaint is trivial or where it is unnecessary or unjustifiable to investigate and that no decision has been made about those matters because the complaint is still premature.

Recommendation 36 (p.66)

Amendment of Schedule 3, s.12 of the *Right to Information Act 2009* to include s.92 of the *Ombudsman Act 2001* is recommended.

Recommendation 37 (p.71)

Strategic planning process should review performance measurement impacts on agencies, complainants and internal processes and behaviours, to consider opportunities for where more balance can be achieved between qualitative considerations and what can properly be measured by time. Such performance measurement planning should include consideration of all aspects of the Ombudsman's role, in addition to dealing with complaints, as per Recommendation 2 and Chapter 4.

Recommendation 38 (p.75)

The intake officers should have a formalised suite of options readily available to them for respite and support according to need and circumstances at the time. The options could include supported time out, defusing with immediate support, formal and informal group or individual debriefing options and one-on-one support sessions such as the Employee Assistance Program (EAP). There should also be follow up protocols in place and practised.

Recommendation 39 (p.75)

Current efforts to consider a network-enabled resource for enquiry and search functions should be supported as a high business need priority to provide quick and responsive access to procedures, telephone scripting for key concerns, quality jurisdictional information that includes up to date contacts and available remedies for that other entity.

Recommendation 40 (p.75)

Research in MIT and a mentoring system with Principal or Senior Investigators for example such as note-taking for investigation interviews and research should be offered to Enquiry and Assessment Officers to broaden experiences and contribution opportunities across the Office and offer professional respite from complaints intake function (commitment may be rostered).

Recommendation 41 (p.75)

More reliable communication processes to consider and embed procedural changes should be implemented.

Recommendation 42 (p.75)

The Inductions checklist and package should be reviewed and updated and proper induction should be implemented prior to inclusion in phone rostering. Quality assurance to this risk should be ensured.

Recommendation 43 (p.76)

Operational Instructions for the Office of the Ombudsman should be updated regularly approximating review dates or following jurisdictional or procedural changes.

Recommendation 44 (p.76)

Provision of a child safety jurisdictional changes training update by IRU for RAPA is recommended and is an example of ongoing opportunities of working across boundaries in sharing knowledge to benefit the efficiency and effectiveness of another team that should be continued.

Recommendation 45 (p.78)

The delegation for signing assessment decisions by AO6 investigators is supported.

Recommendation 46 (p.78)

A working party of staff representatives should be convened to advise the Ombudsman Management Group (OMG), in writing, of the specific delegations and practices of confusion, disparity and missed opportunity. The OMG should consider that list, consult further with staff as may be necessary, and make recommendations to the Ombudsman for the Ombudsman to consider.

Recommendation 47 (p.79)

It would be useful in productivity terms for the Assistant Ombudsmen to discuss their different approaches and agree to elements of a common Office style for drafting correspondence, and clearance expectations, for a Correspondence Protocol for the Office. Supervisors should ensure that their writers are familiar with the Office Style Guide and the new Correspondence Protocol on an ongoing basis. The Style Guide should be included in the Induction Program.

Recommendation 48 (p.80)

The Ombudsman is encouraged to develop a “shared learning” strategy to connect agencies and common issues learned from investigative outcomes in improving administrative practices and procedures. Confirmation of permission, or legislative clarification or amendment, enabling the implementation of the strategy such as casebook material and practitioner discussions in a timely and ongoing way needs to be pursued.

Recommendation 49 (p.82)

The Office should be commended for its excellent training program. Given the high quality programs that the EET can deliver, the Office is encouraged to be innovative in exploring more potential for beneficial impacts in quality administration such as agency partnerships for tailored shorter induction programs, or online resources and training packages. The Office continuing to target engagement with agencies for tailoring programs generally, is supported.

Recommendation 50 (p.83)

The Office continuing to –

- revise/improve the CMS review process including simpler/shorter reporting to be able to conduct more reviews (efficiency);
 - invite agencies to provide feedback on CMS review process (effectiveness and efficiency); and
 - seek more economies in coordination with other services regionally (such as training program and for public interest disclosures),
- is supported.

Recommendation 51 (p.83)

Publication of common results/trends across CMS reviews to help agencies to continually improve CMS (effectiveness) is supported.

Recommendation 52 (p.85-86)

The following measures nominated for improvements in efficiency, effectiveness and economy are supported:

- Greater targeted direct engagement with key community organisations (effectiveness);
- Introduce Aboriginal and Torres Strait Islander community engagement liaison role (as part of Manager, EET role) to encourage and help community organisations directly and easily access Ombudsman for information/advice (effectiveness);
- Revise and update Ombudsman community perspective subscriber database with key community organisations (effectiveness);
- Better coordination and delivery of Communication and Engagement Plan in conjunction with other services (economy and efficiency);
- Improve Office community engagement website information and resources (effectiveness); and
- Greater direct engagement with south-east Queensland Members of Parliament electorate offices (effectiveness).

Recommendation 53 (p.86)

A business case assessment examining the need and opportunities for a social media strategy to engage with target communities is recommended.

Recommendation 54 (p.87)

The Office of the Ombudsman is to be commended for the efficient and effective adoption of this new PID oversight role, implementation of new database, and the high praise and gratitude expressed for PID advice and assistance.

Recommendation 55 (p.87)

The Ombudsman is encouraged to include a PID management action template in the PID process guide for further assistance to agencies following stakeholder feedback.

Recommendation 56 (p.88)

Collaboration between PID team and EET in conducting training regionally, practitioner support opportunities, monitoring and reviewing roles, and administration support to achieve enhanced efficiencies, effectiveness and economies, is recommended.

Recommendation 57 (p.90)

The Ombudsman's suggested amendment to s.76 of the *Ombudsman Act 2001* to ensure that work experience students and participants in rehabilitation schemes are regarded as "officers" to ensure they are covered by other work arrangements under the Act, particularly secrecy obligations under s.92, is recommended.

Recommendation 58 (p.92)

The significantly improved staff survey results overall for the Office of the Ombudsman should be acknowledged and the Ombudsman Management Group executive be encouraged collectively to continue workplace improvements as informed by the latest results.

Recommendation 59 (p.93)

More communication opportunities for management messages and across teams is recommended to assist clarity and commitment in the workplace such as changes to procedures, workload allocations, recruitment and selection.

Recommendation 60 (p.94)

The Ombudsman should consider alignment of the Workforce Capability Plan for the Office with the Public Service's Commission's contemporary capability frameworks and strategies, including the Leadership Talent Management Strategy and the Workforce Capability Success Profile. Specifically, an updated workforce planning framework for the Office can address consistency in selection and recruitment expectations and language, timing of process, selection panel representation, appropriate use of selection strategies, candidate feedback, retention and succession strategies.

Recommendation 61 (p.95)

The Office of the Ombudsman should prepare a training needs analysis which integrates with the performance management framework and includes due consideration of employee needs and goals with workforce capability planning. The training needs analysis should include consideration of advanced negotiating and

mediating skills, emotional intelligence and resilience training, and professional development needs from individual achievement plans.

Recommendation 62 (p.95)

Formalising the “go to” mentor for induction support when starting in a new role and ensuring internal manuals and procedures are up to date, and consistent with the Operational Instructions, is recommended to ensure efficient and effective commencement in new roles.

Recommendation 63 (p.96-97)

Human resources policies, practices and procedures should be reviewed to ensure they are consistent with contemporary best practice in human resource management and innovations and follow the same high standards for the public service. Greater use of CaPE services through the Public Service Commission and some corporate support from the Department of Justice and Attorney-General should be explored in order to enhance the small establishment providing the human resources advice to business areas where there is need for specific support in–

- planning and reviewing employee performance;
- stress management, emotional resilience and wellbeing; and
- soft skills coaching for supervisors and managers, e.g. in managing poor performance.

Recommendation 64 (p.99)

To achieve significant efficiency, effectiveness and economies in human resource management of the staff of the Office, the Ombudsman should consider seeking legislative amendments for appointment of the staff of the Office of the Ombudsman under the *Public Service Act 2008*, and then employed by the Ombudsman, in a similar manner and with similar readily available protections as the staff of other Ombudsmen in Australia.

Pending the relevant amendments to the *Ombudsman Act 2001* and the *Public Service Act 2008* to facilitate this new employment framework, the Ombudsman is encouraged to–

- liaise with the Public Service Commission to arrange for notices and other information flow to go to the Office directly notwithstanding its unique status outside the public service legislation; and
- liaise with the Department of Justice and Attorney-General and other relevant agencies to include the Office in networks for notices about temporary and shorter-term employment opportunities.

Recommendation 65 (p.101)

The Ombudsman’s future requests for supplementary funding across the forward estimates to support its base establishment of 63 FTEs which deliver core functions, and for scoping and implementing the necessary upgrade to its complaints management system, is supported.

Recommendation 66 (p.102)

The Ombudsman is encouraged to negotiate and formalise procurement support arrangements with a protocol clarifying available support, contacts and details with the department responsible for government procurement. The Office of the Ombudsman should ensure that the relevant Office procedures are updated accordingly to include those details in a way that is readily accessible and well known in the Office for relevant officers in the business cycle.

Recommendation 67 (p.102)

The Office should examine the efficiencies and economies in purchasing travel and accommodation services including using the whole of government travel provider, QTravel, and guidance in relation to discretionary items as appropriate, and update the travel policy and procedures accordingly.

Recommendation 68 (p.103)

It is recommended that the Information Management Steering Committee, in consultation with all business units of the Office, review the practices and use of the eDOCS system to ensure maximum storage, search, retrieval and archival performance consistent with compliance obligations. The Office of the Ombudsman should also update the resources used on the intranet and explore options for functionality to better meet Office needs.

Recommendation 69 (p.104)

A review of the Open Data Strategy is supported and supporting action plans are recommended, to ensure improved access to data, documents and other information that the Office currently holds, and in pursuance of existing right to information obligations.

Recommendation 70 (p.104)

It is recommended that the Information Management Steering Committee consider the integrated Risk Management Framework and plan the timetable for, and resourcing of necessary changes to the eDOCS file structure and retention periods according to the 2016 General Retention and Disposal Schedule.

Recommendation 71 (p.106)

It is recommended that the terms of reference for the Systemic Issues Assessment Committee (SIAC) be reviewed by the Ombudsman to focus collaboration and joint responsibility among the members to deliver resourcing solutions.

Recommendation 72 (p.111)

Following the whole of Office strategic planning, structural realignment to strategy is encouraged and should include consideration of-

- an extension of the Early Merit Assessment function and relocation with the intake area;
- parity of the Enquiry Officer's role in the intake area to ensure a suitable complement of AO4 level officers as assessed for recognition of their responsibility and complexity and analysis involved in their roles and their significant contribution to the timeliness of outcomes for the intake function

(reducing their responsibilities to maintain the AO3 level is not supported as a risk to efficiency and effectiveness and anchoring successes);

- apply mobility and cooperative governance principles to the intake of at least new AO6 appointments; and
- reallocate the communications resource to the EET principally with sharing for internal communications as and when required in planning and reporting cycles.

INTRODUCTION

1 History and Purpose of Strategic Reviews

The inaugural Strategic Review was conducted by Professor Wiltshire in 1997/98 and reported in April 1998. Professor Wiltshire's report was tabled in May 1998. In July 1999, the then Parliamentary Legal, Constitutional and Administrative Review Committee (LCARC) reported on its Review of the inaugural Strategic Review and recommended that, as a matter of priority, the Premier (then the portfolio Minister) commission an external management review of the Office of the Queensland Ombudsman.

Professor Wiltshire in his report had stressed that the strategic review was not a management review as such. Given LCARC's role in relation to developing the Ombudsman's budget, it was concerned to know more on the economy, efficiency and effectiveness of the Office. The Premier endorsed LCARC's recommendation in August 1999; in September 1999, the LCARC carried a resolution for the Premier to have conducted a management review of the Ombudsman; in November 1999, the Premier introduced amendments to the Ombudsman's legislation to put beyond doubt that a strategic review can be a management review. The amendments passed in December 1999 and the Consultancy Bureau was appointed in December to conduct the Strategic Review and reported in June 2000.

In 2001, the *Ombudsman Act 2001* replaced the *Parliamentary Commissioner Act 1974*. The requirement for a strategic review of the Office of the Ombudsman at least every five years continued under the new Act. Mr Henry Smerdon AM conducted the Strategic Reviews in 2006 and 2012.

In 2017, the *Ombudsman Act 2001* was amended to provide a requirement for strategic reviews to be conducted at least every seven years, instead of every five years.

2 Appointment of Reviewer and Terms of Reference

Section 83 of the *Ombudsman Act 2001* provides for the appointment of an appropriately qualified person to be appointed by the Governor in Council as Reviewer. Before a Reviewer is appointed to conduct the Strategic Review of the Office of the Ombudsman, the Minister must consult with the Parliamentary Committee about the appointment of the Reviewer and the Terms of Reference for the Review.

In September 2017, the Governor in Council appointed Ms Simone Webbe to conduct the Strategic Review of the Office of the Ombudsman.

The Review's Terms of Reference require assessment, advice and recommendations about the Queensland Ombudsman's functions and whether those functions are being performed economically, effectively and efficiently. The Review's Terms of

Reference also require the Review to “examine all structural and operational aspects of the Ombudsman, as well as its relationship with public sector entities, relevant Ministers, the Parliamentary Committee, and the Legislative Assembly”.

The Terms of Reference for this Strategic Review appear at Appendix A.

The Strategic Review commenced on 16 October 2017. Under the Terms of Reference and in accordance with s.85 of the *Ombudsman Act 2001*, the Reviewer is to provide a copy of the Proposed Report to the Attorney-General and the Ombudsman. The Ombudsman may, within 21 days of receiving the Proposed Report, give the Reviewer written comments on anything in the Proposed Report. If the Ombudsman provides the Reviewer with written comment, the Reviewer and the Ombudsman can agree to incorporate the amendments into the Report, or if there can be no agreement, then the comment is to be included in full in the Review Report. The Review Report is presented to the Ombudsman and the Attorney-General for tabling in the Parliament.

3 Review Methodology

The Terms of Reference required the Reviewer to –

In conducting the strategic review, the reviewer is to have regard to the functions of the Ombudsman and the objects of the Act in assessing the ongoing economy, efficiency and effectiveness of the Office. The reviewer is to also have regard to the Ombudsman’s annual reports, the organisational structure, goals, operational conduct, strategic direction, internal/external policies, operational management, corporate management and service provision of the Office, and operational models in other Australian and international jurisdictions. The reviewer should also consider the impact on the Office of chapter 5 of the *Public Interest Disclosure Act 2010*.

The Reviewer complied with the methodology set out in the Terms of Reference and adopted additional methodologies as included in the following review methodology summary:

- Conducted initial scoping interviews with the Ombudsman and the Department of Justice and Attorney-General.
- Detailed Review Methodology, Project Plan, including consultation strategy were developed and agreed with the Ombudsman and the Project Manager of the Department of Justice and Attorney-General.
- Reviewed all previous strategic review reports and parliamentary committee reports. The recommendations from the 2012 Strategic Review are listed at Appendix B and, where relevant, reference and discussion on certain recommendations are included in this Report.
- Received detailed briefings from the Ombudsman and senior management in response to the Terms of Reference and to advise on the implementation status of the recommendations from the 2012 Strategic Review.

- Identified recent qualitative and quantitative data sets relevant and available to the Review. Reviewed survey materials available in relation to staff, complainant, and agencies conducted since 2013 to date. (The staff survey had only been completed recently.)
- Reviewed extensive materials, information and documents provided by the Ombudsman and researched independently by the Reviewer.
- Implemented extensive consultation strategy to end of week 7 of the Review, which included –
 - External Stakeholders:*
 - 141 consultation letters forwarded by individual emails to external stakeholders inviting written submissions (and interviews for nominated stakeholders), including to all state government departments, all 77 local councils in Queensland, all seven public universities, and other agencies within the Ombudsman’s jurisdiction, as well as other integrity bodies, industry ombudsmen, external complaints bodies, and representative community peak bodies. The Reviewer did write to the Speaker and the Parliamentary Committee of the 55th Parliament to offer a consultation interview and invite comments as the Terms of Reference required a consideration of relationships with the Parliamentary Committee and the Legislative Assembly. The Parliament was dissolved shortly after the Reviewer’s correspondence for a general election to be held.
 - 14 individual interviews with other integrity bodies, and mostly Directors-General of agencies (see list at Appendix C).
 - Received 20 substantial written submissions from agencies representing all sectors and five acknowledgements advising no submissions (see Appendix D) (in addition to nine internal staff submissions).
 - Internal Stakeholders:*
 - Individual interviews with all senior staff.
 - Seven separate staff consultation focus groups for inclusion of all staff, and invited written submissions (nine received).
 - One 2-hour staff workshop for reviewing specified functional activity and key processes with a cross-section of staff at all levels and across all business teams (14 staff attended).
 - Individual interviews with the current and immediate past external Chairs of the Ombudsman’s Audit and Advisory Committee.
- Review and Analysis from-
 - Reviewed sample of 13 complaints management system reviews.
 - Non-participatory observation session of the telephone intake area, including rostered period for the Prisoner PhoneLink.
 - Case samples reviewed being all cases closed in one randomly selected week.
 - Reviewed randomised sample of time sheets of investigations teams.
 - Additional data and original documents of the Ombudsman sought to validate findings.

- Research, inquiry, review and analysis of extensive publicly available materials and reports and conducted interjurisdictional analysis of various specific aspects relevant to the review and generally.
- Ongoing liaison with the Ombudsman, including consultation on key stakeholder feedback, key issues of analysis, and possible responses throughout the course of the review.
- Received, researched and consulted on the Ombudsman's list of suggested legislative amendments.
- Presented draft findings and recommendations, and draft report for discussion with the Ombudsman and senior management including in two x half-day meetings in weeks 9 and 10 of the Review.

The Reviewer is grateful to all internal and external stakeholders consulted for their active engagement in the Review and for their most valuable contributions.

The Reviewer also is very grateful to the Ombudsman and his senior management for their positive approach to the Review and for their prompt and helpful assistance in providing all the information to the Review as requested of them.

List of Acronyms and Definitions

AAC	Queensland Ombudsman Audit and Advisory Committee
ART	(The former) Assessment and Resolution Team
CaPE	Queensland Government Conduct and Performance Excellence service
CCC	Crime and Corruption Commission
CEO	Chief Executive Officer
CMS	Complaints management system
CSU	Corporate Services Unit
DR	Direct referral
DRRB	Direct referral with report back
EAP	Employee Assistance Program
EET	Education and Engagement Team
FTE	Full-Time Equivalent
HR	Human Resources
ICT	Information and Communication Technologies
IRU	Investigation and Resolution Unit
JAG	Department of Justice and Attorney-General
LCARC	(The former) Parliamentary Legal, Constitutional and Administrative Review Committee
MIT	Major Investigations Team
OMG	Ombudsman Management Group
OPCAT	United Nations Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
PID	Public interest disclosure
QFCC	Queensland Family and Child Commission
RAPA	Registration and Preliminary Assessment team
RSP	Regional Services Program
SARAS	Queensland Government Study and Research Assistance Scheme
SIAC	Systemic Issues Assessment Committee
The Act	<i>Ombudsman Act 2001</i>
The Office	The Office of the Queensland Ombudsman
The Office of the Ombudsman	The Office of the Queensland Ombudsman
The Parliamentary Committee	The Parliamentary Committee with oversight responsibility for the Ombudsman, currently the Legal Affairs and Community Safety Committee

STRATEGIC DIRECTIONS

4 Advancing Systemic Improvements

The role of Parliamentary Commissioner for Administrative Investigations (the “Ombudsman”) was introduced in Queensland over 40 years ago under the *Parliamentary Commissioner Act 1974*. The principal function then was to investigate administrative actions of agencies which could be initiated on complaint by an aggrieved person, on reference by Parliament, or on the Ombudsman’s own motion.

In 2001, the Queensland Parliament sought to “modernise”¹ the role of the Ombudsman replacing the *Parliamentary Commissioner Act 1974* with the *Ombudsman Act 2001* (the Act). The first objective of the new legislation was to support implementation of recent strategic reviews of the Office of the Ombudsman, specifically for the Office to “be more proactive in improving the quality of public administration, rather than focussing exclusively on complaint investigation”.²

The new Act also endorsed the Ombudsman’s practice of making recommendations for improving the quality of systemic administrative practice in agencies, and of resolving complaints without formal investigation.

The legislative purpose of the Ombudsman since passage of the *Ombudsman Act 2001* is to-

- give people a timely, effective, independent and just way of having administrative actions of agencies investigated (s.5(a)); and
- improve the quality of decision-making and administrative practices and procedures in agencies. (s.5(b))

Both aspects of this role are equally important in legislative terms. Indeed, the “change in philosophy” for the Office of the Ombudsman that was suggested in the 2000 Strategic Management Review which the new legislation expressly sought to implement, was to provide an “equal priority to systemic improvement to public sector administrative action” as to achieving administrative justice for individuals.³

The Office of the Ombudsman has clearly been successful in serving its purpose in complaints investigations. The Queensland Ombudsman of 2017 not only deals with complaints in a no-fee, confidential, expert and independent manner, with outcomes that are well-described as fair and reasonable,⁴ but it is significantly *faster* than in

¹ Hon. Beattie, P.D., Ombudsman Bill 2001, Second Reading Speech (Queensland, *Parliamentary Debates*, 16 October 2001, 2823-2825 (Peter Beattie)).

² Explanatory Notes, Ombudsman Bill 2001 (Qld) 1-2.

³ The Consultancy Bureau Pty Ltd, *Report of the Strategic Management Review of the Offices of the Queensland Ombudsman and the Information Commissioner* Volume 1 (The Brisbane Printing Place, June 2000) 3, 117. (The 2000 Strategic Management Review)

⁴ External stakeholders’ feedback during consultations; 94% of decisions on complaints reviewed were upheld (Queensland Ombudsman *Annual Report 2016/17*)

2001 when the new Act to modernise the Office was introduced. Queensland Ombudsmen since 2001 have implemented a range of initiatives to improve the timeliness of investigating complaints, including progressive performance improvements in the last five years in which each successive year the Office has reported a 100% success rate in complaints finalised within 12 months of lodgement.⁵

Today, no backlogs in investigating complaints is the new normal.

The annual reports of the Office also report effectiveness with 100% of all the Ombudsman's recommendations or agreed actions as being accepted by agencies in 2016/17 (and 99% in 2015/16).

The Ombudsman's other statutory objective to improve the quality of administrative practices and procedures is to be achieved by making recommendations to agencies, either in particular cases *or generally*, as well as by providing advice, training, information or other help to agencies, *in particular cases* or generally (s.6). The functions of the Ombudsman for particular cases and generally follow in s.12 of the *Ombudsman Act 2001*.

The Ombudsman's performance of its role and functions generally in improving administrative practices and procedures, other than through recommendations from investigation of a particular case, has increased since 2001 and was encouraged in both strategic reviews since 2001. Much progress has occurred since the last strategic review five years ago with training and advice generally, a step-up in activity in community engagement two years ago, and 16 public reports during the term of the current Ombudsman.

However, the role is still maturing and can be subject to the tension of the urgent versus the important where the performance against time measures for dealing with complaints is accorded a higher priority in practice than the importance of advancing systemic improvements for example by resourcing a longer term own initiative investigation into systemic concerns. Development of the role from the traditional arms-length investigator of complaints to one advising, training and helping an agency to improve its practices and procedures in a particular case as anticipated under the 2001 legislation is also ongoing.

Investigating systemic concerns, advising, training, informing and otherwise helping agencies to improve the quality of administrative practices and procedures means the Ombudsman's legislated role provides not just essential accountability of public sector administration, with its considerable powers to investigate unlawful, unreasonable, unjust or otherwise wrong decision-making, but a central place in the State's integrity system through its work in building public sector integrity by training, advising, informing the people in the system and helping address maladministration beyond the reach of an individual complaint.

⁵ Queensland Ombudsman, *Annual Reports* 2012/13, 2013/14, 2014/15, 2015/16, 2016/17.

The Crime and Corruption Commission reduces public sector crime and corruption, the Queensland Audit Office audits public sector finance and performance, and the Ombudsman helps the system protect against maladministration.

Recommendation 1

The Ombudsman's role and functions in investigating administrative actions of agencies and in assisting agencies to improve the quality of administrative practices and procedures, are endorsed as essential elements in the Queensland accountability and integrity system.

With consolidated achievement in meeting and exceeding performance measures in dealing with complaints, the Ombudsman is now best-placed in its history to aim for an equal priority to managing its performance outcomes in helping improve the quality of administrative practices and procedures. This Report seeks to identify operational and structural improvements for efficiency, effectiveness and economy to assist with the Ombudsman's purpose.

4.1 Complex and Systemic Investigations

Major investigations of complex complaints (whether or not reported publicly) and own initiative investigations by the Ombudsman tabled by the Speaker can achieve high value improvements in the administration of public sector programs and the improved efficient and effective spend of public monies directed to the identified public need.

For example, in June 2017 the Speaker tabled the report of the Ombudsman's investigation into the administration of the Patient Travel Subsidy Scheme which found overly burdensome process and undue delays in providing financial assistance under the program to regional, rural and remote patients which caused patients considerable expense and sometimes financial hardship. This report is a good example of a greater public benefit for less investigative resources by the Ombudsman, as well as saving costs for the agency from multiple complaints. The agency agreed that the recommendations were fair and reasonable implementing improvements that benefitted many more individuals than processes for dealing with separate complaints could possibly have, and for so many more citizens for whom making a complaint was beyond the capacities of their individual circumstances. Moreover, administrative improvements were achieved for all current, as well as future, patients under the scheme.

Sometimes it is preferred to undertake an own initiative investigation for systemic benefit after the investigation of an individual complaint(s) so that the necessarily longer systemic investigation does not compromise the timely direct benefit for an individual respondent. The individual complaint then provides a relevant case study for a wider review of administrative action.

Complex or systemic investigations can be conducted in either the Investigation and Resolution Unit (IRU) which also finalises investigations in all other complaints that

are investigated, or in the Major Investigations Team (MIT) which principally works on own initiative investigations and is located with the Registration and Preliminary Assessment Team in the Intake and Major Projects Unit. Both IRU and MIT can conduct complex investigations or own initiative investigations.

The following table summarises the major (complex) complaint investigations and own initiative investigations in the six years from 1 January 2012 to 31 December 2017.

Table 1 Complex and Systemic Investigations (January 2012-December 2017)

TYPE / TEAM	MIT	IRU or other
Own Initiative (any complexity)	34	63
Complex (any file type)	20	39 (40)
Own Initiative and Complex	17	10

Source: Office of the Ombudsman (January 2017)

In relation to public reports, ten public reports originated in MIT and six originated in IRU and in some cases cooperation between the MIT/IRU was involved in finalising the investigations. In addition, as detailed in Chapter 8.1.1, other non-publicly reported investigations closed by IRU led to systemic improvements.

The strategic direction for the Ombudsman to explore is in unlocking even more potential through operational and structural improvements in serving both roles for advancing systemic improvements and for dealing with complaints.

One opportunity is to maximise the ability of the existing dedication of resources to focus on this role of advancing systemic improvements within a broader environment driven by short-term timeframe commitments in the role of dealing with complaints.

When the FTE establishment of 3.8 was relocated in the Office structure with the intake function in 2015, the intention was that the responsible Assistant Ombudsman for the MIT would allocate 80% to the MIT function including performing major investigation work directly. This has been difficult to achieve in practice as the same Assistant Ombudsman is also responsible for the intake function which receives and registers all the telephone, written and in person complaints into the Office (almost 11,000 contacts in 2016/17) and conducts their preliminary assessments. The intake function is a highly reactive environment and has not been conducive to personally undertaking major investigation work and writing reports. It is estimated that at best, 20% of time is therefore allocated in practice to MIT management only.

Staff focus group feedback during consultations also advised of a pattern of carrying temporary vacancies in MIT to help out more urgent business areas of the Office.

In 2014/15, the MIT did not operate with its approved resourcing structure and completed one public report. In 2015/16, the MIT prepared a Business Plan but one has not been prepared since as the Plan did not allow for flexibility to respond to emergent need, or it failed to achieve its goals. A less formal Issues of Substance

page now records possible issues but does not involve a plan. Five public reports were delivered in 2016/17, less public reports are expected this year.

During consultations, there was some external stakeholder feedback perceiving that the Ombudsman had requested agencies to observe tight timeframes in the provision of information in systemic reviews although the same strictness of time was not observed by the Office in completing the report.

Further consultations suggested there had been occasion where work undertaken by the Office, with the assistance of information sought and received from an agency, had to be abandoned due to the passage of time rendering the issue no longer relevant.

The Reviewer noted that there was no service delivery measure for own initiative investigations in the Ombudsman's Service Delivery Statement nor a key performance indicator specified in the annual report. All the performance measured in the 2016/17 Service Delivery Statement concerned complaints only, which reflects the traditional model of the Ombudsman responding to complaints. Targets measured for performance in "improving decision-making" were training, growth in subscriptions to Ombudsman publications, and rectifications from complaints' investigations.

It is acknowledged that developing performance measures for Ombudsmen has been a long-standing challenge, for all jurisdictions – and especially for qualitative measurement. Previous strategic reviews have also encouraged tackling the challenge.

Given that effective performance management in dealing with complaints has achieved excellent outcomes for the Ombudsman, meeting or exceeding every performance measure in the Service Delivery Statement, the same successful strategy - of measuring time - in a service delivery measure in the Service Delivery Statement could be applied to own initiative investigations to sustain a commitment to resourcing priorities, and achieve even more for the Ombudsman's role in advancing systemic improvements, other than investigating individual complaints.

Measuring the number of own initiative investigations would not be as fairly informative or useful as the time-driver of *how long* it took to complete the investigation report. Introducing a target to complete an own initiative investigation within 12 months of commencement would be a smart performance measure. The MIT agreed that 12 months would be reasonable as a target if they were fully staffed, any lesser time and an increase to establishment might need to be considered.

Major investigations undertaken on complaints by the IRU are already subject to a 12-month timeframe within the "proportion of investigations completed with target timeframes" Service Delivery Statement measure.

Beyond performance management, a value management approach would also assist the Office in planning and managing resources to compare alternatives in value for

money which is of significant relevance to complex and systemic investigations that offer wider public benefit for less resources. A value management process should assist in determining priorities and purpose.

Recommendation 2

In the Ombudsman's Service Delivery Statement as part of the annual reporting and budget cycle, a time target of 12 months from commencement to completion of an own initiative investigation should be included as a service delivery measure.

Later sections in this Report make further recommendations in addressing MIT resourcing challenges such as increasing the effectiveness of the Systemic Issues Assessment Committee (SIAC which is essentially all Assistant Ombudsman across teams) to take collective executive responsibility in debating priorities and commitments to the resourcing to match (Chapter 9.3); officers working across boundaries (Chapter 10); and structural and operational realignment to strategy (Chapter 10), to achieve more outcomes without increasing the establishment of the MIT.

It would also be more efficient and effective for own initiative investigations, and more economic for agencies, if s.22 of the *Ombudsman Act 2001* enabled preliminary inquiries as a first step for own initiative investigations. This would ensure a properly informed assessment of the merits of an investigation without needing to formally commence an "investigation". The Ombudsman recommended that amendment to s.22 should clarify that preliminary inquiries can be made for other matters besides complaints. This suggestion is strongly supported to ensure investigation and agency resources are not wasted in commencing an unjustified own initiative "investigation". This amendment would also be consistent with legislative provision in other jurisdictions for conducting a preliminary inquiry to decide whether to make particular conduct the subject of an Ombudsman investigation, whether or not any person has complained to the Ombudsman (e.g. s.13AA *Ombudsman Act 1974* (NSW), s.7A *Ombudsman Act 1976* (Cth)).

Recommendation 3

The Ombudsman's suggested legislative clarification to enable preliminary inquiries with agencies before commencing an own initiative investigation, is strongly supported.

The Office employs various intelligence gathering methods to discern possible issues for own initiative investigations.

Agency feedback suggested that the Office of the Ombudsman should adopt a similarly consultative approach to the Queensland Audit Office in actively engaging with departments to design and plan performance audits. Suggested amendment to s.22 of the Act will assist the level of engagement before commencing own initiative investigations. In any event, early active engagement with agencies to the extent that is efficient, effective and practicable should assist agency perceptions in the process and ensure well-informed and planned investigations.

Recommendation 4

Active engagement with agencies as early as practicable for own initiative investigations and other complex or systemic investigations, is supported.

In settling the process to identify issues (before applying appropriate rigour in assessment), the consultation element could usefully value the body of knowledge and access to information suggestive of systemic concerns that is held by all staff.

All staff through their various capacities whether rostered on complaints phone calls, investigating other matters, consulting or training in the regions or in engaging with communities directly may come in contact with information indicating potential systemic concern. Some access to the issues process is already provided in team-based ways but a recognised whole of office network that captures that intelligence from its people would be beneficial and an appropriate opportunity for dedicated staff to participate in the broader purpose of the Office.

A suitable quick mechanism such as on the intranet that enables the staff member to submit their contribution easily to a well-communicated, rigorous process of filter and assessment could be a useful whole of Office initiative. In support of the Systemic Issues Assessment Committee (SIAC), the MIT should manage the master document, including all staff and team-based input for consideration in the screening process.

Recommendation 5

The Office of the Ombudsman should formalise an integrated whole of Office approach for identification of issues which includes, encourages and facilitates the contribution of every staff member in recognition of the small size of the Office and the level of facility that all officers have in their various roles close to issues for contributing reasonable suggestions for consideration. The mechanism for contributions should be quick, easy and formally connected to the decision-making process.

Recommendation 6

The Major Investigations Team, in support of the Systemic Issues Assessment Committee (SIAC), should maintain the whole of Office master list of potential issues for all major and own initiative investigations, rather than separate lists being managed internally.

In determining which issues to progress to an own initiative investigation, the Office is encouraged to progress its draft guidance on relevant factors for endorsement by SIAC and approval by the Ombudsman. The approaches of Ombudsmen in other jurisdictions may also suggest other factors to consider such as Western Australia's criteria that additionally include:

- Whether other reviews of the issue have been done recently or are in progress;
- The potential for the [Ombudsman] investigation to improve administration across the public sector; and

- Whether investigation of the chosen topic is the best and most efficient use of [Ombudsman] resources.⁶

Recommendation 7

Development and approval of criteria to guide decision-making on when to commence (preliminary inquiries) or an own motion investigation and the process within the Office for that decision-making, is recommended.

It is not realistic to expect that the Ombudsman can investigate all possible areas of systemic concern that may be assessed as warranting attention on the master list. Rather than issues remaining on what becomes a too long wish list, the Ombudsman should refer them directly to the agencies for their own consideration and attention. The Office of the Ombudsman can maintain their own watching brief if necessary. Otherwise, the issues can become stale, or they worsen, the resources spent in making the list are wasted and ultimately systemic improvements are not advanced.

The Ombudsman currently has a process of writing to agency heads to identify matters of concern as an alternative approach to conducting Ombudsman investigations. The policy is well-documented but there appears much more scope for it to be applied more often in preference to issues remaining unprogressed on issues lists. It might be useful to add a time mechanism to the policy managing the issues list process to trigger a referral of issues older than a nominated period back to agencies whether as a matter of concern correspondence, phone call or liaison meeting discussion of the nature of the concerns. The appropriate method of the transfer should correspond to the level of concern and maturity in developing inquiry questions for the issues.

For more serious concerns arising in the course of investigating a complex complaint, it would be appropriate for the Ombudsman to have a similar discretion as the Office of the Health Ombudsman under ss.92 and 93 of the *Health Ombudsman Act 2013*. This would enable the Ombudsman to choose not to progress to a major investigation of a complaint pending the outcomes of a formal referral to the agency with a report back mechanism reporting results of action taken within 28 days of the agency ceasing to deal with the matter.

Recommendation 8

The Ombudsman's suggestion to amend the *Ombudsman Act 2001* to insert a provision(s) which gives the Ombudsman a formal discretion, following consultation with the agency, to refer a matter to an agency for investigation with a report-back mechanism about the results of action taken, is supported.

⁶ Ombudsman Western Australia, *Annual Report 2016/17*, 132.

5 Assuring Public Value

Seeking to maximise public value in the performance of functions supports trust and confidence in public services.

For the Ombudsman, the existing legislative role and functions could offer potentially limitless work but the resource base is tied to a comparatively small budget. Strategic choices need to be made in dividing the allocation of finite resources to the performance of functions. This section will consider three key themes that arose during the extensive stakeholder consultations conducted in this Review: the Ombudsman's threshold for deciding whether to refuse to investigate a complaint or not; investment strategies for saving future costs for the complaints system; and how to minimise duplication and over-burden in matters that yield overlapping jurisdictions.

5.1 Minor vs Major

The *Ombudsman Act 2001* does not require the Ombudsman to investigate every complaint received.

Section 23 provides the Ombudsman with a discretion to refuse to investigate if a complaint is trivial; frivolous or vexatious or not in good faith; of insufficient direct interest to the complainant; or has another right or remedy that has not been reasonably exhausted; or an investigation is unnecessary or unjustifiable. Similar provisions apply for all other Australian and the New Zealand Ombudsmen.

That an investigation is "unnecessary or unjustifiable" is often applied to matters generally described as minor matters.

In exercising the Ombudsman's broad discretion as to whether, in the circumstances, investigation is unnecessary or unjustifiable, the relevant Operational Instructions advise the Ombudsman's delegated decision-maker to identify the factors in favour and against investigation and evaluate, on balance, whether the discretion should be exercised. Further guidance then suggests that the decision-maker should contemplate declining or discontinuing an investigation if it is concluded that one or more of the following factors exist: no prima facie case of maladministration; no merit; similar to previous complaints; requires resources disproportionate to the issue or likely outcome; investigation likely to be ineffective; unrealistic expectations of the complainant; no practical outcome; or the complaint has been or is being rectified.

In 2016/17, of 10,954 contacts made to the Office of the Ombudsman, 6,923 were accepted as complaints for preliminary assessment (after mostly out of jurisdiction matters were declined), of which 79% (5,479) were finalised at the preliminary assessment. Of those finalised, most (63%) were finalised because they had not exhausted other review avenues (i.e. premature); 64 complaints (or 1% of those assessed) were declined for being unnecessary or unjustifiable to investigate.

Of the complaints that were referred to IRU for investigation in 2017/18 (365 cases) to 19 December 2017, the Early Merit Assessment team closed 100% of its allocation of complaints in the assessment phase (83 cases), and approximately 65% of all complaints referred to IRU for investigation were closed in assessment and did not proceed to more complex, and lengthy, investigation.

That is, most complaints received by the Ombudsman are finalised in preliminary assessment, expedited merits assessment or investigative assessment.

During consultations, the proportionality of the serious nature of a complaint and the cost impact of investigating complaints remains a debated issue.

A regional local council submitted-

Council is concerned at the decidedly lower level of complaint matters that the Queensland Office of the Ombudsman appears to be frequently involved in. This concern extends to the amount of staff energy, disruption, effort and cost being incurred by both parties when undertaking in-depth investigations into what may be considered as minor complaint matters e.g. barking dog complaints, animal management issues, local law breaches, basic customer service issues. One would expect that these lower level complaint matters should be able to be effectively dealt with via internal management oversight and review within the local government itself without proceeding to external review.

The Queensland Office of the Ombudsman has been quite public in inviting complaint submissions without perhaps balancing an appropriate level of consideration as to the threshold of seriousness of a complaint matter that is relevant for it to pursue. While acknowledging residents deserve review options on complaint matters... four levels of review regardless of the seriousness, or simplicity of the complaint matter ... it could be argued that for lower level complaints e.g. barking dog matters, a decision made under internal review by the CEO, or under direct delegation from the CEO, should realistically finalise the complaint matter. In a similar vein to the Crime and Corruption Commission (CCC) Queensland's recent refocus on the higher level nature of the matters that the CCC would directly get involved in, Council suggests a review as to the seriousness threshold of complaint matters that the Queensland Office of the Ombudsman will directly investigate should be considered as part of the strategic review.

Another regional local council argued that as the costs of managing complaints was rising, a \$500 fee (refundable if complaint sustained) to reduce vexatious complaints should be imposed. Further, the council added-

...the number of complaints that are sustained is very low but resources expended are high. A higher level of scrutiny in relation to the assessment of the complaint in the first instance may be more appropriate.

Free and fair access to the Ombudsman is fundamental to ensuring the system-wide accountability outcomes of the Ombudsman's role. The legislation is designed expressly to manage the frivolous, vexatious and trivial complaints which is the best response to vexatious complaints than imposing a fee on everyone. Before considering cost-benefit considerations, the overriding principle is that access to the Ombudsman should remain free for complainants. Similarly, the priority for helping improve the quality of administrative practices and procedures supports the free and low-cost arrangements to the Ombudsman's advisory service and training.

Recommendation 9

There should be no fee charged to lodge a complaint with the Ombudsman. Access to the Ombudsman should also remain free to agencies for its advisory service and the current charging for accessible and low cost, but high quality training, is endorsed.

In conclusion, some agencies perceive that the system is overburdened with minor matters e.g. complaints regarding poor customer service, or investigations of local law disputes and commonly, Ombudsman investigation of disputes about barking dogs. This Review has confirmed the appearance of such described matters on the case lists. The scale of the grievance for the individual complainants is not disputed, some impacting on amenity and dignity for the persons concerned, or bearing procedural unfairness. The question is whether spending public funds to resolve or investigate those concerns can be justified or is necessary, which becomes a question of proportionality in the circumstances of each case.

The existing statutory discretions and Office Operational Instructions are framed to address these concerns, and it is for the Ombudsman to ensure that designated decision-makers are well-trained in, and consistently apply, the provision and the relevant internal procedures which are regularly reviewed and current.

Recommendation 10

The Ombudsman is encouraged to continue to seek proportionate responses within cases particular to the facts of the individual case and to ensure on a regular basis that relevant officers are familiar with the Operational Instructions in this regard and are provided with opportunities to share experiences and learnings to calibrate and regularise the application of the Operational Instructions within the s.23 discretion.

Recommendation 11

The Ombudsman is encouraged to continue to consider whether there is a need to finish an investigation, even without an informal resolution, and whether enough impact has been achieved in proportion to the complaint for the matter to be finalised for being unnecessary or unjustifiable to continue.

Recommendation 12

The Ombudsman is encouraged to continue to discuss the “minor vs major” balance in his regular meetings with agencies to–

- **identify any demand management opportunities to assist in addressing more minor matters before they become complaints to the Ombudsman;**
- **include feedback as part of the Ombudsman’s own ongoing informed calibration of the exercise of discretion under s.23; and**
- **keep dialogue and understanding open with agencies in explaining the merits of an investigation where differing perspectives arise.**

Some stakeholders expressed concern that raising the profile of the Ombudsman in the community was increasing the volume of minor matters. This is difficult to assess, and “empowering people” is an important activity of the Ombudsman for balance in the integrity system. The Office is aware of this point of view and confirmed that its purpose is not to “drum up business” but to properly serve their legislated function, which is strongly endorsed.

Recommendation 13

The current community liaison objective and activity is supported in seeking to strike the right balance between informing of review rights and advising that those rights are subject to an assessment process.

5.2 Proactive and Informal

The *Ombudsman Act 2001* enables investigations to be conducted informally and agencies must give reasonable help in the conduct of informal investigations (s.24). The 2001 legislation, in supporting the earlier strategic reviews, intended for the Office of the Ombudsman to be “more informal and timely, and less formal and legalistic, in investigating complaints”.⁷

Many agencies reported during review consultations that they were “greatly appreciative of the good amount of effort” the Ombudsman undertook to sort matters out informally to cut down administration time and costs and achieve simple, effective resolutions. This success in informal and early resolutions would be a significant contributing factor to the Ombudsman exceeding performance measures for assessing and investigating complaints within target timeframes.

The practical effect of non-binding recommendations under the Ombudsman’s legislation would also promote proportional responses from most agencies rather than the consequence that binding decisions would bring to bear in over-formalising and contesting positions. However, the Ombudsman’s recommendations are well-respected (with 100% and 99% acceptance rates in 2016/17 and 2015/16 respectively) and indications during Review consultations are that many agencies

⁷ Explanatory Notes, Ombudsman Bill 2001 (Qld) 2.

strongly favour early phone calls and meetings to seek early resolutions in preference to written correspondence that may reflect poorly on the agency.

Other feedback from agencies during interviews was that they–

- preferred an earlier informal contact to discuss a complaint by telephone or meeting before receiving a formal letter because they were concerned to minimise duplication of review effort, which costs the system more, but also delay in early liaison with the agency while the process progresses could raise the expectations of the complainant unnecessarily and therefore the complainant's level of dissatisfaction with the agencies, Ombudsman and the administrative review process at the end of the experience.
- were concerned at "being investigated" when in fact action on the complaint was still in initial stages of gathering background information and discussing with agencies how to get a resolution.

In more than one staff consultation focus group, staff reported a recent tendency for the Office to write a letter instead of making a phone call, sometimes due to the style of management in some work teams compared with others and sometimes due to individual officer preferences. Many staff noted that apart from the formal effect that a letter had on negotiations, the additional time a letter took to prepare and be approved was inefficient compared with a phone call. It would seem that the staff and agency feedback align in suggesting more scope for the phone call over the letter.

While many agencies praised the informal approaches of the Office of Ombudsman for greater efficiency and effectiveness through greater use of phone calls over formal letters, particularly in initial stages and in negotiating resolutions, there were others who preferred the accountability and clarity of requests in writing.

Recommendation 14

The Office of the Ombudsman should continue a high priority for early resolution of complaints using informal mechanisms to save time and cost such as ensuring that phone contact in the first instance is preferred over written correspondence of either email or letter where practical and appropriate including a consideration of when it is suitable to the agency's needs.

Implementation of this priority can be well-managed by the Office of the Ombudsman within its existing quality assurance framework.

Where a report on an investigation of administrative action by an agency is made by the Ombudsman under s.50 of the Act, the Ombudsman may ask the agency to report back action taken to give effect to the recommendations, and reasons if not, and if the Ombudsman considers it appropriate, further processes of reporting can escalate transparency consequences for the agency's actions.

In practice, many agencies seek to resolve investigations informally prior to a s.50 report. In 2012, the Office introduced Preliminary View letters as an initiative (similar

to the “one last chance to resolve before a report” concept used by the Commonwealth Ombudsman for example) to set out the Ombudsman’s draft findings and draft recommendations. The Office of the Ombudsman advised that these have assisted in resolving matters without a s.50 report. This initiative is to be commended.

There may be scope however for more communication, or adjustment of formal language, between agencies and the Ombudsman to explain that Preliminary View letters are in effect “draft” letters as there were two written submissions as well as interview comments requesting more consultation on “proposed recommendations” and “preliminary findings” in the draft stage which the Office of the Ombudsman believes it provides already with the Preliminary View letter which is the draft stage. The agencies explained that their request for earlier consultation on the draft findings and recommendations would help inform a practical understanding of the applicable context, legislation and policies and the “workability” of recommendations.

Another agency sought consultation on draft recommendations for improvements following complaints management system reviews to ensure recommended process changes are “practical and achievable when taking into account [our] regulatory environment”.

Recommendation 15

The Preliminary View letter initiative is supported and the Ombudsman is encouraged to consider agency feedback and understanding of that process, and the preferences generally for prior consultation on draft findings and recommendations in investigation reports and complaints management system reviews to assist in aligning mutual expectations of the processes involved, and ensuring that the final report is informed by the agency’s feedback on any administrative or legislative feasibility concerns in implementation.

Review consultations also indicated that some agencies would appreciate the Ombudsman’s assistance *after* an investigation ends to work with the agency to improve the wording in the policy or letter rather than just receive the end result in a report or decision-letter making recommendations that they be rectified. This assistance would be consistent with the objects of the *Ombudsman Act 2001* to provide advice, training, information or other help to agencies *in particular cases* about ways of improving the quality of decision-making and administrative practices and procedures (s.6(b)(iii)).

Recommendation 16

The Ombudsman should be available when requested to advise the agency on the effectiveness of its implementation of particular rectifications (such as the re-wording of documents) without the need for a formal follow-up review process or any compromise to the Ombudsman’s independence. In some cases, the Ombudsman may consider it appropriate to proactively offer its early advice and review on the implementation of particular rectifications in decision letters.

Local governments' workload and cost was a recurrent theme. Ongoing engagement with local councils to ensure shared and clear understanding of what is required in the process will help ensure costs are kept to a minimum.

Recommendation 17

In addition to the regional visits program which seeks to actively engage with local councils, the Ombudsman should consider additional measures to keep in regular contact and information-sharing with local councils to ensure the Ombudsman's objectives, processes and requests are clear so that local councils are able to consider any adjustments in internal council processes that may be possible in appropriately managing risks with proportionate responses and avoiding unnecessary costs to the system.

A Modern, Proactive Ombudsman

The inaugural Strategic Review conducted by Professor Wiltshire in 1999 reported that it was –

...essential for the Queensland Ombudsman to follow international and interstate trends to become less reactive and less oriented to individual complaints, and become more proactive, systemic and preventative. Steps have already been made in this direction but there are significant initiatives which could aid this strategic direction. They include a range of staffing practices, research, surveys, and a shift towards becoming more of a consultant to government agencies and working with them to identify and eliminate basic causes of maladministration...

... it is now pointless for Ombudsmen to continue to play a purely reactive role, constantly receiving complaints of a similar nature year in and year out. A proactive approach is required to identify the systemic faults in the system of governance which give rise to citizens' complaints and to rectify those faults...It may also involve working a trifle more closely with government agencies than the traditional image of the arms-length Ombudsman would countenance. However, the results seem to have justified these departures from the traditional norm.⁸

The 2000 Strategic Review agreed –

These issues are of fundamental significance. The strategic direction and philosophy of operation adopted by a particular Ombudsman's Office has a powerful impact on the nature of its workload, the way it deals with that workload, and its impact on individuals and agencies.⁹

As recounted in Chapter 4 above, the *Parliamentary Commissioner Act 1974* was repealed in favour of "new, modern legislation", the *Ombudsman Act 2001*, which

⁸ Queensland Government, *Report of the Strategic Review of the Queensland Ombudsman (Parliamentary Commissioner for Administrative Investigations)*, (Goprint, Brisbane, May 1998) v, 16. (The 1998 Strategic Review)

⁹ The 2000 Strategic Management Review, 5.

implemented an election commitment to “rethink and revamp the Ombudsman’s function”¹⁰ by *supporting* the “strategic reviews’ recommendations by introducing greater flexibility to the Ombudsman’s operations”.¹¹

That was sixteen years ago.

Comparative trends in other jurisdictions for proactive interventions to minimise complaints and maladministration have continued since. In the last financial year, the New Zealand Ombudsman organised its operational teams into two groups, the Complaints Resolution Group to focus on quick and effective complaint handling, and the Compliance and Practice Group for “a clear focus on proactive interventions to achieve systemic change”.¹²

The Strategic Plan 2014-2017 for the Ombudsman of South Australia commits its first objective as “Good governance in agencies”; its first two actions for that objective are to monitor complaint trends and systemic issues and to conduct own initiative investigations. The objective of “Effective and efficient handling of matters” is the fourth objective behind “Accountability” (e.g. stakeholder engagement) and “accessibility” for the third objective in conducting outreach.

The upcoming strategic planning for the Office of the Queensland Ombudsman is a valuable opportunity for the Office to examine its strategic intent, its alignment with its statutory purpose and how all functions fit within the performance framework.

In particular, and in addition to the excellent training for which the Office is renowned, other strategies to support agencies to improve decision-making could be explored such as using trend information from complaints to identify risk periods for higher complaints in anticipation of known events, i.e. seasonal risks, such as education enrolments. Rather than wait for the season of complaints, proactively remind relevant agencies of best practice and the pitfalls to avoid. This does assist the chief executives in their roles which directly serves the Ombudsman’s statutory purpose to help improve public sector decision-making. Such could also prove useful in demand management terms for the Ombudsman to reduce complaints’ workload for repetitive grievances that offer the system little public value compared with helping to prevent the grievance in the first place.

Professor Wiltshire in the inaugural strategic review explained a similar perspective-

A proactive approach by the Ombudsman would be helpful to [chief executives] in establishing patterns of administrative behaviour which were occurring. The only visible thing CEOs see is the number of complaints about

¹⁰ Explanatory Notes, Ombudsman Bill 2001 (Qld) 1; Hon. Beattie, P.D., Ombudsman Bill 2001, Second Reading Speech (Queensland, *Parliamentary Debates*, 16 October 2001, 2823-2825 (Peter Beattie)).

¹¹ Explanatory Notes, Ombudsman Bill 2001 (Qld) 2.

¹² New Zealand Ombudsman, *Annual Report 2016/17*, 3.

their agencies, or the advertisements in the press for people to come and make their complaints.¹³

In 2017, departments are asking for the Ombudsman to proactively assist their improvements by providing feedback loops for learnings, e.g. Were the complainants satisfied when the complaint was “closed”? How do other practitioners handle common issues x and y in practice?

One local council asked in its written submission -

When a complaint is sustained, is the assessment of the complaint leading to significant changes in processes? Are complaints that are sustained creating new processes or outcomes that are then being implemented across the local government sector, or are the reforms from the complaints being acted upon in isolation at the local government authority where the complaint emanated from? Should an innovative complaint process be adding value to potential best practice across the local government sector?

This perspective is testing whether the significant costs invested in dealing with individual complaints pay dividends in avoiding the pitfalls for the whole sector next time.

Another formulation of the same point, is when data gathered becomes knowledge managed.

More operational detail on these suggestions are included in Chapter 8.1 but suffice to observe that a proactive approach that literally helps agencies improve administrative practices and procedures and that sits squarely and uncontentiously within the Ombudsman’s role, would be welcomed by agencies.

Recommendation 18

The Ombudsman is encouraged to consider additional helpful strategies in support of agencies improving administrative practices and procedures through, for example, proactive knowledge management such as examining common areas of complaints to identify suitable opportunities for proactively reminding agencies in advance of known risk events of good practice and learnings from previous investigations.

The 2012 Strategic Review considered whether the Ombudsman should audit the service delivery aspects of the programs to ensure minimisation of risks of complaints. As anticipated, those recommendations would not sit squarely within the Ombudsman’s existing role.

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.

¹³ The 1998 Strategic Review, 35.

As part of the consideration process, the legislative capacity of the Ombudsman to undertake such review should also be clarified.¹⁴

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 further complaints. There would also be merit in the Ombudsman discussing the issue with his fellow Ombudsmen.¹⁵

The recommendations were not progressed and are not supported in this Review due also to the anticipated overlap with the Auditor-General's performance auditing function which would be an expanded role, and would not necessarily manifest as a proactive role providing direct help given the arm's length nature of audits.

The Ombudsman already has considerable access to systemic information, the challenge is to value-add to the information.

5.3 Coordination

During consultations, some agencies identified examples of stress where multiple oversight bodies became concerned with making inquiries or investigating essentially the same series of events at the same time which collectively places the agency under additional pressures on top of its (sometimes urgent and critical) responsibilities to respond to and address the primary situation.

There would appear to be three main causes that expose the Ombudsman to the risk of overlapping jurisdictional responsibilities or duplication of effort:

5.3.1 Jurisdictional split of external oversight responsibilities

Generally, agencies are subject to the concurrent oversight of the Crime and Corruption Commission (corruption and serious crime), Queensland Audit Office (financial and performance auditing) and the Ombudsman (maladministration). In some areas of public sector administration such as juvenile detention and child safety, there are additional specific oversight roles and powers.

For example, for child safety, the same series of events can cause the external oversight response of the Queensland Family and Child Commission (QFCC), Office of the Public Guardian, Crime and Corruption Commission, Queensland Audit Office, and the Queensland Ombudsman (for maladministration generally and specifically for responsibility for oversight of complaints about the child protection system following the Queensland Child Protection Commission of Inquiry Review in 2013).

¹⁴ Smerdon, H., *Report: Strategic Review of the Office of the Queensland Ombudsman*, 2012, 55, Recommendation 35. (The 2012 Strategic Review)

¹⁵ The 2012 Strategic Review, 55, Recommendation 36.

The QFCC advised this Review –

Both the QFCC and the Office of the Queensland Ombudsman have lead roles in identifying systemic trends and reform priorities within the child protection and support systems, which has resulted in a strong partnership between our two organisations.

The QFCC also confirmed the coordination and collaboration efforts being undertaken to minimise duplication -

The QFCC also co-ordinates the Child Protection System External Oversight Agencies Group, comprised of representatives from the Office of the Queensland Ombudsman, the Office of the Public Guardian, the Crime and Corruption Commission and the Queensland Audit Office. This group has been established to enable coordinated oversight of the child and family support system, identify and resolve cross-agency issues and opportunities for collaboration, reduce duplication of work and enable information sharing. While this group remains in the early stages of development, it has enabled collaborative discussions on the synergies between the work of the Queensland Ombudsman and the QFCC, with plans in train to formalise information sharing regarding systemic issues evident from complaints received from both agencies.

The Ombudsman also is a member of the Integrity Committee with the Auditor-General, the Integrity Commissioner, Crime and Corruption Chairperson, and the Chief Executive, Public Service Commission which meets regularly. For coordinated general discussions of local government strategic issues, the Ombudsman also participates in quarterly meetings with the Crime and Corruption Commission, the Queensland Audit Office, and the department responsible for local government.

Section 15 of the *Ombudsman Act 2001* was a new legislative provision for the Ombudsman in 2001 “in order to avoid inappropriate duplication of investigative activity”¹⁶ in such situations where the legislative framework provides overlapping jurisdictional external oversight. Section 15 provides that the Ombudsman may liaise with a complaints entity to enter an arrangement aimed at avoiding inappropriate duplication.

The Ombudsman is presently reviewing a memorandum of understanding or liaison agreement with the Energy and Water Ombudsman Queensland, and with the Health Ombudsman.

The Ombudsman reports good relations with the external oversight bodies generally which means that reliance on such formal agreements has not been considered necessary.

¹⁶ Explanatory Notes, Ombudsman Bill 2001 (Qld) 8.

Coordination arrangements such as memoranda of understanding and exchange of letters to agree on coordinated and cooperative endeavour are supported as effective mechanisms to scaffold mutual understandings in coordinated activities ensuring clear, consistent and successive arrangements, particularly when the system is under pressure.

Recommendation 19

Efforts by the Ombudsman to maintain engaged and active relationships with other external oversight bodies is supported. The Ombudsman should also review the Register of Liaison Agreements for the Office of the Ombudsman to update arrangements with other bodies as considered necessary in supporting the efficient and effective performance of the Ombudsman's functions.

Sharing and leveraging data in the integrity partnerships was suggested during stakeholder consultations as another way to enhance coordinated efforts and improve public value. At an officer level, there is sharing of general information and discussions are held in general terms about areas of concern including in the Integrity Committee, but understanding of the current legislative framework prevents the Ombudsman sharing with the Queensland Audit Office details of its complaints and investigations. The Auditor-General can share information with the Crime and Corruption Commission but not with the Ombudsman. The Auditor-General shares performance audit planning information with the Ombudsman.

The public value benefits that would flow from making the necessary legislative clarifications and provisions, to enable the Ombudsman and the Queensland Audit Office to share complaints and investigation information with each other, are tangible and persuasive.

For example, of the Ombudsman's five public reports of investigations in 2016/17, the Auditor-General produced three reports that year on the same subject. Had the Queensland Audit Office known for example that the Ombudsman was conducting a major investigation into the Patient Travel Subsidy Scheme, it could have chosen to wait to consider the Ombudsman's report before deciding whether there were additional matters that warranted the Auditor-General's specific attention, or vice versa. This is a good example where duplication of public resources could become a saving to the system – for both integrity bodies and for agencies.

Greater efficiency and effectiveness in the accountability framework could also be achieved in enabling the sharing of information between both integrity bodies in the following scenario: during the course of an investigation one body notices irregularities in a matter unrelated to the complaint under investigation (or the audit being conducted) but potentially quite relevant to the oversight jurisdiction of the other body. If the body that noticed the irregularity could inform its integrity partner of the concern noticed, the integrity partner could consider a reprioritisation of its auditing or investigations' work plan to ensure possible rectification sooner rather than later, in the public interest.

Recommendation 20

Legislative amendment to enable the Office of the Queensland Ombudsman and the Queensland Audit Office to share complaints and investigation data and other systemic information in confidence is recommended, and should be supported by a formal Memorandum of Understanding including detail of the permissions, access protocols and confidentiality arrangements.

5.3.2 Forum shopping

It is not uncommon for a complainant to lodge the same complaint at the same time with multiple external oversight bodies, or the complainant will provide a “cc” copy to other bodies. (Since the last Strategic Review, the Ombudsman stopped counting a “cc” copy of a written complaint as a “contact” in its workload statistics.)

A regional local council Mayor noted six different entities that a complainant could engage in a complaint against council and appealed for better coordination and better understanding of the hierarchy and pathways for complainants involved in these situations concluding-

A clearly defined process would also reduce different agencies dealing with the same complaint concurrently or in a piecemeal approach, and lead to the more efficient deployment of resources.

Forum shopping was also noted as an issue during consultation interviews, although the Ombudsman and key integrity agencies reported that they have good working relationships which enable coordinated agreements to be reached when forum shopping is identified.

Over the last 18 months, the Office of the Ombudsman has introduced free community presentations during the regional visits program which explains the complaints landscape and the roles of the various oversight bodies. These have been well-received according to feedback and there are plans to extend the presentation program, including with local governments. Access to a copy of the landscape presentations on the Ombudsman’s website could also be a useful and more readily accessible resource to explain the pathways for local councils and communities, especially in rural and regional Queensland.

Recommendation 21

Ongoing free promotion of the complaints landscape presentation by the Office of the Ombudsman within communities and with local governments, including making it available on the website, is supported.

5.3.3 Coordination challenges

Some departments have investigative and monitoring powers under legislation including local government, child safety, environmental protection, corrections and detentions. These can be complex jurisdictions particularly with the prospect of disciplinary and external oversight activity at the same time. The various investigations that could be open at the same time over the same series of events

could require different standards of proof (e.g. disciplinary burden of proof is higher than that required in Ombudsman investigations) which may present a range of challenges in sequencing the different investigations, where joint effort is not possible, to ensure - in the first instance - that evidence is not compromised for all investigating authorities, and to avoid vulnerable witnesses (e.g. children) subjected to multiple interviews concerning the same matter, and in the second instance that public value is assured in seeking to minimise duplication and maximise effective outcomes.

The first obvious difficulty that is worsening the coordination reality is that clarification of the grounds for disclosure under the obligation of secrecy in s.92 of the *Ombudsman Act 2001* is required as a high priority to allow better coordination of departmental and Ombudsman investigations. The proposed amendment would enable the Ombudsman to disclose to an agency that also has investigative responsibilities over the same or related events that it is investigating a complaint and the nature of that complaint. Recent examples of great difficulties in the secrecy obligations for managing events and coordinating investigations were explained to the Reviewer.

Currently, s.92(2) imposes a high threshold requiring that the disclosure needs to be for the purpose of protecting the health, safety or security of a person or property as well as the agency having a proper interest in the matter. Relevant amendments for the disclosure grounds to no longer be cumulative were before the 55th Parliament in the *Crime and Corruption and Other Legislation Amendment Bill 2017* (clause 77). Reintroduction of that Bill's proposed amendments concerning the Ombudsman is recommended.

Recommendation 22

Reintroduction of the proposed legislative amendments in relation to the Ombudsman that were contained in Part 6 of the *Crime and Corruption and Other Legislation Amendment Bill 2017* of the 55th Parliament is strongly supported.

Other difficulties could be assisted by establishing and agreeing, in advance of significant events, formal cooperative arrangements (and mechanisms within those arrangements for relevant update within events) with departments that have investigative responsibilities in complex or high risk jurisdictions relevant to the Ombudsman.

Recommendation 23

The Ombudsman should consult with agencies who also have investigative or monitoring powers in complex or difficult jurisdictions (e.g. juvenile detention) to ensure alignment of expectations in the scope of the Ombudsman's investigations and to avoid any unnecessary burden or duplication of effort for all parties. The Ombudsman should consider then entering suitable formal cooperative arrangements with relevant agencies to support efficient and effective coordination of outcomes.

6 Anchoring and Extending Successes

During this Strategic Review, internal and external stakeholders nominated a range of factors that they believed led to the significant performance successes that have been reported since the 2012 Strategic Review, including-

- leadership;
- clarity of purpose to serve timeliness targets;
- good people working in the Office who are passionate and professional in their work;
- good working relationships with stakeholders; and
- various improvements in business processes such as early merits assessment.

Under s.61 of the *Ombudsman Act 2001*, an Ombudsman holds office for a term of no more than ten years in total. The present Ombudsman, Mr Phil Clarke, commenced in early 2011 and therefore will not be the Ombudsman when the next strategic review is due in 2024.

The Office of the Ombudsman needs to ensure that it has an integrated risk management framework and risk management maturity to secure the performance successes into the future and position the Office well for meeting new opportunities and challenges.

6.1 Managing Risks

The Strategic Plan 2015-19 nominates three strategic risks: reputation as an independent, fair and impartial Ombudsman; resources to deliver equitable and accessible services; and capability based on relevant and contemporary professional expertise.

The Office of the Ombudsman has a range of risk intelligence available to it through its audit programs, survey material, and performance monitoring and business information systems.

There are identified operational and organisational risks to sustaining success over the mid to long term. Some of these risks appear in internal audit reports, the most recent Risk Management Plan for the Office, and the recently endorsed Strategic Internal Audit Plan. Some organisational risks have been identified in recent staff surveys. Other organisational and operational risks have been discussed during consultations in this Strategic Review (see specific recommendations in response to these risks in Chapters 7-10), as is appropriate to the task of a Strategic Review and can help inform risk management planning for the Office.

Development of a Risk Register that clearly documents all risks and is regularly monitored and reviewed to ensure it remains up to date will support the Audit and

Advisory Committee in its Charter¹⁷ that was broadened in 2013 following the 2012 Strategic Review to include governance and planning issues in its remit given the small size of the Office.

As risk management is not static in nature, an integrated risk management framework could include ongoing consideration of the risks and challenges identified by the work and opportunity of previous strategic reviews, as well as the implementation of the Office's own project initiatives in response to identified concerns such as the 2012 Improving Capability and Effectiveness project, which nominated five key areas for improvement initiatives: public interface; performance management; information management; investigations; and major investigations. All these focus areas remain relevant in managing business risks and continual improvement.

Some issues identified in previous strategic reviews (e.g. delegations, correspondence efficiencies, human resource management issues) and the 2012 Improving Capability and Effectiveness project (e.g. information management, training needs analysis, performance management, and major investigations) have been identified as ongoing issues in this Strategic Review; the names of structures or business systems may have changed but some issues appear to have persisted and are being raised in a contemporary sense as risks to compliance obligations, productivity and effectiveness.

Integration of risks identified in workforce capability planning also would be important given that workforce capability has been nominated by the Office as a top three strategic risk in its strategic plan.

An integrated risk management framework could include all areas of concern under continual review and as part of the usual course of follow-up and review in any change management cycle.

Recommendation 24

An integrated Risk Management Framework for the Office of the Ombudsman is recommended. The broader remit for the Audit and Advisory Committee as set out in its Charter, and as reflected in the recently endorsed Strategic Internal Audit Plan, is supported and presents an opportunity for the Office to ensure the currency of an integrated risk management framework that includes a Register of Risks submitted for review in accordance with the Committee's Charter concerning risk management.

During Strategic Review consultations, some agencies were concerned to suggest, or agree, that although they enjoy good working relationships with the Ombudsman and his Office presently, it would be prudent to scaffold that success with "cooperative relationship documents", exchange of protocol letters, or where the jurisdictional relationships are more complex (see Chapter 5.3.3) memoranda of

¹⁷ Office of the Queensland Ombudsman, *Duties and Responsibilities, Audit and Advisory Committee Charter*, Section 4(b)(iii).

understanding, to provide clarity and continuity in the working protocols that have been agreed to date, and mutual expectations in relationships and processes such as the contact liaison arrangements that can vary across agencies. The intended prudence is not to introduce a burdensome, overly formalised process and can vary on an agency by agency basis according to respective needs and experiences. To minimise administration, the agreements need only be reviewed as and when required.

Recommendation 25

Where memoranda of understanding or relevant exchange of letters do not already exist, the Ombudsman should consult with individual agencies within its jurisdiction (that have substantial ongoing contact with the Office) to agree and exchange a written record of the mutual expectations and operational protocols intended for efficient and effective dealings.

6.2 Considering Opportunities

Consolidation of current successes anchored by a comprehensive risk management framework will support further successes in continually improving its performance as well as in new oversight roles, as may be determined.

The Ombudsman's review of the *Public Interest Disclosure Act 2010* which was tabled in the Legislative Assembly by the Attorney-General in February 2017 recommended a more "direct and vigorous" oversight role for the Ombudsman.

The Office of the Ombudsman expects that Government decisions on implementation of recent review recommendations in corrections and youth justice will have a significant impact on the Office whether through taking on new roles or in managing existing activities of the Ombudsman in its inspections program for prisons and youth detention centres.

There may be an additional role or impact for the Ombudsman following the Commonwealth Government's announcement to establish a national inspections regime that complies with the United Nations Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

Recommendation 26

The following principles should be included in considering new roles for the Ombudsman:

- **It would be an inconsistent role for the Ombudsman if the new role would involve the possibility of Ministerial direction. There should be no compromise to the Ombudsman's independence which is fundamental as a parliamentary ombudsman.**
- **The new role should be a suitable fit in terms of the skills and mission of the Office of the Ombudsman.**

- **The new role should be adequately supported by corresponding resources, including for corporate services' support and in sustaining governance costs.**

The Ombudsman suggested amendments to s.10(c) of the *Ombudsman Act 2001* to provide jurisdiction over bodies which perform a function on behalf of an agency, particularly contracted service delivery (similar to the “follow the dollar” amendments in the Auditor-General’s legislation). The Ombudsman explained that such amendment was necessary to ensure no dilution of oversight when an agency decides to outsource delivery of a function previously delivered by the agency.

There are administrative justice and accountability arguments in favour of a discretion for the Ombudsman to investigate complaints directly into publicly funded outsourced service delivery.

New South Wales has a scrutiny function for state-owned corporations and “certain non-government agencies, including non-government schools, child care centres and agencies providing substitute residential care”.¹⁸

All Commonwealth entities and their contracted service providers, subject to some specific statutory exclusions (such as the intelligence agencies), are within the jurisdiction of the Commonwealth Ombudsman. The Commonwealth Ombudsman also has oversight of the activities of certain private sector organisations, including private health insurers and some postal operators.

In Queensland, industry ombudsmen such as the Industry Energy and Water Ombudsman is one response to ongoing concerns for accountability and integrity where the service provider is no longer part of the public service.

The 2012 Strategic Review recommended-

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.¹⁹

The Ombudsman’s submissions seeking the inclusion non-government organisations within its jurisdiction have not been supported by Government.

During consultations, one agency explained that non-government organisations are contracted under legislation to have a quality standards framework to meet detailed requirements. Organisations over a certain size are audited to check that they comply with standards and there are contractual consequences for failures in governance. Many of these organisations have several funding partners or service

¹⁸ *Community Services (Complaints, Reviews and Monitoring) Act 1993 (NSW) s.11.*

¹⁹ The 2012 Strategic Review, Recommendation 15.

purchasers such as other governments. Definitional and threshold issues would need to be resolved.

Accordingly, consultation feedback was that given the existing governance standards subjected to contractual consequences, and a complex environment involving many different stakeholders often delivering social services on the tightest of budgets, a repeated layer of costs, process and complexity was not supported. Moreover, the Ombudsman maintains jurisdiction over the contracting-out agencies directly and the Auditor-General now has relevant jurisdictional oversight to “follow the dollar”.

For the purposes of this Strategic Review, amendment of s.10(c) for the Ombudsman to have jurisdiction over non-government organisations should be included in a more comprehensive whole of government review of administrative law jurisdictional coverage for non-government organisations and other outsourced service providers. The following factors also suggest that the timing is not practical for a Strategic Review recommendation for this additional jurisdiction-

- the additional workload involved in the range of additional roles that are currently possible for the Ombudsman to accommodate or coordinate;
- this Review’s key recommendation for the Ombudsman to prioritise and measure further performance of its current statutory purpose other than dealing with complaints; and
- other budget constraints for the Ombudsman.

Recommendation 27

Suggested amendment to s.10(c) of the *Ombudsman Act 2001* to give the Ombudsman jurisdiction over non-government organisations and other providers of contracted service delivery is not supported at this time until its inclusion in a more comprehensive whole of government review of the accountability framework for contracted service-providers.

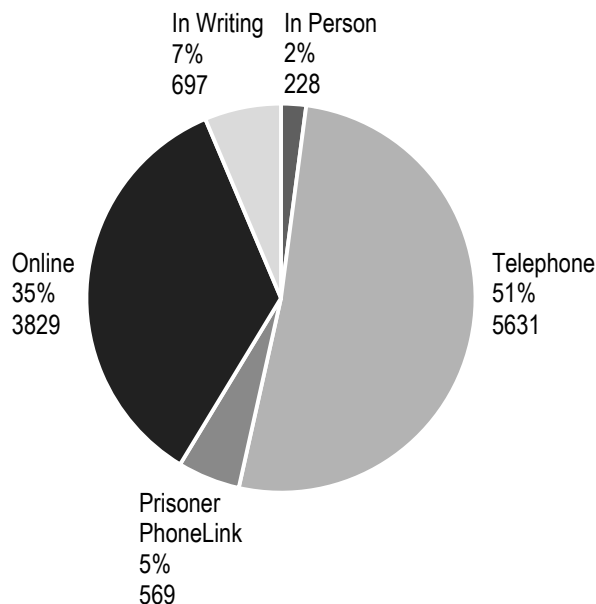
PERFORMANCE OF FUNCTIONS

7 Dealing with Complaints

7.1 Workload and Demand Management

In 2016/17, the Office received nearly 11,000 contacts, with a 33% increase in the number made online via email or the online complaint form on the Office’s new website compared with the previous year. There was a significant 17% decrease in the number of complaints made by telephone compared with the previous year. Complaints were made in person by 228 people in 2016/17, the equivalent proportion of 2% of contacts as for 2015/16. The number and proportion of contacts by method is shown below:

Figure 1 Methods of Contact with the Office



Source: From data in the Annual Report 2016-17, Queensland Ombudsman (Figure 5, p.20).

The Office has implemented more accurate recording of “contacts” over the last five years. For example, after July 2013, the Office no longer recorded as a “contact” the online use of a complaints form for an out-of-jurisdiction matter because advice about the alternative complaints process was automatically generated, causing no impact on Office resources. Similarly, the Office no longer records phone calls that were redirected automatically by the phone messaging system as “contacts”. The Ombudsman is to be commended for implementing this fair reporting to more accurately assess and manage workload for the Office.

Accordingly, the total number of “contacts” counted as received has reduced.

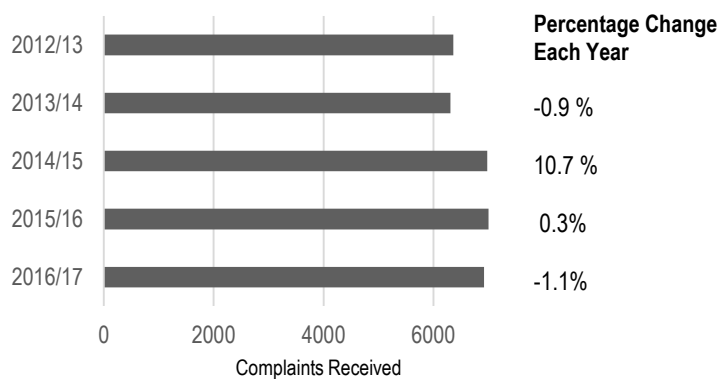
Table 2 Numbers of “Contacts” 2012-2017

	2012/13	2013/14	2014/15	2015/16	2016/17
Contact received	15, 191	11, 995	12, 982	11, 294	10, 954

Source: From data supplied by the Office of the Ombudsman (October 2017)

The number of contacts that are “complaints” though has remained relatively stable each year – 6,923 complaints in 2016/17 is approximately a 9% increase overall in complaints in the five years since 2012/13 with 6,363 complaints.

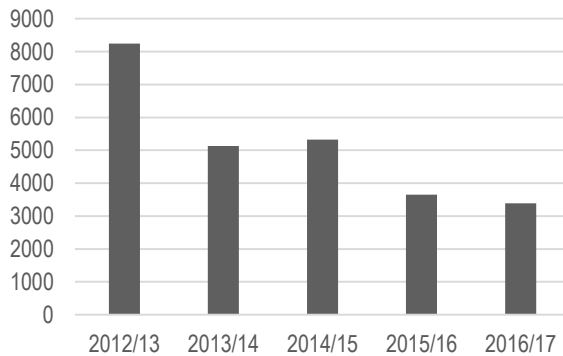
Figure 2 Complaints Received by the Office 2012-2017



Source: From data supplied by the Office of the Ombudsman (October – December 2017)

As Figure 3 shows, the workload involved in handling out-of-jurisdiction matters has reduced significantly owing to the business process initiatives of the Office, including automated telephone and internet redirections. The Ombudsman expects that the number of out-of-jurisdiction matters will lower further to about 2,800 in 2017/18, which is still over a quarter (26%) of all contacts but significantly improved on 54% of all contacts in 2012/13.

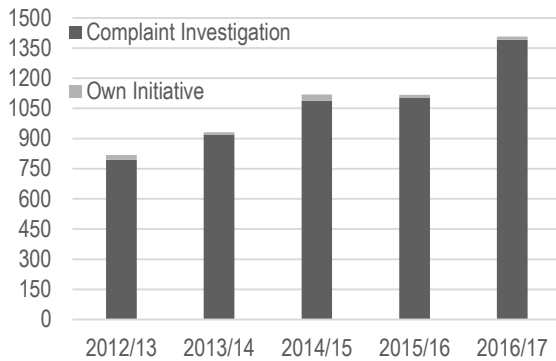
Figure 3 Number of Out-of-Jurisdiction Matters 2012-2017



Source: From data supplied by the Office of the Ombudsman (October –December 2017)

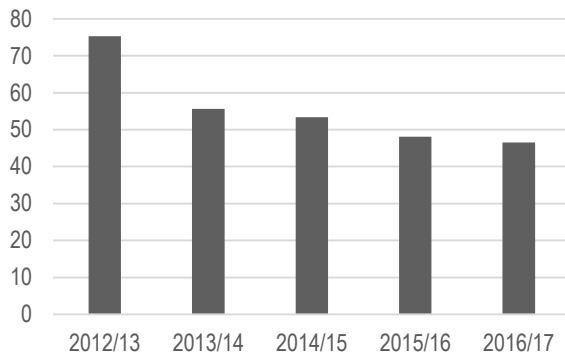
Although the number of investigations finalised has increased over the five year period as Figure 4 indicates, Figure 5 shows it took less time to close those investigations with a consistently reducing trend in the number of days for an investigation.

Figure 4 Number of Investigations Finalised 2012-2017



Source: From data supplied by the Office of the Ombudsman (October –December 2017)

Figure 5 Average Number of Days for an Investigation 2012-2017



Source: From data supplied by the Office of the Ombudsman (October –December 2017)

With the number of complaints stable, the number of investigations up but offset by less time involved in closing the investigations, it would appear that the workload involved in dealing with complaints has remained relatively stable over the last five years, possibly with a net decrease owing to efficiencies saved in more complaints made online than by telephone and a significant reduction in out-of-jurisdiction matters.

Recommendation 28

The Ombudsman’s commitment to reducing out of jurisdiction numbers, improving business processes like automated telephone and online redirections is commended.

The Ombudsman has identified inefficiencies in determining out-of-jurisdiction matters for tribunals. The Ombudsman has suggested better clarification of “deliberative functions of tribunals” in s.16(2)(a) to define jurisdiction, potentially

through providing a schedule to the *Ombudsman Act 2001* for tribunals which are out-of-jurisdiction.

Recommendation 29

The Ombudsman’s suggested clarification of s.16(2)(a) in the *Ombudsman Act 2001* to better define jurisdiction for “deliberative functions of tribunals” is supported.

An additional factor that can complicate the complaints landscape is the use of the term “Ombudsman” other than for the one parliamentary ombudsman whose independence is secured by a range of legislative provisions including that the Ombudsman is not subject to direction by any person (s.13).

The confusion caused by multiple “Ombudsmen” within a jurisdiction may be inefficient through increasing the volume of out-of-jurisdiction handling of matters across offices.

Concern at the “overuse” of the name “Ombudsman” has persisted for some time. It was raised in this Review by the Ombudsman in the Reviewer’s first meeting with the Ombudsman. It was raised by the Queensland Ombudsman as early as 1993.²⁰ It was raised in the inaugural strategic review by Professor Wiltshire who recommended that, “the Government should cease using the word ‘Ombudsman’ in the title of other appeal bodies and mechanisms and should also discourage the private sector from so doing” because it was not only confusing but “distorting if not debasing the currency of the Ombudsman title, reducing the status and significance of the Ombudsman’s Office”.²¹

The concern has been mentioned in other strategic reviews and has received parliamentary committee support concerning prospective application.

Other jurisdictions have imposed statutory restrictions. Since 2004 in South Australia, agencies have not been able to use the word “Ombudsman”. Since 1991 in New Zealand, the Ombudsman’s prior consent is required.²²

With prospective application, at least prior consent by the Ombudsman is supported to enable a consideration of the impact of the new title on jurisdictions.

Recommendation 30

Legislative amendment of the *Ombudsman Act 2001* to require at least that the Ombudsman be consulted prior to any person using the name “Ombudsman” similar to the New Zealand provision, or alternatively, similar provision to South Australia in not permitting use, is supported.

²⁰ Queensland Ombudsman, *Annual Report 1992/93*, 15, cited in Parliamentary Legal, Constitutional and Administrative Review Committee, *Review of the Report of the Strategic Review of the Queensland Ombudsman* (Report No. 14, July 1999) 57.

²¹ The 1998 Strategic Review, 71, Recommendation 28.

²² *Ombudsmen Act 1975* (NZ) s.28A.

7.2 Client Service

The Client Service Charter for the Office of the Ombudsman is available on the Office's website.

The Office demonstrates a high level of commitment to surveying clients. The next client satisfaction survey for the Office of the Ombudsman is planned for the end of 2017/18.

The last client survey seeking feedback from agencies was conducted in April-June 2013. Separately, recent surveys of individual clients in respect of individual work team areas in alternate years were conducted for the intake area (called Registration and Preliminary Assessments or RAPA) in 2012 and 2014/15 and for the Investigation and Resolution Unit (IRU) in 2013/14 and 2016. Usually a client survey is conducted every year and a weighted measure is based on the latest two surveys which covers both teams. The Service Delivery Statement for 2016/17 did not measure client satisfaction as budgetary constraints resulted in no survey conducted in that year.

The 2015/16 annual report last reported the relevant Service Delivery measure as 67% of the proportion of clients satisfied/very satisfied with level of service provided by the Office. The target was 80%.

A review of the survey reports did not identify any surprises or serious issues of concern that are not discussed in this report already (e.g. from agencies- better understanding of reality and context in recommendations; from clients of IRU – “progressing proactive oral contact during investigations”; and from clients of RAPA – “setting expectations” by providing more information initially about what the Office can do).

It should be noted that for IRU only one in five complainants receive a complaints' outcome with a rectification recommendation, and for RAPA: delegated decision-makers exercise the Act's discretion to “refuse” to investigate eight out of ten complaints. RAPA employs the language of “decline” to investigate in prudent preference to “refuse” as worded in the Act. The survey is not meant to be measuring satisfaction with outcomes but with client service but arguably the context for survey respondents is important to acknowledge.

The surveys provide the Office with valuable information for informing and encouraging development of client service initiatives. The Office is encouraged to integrate significant issues in client feedback into the recommended Risk Management Framework for reputational risks or operational risks pending the nature of the area for improvement. This would support the planning framework flow through to individual plans to implement identified improvement and assist senior management to monitor progress in response to identified issues.

The Reviewer's case-sampling review indicated that generally correspondence was of an appropriate length for the purpose, with an accessible but appropriately professional tone, and limited legalese.

The Ombudsman has initiated a requirement for IRU staff to make a phone call to the complainant before the decision-letter is sent as an improved client service on the basis that the phone call is a courtesy and will assist the complainant receive the news. It is recognised that it is a difficult phone call to make given that four times out of five, on the statistics, the complainant will not receive "good news" with no recommendations made for the rectification that they had sought. The Office of the Ombudsman is to be commended for this diligence in client service.

Development and launch of the new website in 2016/17 should also be mentioned as a significant recent client service initiative increasing users to the site by 22%. Content and material from the "It's OK to Complain" website was incorporated into the new website and the "It's OK to Complain" website was closed with agreement of partner agencies.

Recommendation 31

The ongoing program of client surveys is supported and should properly inform ongoing client service improvements.

Recommendation 32

The Office is encouraged to integrate significant issues in client feedback into the recommended Risk Management Framework for planning and review of service and operational improvements suggested by the survey feedback.

7.2.1 Direct Referrals

Background

Under s.23(1)(d) of the *Ombudsman Act 2001*, the Ombudsman may exercise a discretion not to investigate a complaint if the complainant has not exhausted other remedies or review rights (such as an agency's internal complaints management system) and it would be reasonable in the circumstances to require the complainant to do so first. These are known as premature complaints and most are refused by the Ombudsman's delegated decision-maker. The Ombudsman is regarded as a reviewer of last resort.

For premature complaints, the Ombudsman's delegated decision-maker will advise the complainant to refer the matter themselves to the relevant agency for review or remedy first (known as self-referral). Alternatively, in a growing number of cases and with the complainant's consent, the Ombudsman's delegated decision-maker will refer the premature complaint directly from the Ombudsman to the agency for the complainant (known as a direct referral or DR) and in some circumstances (e.g. child safety) the Ombudsman will request the agency to provide the Ombudsman with advice on how the complaint was addressed (known as a Direct Referral with Report Back or DRRB).

Direct referrals and direct referrals with report back are made without pre-judgment or consideration of the merits of the complaint. They are considered as a client service or out of a concern for access to administrative justice for vulnerable complainants to avoid them falling out of the system before due consideration of their rights.

The Ombudsman has delegated the discretion under s.23(1)(d) to relevant officers. Enquiry Officers (AO3s) in the intake function handle most of the contacts made to the Office and regularly exercise this discretion and the practice of direct referrals in cases where a complainant has not exhausted the complaints management system of the relevant agency.

Enquiry officers are to escalate a matter to a supervisor in certain circumstances (e.g. allegations of harm) and the Ombudsman's Operational Instructions set out when the Ombudsman will intervene in premature matters where the complaints management system has not been exhausted (e.g. potential systemic maladministration or urgent and substantial risk).

The 2012 Strategic Review recommended that the Ombudsman be encouraged to continue directly referring complaints to agencies in appropriate circumstances and to ensure appropriate monitoring mechanisms for measuring action by agencies. The 2012 Reviewer rightly cautioned the process not to become an advocacy role. The Ombudsman describes direct referrals as now well established operational practice. The Office of the Ombudsman appreciates that local Members of Parliament during the regional visits program, as well as the Parliamentary Committee, have expressed support for the practice as a client service initiative.

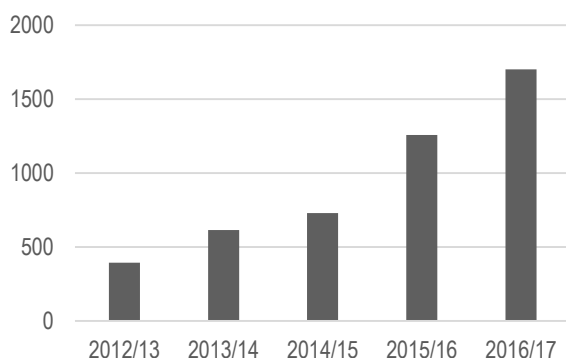
Issues

Direct Referrals initially came to the attention of this Strategic Review because the increase in numbers over the last five years has been significant.

The percentage of overall premature complaints which are directly referred to agencies is 39% (1715 complaints directly referred) in the 2016/17 year. (The 2016/17 target for direct referrals in the Annual Report was 20%.) There has been a distinct trend of significant increase in each year since the last Strategic Review in 2012. The number of direct referrals in 2016/17 was a 34% increase on the year before in 2015/16.

It is noted that implementation of effective complaints management systems within agencies was less reliable under the Public Service Commission Directive No.13/06 than after the *Public Service Act 2008* was amended with effect from July 2014 to require agencies to have effective complaints management systems that were compliant with Australia New Zealand Standards. The legislative requirement for implementation of the Standards (which the Ombudsman monitored) enabled the Ombudsman to confidently become the reviewer of last resort. Notwithstanding, analysis of the trend shows a significant and steady increase, as shown in Figure 6.

Figure 6 Number of Direct Referrals 2012-2017



Source: Reproduced from data supplied by the Office of the Ombudsman (October 2017)

Table 3 No. of Direct Referrals and % of Premature Complaints over the last 5 Years

Year	Number of DRs made	Percent of DRs of overall premature complaints
2012/13	394	9
2013/14	618	16
2014/15	742	17
2015/16	1279	31
2016/17	1715	39

Source: From data supplied by the Office of the Queensland Ombudsman (October 2017)

The Reviewer also noted that following personnel changes in management of the intake function in the first quarter of 2017/18, the number of direct referrals by month nearly halved in the subsequent month of October (with a similarly strong reduction continued in November 2017) indicating a high variance of subjectivity open in the decision-making among officers.

Table 4 No. of Direct Referrals Made over the Last 5 Months

Month (2017)	Number of DRs made	Number of DRRBs made	Total – Directly Referred
Jul	99	17	116
Aug	144	33	177
Sep	112	30	142
Oct	73	5	78
Nov	59	5	64

Source: From data supplied by the Office of the Queensland Ombudsman (December 2017)

Given the steep increases year on year since the last Strategic Review (and the sharp recent variance), and it was clearly evident during staff consultations that there was a range of different opinions and concerns for the operational practice, the Reviewer convened a business improvement workshop dedicated to discussing the concerns and benefits of directly referring premature complaints to agencies and whether, and if so to what extent, the annual increase trend should be supported or should direct referrals be managed differently in the interests of economy, efficiency and effectiveness.

The following summary of issues is from the two-hour workshop of 14 participants representing a vertical slice of classification levels and across all intake, assessment and investigation* work teams in the Office of the Ombudsman. (*Separately, investigators automatically directly refer premature elements of a complaint if an investigation has already commenced in a matter.)

Positive issues in response to the increased annual trend of direct referrals:

- Some agencies have welcomed the early notice of complaints by direct referral to help earlier resolutions.
- Direct referrals promote access to administrative justice for vulnerable complainants in seeking to avoid them “falling between the cracks” or losing them from the system when it is too much in their circumstances for them to make that second call if the Office of the Ombudsman tells them to do it themselves. [Previous data from *Referred to Agency Survey Reports* (2004, 2008) substantiate this concern of losing too many vulnerable complainants from the system with self-referrals.]
- Helpful, integrated client service initiative for all complainants which enhances faith in the whole of government complaints system.
- Gives the Ombudsman early visibility of premature complaints’ issues to feed into consideration of trends in systemic concerns for possible major investigations.
- Benefits for managing complainants on the phone by offering to directly refer their complaint (with their permission) as that tangible assistance helps defuse anger, upset or frustration displayed by complainants over the phone.
- Offered complainants a “sense of value” by being taken seriously because their complaint was being “referred on”.
- Assists in addressing issues of “complaints fatigue” for complainants.

Cautions or concerns raised with the significant annual increase of direct referrals:

- An increasing number of agencies are complaining that the steady increase in direct referrals is too many.
- Complainants can confuse direct referral as a validation on the merits of their complaint – the “sense of value” or “stamp of approval” that the Ombudsman has taken them seriously and is telling the department to look into it. This

confusion can raise unreasonable expectations for the complainant ending in considerable dissatisfaction and frustration with the agency and the Ombudsman.

- A corresponding steady increase in correspondence directly referring matters to agencies (without a merit assessment and with inconsistent thresholds for referrals) may impact on the gravitas of communications from the Ombudsman with the fear that it may lead to less timely or responsive actions from agencies to its merits assessments and investigations.
- Equity for other complainants “waiting in the queue” for agencies to deal with their complaints made directly to the agency where agencies prioritise the directly referred complainant more highly due to the Ombudsman’s involvement, or complainants attempt to “game” the system by going direct to the Ombudsman in the first instance to gain some advantage.
- Additional workload for an already pressured intake team resulting from increased direct referrals was a common concern. The requirement to gain the complainant’s consent to the direct referral (while appropriate and not disputed) does add to that workload. There also was additional workload when confused complainants would come back to the Ombudsman regularly seeking updates on how their matter was being progressed with the agency – which is not the Ombudsman’s role for directly referred matters.
- Thresholds for exercising discretion for when to directly refer or not were unclear and inconsistent depending on the approach of individual officers. (Some direct referrals were automatic and clear e.g. child safety).
- Inconsistency in the content of direct referral correspondence and the varying levels of detail that were included, depending on the officer. Some matters are escalated to superior officers (e.g. child safety) but generally actioned by Enquiry Officers who value their responsibility highly and expressed concern at any diminution of their responsibility or autonomy in any change. Some Enquiry Officers include more “case notes” style detail than others. (Many Enquiry Officers are legally qualified and/or admitted to practise.)
- There was a risk of criticism for error by the Ombudsman and confusion with the Ombudsman’s role in including the detailed level of “case notes” style in the direct referral correspondence. Some agencies could confuse the nature and extent of the Ombudsman’s involvement. Some agencies have complained that the case notes contained error or were incomplete. The process of the Enquiry Officer taking the level of detail from the complainant for making the case notes for the agency can increase the complainants’ expectations from the process and may also become a “disservice” when the complainant necessarily has to re-tell the details to the responsible complaints review entity, or demands the Office of the Ombudsman provides a service having just received the details from the complainant.

- Contributing to a series of “cascading declines” in review of complaints was another concern where the Office of the Ombudsman directly refers a matter to an agency expecting that if and when the complainant returns to the Ombudsman with the complaint after the agency has reviewed it, the Ombudsman is likely to refuse to investigate the complaint anyway under s.23(1)(f) of the Act because it is “unnecessary or unjustifiable”. The understanding of the intake team currently is that in making a direct referral they are not permitted to advise the complainant of the possible application of s.23 by the Ombudsman if the matter returns post-agency to the Ombudsman because that could be seen as pre-judging the complaint.
- There is a risk of confusion of the role of the Office of the Ombudsman and the role of the agency in managing their complaints.
- There is a risk or concern of agencies over-responding to unmeritorious issues because the matter came via the Ombudsman.
- There is a risk to the Ombudsman’s independence if the direct referral is misunderstood as adopting an advocacy role.
- Directly referring complaints does not encourage complainants to take responsibility to manage their own complaint.

Subsequent to the workshop, the Reviewer considered material used internally for escalations and guidance in the intake area which have added the consideration of vulnerability to support a direct referral decision. The more formal documented procedures approved by the Ombudsman appear in the *Operational Instructions No. 2* (which were issued in 2013 for review in 2015) and do not include considerations such as vulnerability for direct referral of premature complaints received by telephone which are to be self-referred whereas all written complaints are to be directly referred, and there is a general discretion for direct or self-referral if the complainant presents in person.

During subsequent review of case sampling, the Reviewer also noted the content of correspondence directly referring complaints to agencies had the potential to mislead complainants as to the nature of the decision being taken and could unreasonably increase expectations. Management agreed with this feedback and will reconsider the wording.

The following additional points or suggestions were made during consultations with external stakeholders in interviews and in written submissions in this Strategic Review which similarly evidence the need for more clarity and consistency of approach:

External stakeholders:

- Need to implement a liaison protocol between agencies and the Ombudsman (sometimes direct referrals are trivial, frivolous or do not reasonably relate to the administration of the department e.g. a complaint that a train was four minutes late was directly referred. (The Reviewer confirmed this example with the Office of the Ombudsman.)
- It is our experience that complainants are approaching the Ombudsman in the first instance, rather than raising their concerns initially with the department.
- Supports direct referrals or preliminary inquiry by the Ombudsman to allow the “overwhelming majority” of such complaints to be resolved satisfactorily.
- From a large council: generally, the referral from RAPA (intake area) works well with limited errors where it was referred to the incorrect agency or the referral lacks sufficient detail for the City to adequately pursue the complaint. This has improved over last 6-12 months following feedback at liaison meetings.
- From a smaller regional council- direct referrals do not meet expectations of the complainant and create additional work for the council.

Conclusions and suggestions:

A reasonable assessment is that the pendulum has swung too far to err on the side of too many direct referrals in proportion to genuine need.

There would seem to be a general consensus in consultations that the practice of direct referrals responding to circumstances of significant vulnerability, hardship and risk for the complainant is important for assisting with equitable access to administrative justice and should be weighted accordingly high among other factors against direct referrals. However, the contentious growth in numbers corresponds with the broadening of “client service” beyond circumstances of risk and vulnerability to helping complainants connect with the administrative review system efficiently.

In the first instance, direct referrals by reason of vulnerability are not a merit assessment made on the content of the *complaint* but on a consideration of the circumstances of the *complainant*. Considering whether the complaint, taken at its highest (i.e. if all the complainant’s claims were proven true), is of a minor or major nature could assist in managing the volume of direct referrals and respond to the concerns raised in the workshop and during consultations without compromising reasonable equity and considerations of risk. This is not to suggest that a minor matter has not been the subject of a procedural unfairness or other right of review but that the Ombudsman is advising the complainant to self-refer the matter rather than the Ombudsman taking that step administratively for the complainant. This moderation would respond to examples of concerns regarding a four minute late train or the objectionable colour of public infrastructure.

In terms of managing the complainant's expectations in self-referral of minor matters (should the complainant return for review by the Ombudsman once other avenues are exhausted), the 2013 Operational Instructions instruct that the complainant should be advised on self-referral that if they remain dissatisfied after the agency's complaints management system review, "it is unlikely to be a matter that the Ombudsman will ultimately deal with" and reasons are to be provided (the complainant could still make a complaint to the Ombudsman but at least they would know what to expect, and the indication does not relate to the complainant seeking a review of the complaint handling procedure either as that would be a separate matter to the original complaint).

The Operational Instructions' procedure is no longer in practice because it was regarded as "pre-judging" the complaint. This concern might be managed but a lower risk approach is also possible by the simple provision of information, which is not suggestive and is provided in all cases, but enables complainants to be informed in advance that the legislation provides additional grounds for the Ombudsman to refuse to investigate a complaint, other than for it being premature.

This alternative approach would be more efficient, effective and economic for the Ombudsman, and the complainants, because it-

- offers "no surprises" as to what may be possible (effective); and
- would be standard wording used in all cases (efficient) and does not require the Ombudsman's delegated decision-maker to spend time considering whether it might be possible that the complaint falls within the other s.23 provisions and without that consideration there would be no need for preparation of reasons or raising the level of delegated officer (economic).

In responding to the aim for improving the "client service" experience, the workshop canvassed possible alternative measures as a midway option between a direct referral or a simple self-referral, such as –

- providing written information or fact sheets with a self-referral on common minor but upsetting complaints (e.g. potholes) instead of direct referrals;
- offering to the complainant to transfer their phone call directly to the relevant complaints phone line in certain larger agencies (that have that infrastructure in place such as the Public Trustee or Transport and Main Roads) without formalising a direct referral, either as a simple phone switch through ("cold" transfer) or with a brief verbal introduction of the complainant to the agency's complaints officer ("warm" transfer), if appropriate in the circumstances (e.g. a distressed complainant). This would not be offered in every case but it was generally agreed that there would be a subset of complainants and agencies where the phone transfer, without a formalised direct referral and instead of a self-referral, would be appropriate; and
- providing better quality advice to the complainant on what the available remedies are with the relevant agency. This would be a more helpful second tier of advice beyond advising simply "which agency to go to" and would need to be supported

by ready access to the details of specific complaints management systems by agency.

Until recently, following up direct referrals with report back with agencies was essentially unattended to in the Office of the Ombudsman due to a lack of implemented procedure and allocated resources. There may have been uncertainty too as to the Ombudsman’s role in the process due to a concern not to be criticised for advocacy on behalf of complainants which would undermine the Ombudsman’s independence. Due to the commendable problem-solving initiative of an Enquiry Officer recently, this situation has been addressed administratively with development and implementation of clear and effective procedures and rostering of responsibilities.

In the final analysis, suggestions workshopped and obtained during consultations should reasonably meet the direct referral concerns, as summarised below:

Issue	Response
Equitable access to administrative justice; inconsistent thresholds	Updated, clear instructions to guide the exercise of discretion according to need
Helpful, integrated client service; lessen “complaint fatigue”	Fact sheets, phone call transfers, 2 nd tier quality information about the agency’s complaints management system (CMS)
Early visibility on issues	Adopt alternative trend information gathering from contacts, separate from direct referral process
Gives “sense of value”; strategy to defuse caller frustration	Risks unreasonable expectations increasing frustrations
Workload	Reduction in volume with minor vs major moderation Examination of other client service initiatives Liaison protocols with agencies for preferred processes by agency
Need Liaison Protocols	Agreed. Need not be burdensome, scale to need pending volume and issues on agency by agency basis (may include as part of regular meetings, or implement by correspondence). Keep Protocols under review as required. Gives framework for feedback and continual improvements.
Some agencies prefer early knowledge through Direct referrals	Liaison protocols on agency by agency basis to accommodate complaints profile and expectations of each agency; and ensure clarity of roles
Confusion of roles in merit assessment	Address with consistent and approved clarity in phone call scripting, correspondence and liaison protocols
Loss of gravitas with too many	Reduced volume Consult with agencies for recognition of certain emailed format and procedure distinguishing the direct referrals and direct referrals with report back from other Ombudsman correspondence
Equity for other complainants in agency queues; agencies over-responding	Clear, correspondence templates to agencies explaining process, roles – and expectations Liaison protocols
Frustration of “cascading declines”	See Recommendation 35 –upfront provision of information that there are other grounds for a “refusal” to investigate

Issue	Response
Lengthy case notes – risk of error, “disservice”, confusion of role	Correspondence template and liaison protocols set out an expectation for a one sentence/minimum description of the nature of the complaint being referred.
Problem of complainants going to Ombudsman in the first instance	Ombudsman community engagement and regional visit programs – and other relevant external communications – reinforce messages that generally the Ombudsman is reviewer of last resort, and that agencies are now required to have effective CMS compliant with Australian and New Zealand Standards.
Complainants not taking responsibility for own complaints	Reduced incidence of direct referrals Direct referrals according to need
Independence of the Ombudsman	Clarity of roles in procedures, correspondence and community liaison, liaison protocols with departments.

The level of detail provided in this section respects and seeks to respond to the many and detailed contributions made during consultations on these daily processes of considerable volume directly impacting efficiency, effectiveness and economy for the Office of the Queensland Ombudsman, agencies and complainants. The analysis of issues and strategies proposed also may be included in the upcoming strategic planning for the Office.

Recommendation 33

The Ombudsman should review and approve updated procedures managing the practice of direct referrals and direct referrals with report back, in consultation with staff and agencies to achieve improved efficiency, effectiveness and economy through–

- **clarity of purpose, roles, thresholds, equity, procedures and client service involved;**
- **liaison protocols with agencies;**
- **accordant community liaison, external communications and education messages;**
- **the introduction and re-introduction of alternative client service initiatives such as fact sheets, phone transfers, and provision of enhanced information; and**
- **support to staff with effective tools to readily access the applicable information and protocols.**

Recommendation 34

Recent rigour in reducing the volume and minor nature of direct referrals is supported. A clear formulation to support a consistent application of thresholds before a direct referral which responds to risk, and genuine need of complainants to be assisted in equitable access to administrative justice, is recommended. If the Ombudsman considers, on the request of an agency with a substantial volume of matters, that it is warranted to apply a lower threshold for direct referrals for that agency specifically, then this agreed variation of the threshold should be specified in the liaison protocol and should be scaffolded by implementation of the updated procedures and communication templates to avoid confusion of roles and expectations.

Recommendation 35

On self-referrals and direct-referrals, the Ombudsman should inform the complainant that in addition to the provision where the Ombudsman refuses to investigate a premature complaint, the Ombudsman may also refuse to investigate a complaint under s.23 of the *Ombudsman Act 2001* for other reasons such as where the complaint is trivial or where it is unnecessary or unjustifiable to investigate and that no decision has been made about those matters because the complaint is still premature.

7.2.2 Informal and Early Resolution

Informal procedures and seeking early resolution are effective strategies for complainants and agencies to achieve timely results. The essential nature and priority of informal procedures and early resolutions to the work of the Ombudsman is undisputed for the Office of the Ombudsman to perform its functions efficiently, effectively and economically. Chapters 4 and 5 address the current strategic issues for informal and early resolutions.

There is a further operational issue that is influencing the efficient and effective pursuit of informal and early resolutions by undermining the Ombudsman's ability to conduct *confidential* investigations.

In dealing with complaints, section 25 of the *Ombudsman Act 2001* provides that the Ombudsman "must conduct the investigation in a way that maintains confidentiality". Moreover, the Ombudsman owes an obligation of secrecy under the *Ombudsman Act 2001* not to disclose information obtained during preliminary inquiry or investigation (with a maximum penalty 100 units). These provisions enable the Ombudsman to hold out the Office as being able to conduct timely, informal and *confidential* investigation of complaints which has been a hallmark characteristic of a parliamentary ombudsman.

The Ombudsman explained that the ability to guarantee confidentiality of investigative material is critical to the Ombudsman's ability to encourage disclosures, including public interest disclosures, about maladministration and facilitate the cooperation of witnesses. Conversely, the effectiveness of the confidentiality and secrecy provisions protect reputations from unsubstantiated allegations made in the course of *informal* procedures. They also facilitate the Ombudsman's ready access to sensitive government information for informally and confidentially investigating complaints and seeking early resolution or early recommendations – without recourse to the formal and extensive powers to require documents or information under Part 4 of the Act. The Ombudsman confirmed that almost all of the Office's investigations are conducted informally without needing Part 4 powers, and most investigations are finalised without giving a formal report and recommendations under s.50.

The Ombudsman is concerned that there have been instances where agencies and witnesses have become hesitant or reluctant to provide all information in informal

investigative proceedings due to a concern that the *Right to Information Act 2009* may override the confidentiality and secrecy provisions of the *Ombudsman Act 2001*.

Independently, a local council volunteered this perspective in a written submission to this Strategic Review-

From time to time [Ombudsman] investigators send requests for sensitive information and without invoking their legislative authority, which can leave the City Officers in a difficult position. Where this occurs, the City liaises directly with the requesting investigator to ensure the correct head of power is invoked.

The Part 3, Factors Favouring Nondisclosure in the Public Interest, include prejudice of the “conduct of investigations, audits or reviews by the ombudsman or auditor-general” (18, see also 16, 20) but these would only apply if the investigation was to be, or still being, conducted. The concerns for confidentiality and secrecy is as valid post-investigation for witnesses and agencies.

The Ombudsman suggested a class-based exemption from the *Right to Information Act 2009* and the *Information Privacy Act 2009* for operational material similar to the exemptions in New South Wales and Victoria.

The Reviewer does not consider that a class-based exemption framework like the legislative provisions in New South Wales and Victorian provisions is necessary to deal with the Queensland situation. For Queensland’s legislation, the concern should be directed specifically to the inconsistency with s.92 obligations of secrecy in the *Ombudsman Act 2001* and is better addressed, as it has been for the Auditor-General already, by including s.92 of the *Ombudsman Act 2001* (concerning information obtained in preliminary inquiry or an investigation) in Schedule 3, s. 12 under the *Right to Information Act 2009*. The Reviewer has consulted with the Information Commissioner to check that this would be the better approach.

To fail to address the effect of this inconsistency with the Ombudsman’s existing secrecy and confidentiality requirements means that the Ombudsman cannot assure witnesses and agencies of his obligation to perform investigations confidentially under the Act leading either to gaps and inefficiencies in information, or the necessity to use formal more expensive (in time and process) powers. In practical terms, the net effect to accessibility of information should be the same under the eventual application of the *Right to Information Act 2009* but the *certainty* at the front end – prior to the Ombudsman seeking access to the information - avoids the most anomalous result of right to information legislation compromising the Ombudsman’s access to information for quick and informal administrative justice.

Recommendation 36

Amendment of Schedule 3, s.12 of the *Right to Information Act 2009* to include s.92 of the *Ombudsman Act 2001* is recommended.

7.3 Workflow Efficiency and Effectiveness

Since January 2012, complaints workflow has been organised operationally and structurally around time, and the sequence is premised on a process assessment followed by a merits assessment.

“Process assessment” occurs in RAPA which registers the complaint and then undertakes a preliminary assessment of complaints within jurisdiction within 10 days (2016/17 actual: 6 days similar to previous years). If the complaint is not finalised in the preliminary assessment phase (and approximately 80% of matters are) then it is referred for investigation in IRU: first for investigative assessment (within 14 days, and approximately 65% are closed) followed by an investigation (3, 6, or 12 months) if the complaint was not discontinued or resolved in investigative assessment.

The time target for straightforward complaints is within 3 months, within 6 months for intermediate, and within 12 months for complex investigations. In 2016/17, investigations of complaints took an average of 46.5 days to finalise (48.1 days in 2015-16).

Following a successful trial in 2016, investigative assessment now includes an expedited merit assessment process of simple complaints within the IRU to minimise process for limited or no merit complaints (achieves an average of 4 days to finalise rather than 14 days). The other investigative assessments occur within the IRU teams by investigators.

At any point during an investigation, the complaint might be resolved prior to completion of the investigation or a decision-letter, or discontinued as unnecessary or unjustifiable.

At any point in the workflow timetable, a matter may be informally resolved, or discontinued by the Office for want of sufficient merit to continue.

This workflow planning framework has reported successful timeliness outcomes against the performance measure targets.

Comparative interjurisdictional trends also indicate significant gains in timeliness of case management over the last decade. Victoria established an early resolution team in 2016/17 that dealt with 85% of all initial contact. Western Australia made additional enhancements to its early resolution capacity in its organisational structure in 2016/17, following a new organisational structure in 2011/12 to promote and support early resolution of complaints.

7.3.1 Performance Measures

Performance management for the Office is framed principally around timeliness. It is the more reliable quantitative measure to indicate performance “improvement”. Fairly measuring the number of complaints is indicative of workload but is an unreliable measure of “success”: an increased number could reflect success in the

Office educating people about their rights and the Ombudsman’s role, whereas a decrease in complaints could indicate success due to the overall reduction in maladministration giving rise to complaints.

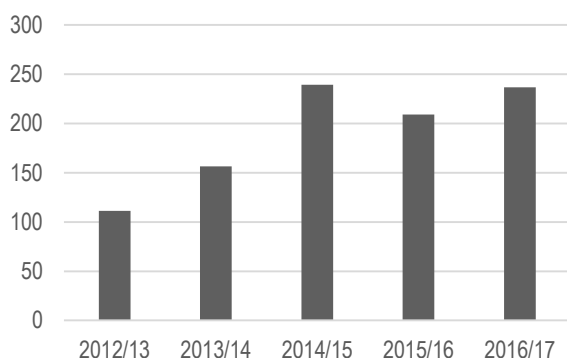
The 2006 Strategic Review recommended that the Office develop a credible set of performance indicators to measure the effectiveness of the espoused “Service Standards” for publication in the annual report. The commitments in the current Client Service Charter (e.g. courteous, helpful, professional) are typically included in the annual client surveys to produce one overall indicator for client satisfaction.

The survey data is rich with other information valuable for senior management analysis in accessing a bigger picture of risk and performance.

By way of example, in investigative assessments and investigations (i.e. IRU), the perception of Office partiality increased (agency bias) in the client surveys between 2010 and 2014. In the 2014 survey, 25% of clients felt the Office of the Ombudsman was impartial in dealing with their complaint compared with 36% in the 2010 survey. The cause is necessarily ambiguous in the context of a 17% rectification rate for the 2013/14 year, i.e. only one person in five may get a result that they were seeking through a full or partial rectification. However, a trend variance analysis could suggest alternative hypotheses to keep a watching brief over future trends, if not a quality assurance alert. For example, the 2010 measure occurred prior to the 2012 organisational operational structure of workflow organised around nominated timeframes, i.e. significant change event between both measures of partiality.

It is possible that pressure to perform to timeframes could expose the Office to an operational risk to quality, if there is not a corresponding qualitative measure, or it is less visible, or quality assurance management is not as effective to guard against it. It is noted that the rectification rate in the following year 2014/15 increased visibly from the 2013/14 rectification rate, as shown in Figure 7 below. It is also noted that client perception of impartiality measured in the last 2016 IRU client survey returned to the higher level of the 2010 survey (i.e. 36%).

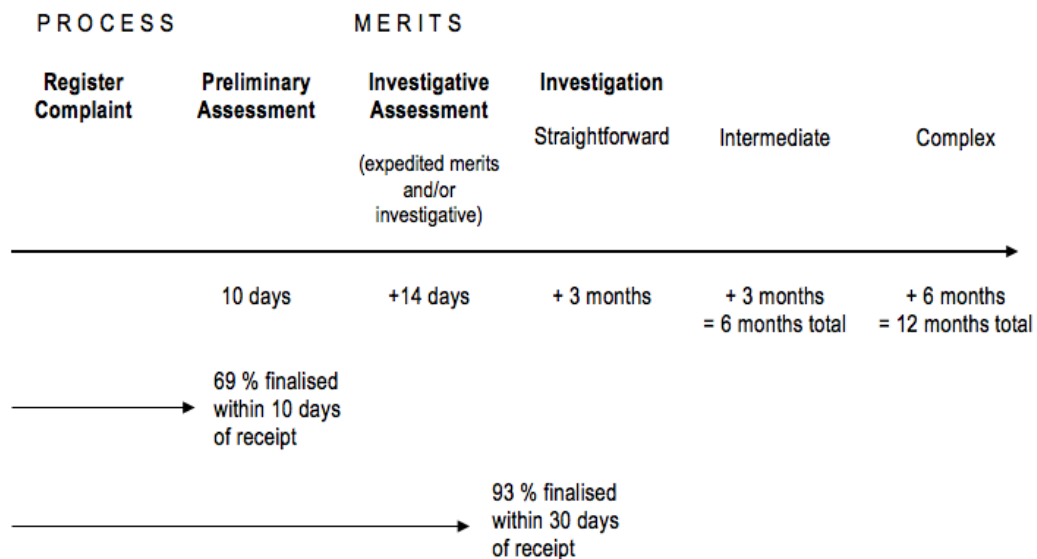
Figure 7 Number of Rectifications 2012-2017



Source: Reproduced from data supplied by the Office of the Ombudsman (October 2017)

The following Figure 8 summarises the complaints workflow and timeframes.

Figure 8 Complaints - Workflow and Timeframes



A successful timeframes-measured model, needs to ensure that timeliness does not become the too dominant driver at the expense of other desired qualitative outcomes.

During internal and external stakeholder consultations, concerns revealing some unintended consequences from an emphasis on time were made.

Unreasonable timeframes in seeking information from agencies was raised, one submission stated-

The department does hold concerns about the timeframes set by the [Office of the Ombudsman] in its requests to the department for certain meetings and where it seeks written information/responses. In most cases the issues/matters on which information is sought are complex, long standing matters that have been subject to many exchanges of correspondence with parties over a period of time. The rationale for truncated timeframes is also difficult to understand when the [Office of the Ombudsman] itself has longstanding issues in respect of the timeliness of its reviews and investigations. A greater focus on informal approaches to the department at earlier stages of an investigation may be beneficial for the conduct of initial research and assessment by the [Office of the Ombudsman].

In its written submission, a university acknowledged extensions of time were possible but suggested a more targeted assessment of time upfront would be more efficient-

In its assessment, investigation and resolution process, it appears that the Ombudsman has adopted, by default, a one week timeframe when requesting

information or submissions from the University. In the main, it is the complex administrative decisions that are referred to the Ombudsman and the University has experienced difficulty in responding to the Ombudsman's request within 7 days. It might be unreasonable to require such a tight timeframe to respond to these complex matters and experience has shown that provision of a comprehensive and informed response to the Ombudsman within seven days is rarely possible.

In making this observation, the University acknowledges the willingness of the Ombudsman to grant an extension when requested. However, there is an administrative cost associated with requesting these extensions, which would impact the operations for the University and the Ombudsman. The University is of the view that it might be more appropriate for the Ombudsman to adopt a two week period for the University to respond to these types of requests.

Staff welcomed the recent change in procedure that enabled a 10 day extension of time (subject to Assistant Ombudsman and Principal Investigator approval) to be given to the assessment timeframe of a complaint to enable agencies to supply requested information within the assessment timeframe.

Staff feedback also included concern at a perceived one size fits all paradigm to ensure that the complexity of a case is properly considered and "whether timeliness might be becoming more important than the impact that the investigation will have".

The risk of unintended consequences of a dominant time driver, suggested in staff consultations, may be summarised as-

- Risk of rushing or cutting corners before time is up. (This is the risk to watch if the partiality client survey result continues to increase.)
- Once the extended timeframe of an investigation is in play, officer can drop focus on it ("de-prioritise") and run after the other assessments before time runs out, causing the opportunity cost of potentially missing earlier informal resolution. The other time pressures (urgent not important driving case management) are difficult with assessment vs investigations conducted by same investigators.
- Generally not being able to get permission to go to Intermediate earlier than Straightforward could be having unintended effect on planning and managing case.
- Reputational damage for the Ombudsman when agencies regard one size fits all short timeframes as arbitrary, unreasonable and disconnected from a proper assessment of the complexity of the matter, with resulting extension processes and administrative costs being uneconomic and inefficient.

It must also be noted that there was evident staff pride in the fact that the Office was reporting exceptional timeliness and had convincingly moved away from the burden

of ongoing backlog. It must be emphasised that no stakeholder suggested that time should not be a key driver in performance management. Time measures work to drive performance, and should continue, but need ongoing management review to guard against any unintended consequences.

Other options in the timed sequence within the performance management framework may be suitable, such as “stopping the clock” on the Ombudsman’s measures for the two week or appropriate period given to agencies for the initial response and provision of information. Or, measuring the rate of informal resolution outcomes which may show trends in early resolution capability. How to measure refinements are matters that the Office can workshop through in its upcoming strategic planning opportunity and include considerations outlined in Recommendation 2. Measuring the timeliness of major and own initiative reports should drive corresponding management decisions around structure and resourcing (and enabling human resource management decisions for workforce capabilities) to achieve that measure.

Recommendation 37

Strategic planning process should review performance measurement impacts on agencies, complainants and internal processes and behaviours, to consider opportunities for where more balance can be achieved between qualitative considerations and what can properly be measured by time. Such performance measurement planning should include consideration of all aspects of the Ombudsman’s role, in addition to dealing with complaints, as per Recommendation 2 and Chapter 4.

7.3.2 Intake and Assessments

The Registration and Preliminary Assessment (RAPA) team replaced the former Assessment and Resolution team (ART) in the major 2012 restructure. The 2006 and 2012 Strategic Reviews found that the ART had ongoing poor time performance outcomes. ART carried a backlog of assessments and it was reported that some staff in the Office believed that the investigation teams were under-utilised and could do more. The 2012 Strategic Review recommended that –

The role of ART should be redefined to that of a receival centre for “contacts” with the Office. All files should be resolved within 72 hours of creation. Files not resolved within 72 hours should be immediately acknowledged and then passed to the investigation teams for resolution.²³

The inaugural strategic review was concerned that an intake team to screen all contacts and undertake early resolution could become quite repetitive and monotonous recommending that “all staff should be given the opportunity to take part

²³ The 2012 Strategic Review, 47, Recommendation 20.

in rotations to the intake unit and none should serve longer than six months at a time.”²⁴ Professor Wiltshire considered-

Staff should be rotated between intake and investigative work. Experience elsewhere including Ombudsman’s Offices shows the reality of “burn out” amongst street-level officials who have constant client contact.

Staff were not in favour of the intake unit and it was not ultimately supported in the 2000 strategic management review, but as backlog and poor performance persisted in the intake and assessment function, the 2006 and 2012 reviews became increasingly more supportive of a specific intake function. The 2006 Strategic Review recognised the particular demands and pressures of working in the intake area in a close client contact environment and recommended a staff rotation policy be implemented to ensure that the staff could work in both investigative and intake teams.

The present Ombudsman applied specific resources to address the backlog as part of the restructure in 2012 when ART was replaced with RAPA.

RAPA has achieved great success against its key timed performance measure, dealing with assessments within 6 days, well within its 10 day target. It consistently overperforms in easily meeting targets for answering phone calls within two minutes. Currently the team carries an open caseload under preliminary assessment of approximately 50-80 cases.

The workload is significant with RAPA registering 6,958 complaints in 2016/17 year and finalising 79% of all complaints to the Office.

The reasons for success were explored in the staff focus groups across the Office. Explanations offered for RAPA performance measurement success included:

1. RAPA management was very clear about roles and processes, and especially expectations of timeliness. RAPA “stopped people just sitting on things”.
2. Improvements in managing unreasonable conduct by complainants -better than ART in managing long and abusive phone calls, there was permission to call that behaviour earlier. Unreasonable behaviour training.
3. Leadership.
4. Passionate, dedicated officers who are good people and have a supportive culture for each other.
5. Clear escalation processes and good quality assurance, audit-checking.

In focus groups, staff were asked to identify the risks to success. Many supported a view that the working environment was “unsustainable” due to perceived operational and workplace risks, and that success was achieved “in spite of the structure”.

While the staff turnover rates were at an acceptable level office-wide, RAPA had the highest staff turnover experience. Staff perceived staff turnover was 9-12 months.

²⁴ The 1998 Strategic Review, 57, Recommendation 18.

Follow up with figures in Office records showed some periods for longer but enough within that frame to justify the perception, including some officers declining extensions to one-year temporary contracts which are not as obvious in the turnover numbers.

There has been no staff rotation into RAPA only very limited opportunities for relieving. The caution of earlier strategic reviews is valid. The working environment is reactive and can receive highly emotional phone calls. The daily phone roster does offer short periods of respite in the day. The phone calls are constant and the tight turnaround ever-present. There is constant close contact with complainants receiving complaints information and advising that in most cases, as borne out in the statistics, the matter is finalised and the Ombudsman is unable to assist.

However, the Reviewer's conclusion is the obviously difficult nature of a complaints intake function is not actually the key to the concerns of the operational and workplace risks. It is not necessarily the case that the officers are a wrong fit or not resilient enough (to the contrary in fact from the Reviewer's observation), but more that there is too much sense of being just "process", when their value, contribution and potential is much more. The Ombudsman advised that he appreciated this issue which was part of the reason for increasing delegations to Enquiry Officers previously.

The Reviewer conducted a scheduled non-participatory observation one morning sitting among Enquiry Officers in the RAPA to observe the intake function and the workplace firsthand and to listen into phone calls received, including the Prisoner PhoneLink calls. The Reviewer was impressed with their professionalism, appropriate balance of empathy and efficient clarity of thought that officers brought to their tasks. This required emotional resilience to focus on the facts and threshold questions to quickly and effectively navigate the relevant jurisdictional and threshold questions to assess complex, lengthy and emotionally loaded phone calls.

The operational and workplace risks (not in priority order) to efficiency, effectiveness and economy in the intake and preliminary assessment function and possible responses may be described as:

Parity and Respect

The first observation was that in the Reviewer's experience, the nature and standard of the work being performed by the Enquiry Officers during observation was in excess of AO3 level. The Reviewer respected that the phone calls were of a more complex nature than merely a procedural or processing function registering phone call details and responding to clear questions about jurisdiction or the availability of other remedies against a checklisted guide. It would be a perfect call to have the relevant facts and jurisdictional questions presented clearly for simple answering. In one approximately 40 minute anxious complainant's phone call witnessed, there were multiple events, multiple potential jurisdictions and remedies for example to untangle, after determining if there were "administrative actions" of an "agency" and so on, and before considering what would be "reasonable in the circumstances" if "refusing" the complaint or holding pending further analysis.

The Reviewer confirmed with the Office of the Health Ombudsman that their equivalent intake roles were classified at AO4 level.

Staff feedback in focus groups other than the AO3s also mentioned the lack of parity for the roles. Although the work roles are different, lack of parity perceived in delegations and responsibilities for AO3s and AO5s in RAPA compared with AO6 investigators was also raised.

Bottlenecks

Review of AO5 Assessment Officer role descriptions describe the advisory role that the AO5s can offer the AO3s in more complex matters but the roles have evolved to become like “middle management” in practice regularly supervising the Enquiry Officers. This practice is beyond their assessed role descriptions and is causing bottlenecks in preliminary assessment caseload and overloading the Assessment Officers which is substantiated in data obtained from RAPA that showed that during a sample period (23 October – 3 November 2017) of the 271 complaint cases that were assessed by Enquiry Officers, 191 cases were advised on by an Assessment Officer or Manager.

Operational Impact of Time Pressures

Limited availability of time and resources has suggested operational risks:

- There have been occasions of limited, if any, induction before a new Enquiry Officer served on the phone roster.
- There are limited available ICT tools to assist in dealing with particularly difficult phone calls such as a search and enquiry intranet function or other real-time interactive resource.
- Complex jurisdictional changes such as in child safety (officers would value time for training and better understanding of the complexities).
- Busy-ness has also meant limited time to document and share procedural improvements so there can be uncertainties and inconsistencies in procedures.
- There is limited scope to assess and re-allocate that person’s work (The necessity for reallocation of work in staff absences was also raised in 2006 Strategic Review. However, new management has addressed this recently).

Value – Career pathways and value-add opportunities

The recently completed staff survey highlighted dissatisfaction with the availability of career pathways within the Office. For officers rostered on the phones, it is essential, as all other strategic reviews have reported, that those officers are offered rotational work in other areas of the Office. This would offer respite from the close contact with complaints intake as well as the opportunity and recognition of the importance of professional development and wider experiences for officers. (Also see Chapters 9 and 10).

Workplace health

Although the recent staff survey reported a strong 48% positive for “Workload and Health” for the Office (and 46% positive for the Intake and Major Projects Unit specifically in which RAPA is located) and a strong 65% positive for “Safety, Health and Wellness” for the Office, which overall Office results are +8 and +10 respectively better than the Queensland public sector benchmarks, staff focus groups identified the following risks in terms of workplace health:

- “Incessant”, “reactive”, sometimes emotionally challenging environment daily roster.
- Little and sometimes compromised respite if staffing numbers are low or under workload pressures.
- Need more training support for coping with the nature of the contacts.
- Need more debrief and counselling support, and more formalised processes so that debriefing opportunity is not subject to skills and style of managers at the time nor lost due to time and workload pressures e.g. non-rostered peers, mentors from other teams trained to assist. Not just for critical incidents.

(Also see Chapter 9.1.3).

Recommendation 38

The intake officers should have a formalised suite of options readily available to them for respite and support according to need and circumstances at the time. The options could include supported time out, defusing with immediate support, formal and informal group or individual debriefing options and one-on-one support sessions such as the Employee Assistance Program (EAP). There should also be follow up protocols in place and practised.

Recommendation 39

Current efforts to consider a network-enabled resource for enquiry and search functions should be supported as a high business need priority to provide quick and responsive access to procedures, telephone scripting for key concerns, quality jurisdictional information that includes up to date contacts and available remedies for that other entity.

Recommendation 40

Research in MIT and a mentoring system with Principal or Senior Investigators for example such as note-taking for investigation interviews and research should be offered to Enquiry and Assessment Officers to broaden experiences and contribution opportunities across the Office and offer professional respite from complaints intake function (commitment may be rostered).

Recommendation 41

More reliable communication processes to consider and embed procedural changes should be implemented.

Recommendation 42

The Inductions checklist and package should be reviewed and updated and proper induction should be implemented prior to inclusion in phone rostering. Quality assurance to this risk should be ensured.

Recommendation 43

Operational Instructions for the Office of the Ombudsman should be updated regularly approximating review dates or following jurisdictional or procedural changes.

Recommendation 44

Provision of a child safety jurisdictional changes training update by IRU for RAPA is recommended and is an example of ongoing opportunities of working across boundaries in sharing knowledge to benefit the efficiency and effectiveness of another team that should be continued.

7.3.3 Investigations

Success factors nominated for investigations in IRU since the last strategic review included improved delegations, positive visibility of performance and investigative outcomes, better processes and the Resolve worktracking system for regular review and platform for work process timeframes and the ability to escalate within the system although there are concerns for the future of the Resolve system given its age (see Chapter 9.2.2).

It was reported that the investigators are “not overworked”. The Reviewer confirmed this assessment in staff focus groups generally and reviewed sample timesheets for IRU officers to look at time carry-overs and/or losses of time for a five month period in 2017 across the three teams and levels. The current investigating officer caseload is approximately 6-10 cases. This compares with *in extremis* caseloads per officer of 50-60²⁵ in 2000 at the time of the Strategic Management Review *after* 18 additional staff resources had been added to the Office.

However, feedback during consultations included disparity in workloads and performance management within teams with some officers working above and beyond others at the same or higher levels. These claims are consistent with the staff survey feedback identifying concerns in managing poor performance. (See Chapter 9 below.)

In addition, mixing assessments with investigations provides a constant tension of time, where the urgent (assessments with shorter timeframes) can be prioritised over the more important (quality case management and investigation of complaints whether of direct benefit to complainants or major investigations of systemic benefit with the former done first due to the tighter set timeframes and corresponding priority for resources). See Chapter 10.

Some staff had raised that the practice of needing to seek re-categorisation of a case to a higher level of complexity closer to expiry of the deadline of the lower level category was problematic for case management. The Reviewer was advised by the

²⁵ The 2000 Strategic Management Review, iii.

Ombudsman that categorising case management according to complexity was possible at the outset in accordance with the Operational Instructions.

The Reviewer was also advised that if complaints were not finalised at preliminary assessment they were referred to IRU for investigation but that the investigation proper did not occur automatically as the delegated decision-maker needed to first decide that an investigative assessment would become an investigation.

Feedback

During consultations, one department suggested that it would be useful to learn how satisfied the complainant was with how the complaint had been addressed. One council and one department made the same suggestion that it would be beneficial to let the agency know when the Ombudsman has decided to refuse the investigation of a complaint made against the agency because complainants often tell the agency that they have taken their complaint to the Ombudsman and it would be good to know that the matter had been closed.

The Office advised that it does not often know how satisfied the complainant was either but liaison officers are welcome to contact the Office in particular cases of interest. Where agencies have been engaged by the Office in assessment of a complaint, the Reviewer is advised that the Office will advise that the complaint has been finalised but with approximately 65% of all investigative assessments closed in the initial stage in IRU, the workload to advise all the other agencies (where no contact had been needed with the agency before finalising) would be disproportionate.

7.3.4 Delegations

Devolved (or local) decision-making is quicker and more responsive decision-making, supports performance accountability and a sense of work autonomy, but ultimately it is a question of capability and risk management.

Questions as to the appropriate level of delegations have been raised in the previous strategic reviews. There have been significant improvements in delegations over the period. For example, an AO7 in each investigative team in IRU now allocates investigative work to the team, which was formerly the Assistant Ombudsman's decision, the (former) ART Committee and earlier the Deputy Ombudsman.

However, delegations are in issue again in this Review. It is understood that new delegations were approved in July 2017 for assessment phase for AO6 level officers.

The view persists that AO6 and AO7 level officers particularly are under-utilised in exercising authority for signing of letters, and as compared with previous work experiences. This is not only a source of frustration in perceived lack of autonomy but it can impact adversely on the efficiency, effectiveness and economy of the Office with unnecessary delay, administrative burden, duplicated effort and inconsistencies in the decision-making framework in parity with others.

One of a number of risks that needs to be weighed is the capability of the proposed delegated decision-maker, and whether the quality assurance processes are adequate to expose error and have it addressed satisfactorily. Delegations can be merit-based decisions where there is an effective performance management framework in place. Officers can qualify to hold the delegation rather than as of right according to classification level.

In risk assessment, it should also be noted that assessment decisions are subject to the internal review complaints process.

Due to the persistence of this issue (and correspondence practices in 7.3.5), it is suggested that a staff working party be convened to advise the Ombudsman Management Group (OMG), in writing, of the specific delegations and practices of confusion, disparity and missed opportunity, for the OMG to consider that list, consult further with staff to settle a view if necessary, and make recommendations to the Ombudsman.

The following considerations support the most devolved level of decision-making for Ombudsman tolerance level to consider-

- merit qualification, managed with suitable checks and balances to avoid claims of favouritism;
- parity across levels, but avoid addressing the disparity by removing the delegation from the eligibility of lower level officer but instead adding it to the merit eligibility of the higher classified officer;
- effective quality assurance and governance in place;
- periodic review of performance of delegated authority;
- greater reasonable delegation can support greater accountability of performance;
- avoid disconnect between informal resolution results and the formal confirmation (effectiveness of local decision-making); and
- flexible options e.g. set sign off delegations when settling the case management plan so that risks can be assessed on case by case basis.

Recommendation 45

The delegation for signing assessment decisions by AO6 investigators is supported.

Recommendation 46

A working party of staff representatives should be convened to advise the Ombudsman Management Group (OMG), in writing, of the specific delegations and practices of confusion, disparity and missed opportunity. The OMG should consider that list, consult further with staff as may be necessary, and make recommendations to the Ombudsman for the Ombudsman to consider.

7.3.5 Correspondence

Inefficiencies and delay in clearance and repeated redrafts of correspondence has been a concern in previous strategic reviews²⁶ and has been volunteered as being cause for undue delay and inconsistencies for some areas in this Review.

The Office has a Style Guide available on the intranet and training is offered periodically. The Style Guide is not included in the Induction Package and training is not offered to new starters specifically. Operational Instructions guide when to use a formal letter or an email.

Recommendation 47

It would be useful in productivity terms for the Assistant Ombudsmen to discuss their different approaches and agree to elements of a common Office style for drafting correspondence, and clearance expectations, for a Correspondence Protocol for the Office. Supervisors should ensure that their writers are familiar with the Office Style Guide and the new Correspondence Protocol on an ongoing basis. The Style Guide should be included in the Induction Program.

7.3.6 Quality Assurance

The Office exhibits a high commitment to quality assurance of its delegated decision-making in assessment and investigations, including escalation protocols, daily, monthly and quarterly reviews and audits of samples by peers and management. The quality assurance framework is well-known and practised. The Operational Instructions record audit assessment procedures.

Complaints management system, internal review and service delivery complaints policies and procedures are well-established and monitored. Review of the 2016/17 Service Delivery Complaint Analysis report did not raise any concerns for this Strategic Review.

8 Helping Improve the Quality of Administrative Practices and Procedures

8.1 Improving Decision-Making

8.1.1 Public Reports and Investigative Outcomes

Major investigative reports are directed at improving systemic issues of concern. Five public reports were released in 2016/17 and 17 public reports in total under the tenure of the current Ombudsman.

²⁶ The 2000 Strategic Management Review, v.

Other non-publicly reported investigations can also lead to systemic improvements. In 2016/17, 1,407 investigations were closed. In total, 232 rectifications were achieved. Of these rectifications, 218 were negotiated resolutions and there were 14 findings of administrative error. In the 1,407 closed investigations, a total of 306 investigative recommendations were made (181 direct benefit and 125 systemic improvements). The majority of the recommendations identified improvements to agencies' policies or procedures, which the 2016/17 Annual Report noted was consistent with the nature of recommendations in previous years.

During consultations, some departments and councils asked for the learnings from others' experiences be shared across the liaison network. For example, it was suggested that learnings from the (de-identified) investigative outcomes of other agencies could be shared in order to learn from the traps to avoid, without needing complaints and investigations of their own. Electronic circulation of de-identified casebook material (similar to the 2008 Local Government Casebook) is one approach.

Another possibility might be facilitation of periodic departmental Ombudsman liaison meetings to share ideas, issues and peer-tracking in smaller groups, potentially after an Assistant Ombudsman briefing on the common themes for the year to watch out for; or combine the keynote presentation with a speaker from another integrity agency before breaking into work groups to discuss common challenges and hear others' strategies. There are similar precedent ideas for shared-learnings in other jurisdictions. The regional visit program may also offer scope for this practitioners' workshopping experience regionally.

The Office is less active in the provision of administrative improvement resources in recent years. The Office has taken the interpretation of s.92 of the Act to prevent the publication of (even complainant de-identified) case material for the purposes of learning such as in newsletters without making a written request for prior approval by the Speaker under s.54. This needs to be addressed. If the firm opinion is that s.92(1)(a)(v)(A) of the *Ombudsman Act 2001* is insufficient then either legislative clarification should be sought, or the Ombudsman plan to include seeking the Speaker's prior consent to enable shared learning from case experiences with administrative improvement resources for agencies.

Recommendation 48

The Ombudsman is encouraged to develop a “shared learning” strategy to connect agencies and common issues learned from investigative outcomes in improving administrative practices and procedures. Confirmation of permission, or legislative clarification or amendment, enabling the implementation of the strategy such as casebook material and practitioner discussions in a timely and ongoing way needs to be pursued.

8.1.2 Training and Learning

The Education and Engagement Team (EET) delivers the training program throughout Queensland for the Office of the Ombudsman. Principally, the program covers decision-making, complaints management, public sector ethics, and managing unreasonable conduct. It is an active and well-organised program with appropriate operational planning targets, in particular for the proportion of participants reporting that training helps their work (target 80%, usually well- exceeded).

Training calendars and monthly reports evidence a coordinated effort for training and distribution of communication resources throughout regional Queensland regularly. Promotion is broadcast and targeted, including EET offering to tailor sessions for the business of particular agencies. Training is demand driven and while significantly reduced in the first half of the last financial year, it improved by the close of the year. For 2017/18 (to 31/10/17), 71 sessions had been delivered to 1096 participants (annual target of 2500).

A comparison, of the demand each year since the last review shows an improved high demand overall.

Table 5 Comparison of Training Demand over last 5 years

Year	Sessions delivered	No. of participants
2016/17	105 (42 in regional Qld)	1591
2015/16	162 (60 in regional Qld)	2616
2014/15	154 (65 in regional Qld)	2655
2013/14	137 (81 in regional Qld)	2202
2012/13	82 (28 in regional Qld)	1530

Source: Queensland Ombudsman Annual Reports for period 2012-2017

The most common theme across written submissions and in agency interviews was that the training programs delivered by the Office were highly-regarded for their relevant, useful content and exceptional trainers.

One local council submission, provided excellent satisfaction statistics for the training and complimented that-

... feedback from these sessions was overwhelmingly positive, particularly in relation to the knowledge, expertise and skill of the presenters and their support team.

Another council submitted-

The frequent availability of the specialist training is a strong indicator to Council of the Ombudsman's commitment to devolving more responsibility to Council in the area of complaints management whilst the Ombudsman remains impartial and separate. In turn, the Ombudsman's profile is raised.

... training very successful and was tailored to Council's needs. Council endorses this ongoing approach.

A regional local council telephoned and made a written submission to advise that they "greatly appreciate benefits of regular high quality training delivered regionally". Another regional local council made the connection expressly between improved service to the community and a regular, quality, training and support program to assist in enhancing staff skills.

Without exception, all departments that commented on the training provision by the Ombudsman gave high praise from their regular use. One department highlighted that the training was such high quality for a very competitive price that all departments should use the service.

In staff focus group discussions exploring opportunities for greater effectiveness given the Office's undoubted strength in their training product, the point was well-made that training is prevention so the earlier the training, the better. Commitment to training programs included in agency induction checklists, online options, even Skype delivery for better access in regional areas were discussed. The Reviewer notes that Scotland provides free e-learning courses on its website and that agencies can adapt the e-learning package for use internally, which has been popular for councils. This might be another idea worth exploring given Queensland's decentralised state and the cost and practical challenges of getting to all areas regularly.

The New South Wales Ombudsman also pushes out more model policies and procedures through its website than Queensland such as for complaints handling and managing unreasonable conduct, and includes numerous fact sheets on bad faith bias, breach of duty, conflict of interest, gifts, good conduct and administrative practice guidelines for state and local government, and natural justice/procedural fairness.

The EET also suggested that targeted engagement with agencies could promote the availability of tailoring training services to agency needs, and that improved economies might be found with better coordination and delivery of other services with regional training sessions. There could also be scope in Recommendation 48 above for the trainers beyond a set program, for a changing program, that shares trends and themes and better responses for the practitioners. Or, where the trainers might collaborate with an agency after a public report by the Ombudsman to tailor a program for within that agency(ies), if that would be a relevant and helpful response.

Recommendation 49

The Office should be commended for its excellent training program. Given the high quality programs that the EET can deliver, the Office is encouraged to be innovative in exploring more potential for beneficial impacts in quality administration such as agency partnerships for tailored shorter induction programs, or online resources and training packages. The Office continuing to target engagement with agencies for tailoring programs generally, is supported.

8.1.3 Complaints Management Systems Reviews

The EET also conducts a rolling program of review of complaints management systems (CMS) across all sectors: state agencies and offices, local councils and public universities. In 2016/17, the EET completed CMS reviews for 11 local government, 22 department/public authority, 20 department website external reporting and 31 shire council website external reporting. Over the past five years, 114 CMS reviews were completed. The Ombudsman advised that in addition, complaints handling and advice are provided to agencies on CMS policy development and implementation.

The Reviewer considered a sample of 13 CMS Reviews completed in 2016/17 across all sectors. They appeared appropriately detailed but accessible as suited to their purpose. The possibility of offering supplementary resources or help to assist smaller agencies understand and implement some of the recommendations was discussed. The EET helpfully identified further good suggestions for efficiency, effectiveness and economy, as endorsed in these recommendations.

During consultations interviews in particular, many agencies were grateful of the collaborative and helpful approach that the EET provided in advising on agencies' CMS and for the value that the CMS reviews provided in identifying areas of concern. Following consideration of other stakeholder feedback, Recommendation 15 encourages prior consultation with agencies on draft findings and recommendations of CMS review reports.

Recommendation 50

The Office continuing to –

- **revise/improve the CMS review process including simpler/shorter reporting to be able to conduct more reviews (efficiency);**
 - **invite agencies to provide feedback on CMS review process (effectiveness and efficiency); and**
 - **seek more economies in coordination with other services regionally (such as training program and for public interest disclosures),**
- is supported.**

Recommendation 51

Publication of common results/trends across CMS reviews to help agencies to continually improve CMS (effectiveness) is supported.

8.1.4 Administrative Improvement Advice

General administrative improvement advice is provided in response to specific agency requests. A description of the nature of the advice is recorded which would provide the Office with good trend information to consider its overall programs for helping to improve quality of administrative practices and procedures. In 2016/17,

there were 59 administrative improvement requests from agencies (49 in 2015/16, 89 in 2014/15, 63 in 2013/14, and 60 in 2012/13).

8.2 Empowering People

The Ombudsman's strategic plan and annual reports provide a proper focus on the Office's efforts for empowering people to resolve complaints with public sector agencies which involves "building greater knowledge in the community about how to make an effective complaint and when to contact the Office".

The other objective of the Office for empowering people is to promote accessibility. Community outreach targets Aboriginal and Torres Strait Islander communities, culturally and linguistically diverse communities, refugees, children and young people, students, homeless, aged, disability and carers, prisoners and regional Queenslanders.

Community outreach is delivered through the Office's Regional Services Program (RSP) and Communication and Engagement Plan, also both delivered by the EET.

The RSP policy includes the principles, scope and planning to support the policy and quarterly performance monitoring by OMG.

The RSP plans ten monthly regional visits throughout the state each year. In 2016/17, EET travelled to 26 regional locations and delivered 29 training sessions, ten CMS reviews, ten Members of Parliament electorate office visits, 20 government engagements (information sessions) and 81 community engagements (information sessions) including delivering the Queensland Complaints Landscape presentations to build greater awareness and knowledge of the Ombudsman's services and CMS in agencies. The Ombudsman advised that engagement with indigenous councils is a feature of regional visits whenever possible.

The 2006 and 2012 Strategic Reviews recommended that the Ombudsman appoint Indigenous Liaison persons for a "greater and more trusted connection" with communities. The Ombudsman advised that the recommendation was not implemented as demand for indigenous specific work did not support that approach and that the EET had been charged with specific engagement with indigenous communities and councils in particular.

During consultations, at least one other agency would support that latter view as it no longer allocates an indigenous liaison role to a specific position.

The Reviewer understands that data collection in the intake area (in RAPA) occurs at most 20% of the time as one day is rostered to seek demographic data, and it is not always possible to seek that information pending the circumstances of the call. The Reviewer notes that Form 2 in the Operational Instructions for complainants presenting in person seeks various information, but not demographic data. The collection of further and better information would be an opportunity to assist informing

a community outreach strategy that could be developed to focus on the areas of risk and of need in accessibility and knowledge building.

In terms of data, what is known already are widely-reported data showing a history of over-representation of indigenous Australians in juvenile detention, corrective services, and child protection systems for example, all relevant state agencies. Arguably, If there was not a corresponding over-representation presenting to the Office of the Ombudsman, then there are accessibility issues deserving of specific community engagement strategy.

The EET have been actively engaging with Aboriginal shire councils over the last 18 months and could build their profile and priority with the communities to be formally designated the Aboriginal and Torres Strait Islander Liaison point with responsibility to assist with direct and easy access to the Office and to consult with indigenous communities to develop a specific outreach strategy for wider indigenous communities.

Engagement action plans with indigenous communities undertaken by Ombudsmen in other states may help identify suitable strategies (e.g. Western Australia in 2016/17 continued “a major program to enhance awareness of, and accessibility to, Ombudsman services by Aboriginal Western Australians.”²⁷ The New South Wales Ombudsman has legislative responsibility for monitoring and assessing designated Aboriginal programs since July 2014 which is beyond the Queensland role but could offer relevant experiences and community outreach strategies, as might Victoria which has an Accessibility Action Plan even though its role is also beyond the Queensland role because Victoria has charter of human rights and responsibilities legislation.)

During staff consultations, it was suggested that there were opportunities to engage better with youth and other priority communities through social media. It was generally agreed that a business case for a social media strategy should be prepared to answer the range of possible issues (approval of posts, risk management strategies for reputational damage) and to consult on experiences with interstate Ombudsmen using social media and other relevant bodies within Queensland such as the Office of the Public Guardian. Such business case would be appropriately part of an integrated external communications strategy for the Office.

Recommendation 52

The following measures nominated for improvements in efficiency, effectiveness and economy are supported:

- **Greater targeted direct engagement with key community organisations (effectiveness);**
- **Introduce Aboriginal and Torres Strait Islander community engagement liaison role (as part of Manager, EET role) to encourage and help**

²⁷ Ombudsman Western Australia, *Annual Report 2016/17*, 7.

community organisations directly and easily access Ombudsman for information/advice (effectiveness);

- Revise and update Ombudsman community perspective subscriber database with key community organisations (effectiveness);
- Better coordination and delivery of Communication and Engagement Plan in conjunction with other services (economy and efficiency);
- Improve Office community engagement website information and resources (effectiveness); and
- Greater direct engagement with south-east Queensland Members of Parliament electorate offices (effectiveness).

Recommendation 53

A business case assessment examining the need and opportunities for a social media strategy to engage with target communities is recommended.

8.3 Oversighting Public Interest Disclosures

Public interest disclosure (PID) oversight transferred to the Ombudsman from the Public Service Commission in January 2013. The transfer of responsibility and expertise has been achieved efficiently and effectively, with numerous agencies complimenting the expert and helpful advice readily available in the Office.

The following comments from a sample eight different external stakeholders indicate the level of support:

PID training high quality and valuable exercise. PID team also very helpful when queries on the PID Act and its implementation arise, they are to be commended.

Ombudsman's staff consultative approach is appreciated, PIDs-efficient, effective and responsive when contacted for advice and assistance.

The new RaPID database has streamlined PID reporting across agencies.

PIDs excellent training and on phone help.

Easy and early good advice.

Used to have a PID contacts forum but seems to have fallen away, would be good to look at setting that up again.

PIDs-efficient, effective and responsive when contacted for advice and assistance.

Supportive of PID coordinators' network and the shared learnings arising out of that network – valuable resource. "Thinking about blowing the whistle"

series that was published in 2011 by the then Crime and Misconduct Commission, the Ombudsman and the Public Service Commission, now outdated and has been removed from circulation. It would be beneficial for this series to be reviewed and updated so it can continue to be a valuable resource in Qld departments and agencies.

A 30% increase in the reporting of PIDs in the last financial year compared with the previous year has been noted by the Office. One explanation may be the increased engagement with agencies and increased training.

Resourcing constraints have meant that the Office has not been able to conduct a review program of the way agencies are dealing with PIDs with a similar rigour as the CMS review program, and only one PID training session has been conducted outside south-east Queensland.

There is scope for cross-skilling and more collaboration between both PID and EET teams with obvious synergies and savings in conducting training regionally, practitioner advice, monitoring and reviewing roles and administration support. This scope for greater efficiency and economies for the Office in coordination and collaboration of effort would still apply if the nature and extent of the oversight role increased due to the common or very similar frameworks of the Regional Services Program, liaison networks and shared learning opportunities.

Relevantly to Chapter 8.1.1 and Recommendation 48 above in terms of sharing strategies in dealing with complex PIDs, New South Wales reports on good practice and PID practitioners' discussions on problems (e.g. staff making a disclosure under PID Act to avoid performance management) with strategies used to address these problems and case studies and advice from the Ombudsman. Such forum opportunities could be combined effectively with EET topics, particularly as the liaison points in agencies would often be similar. There is an introductory PID training program (free to agencies) that the EET trainers could readily deliver with other programs regionally. More planning would be required around the advanced PID package to combine efforts for cost savings and efficiencies in planning in the regions.

Recommendation 54

The Office of the Ombudsman is to be commended for the efficient and effective adoption of this new PID oversight role, implementation of new database, and the high praise and gratitude expressed for PID advice and assistance.

Recommendation 55

The Ombudsman is encouraged to include a PID management action template in the PID process guide for further assistance to agencies following stakeholder feedback.

Recommendation 56

Collaboration between PID team and EET in conducting training regionally, practitioner support opportunities, monitoring and reviewing roles, and administration support to achieve enhanced efficiencies, effectiveness and economies, is recommended.

9 Capable and Accountable Organisation

The people, processes and systems that make for an accountable organisation with a capable workforce are considered below.

9.1 People

The purpose of the Ombudsman for timely, effective and independent administrative justice with a remit to also help improve the quality of public service administration clearly resonate in the marketplace when the Office is recruiting, as well as in the workplace where so many of its people consistently strive in that mission, and choose to stay.

Selection pools for a vacancy in the Office typically attract large pools of applicants (e.g. for RAPA > 100, IRU >55, corporate services > 50,). Overall, the workforce is generally stable, with a diverse service record ranging from a few in their fourth decade of service to the more recently appointed.²⁸

The Reviewer met with the staff of the Office, divided over seven focus groups and in a business improvement workshop, over a period of a few weeks and benefitted from several submissions in addition to those meetings. Many of the people who work at the Office can be well-described as proud, expert, knowledgeable and dedicated in their roles. They like to help people who may be exposed and may not be able to look after themselves. Equally, it was evident that they enjoy helping agencies in their various roles with good job satisfaction in the broader impacts that they are helping to achieve. The success of the Office's performance clearly benefits from its staff sharing its mission, which is a credit to all.

The establishment for the Office is 63 FTEs. Analysis of the profile of the workforce by age, level and gender in June 2016 compared with June 2012, and as compared with the Queensland public sector, shows-

- a 5% increase in female workers (from 60% to 65% of the total) which reflects a similar small increase in trend in the broader sector to 66.5% for 2016;
- a 15% increase in the 30s age bracket with adjustments down in the 20s (-8%) and down in the 50s (-7%) with negligible movement in all age brackets in the broader sector, but otherwise in 2016 an even spread in age groups 30s – 50s+;

²⁸ RAPA would be an exception to the overall pattern, as explained earlier in 7.3.2.

- the 2016 age groupings were consistent with the broader sector with the exception of the Office's 20s bracket at half of the broader sector in favour of the 30s (which may reflect large-sized, well-qualified pools for the greater delegated responsibilities in Enquiry Officer roles since RAPA established in January 2012); and
- the largest age grouping of males in 2016 was in the over 50s at nearly double females in the same bracket, and the largest age grouping of females was in the 30s.

The Office annual reports now also provide equal employment opportunity census data.

Analysis of the available 2016 data shows that there was gender diversity in the senior roles AO7 and above (11 males and 14 females). However, ratios in the smaller group of AO8 and above were more difficult to interpret. As at 30 June 2017, in the AO8-CEO levels there were 6 males and 4 females. Following recent staff recruitment, there are now 7 males and 3 females in the AO8-CEO levels.

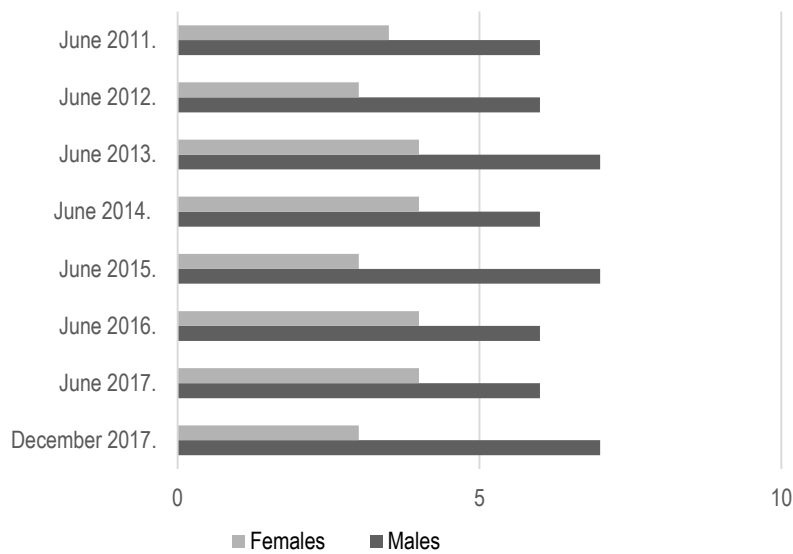
The 2012 Strategic Review reported a prevailing view that the Office was a male-dominated organisation and that there was "still a significant gender imbalance with an under-representation of females in senior management" with 3.5 females and 6 males, AO8-CEO, 2010/11.²⁹

This Strategic Review did not detect a prevailing view among staff, express or inferred, in the various consultations that the Office suffered a gender imbalance. This was so despite discussions on the recent staff survey that included lesser scores for "anti-discrimination" but when this was discussed, staff were keen to clarify that that survey result was intended to refer in more general terms to fairness issues such as favouritism in the workplace other than specific statutory grounds (discussed in 9.1.1).

It is also contextually relevant to the data to note that comparing a static figure in one point in time from five years earlier may misrepresent the trend in figures in between, as the 2016/17 figure suggests, and the actuals shown below, where in three of the last four years the ratio was 6 males and 4 females. In a small number of ten, the movement of one officer impacts the ratio more significantly.

²⁹ The 2012 Strategic Review, 64.

Figure 9 Gender Profile AO8-CEO Level (current-2011)



Source: Queensland Ombudsman Annual Reports for period 2010-2017 and current data from the Office of the Ombudsman (December 2017)

The Ombudsman has expressed a clear commitment to gender diversity in the Office. The Reviewer noted the Ombudsman’s reporting mechanisms that regularly provide workforce data for review. This Review encourages the Office to maintain regular review and commitment to contemporary workforce practices to continue to support gender, age and other diversity in the workplace.

In relation to temporary staff working in the Office, the Ombudsman advised that s.76 of the *Ombudsman Act 2001* requires amendment to ensure the proper coverage of work experience students and participants in rehabilitation schemes as “officers” and cause them to be subject to other work arrangements in the provisions of the Act, particularly secrecy obligations under s.92.

Recommendation 57

The Ombudsman’s suggested amendment to s.76 of the *Ombudsman Act 2001* to ensure that work experience students and participants in rehabilitation schemes are regarded as “officers” to ensure they are covered by other work arrangements under the Act, particularly secrecy obligations under s.92, is recommended.

The following sub-sections in 9.1 consider the processes that support a capable and productive workforce and, ultimately, can help make the Office “a great place to work”.

9.1.1 Staff Consultation

The key staff feedback mechanism for the Office are staff surveys. The 2012 Strategic Review reported a range of negative indicators from the 2011 Staff Survey (response rate 93%), and which prompted the then newly appointed Ombudsman to implement five Improving Capability and Effectiveness projects in 2012.

In significant contrast, analysis of the most recent staff survey (Working for Queensland 2017) (response rate 83%), against the average benchmarks for the Queensland public sector, found in respect of the benchmarks that the Office was-

1. above for agency engagement 61% (benchmark 51%);
2. above for organisational leadership 58% (benchmark 53%); and
3. equivalent for innovation 59% (benchmark 61%).

These results also represented significant improvement from the 2015 staff survey results for closely equivalent questions:

Table 6 Key Changes Since 2015 Staff Survey

Theme of the Question	2015 %positive (variation from benchmark)	2017 %positive (variation from benchmark)
Office is a great place to work	44% (-20)	62% (+1)
High quality leadership of the Office	27% (-24)	62% (+6)
My manager creates a shared sense of purpose	36% (-28)	74% (+6)
My manager listens well	63% (-11)	88% (+11)

Source: Office of the Ombudsman (October 2017)

The main areas for improvement (two areas of priority are highlighted in bold) that the 2017 Staff Survey identified can be described as:

- *poor career development opportunities*
-40% negative satisfaction with career development opportunities
 -10% below public service response for “opportunities for me to develop my skills and knowledge”
- *fairness and trust*
-54% disagreed that “I am confident that poor performance will be appropriately addressed in my workplace”
 -12% below public service response for “people are treated fairly and consistently”

- *effectiveness and innovation*
 - 17% below public service response for “people in my workgroup share diverse ideas to develop innovative solutions”
 - 15% below public service response for “my workgroup uses research and expertise to identify better practice”
- *job satisfaction*
 - 13% below public service response for “degree to which job is interesting and challenging”
 - 11% below public service response for “opportunities to utilise my skills”

The final point of significance that the 2017 Staff Survey highlights is that the breakdown of results by work teams showed that it was the IRU staff who were significantly less satisfied than the rest of the Office. None of the other teams, including RAPA for all its workplace pressures, had a single climate indicia or strategic factor at a variance in the red (i.e. at less than 5% below the rest of the public service) whereas the IRU had 11 in the red out of a total of 17. Chapters 9 and 10 seek to assist the scores profile for IRU.

Chapter 10 will also seek to respond to the career path concerns together with 7.3.2, 9.1.3 and 9.1.4 recommendations. Suggestions for responding to the perceptions of failing to treat people fairly and to manage poor performance are made in 9.1.4 and 9.1.5. The organisational philosophy in Chapter 10 together with other recommendations in 9.1.4 and specific areas such as 8.1.2 seek to respond to effectiveness and innovation dissatisfaction. Improving issues involved in job satisfaction are suggested in 7.3.4, 7.3.2 and Chapter 10.

Recommendation 58

The significantly improved staff survey results overall for the Office of the Ombudsman should be acknowledged and the Ombudsman Management Group executive be encouraged collectively to continue workplace improvements as informed by the latest results.

In terms of other staff consultation and feedback avenues, the Reviewer was advised that there are monthly staff meetings for all staff by the Ombudsman personally. The three teams within the IRU no longer have a whole-of-unit staff meeting, and arrangements across teams within the IRU vary considerably. Staff were clear of the big picture leadership messaging of mission and performance objectives but were less clear of details across the office such as whether the Expedited Merits Assessment was still a pilot or not; recruitment and selection processes and decisions; and changes to procedures.

In responding to similar indications, the 2012 Strategic Review recommended-

The Ombudsman should continue to pursue policies that enhance the trust and information flows between management and staff so that the high aspirations of management and staff for a “One Office” can be fulfilled in a meaningful way.

This Review agrees. A common perspective during staff consultations was that at least a number of the teams across the Office had become quite entrenched “silos”, which is not conducive to efficiency and effectiveness and will be returned to later in Chapter 10.

Recommendation 59

More communication opportunities for management messages and across teams is recommended to assist clarity and commitment in the workplace such as changes to procedures, workload allocations, recruitment and selection.

9.1.2 Recruitment and Selection

It would appear to be generally agreed that the common entry points into the Office are the AO3 intake roles in RAPA or the AO6 investigating roles in IRU. Some feedback suggested that this could be a risk for an internally closed and entrenched culture. Staff consultations also indicated that upcoming vacancies have been advised but delays in advertising are not uncommon. Staff feedback was that the recruitment delay impacts on work outcomes in that area or other areas that need to backfill urgently which leads to staff frustration.

The 2000 Strategic Management Review reported staff criticisms about recruitment and selection practices not being consistent with public service standards, variations in recruitment and selection practices and process between teams which caused unnecessary tensions and inconsistent feedback.³⁰

In this 2017 Strategic Review, each of those concerns was raised across the staff focus groups by various staff. The 2017 Staff Survey apportioned the staff equally in their positive, neutral and negative view to the statement, “recruitment and promotion decisions in this organisation are fair”, which with a positive response of 35% in favour of the statement was a 2% less positive result than the public service benchmark.

On further inquiry, the Reviewer determined that there is not always an external representative on the selection panel, although there usually is for higher levels but the policy does not specify that be so, and there would appear to be inconsistencies between management as to what is required for equivalent roles, as well as inconsistencies in providing feedback.

A greater explanation at the outset as to what is valued for the role through greater alignment with contemporary workforce capability planning such as the Public Service Commission’s approach to the Leadership Competency Framework and The Workforce Capability Success Profile, would assist in providing a common framework and language on leadership expectations and for dialogue with staff. The Success Profile can also inform talent recruitment, retention, and succession strategies.

³⁰ The 2000 Strategic Management Review, 94-95.

Statistically, the Ombudsman understands that, in general, a recruitment decision is approximately a seven year commitment so that it is critically important to get that decision right in a small Office of 63 FTEs.

The Ombudsman advised that a staff turnover target of 7.5% has been established and is closely monitored. Average turnover for the Office in the last five years has significantly improved compared with that measured in the last Strategic Review:

<u>Most recent five years</u>	<u>As reported in last Strategic Review</u>
5.8% (2016/17)	19% (2010/11)
17% (2015/16)	14% (2009/10)
17% (2014/15)	24% (2008/09)
10% (2013/14)	18% (2007/08)
6.9% (2012/13)	23% (2006/07)
	29% (2005/06)

The Office does offer an exit survey or interview as part of the separation procedures, although this is not often accepted.

Recommendation 60

The Ombudsman should consider alignment of the Workforce Capability Plan for the Office with the Public Service’s Commission’s contemporary capability frameworks and strategies, including the Leadership Talent Management Strategy and the Workforce Capability Success Profile. Specifically, an updated workforce planning framework for the Office can address consistency in selection and recruitment expectations and language, timing of process, selection panel representation, appropriate use of selection strategies, candidate feedback, retention and succession strategies.

9.1.3 Induction and Training

The Ombudsman has achieved a 2% of annual budget allocation to training for the last five years which delivers on the 2012 Strategic Review’s recommended allocation of a minimum of 1.5% (and preferably 2%). This achievement on a tight budget over a small Office is acknowledged and is to be commended.

The training plan documentation for the Office does not include a training needs analysis integrated with the performance management framework and individual achievement planning which would assist the Office in identifying and planning the training spend, such as for consideration of the following training needs identified by staff during consultations-

- Currency in training needs e.g. in advanced negotiating or mediating (other offerings are too introductory and not sophisticated enough to extend the investigators’ skills’ sets. (Tailored training in-house with supplementary resources might be an option, consider whether cost-sharing with another investigating agency might be possible).

- Emotional intelligence training and building resilience for RAPA and IRU staff.
- Avoiding “stagnation of skills” and professional development and to better guide “desirable” and “highly desirable” Study and Research Assistance Scheme (SARAS) decision-making.

Additionally, development of competencies and plans for work shadowing were noted as for future action by corporate services in the Improving Capability and Effectiveness project update.

Recommendation 61

The Office of the Ombudsman should prepare a training needs analysis which integrates with the performance management framework and includes due consideration of employee needs and goals with workforce capability planning. The training needs analysis should include consideration of advanced negotiating and mediating skills, emotional intelligence and resilience training, and professional development needs from individual achievement plans.

The Office induction program provides for corporate induction, induction by manager and induction training with manuals and checklists.

Staff feedback suggested better on the job mentoring, particularly when first arriving into a new role. Staff feedback included that the Operational Instructions tended to be more relevant for the ideal situation which is not often that applicable, and the currency and status of approval of other internal procedures was not always that clear.

Recommendation 62

Formalising the “go to” mentor for induction support when starting in a new role and ensuring internal manuals and procedures are up to date, and consistent with the Operational Instructions, is recommended to ensure efficient and effective commencement in new roles.

9.1.4 Achievement Planning

An integrated performance management framework owns the strategic plan, the achievement of which is planned by business or operational plans which are delivered through the collective might of individual achievement plans as assisted by training needs analysis and training plans.

Staff feedback suggested that some staff did not have individual Achievement Plans in place, or they were out of date, or that the process was one-sided and not positive. Some staff in other teams indicated that they had Achievement Plans in place without concerns. There would appear to be inconsistent implementation of Achievement Planning throughout the Office and therefore a missed opportunity to plan the achievement of business, and promote reasonable performance conversations and expectations.

The first concern that was raised however, with examples, was the perceived persistent failure to manage poor performance.

The 2017 Staff Survey confirmed the priority of this concern for staff with 54% who disagreed that “I am confident that poor performance will be appropriately addressed in my workplace” (which response was 18 % less positive than the public service benchmark).

Staff feedback during consultations elaborated that the consequences of the ongoing failure to manage poor performance within the Office:

- Had a de-motivating effect on other staff.
- Underperforming staff are not only “being carried” by other staff but they are “blocking limited career pathways” in the Office.
- “Picking up the slack” of another officer means other work does not get done.

Under the *Public Service Act 2008*, managers can be disciplined for failing to manage poor performance. Section 26(3) provides that a manager must-

(a) proactively manage the work performance and personal conduct of public service employees under the manager’s management; and

(b) if a case of unacceptable work performance or personal conduct arises, take prompt and appropriate action to address the matter.

Managers and staff of the Office of the Ombudsman are not public service employees employed under the *Public Service Act 2008*.

However, the Office should be, and be seen to be, applying best practice in the application of the Office performance management framework and in the proper implementation of individual achievement planning and, if and when necessary, in individual performance improvement plans or other appropriate strategies to manage poor performance.

Recommendation 63

Human resources policies, practices and procedures should be reviewed to ensure they are consistent with contemporary best practice in human resource management and innovations and follow the same high standards for the public service. Greater use of CaPE services through the Public Service Commission and some corporate support from the Department of Justice and Attorney-General should be explored in order to enhance the small establishment providing the human resources advice to business areas where there is need for specific support in–

- **planning and reviewing employee performance;**
- **stress management, emotional resilience and wellbeing; and**

- **soft skills coaching for supervisors and managers, e.g. in managing poor performance.**

9.1.5 Public Service Act 2008

Staff of the Office are employed under the *Ombudsman Act 2001* (ss.76, 78), and are not public servants under the *Public Service Act 2008*. The conditions of employment of the staff of the Office are approved by the Governor in Council but in practice they are consistent with the Public Service Award under the *Public Service Act 2008* and the *Public Service Regulation 2008*.

Historically, it has been for reason of protecting the Ombudsman’s “independence” that the staff of the Office have not been employed under the *Public Service Act 2008*. In principle and practice, there are several reasons that undermine that justification:

- *Independence*: The Ombudsman’s independence does not depend on the legislative head of power for the employment of the staff. The Ombudsman’s independence is legislatively mandated in the *Ombudsman Act 2001*, s.13, where the Ombudsman is not subject to direction by any person and is an officer of the Parliament (s.11).
- *Perceived independence*: The Queensland Auditor-General is an independent officer of the Parliament with staff who are public servants employed under the *Public Service Act 2008* without independence concerns. The Ombudsman of other Australian jurisdictions have had their staff employed as public servants under equivalent general public service legislation, also for a long time without any threat to their independence:
 - Commonwealth (s.31, *Ombudsman Act 1976* (Cth))
 - NSW (s.32, *Ombudsman Act 1974* (NSW))
 - Victoria (s.7, *Ombudsman Act 1973* (Vic))
 - Tasmania (s.9, *Ombudsman Act 1978* (Tas))
- *Ready availability of protections*: Simple amendment to preserve the effect of the existing s.75 of the *Ombudsman Act 2001* would confirm that staff are also not subject to direction by any person. (e.g. s.32(3), *Ombudsman Act 1974* (NSW))
- *Fundamental inconsistency*: currently, s.77 of the *Ombudsman Act 2001* enables public servants to be seconded to the Office of the Ombudsman with the protection in s.77(2) that the public servant is “taken to be an officer of the Ombudsman” while seconded which activates the s.75 independence right not to be directed.

As this Review and others prior³¹ have shown, there are a number of ever-growing practical difficulties and unfair consequence for the staff of the Ombudsman and for the Office of the Ombudsman to continue under current arrangements, as follows:

- *Mobility of staff of the Ombudsman:* The *Ombudsman Act 2001* provides for preservation of rights for public servants on secondment. The Ombudsman accepts the Public Service Award provisions for secondment and transfer of public servants. However, for staff of the Office, appointment under the *Ombudsman Act 2001* means that the merit requirement in s.27 of the *Public Service Act 2008* would prevent a permanent transfer from “outside the public service” to a public service position. It would be treated as an appointment and the appointment would have to be on merit. The merit requirement would not apply if the transfer was *within* the public service. The only alternative would be to rely on the Recruitment and Selection Directive for a decision to exempt advertising and directly appoint, or be appointed for a period of less than 12 months under the Directive. [After this issue was raised during this Review the Ombudsman has met with the Chief Executive, Public Service Commission to discuss.]
- *Missed career development opportunities:* access to opportunities in public service agencies such as invitations for expressions of interests for temporary and other shorter-term opportunities are only advertised within agency or agency groups. Therefore, staff of the Ombudsman miss out on notice and access rights to apply to those short term or temporary jobs which, given the limited career pathways in the Office, unfairly limits the experience and career development options available to staff and risks their de-skilling or careers going “stale”.
- *Overhead costs in duplicating Industrial Relations and Human Resources arrangements:* the small corporate support base of the Office has the burden associated with negotiating specific industrial arrangements for Ombudsman staff; then undertaking the Governor in Council approval processes to essentially mirror those arrangements afforded to core public service employees. The Office has to settle its own HR policies and procedures, it may duplicate the public service arrangements but as this Report shows, it can fall behind. There is also the problematic flow of information to the Office because of the unique employment conditions. There is one human resources FTE (0.6 + 0.4) for human resources support to an office of 63. This is an extraordinary load.

To achieve significant efficiency, effectiveness and economies in human resource management of the staff of the Office, the *Ombudsman Act 2001* and the *Public Service Act 2008* should be amended for the staff of the Office of the Ombudsman to be appointed under the *Public Service Act 2008* and then employed by the Ombudsman. The staff would be governed by the *Public Service Act 2008* and

³¹ See for example, the 2000 Strategic Management Review, 90-91.

Directives, which would be a more effective and enduring systemic solution to a number of the HR concerns outlined in this Chapter, including recruitment and selection frameworks and performance management obligations.

The employment of the Ombudsman would remain under the *Ombudsman Act 2001*. Converting staff over to a new employment framework may involve grandfathering current conditions for existing staff.

Recommendation 64

To achieve significant efficiency, effectiveness and economies in human resource management of the staff of the Office, the Ombudsman should consider seeking legislative amendments for appointment of the staff of the Office of the Ombudsman under the *Public Service Act 2008*, and then employed by the Ombudsman, in a similar manner and with similar readily available protections as the staff of other Ombudsmen in Australia.

Pending the relevant amendments to the *Ombudsman Act 2001* and the *Public Service Act 2008* to facilitate this new employment framework, the Ombudsman is encouraged to-

- **liaise with the Public Service Commission to arrange for notices and other information flow to go to the Office directly notwithstanding its unique status outside the public service legislation; and**
- **liaise with the Department of Justice and Attorney-General and other relevant agencies to include the Office in networks for notices about temporary and shorter-term employment opportunities.**

9.2 Corporate Support

Corporate support for the Office of the Ombudsman continues to face the challenges of a small Office needing to comply with various public sector governance obligations, of increasing complexity, as though it was a government department.

The Executive Services function (with 1.6 FTE) is served by the General Counsel providing legal services and the Executive Coordinator who provides executive support, performs the role of Right to Information and Information Privacy Coordinator, and contributes and coordinates certain records management activities.

The Corporate Services Unit (CSU) (with 9.7 FTE) provides services in information and communication technologies and information management, finance and facilities, human resources management performance and reporting, and communications. Payroll services are outsourced to Parliamentary Services.

The CSU aims to contribute to the organisation's strategy and performance beyond simple compliance with minimum requirements. Presently, CSU reports that it is building systems to support managers and staff to self-serve in some areas and provide more tailored advice or services for complex problems. CSU is also working on a system for identifying, supporting and communicating across the Office, its

decisions on the priorities for work beyond “business as usual”. Both strategies are well-directed to achieve efficient and effective outcomes for the Office with a small corporate services resource base.

The CSU has used contractors to supplement resources and skills and acknowledges that the practice creates challenges such as lead time and costs involved and planning for succession when a contractor leaves. The CSU is working through the risks and challenges with the Ombudsman to achieve balance between cost and capacity for all corporate support functions.

9.2.1 Finance

Budget

The Ombudsman has performed within the allocated budget for the Office for the duration of his term. The Office reported a small residual surplus of income over expenditure of \$0.020M of the annual budget of \$8.216M in 2016/17.

The Ombudsman has continued to perform well meeting all Service Delivery Target Measures reported and has continued implementation of administrative and business improvements each year to achieve efficiencies and economies as included in this Report.

In addition to parliamentary appropriation for budget funding the Office, revenue is generated from training programs offered to agencies throughout Queensland on a partial cost-recovery basis.

The only increase in real terms to the Office budget over the last five years was as a result of the Government’s transfer to the Office of the oversight of public interest disclosures function and oversight of the child safety complaints function, which transferred a small number of FTEs to perform the functions (less corporate on-costs).

A review of forward estimates from the Office indicates a deteriorating budget position for employee and non-employment related costs.

Employee expenses represented approximately 80% of total expenditure in 2016/17. The Office is only funded for approximately 95% of its salaries’ establishment of 63 FTEs over the forward estimates.

Further, the Reviewer is advised that funding for non-employment related costs are projected to decrease 30% in real terms (between 2009-10 to 2020-21).

The Office is also forecasting out-year financial pressures from a lack of funding for committed office accommodation rental increases and non-escalation for non-salary costs despite cost increases.

In 2016/17, rental accommodation costs represented 8% of the total expenditure. General operating costs, including other property expenses, information and

telecommunication costs represented 12% of total expenditure. In February 2016, the Office amalgamated its staff from levels 17 and 19 and committed to office accommodation on level 18 of 53 Albert, until February 2022.

The Office has an insufficient capital funding program to maintain the office systems and equipment which are essential for the operations of the Office in managing the throughput of nearly 11,000 contacts a year including nearly 7,000 complaints, and in finalising over 1,400 investigations a year.

The provision of supplementary funding will be required to support the Office's existing 63 FTE positions which are required to perform core functions of the Office. (The Office has not increased its FTE position over the Ombudsman's term other than receiving the transferred FTEs with the child safety and PID functions). Additional capital funding will also be required for the upgrade of the complaints management system which underpins its business for dealing with complaints.

The Ombudsman confirmed that the greatest financial pressure is related to non-salary costs, even though the current Office budget does not provide full funding for the whole 63 FTE establishment (95% in the 2017/18 Office budget).

This Review supports supplementary funding submissions from the Ombudsman in forward budgets to meet these essential expenditure needs. It is noted that the full-cost of implementation of works for the upgraded complaints management system is not known pending completion of a scoping study which will be included in the supplementary budget submission.

Recommendation 65

The Ombudsman's future requests for supplementary funding across the forward estimates to support its base establishment of 63 FTEs which deliver core functions, and for scoping and implementing the necessary upgrade to its complaints management system, is supported.

Financial Services

Consistent with the modest size of corporate support to the Office, the two financial services staff are focussed mostly on core business with limited capacity for managing business improvement projects for the Office.

The other main challenge is ensuring relevant expertise and knowledge are available to manage compliance obligations due to the risks for a "stand alone" agency in particular access to the information and support networks from central agencies that public service departments enjoy in meeting compliance obligations. Limited assistance is available through agreement with Parliamentary Services.

The Office has infrequent medium-sized procurement projects and encountered difficulties in seeking and obtaining advice, and navigating government website resources on specific purchasing matters e.g. buying a printer, tendering for internal audit, or scoping an information management project, together with advice on contract documentation.

For the Ombudsman to employ public servants, the Office would have to be created as a public service office under the *Public Service Act 2008* (see 9.1.5), which should assist with minimising risks in accessing corporate service obligations information and support. Pending recommendation 64, protocol arrangements for support may be negotiated.

Recommendation 66

The Ombudsman is encouraged to negotiate and formalise procurement support arrangements with a protocol clarifying available support, contacts and details with the department responsible for government procurement. The Office of the Ombudsman should ensure that the relevant Office procedures are updated accordingly to include those details in a way that is readily accessible and well known in the Office for relevant officers in the business cycle.

Travel

The travel policy and procedures (July 2016) in the Financial Management Practice Manual refer to the previous state government travel provider.

The current whole of government arrangement for maximising savings is through QTravel which accesses three travel suppliers. The Office travel policy and procedures has not been updated and consequently travel bookings have been made in ad hoc manner in the Office, reportedly through the former whole of government provider as well as other travel providers, airline and hotel websites and online travel search and booking providers. It is possible the Office could be missing government savings through the economies of scale of the whole of government provider as well as the internal efficiency of accessing a single portal for travel bookings.

The travel procedures provide for the 'best value fare' method but during staff consultations, it was brought to the Reviewer's attention that the procedures do not provide guidance on whether travel insurance should be purchased; guidance for extra costs per seat; and how flight or accommodation credits from cancellations or name changes are to be applied.

Recommendation 67

The Office should examine the efficiencies and economies in purchasing travel and accommodation services including using the whole of government travel provider, QTravel, and guidance in relation to discretionary items as appropriate, and update the travel policy and procedures accordingly.

9.2.2 Information Management

Resolve

The software for the complaints management system, Resolve, continues to be supported by the supplier for the time being but it is an older version of the system and a health check report on the system in January 2014 recommended that the

system be rebuilt, including continued and updated specific requirements for the business of the Office. Progress is dependent on additional capital funding.

Document recording

In 2015, the Office implemented the eDOCS records management software to store office records for search, retrieval and archival purposes. Staff feedback, including in staff focus groups, identified concerns for excessive “siloeing” of information which has made the system frustrating for users as well as many examples of storage and search difficulties. The various practices and default settings with, and in, the system make it unclear to what degree of confidence the Office could have on the system’s storage and search performance, among other concerns. There were also concerns expressed at the reluctance of officers using the optical character recognition capability of the dedicated scanning devices, prior to the replacement of the multi-function devices/photocopiers.

The current intranet was developed in approximately 2006 and staff reported that it is not user-friendly with limited search capability and it is not overly intuitive. It also contains some out of date information. The intranet is still used to find the finalised policies and documents of the Office because the eDOCS system does not enable them to be readily found. This feedback is useful in ongoing systems review. The Reviewer understands that in Western Australia, the Office of the Ombudsman conducts annual staff surveys as part of the program of regular reviews of the effectiveness of the Office’s recordkeeping systems. This may be a useful strategy to include in reviewing practices and procedures.

Recommendation 68

It is recommended that the Information Management Steering Committee, in consultation with all business units of the Office, review the practices and use of the eDOCS system to ensure maximum storage, search, retrieval and archival performance consistent with compliance obligations. The Office of the Ombudsman should also update the resources used on the intranet and explore options for functionality to better meet Office needs.

Open Data Strategy and Right to Information

Compared with the extensive range of available information on the websites of other Australian and New Zealand Ombudsman (e.g. a wide range of administrative improvements resources such as fact sheets, case notes, good administration guides, as well as survey data, copies of memoranda of understanding, protocols, internal planning and reporting documents) consistent with the contemporary “push” model for government information and in pursuance of the *Right To Information Act 2009* disclosure log and other obligations, the Office of the Ombudsman could do a lot more in making information available through its new website. The Open Data Strategy for the Office was last updated in November 2015 and is currently under review and should be operationalised with action plans to ensure best practice implementation of the Office’s commitment to transparency and accountability.

Recommendation 69

A review of the Open Data Strategy is supported and supporting action plans are recommended, to ensure improved access to data, documents and other information that the Office currently holds, and in pursuance of existing right to information obligations.

Records Management

A review of the Retention and Disposal Schedule is due, and was approved by the State Archivist in 2009. The Ombudsman advised that the review is pending the State Archivist's review of the current legislation and policies which, it is understood, is consistent with the approach adopted by other agencies and seeks to avoid significant expense that may no longer be necessary pending the review.

Management is aware that there is scope for improvement in the corporate use of the eDOCS file structure according to the General Retention and Disposal Schedule released in September 2016.

Recommendation 70

It is recommended that the Information Management Steering Committee consider the integrated Risk Management Framework and plan the timetable for, and resourcing of necessary changes to the eDOCS file structure and retention periods according to the 2016 General Retention and Disposal Schedule.

9.3 Governance Framework

The Office of the Ombudsman is managed within a comprehensive external and internal governance framework:

External

The Ombudsman is independent of the Executive and reports to the Parliament through the parliamentary committee responsible for oversight of the Ombudsman which since 2015 has been the Legal Affairs and Community Safety Committee under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.

The Ombudsman is an accountable officer with a range of financial and governance responsibilities under the *Financial Accountability Act 2009* and its subordinate legislation and other instruments.

External audit monitors compliance with financial management requirements and the Queensland Audit Office reviews a final version of the Ombudsman's annual report before being tabled to ensure no material inconsistency between the other information and the financial report. The annual report accounts for non-financial performance and provides full disclosure of financial performance.

The Ombudsman appears before the Parliamentary Estimates Committee each year for scrutiny of past and planned performance and financial performance.

Internal

The Queensland Ombudsman Audit and Advisory Committee (AAC) is directly responsible to the Ombudsman and is to provide the Ombudsman with assurance, advice and assistance on the risk, control and compliance frameworks for the Office, external accountabilities, and the Office's strategic and operational planning.

The AAC is comprised of two suitably qualified external members independent of the Office (including the chair) and the Deputy Ombudsman. As explained in section 6.1 above, the charter for the AAC has broadened to include governance and planning issues. The Chair, and immediate past Chair of the AAC agreed, that the Deputy Ombudsman's membership is both appropriate and highly valued, and as an officer of the Ombudsman was consistent with Treasury's audit committee guidelines. The Office's Chief Financial Officer is the secretary to the AAC, which meets quarterly.

The AAC undertakes an annual self-review process and an external peer review of its operations and activities every three years. These were reported as useful and effective processes.

The Head of Internal Audit is the Director of Internal Audit for the Department of Justice and Attorney-General, who is appointed to head the internal audit function for the Office of the Ombudsman. Audits may be undertaken by auditing firms that are independent from management and the Queensland Audit Office.

The Director of the Corporate Service Unit is responsible to the Ombudsman in managing implementation of audit recommendations.

Internal governance within the Office is supported by the following committees which all benefit from clear charters and appropriate membership.

- Ombudsman Management Group (OMG) is the Office's executive group and also serves as the Finance Committee.
- Information Management Steering Committee is principally responsible for information governance arrangements, priorities, and information risks management.
- Health and Safety Committee provides a consultative forum for cooperation with staff and the Office on health and safety measures.
- Systemic Issues Assessment Committee (SIAC) was established to discuss priorities, project planning and resourcing for investigation of potential systemic issues in administration or significant complaint issues.

The SIAC is the most recently established committee as from April 2016. Its charter is important in deliberating and recommending the priorities and resourcing solutions for complex and systemic investigations. From April 2017, resourcing for investigations became a standing item on the SIAC agenda. The Reviewer

considered the relevant record of the minutes since as to the nature and extent of those deliberations and their decisions.

In view of the recommendations made for strategic directions in section 4.1 relating to complex and systemic investigations, the SIAC is encouraged to progress the possible collaborative resourcing options to find solutions for the resourcing needs of identified priorities - for recommendation to the Ombudsman. The formal terms of reference for SIAC may be reviewed, with that emphasis, to drive collaboration and joint responsibility among the executive to deliver resourcing (e.g. the role of individual members might specify a role in cooperative governance for resourcing, or collaborating in identifying resourcing solutions according to priority.)

Recommendation 71

It is recommended that the terms of reference for the Systemic Issues Assessment Committee (SIAC) be reviewed by the Ombudsman to focus collaboration and joint responsibility among the members to deliver resourcing solutions.

10 Structure

The Terms of Reference for this Review require the Reviewer to “examine all structural and operational aspects of the Ombudsman” in advising on the Ombudsman’s functions and whether performance is efficient, effective and economic.

While individual efficiencies may be identified such as Recommendation 56 for the PID team and EET to work more closely together to leverage savings from synergies, the better approach in advising on the structural aspects is to ask whether the structure supports the strategy.

10.1 Strategy and Functions

Strategic directions, and Chapter 4 which examines the Ombudsman’s two statutory objectives, properly frames consideration of this question. As explained in Chapter 4, the legislative intention for the role is to give equal priority to systemic improvement of public sector administrative action as to achieving administrative justice for individual complainants. The latter being the traditional role of the Ombudsman in dealing with complaints and is the role that has reported meeting all performance measures.

The systemic improvement aspect of the Ombudsman’s role is the strategic direction in Queensland, and the comparative trend in many other Australian and New Zealand jurisdictions, for a modern Ombudsman.

In Queensland, the current elements of this “systemic improvement” role that seek to improve the quality of decision-making and administrative practices and procedures in agencies, include-

- Major investigations arising from complex complaints (e.g. IRU);
- Own initiative investigations that do not require a complaint (e.g. MIT);
- Education and training (EET);
- Community engagement program (EET);
- Complaints management system reviews (EET);
- Administrative improvement advice (EET); and
- Regional visits program (EET).

This Review makes a number of recommendations for the Ombudsman to consider in enhancing performance outcomes in systemic improvements, for example-

- 12 month performance measure from commencement of an own initiative investigation
- SIAC’s role in resourcing solutions
- Proactive
- Extra administrative improvement resources
- Shared learning
- PID reviews
- Knowledge sharing
- Whole of office identification of issues list
- Central management of the list – for SIAC

Further efficiencies that may be available for continuous improvement in the dealing with complaints include:

- investigations not assessments as well, enhance early merit assessment capacity
- consequences of disparity in workloads
- unlocking resource potential by managing poor performance
- informal resolution (Recommendation 36)
- minor vs major
- coordination (Chapter 5.3, e.g. Recommendations 20, 22, 23)
- lock in performance success for dealing with complaints
- Resolve, eDOCS and intranet enhancements
- Direct referrals
- Improved productivity in the workplace in dealing with staff survey issues, in particular the quite different results for IRU
- Delegations
- Correspondence
- Induction and training

The Office of the Ombudsman's strategic planning intended to follow this Strategic Review and include engagement and participation with all staff is a well-timed opportunity for the Office to consider the elements of its strategic purpose and the priority projects and performance expectations for achieving that mission.

10.2 Structural Realignment to Strategy

A first principle of organisational design is to align the structure with the strategy to ensure limited resources are being used strategically.

As identified in this Report, the complex and systemic investigations which are a key element of the systemic improvement function are structured within the function that deals with complaints (intakes, assessments, resolution and investigations). The MIT is co-located with the intake area and the IRU also conducts investigative assessments and investigates all complaints.

Every structure has advantages and disadvantages.

The advantages of the current structure are that MIT is connected to the intelligence of emerging trends evident in the intake function (which has been valued), and the IRU are the investigators and already dealing with a matter that becomes a complex investigation (relationship and history leverage). The disadvantages of the current structure as explained in this Report are that the long-term becomes subordinate to the short-term because of the urgency vs important tension; i.e. efficiency will dominate effectiveness especially because efficiency is easier to measure (by time). This tension can be seen for IRU in the time-juggle with handling assessments (short timeframes) as well as in MIT's experience in carrying vacancies and most of the Assistant Ombudsman's time spent in managing the reactive environment of the intakes function. So, although major and own initiative investigations have achieved systemic improvements, the experiences suggest that there is *potential* for more.

In addition to aligning the organisation to strategy, and avoiding the short-term (urgent) overpower the longer term (important), the other key organisational design principles for unlocking the potential for systemic improvements would be the way that the Office uses its two key strengths, its people and its knowledge:

- Enabling people to work across boundaries increases organisational agility and responsiveness, builds skills and experiences and therefore the future resource capacity and productivity of the organisation, and seeds innovations through cross-fertilisation of ideas. It requires cooperative governance to manage staff effectively but the Office has good governance structures to flex and meet this challenge through OMG and SIAC for example.
- Knowledge sharing as an underlying philosophy of the entire structure. Facilitating a larger, coherent shared use and development of knowledge will empower all units in their business outcomes. The intake and complaints

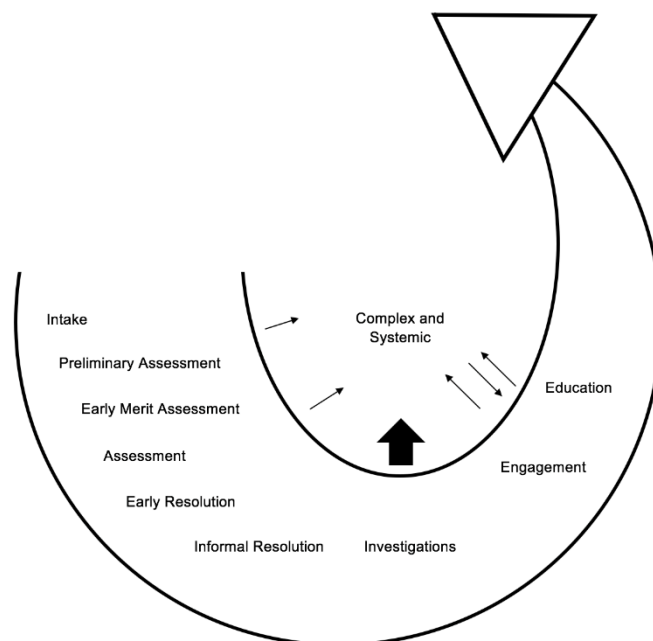
areas do reveal important data and information on trends and issues; and as does the education and engagement function working with peak bodies and seeing the areas of challenge in training; and outcomes of informal resolutions and investigations are relevant to feed back to education and engagement for shared learning strategies across agencies. The whole of office approach for identification of issues in Recommendation 5, and knowledge-sharing in Recommendation 44, are other examples. Some of this happens already, the challenge is to embed knowledge sharing as an organising principle across the Office.

Organising people and knowledge according to these precepts will seek to retain the advantages of the existing structure of MIT accessing intakes information, and major investigations nurtured from the investigations proper to the point where time, and potentially consultancy and pooling of skills, is required for collaboration with the more full time systemic investigators.

Conceptually, Figure 10 attempts to represent the aim for complex and systemic investigative effort to-

- step off the necessary speed and flow of the complaints processing but not be remote from the investigators (because they can move in and out of the “complex and systemic” as their cases may provide),
- be close to the whole cycle of a complaint for data, information and knowledge access and foster knowledge interdependencies with education and engagement, and public interest disclosures in a broader sense. The small arrows represent data, information and knowledge flow.

Figure 10 Conceptual Interrelationship of Functions



In translating the strategic concept of functions to structure (form follows function), the guidance of additional design principles or characteristics are relevant for the whole Office:

- ensure clear accountability and reporting lines
- reduce duplication of effort (minimise double-handling of complaints)
- flatter organisational structure, avoid middle management and avoid negative effect of silos, and maximise span of control
- improve communication flows, horizontally and vertically
- continue to drive productivity and a focus on outcomes
- provide accountability for continual improvement initiatives
- lower costs by sharing efficiencies
- reduce red tape but do not lose control required to guarantee minimum standards
- promote mobility and development of staff
- parity in roles and responsibilities
- effective and appropriate delegations

According due weight to these principles and from the findings in this Report, the following four specific suggestions are made for the Ombudsman's consideration:

Early Merit Assessment, Assessments and Investigations

The success of the early merit assessment function should be extended by a reallocation of resources from IRU to an intake and assessments area that conducts: intake and preliminary assessments, early merit assessment, assessment, and early resolution so that IRU would be focussed on informal resolution and investigations. This would also provide an exposed need for a succession plan for the current early merit assessment team.

Enquiry Officers

For the reasons outlined in 7.3.2, this Reviewer recommends that the classification of the levels for the Enquiry Officers be reviewed (and compared with other like organisations) with an expectation that a designation of AO4 level rather than AO3 level would be accorded in a structure that sought to minimise double-handling, middle-management, and appropriate local-decision-making. The alternative of reducing the current level of responsibilities and delegations would increase double-handling and the need for more middle management which would lead to more blockages and delays that could undermine the success of the timeliness for the complaints function.

Investigators – AO6 level mobility through the Office

At least for new appointments to the Office, the AO6 entry point should be facilitated through Role Description and up front expectation that the role is a resource for the whole Office and will be allocated across teams according to need within IRU and rotated into intake and assessments, or extra capacity to MIT – as may be determined by the Office in a cooperative governance model that aims for

organisational agility and to grow and coach the skills needed to achieve ongoing success for the individual and the capacity for the organisation.

External Communications

The internal communications need is cyclical around planning and reporting cycles, it is recommended that this resource be part of the structure with PID team and the EET to develop an external communications strategy and assist the effort in additional shared learning material recommended in Chapter 8.

In addition, Recommendation 56 recommends that the PID team and the EET collaborate more closely as part of a broader team to achieve savings in synergies and enhanced effectiveness.

Finally, it is expected that the structural realignment with strategy could be kept cost neutral.

Recommendation 72

Following the whole of Office strategic planning, structural realignment to strategy is encouraged and should include consideration of-

- **an extension of the Early Merit Assessment function and relocation with the intake area;**
- **parity of the Enquiry Officer's role in the intake area to ensure a suitable complement of AO4 level officers as assessed for recognition of their responsibility and complexity and analysis involved in their roles and their significant contribution to the timeliness of outcomes for the intake function (reducing their responsibilities to maintain the AO3 level is not supported as a risk to efficiency and effectiveness and anchoring successes);**
- **apply mobility and cooperative governance principles to the intake of at least new AO6 appointments; and**
- **reallocate the communications resource to the EET principally with sharing for internal communications as and when required in planning and reporting cycles.**

RELATIONSHIPS

In addition to its other areas of responsibility, the Parliamentary Legal Affairs and Community Safety Committee monitors and reviews the performance of the functions of the Ombudsman. The annual point of contact for the Ombudsman with the Committee is in the conduct of public hearings for the purposes of the Committee's oversight of the Ombudsman's annual report. The Committee may also conduct public hearings in reviewing the Strategic Review of the Office of the Ombudsman.

The Ombudsman advised that he was grateful for a good relationship with the Parliamentary Committee, and for its effective oversight of the Ombudsman's role as an important element of the external accountability framework for the Office of the Ombudsman.

The Ombudsman also reported good working relationships with agencies within the Ombudsman's jurisdiction as well as with other integrity and external complaints bodies. These relationships were maintained through an active engagement by the Ombudsman meeting personally with agency heads on a regular basis, regular liaison at executive and officer levels, as well as through the everyday contact in the performance of the Ombudsman's functions.

The Reviewer's extensive consultations from written submissions and interviews overwhelmingly confirmed that good, productive working relationships were in place. For example, from across all sectors:

"professional, collaborative and productive interactions"

"constructive and courteous"

"enjoys a cooperative and productive relationship"

"professional and responsive... Any questions or discussion are communicated with a mutual respect for each area's expertise and with a common aim to identify and resolve any complaints as fairly and effectively as possible"

"constructive and flexible"

"liaison process in place between the Office of the Ombudsman and the department works well"

"This was a major exercise as it was an Administrative Complaint and required a lot of research and supporting information, Council's officer found the Ombudsman's Office at all times acted professionally, thoroughly and with a reasoned outcome"

"We recognise the value of the partnership in resolving student complaints and making improvements to our business processes"

"There is no pre-judging the outcome... the Ombudsman does not advocate for the complainant but provides an unbiased appreciation of the situation... council feels represented ... discussions are respectful, meaningful and helpful"

"helpful, value-add engagement"

"very happy with the relationship"

“values the positive relationships built and the willingness to meet twice a year in person to discuss and reflect on specific student cases as well as sector-wide issues. This approach has helped to build trust in each other’s processes and ensures smooth, timely handling of cases”

“To the Office of the Ombudsman’s credit, they have increased the department’s willingness to admit when the department has made a mistake, the department has even stepped up proactively to make an apology”

Importantly, the high regard that the Ombudsman and his officers have earned in their relationships with agencies increases the efficient and effective impact of their work in giving people administrative justice and in improving the quality of decision-making and administrative practices and procedures in agencies.

APPENDICES

11 Appendix A: Terms of Reference

SCHEDULE

2017 Strategic Review of the Office of the Ombudsman

TERMS OF REFERENCE

REQUIREMENT FOR STRATEGIC REVIEW

Section 83 of the *Ombudsman Act 2001* (Ombudsman Act) requires a strategic review of the Queensland Office of the Ombudsman (Office) to be conducted by an appropriately qualified reviewer who is appointed by the Governor in Council. Section 83(8) of the Ombudsman Act requires the strategic review to include:

- (a) a review of the Ombudsman's functions; and
- (b) a review of the Ombudsman's performance of the functions to assess whether they are being performed economically, effectively and efficiently.

The Ombudsman's functions are contained in section 12 of the Ombudsman Act and include investigating the administrative actions of agencies, considering the administrative practices and procedures of agencies generally and making recommendations or providing information or other help to agencies for the improvement of practices and procedures.

The Office is also the oversight agency for the *Public Interest Disclosure Act 2010*. The Office monitors and reviews the management of public interest disclosures (PIDs) and provides education and advice about PIDs.

Section 89 of the Ombudsman Act sets out the functions of the parliamentary committee in relation to the Ombudsman. These functions include monitoring and reviewing the performance by the Ombudsman of the Ombudsman's functions under the Ombudsman Act and reporting to the Legislative Assembly on any matter concerning the Ombudsman, the Ombudsman's functions or the performance of the Ombudsman's functions. The parliamentary committee also reviews the reports of the strategic reviews and the annual reports of the Office.

SCOPE

The reviewer will be required to assess, and provide advice and recommendations about, the functions and the performance of the functions of the Ombudsman and the Office under the Ombudsman Act in order to assess whether those functions are being performed economically, effectively and efficiently.

The review will examine all structural and operational aspects of the Ombudsman, as well as its relationship with public sector entities, relevant Ministers, the parliamentary committee, and the Legislative Assembly.

POWERS OF REVIEWER

In accordance with section 84 of the Ombudsman Act the reviewer will have the powers of an authorised auditor under the *Auditor-General Act 2009* for an audit of an entity; and the *Auditor-General Act 2009* and other Acts apply to the reviewer as if the reviewer were an authorised auditor conducting an audit.

QUALIFICATIONS OF REVIEWER

The strategic review is to be conducted by a person of high professional standing with a sound

‘continued on next page...’

understanding of:

- modern decision making frameworks;
- public sector administration;
- independent oversight agencies; and
- management of a public sector agency.

In addition, knowledge of contemporary managerial and organisational standards and techniques would be beneficial.

The reviewer will need to demonstrate they have no pecuniary interest in the outcome of the review and have no established relationship with the Office. The reviewer will also be required to demonstrate independence from the Office.

METHODOLOGY

In conducting the strategic review, the reviewer is to have regard to the functions of the Ombudsman and the objects of the Act in assessing the ongoing economy, efficiency and effectiveness of the Office. The reviewer is to also have regard to the Ombudsman’s annual reports, the organisational structure, goals, operational conduct, strategic direction, internal/external policies, operational management, corporate management and service provision of the Office, and operational models in other Australian and international jurisdictions. The reviewer should also consider the impact on the Office of chapter 5 of the *Public Interest Disclosure Act 2010*.

Interstate and international travel will not be required.

Reports relevant to the review are listed in **Appendix 1** of this document.

DURATION

The final review report is expected to be provided to the Attorney-General as responsible Minister and the Ombudsman within four months of the commencement of the review.

REPORTING

Section 85(1) of the Ombudsman Act requires the reviewer to give a copy of the proposed report to the Attorney-General and the Ombudsman before the report is finalised. Under section 85(2) of the Ombudsman Act, the Ombudsman may, within 21 days of receiving a copy of the proposed report, give comments to the reviewer on the proposed report, in which case the reviewer must comply with section 85(3) of the Ombudsman Act.

In accordance with section 85(4) of the Ombudsman Act, the final report of the review is to be given to the Attorney-General and the Ombudsman, in a suitable format for tabling in the Legislative Assembly. The report should be presented to the Attorney-General and the Ombudsman no later than 10 business days after complying with section 85(1) and 85(3) of the Ombudsman Act.

‘continued on next page...’

APPENDIX 1: LIST OF REPORTS

- Henry Smerdon AM, *Strategic Review of the Office of the Queensland Ombudsman*, tabled 17 May 2012.
- Legal Affairs and Community Safety Committee, Report No. 15, *Report on the Strategic Review of the Office of the Queensland Ombudsman*, tabled 22 November 2012.
- Legal Affairs and Community Safety Committee, Report No. 34, *Oversight of the Office of the Queensland Ombudsman*, tabled 9 August 2013.
- Legal Affairs and Community Safety Committee, Government Response - Report No. 34, *Oversight of the Office of the Queensland Ombudsman*, tabled 8 November 2013.
- Legal Affairs and Community Safety Committee, Report No. 73, *Oversight of the Office of the Queensland Ombudsman*, tabled 12 September 2014.
- Legal Affairs and Community Safety Committee, Report No. 10, *Oversight of the Office of the Queensland Ombudsman*, tabled 30 October 2015.
- Legal Affairs and Community Safety Committee, Report No. 35, *Oversight of the Office of the Queensland Ombudsman*, tabled 30 August 2016.
- The following annual reports:
 - Queensland Ombudsman – Annual Report 2011-12, tabled 25 September 2012;
 - Queensland Ombudsman – Annual Report 2012-13, tabled 27 September 2013;
 - Queensland Ombudsman – Annual Report 2013-14, tabled 30 September 2014;
 - Queensland Ombudsman – Annual Report 2014-15, tabled 18 September 2015;
 - Queensland Ombudsman – Annual Report 2014-15: Erratum, tabled 28 September 2015; and
 - Queensland Ombudsman – Annual Report 2015-16, tabled 30 September 2016.

12 Appendix B: List of 2012 Strategic Review Recommendations

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

Recommendation 2: The current role and responsibilities of the Ombudsman as outlined in the legislation is endorsed.

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.

Recommendation 4: The Ombudsman is encouraged to continue the current referral to agency policy in appropriate circumstances and to ensure that appropriate monitoring mechanisms are in place for measuring action by agencies in response to the referrals.

Recommendation 5: The Ombudsman should undertake another comprehensive “Referred to Agency” Survey, preferably in the next 12 months, to better inform strategies in this area.

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.

Recommendation 7: The Ombudsman continue to explore with his colleagues, the capacity for benchmarking data to be produced as a useful tool for management and to supplement the range of internal performance data produced by the Office.

Recommendation 8: The Ombudsman investigate the opportunities for improvements to the current “contact” receipt process with a view to rationalising the file creation process, setting up a more efficient call transfer process and quicker resolution of “contacts” that are clearly not within the jurisdiction of the Office.

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.

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 web site 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.

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.

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;

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.

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.

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.

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.

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.

Recommendation 18: The Ombudsman should take steps to ensure the continuing integrity of the data collection process such that it reflects the real demand for the services of the Office for both public accountability and management purposes.

Recommendation 19: The Ombudsman should also investigate the necessity for creation of files to record "contacts" from the public particularly where it is clear that

the matter is not one for the Office to resolve and is more in the nature of an inquiry.

Recommendation 20: The role of ART should be redefined to that of a receival centre for “contacts” with the Office. All files should be resolved within 72 hours of creation. Files not resolved within 72 hours should be immediately acknowledged and then passed to the investigation teams for resolution.

Recommendation 21: The process for creation of files in ART should be reviewed to ensure that guidelines are well constructed, clear and practical and that files are not being created unnecessarily or duplicated.

Recommendation 22: The review of the guidelines for creation and closure of files should ensure that the processes reflect accurate and relevant ways of recording case management and control and that files are only created for this purpose.

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.

Recommendation 24: The Teams should also comprehensively consider and address the issues raised in the 2010 Complainants Survey with the objective of enhancing the quality of the whole investigation process.

Recommendation 25: The Ombudsman is encouraged to expand the current program of connecting with those disadvantaged in terms of access to the Ombudsman’s services by also making such connections an important part of an expanded regional visits program

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.

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.

Recommendation 28: The Ombudsman is to be commended for the good work undertaken to further improve the communication efforts and the building of relationships with the community and stakeholders and is encouraged to continue the progress being made across the board, particularly in terms of providing reports that are readable and relevant to all stakeholders.

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.

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.

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.

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

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.

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.

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.

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.

Recommendation 37: The Ombudsman should take up with Treasury, the difficulties associated with the increase in workloads and seek recognition of efforts by the Office to deal with the increase and also recognition of the need for some additional resourcing if as expected the workload continues to increase with consequential impact on the capacity of the Ombudsman to continue to deliver services at an acceptable standard.

Recommendation 38: The Ombudsman also consider the need for and desirability of outsourcing further corporate support functions, particularly IT, to ensure that these functions are provided at acceptable standards.

Recommendation 39: The Ombudsman should continue to monitor closely the situation with staff turnover in the context of overall policies for staff recruitment, training and development, and retention. A target turnover rate of no more than 10% should be set as a longer term goal.

Recommendation 40: The Office should increase the spending on training and development for all staff such that at least 1.5% (but desirably 2%) of the employee cost budget is committed for this purpose each year.

Recommendation 41: The training and development should be available to all staff on an equitable basis having regard for the needs of the Office.

Recommendation 42: The Ombudsman should provide assurances to all staff that the Office is committed to training and development and that training and development needs remain an important element of the Office's performance appraisal and management processes for staff.

Recommendation 43: The Ombudsman should institute an immediate review of all delegations but particularly for the assessment, investigation and resolution areas to ensure that maximum value is being achieved from the skilled and professional staff who work in these areas.

Recommendation 44: The review should ensure that the delegations allow staff to be appropriately empowered to carry out their responsibilities and that they accept more responsibility for their work outcomes.

Recommendation 45: The Ombudsman consider further approaches to Treasury in support of additional resources for high priority areas such as appointment of liaison officers and also having regard for the significant increases in demand that have occurred. Further discussions should also be held in regard to funding for cost recovery activities such as administrative improvement programs.

Recommendation 46: The Ombudsman continue to ensure that achieving better gender balance remains firmly on the agenda for the Office.

Recommendation 47: The Office should continue to collect data on the key groups identified for priority in the Government's EEO policies.

Recommendation 48: The Ombudsman should reconsider the issue of publication of comprehensive staff profile information in his annual report consistent with that published by other similar agencies and if need be, ascertain the attitude of staff within the target groups to publication of the relevant statistics.

Recommendation 49: The Office should continue to ensure that the EEO targets are properly considered during the strategic planning process.

Recommendation 50: The Ombudsman should continue to pursue policies that enhance the trust and information flows between management and staff so that the high aspirations of management and staff for a "One Office" can be fulfilled in a meaningful way.

Recommendation 51: The Ombudsman should consider additional means of communication and consultation with staff generally and while reconstituting the Staff Consultative Committee is an option, a less cumbersome and more efficient model may be the expansion of the current remit of the Innovations Committee to maximise the lines of communication between management and staff.

Recommendation 52: While it is not intended to compromise the excellent work of the Committee or its independence or its work with and relationship to the Internal Auditor, there would be merit in internal audit providing advice and guidance in regard to compliance with the Government's prescribed policies and procedures in regard to financial, HR and other matters, in a range of operational areas, recognising the difficulties that small offices have in meeting and keeping up to date with these standards generally.

Recommendation 53: The Ombudsman should discuss with the independent Chair of the Audit Committee a preferred position that the membership of the Audit Committee be limited to suitably qualified persons independent of the Office, noting that the Head of Internal Audit would be expected to attend all Audit Committee meetings to fulfil the requirements of the Financial Accountability Regulation 2009 relating to communication between the entity and the Committee.

Recommendation 54: The Ombudsman continue to ensure that the staff are fully involved in the strategic planning process so that there is appropriate ownership of the outcome as a blue print for the future to strengthen the "One Office" concept.

Recommendation 55: The Ombudsman give consideration to a restructure of the Office taking into account the following principles:

- the role of ART being changed to more of a call centre, intake and referral centre as referred to in Section E.3;
- a new area be added to [the Administrative Improvement Unit] AIU to deal with community engagement as well as potential authority to deal with complaint management standards and audits;
- the investigation teams being amalgamated as a single investigations unit reporting to the Deputy Ombudsman through an appropriate senior officer structure;
- the major projects area being incorporated into the investigations unit unless a strong argument can be made for retention as a separate unit;
- the name of ART being changed to more appropriately reflect its new role;
- the name of AIU being changed to reflect its role in administrative improvement as well as community engagement and public interface;
- Corporate Support unit remaining essentially as is.

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

Recommendation 57: The proposals outlined in the 5 Projects being undertaken by the Ombudsman as part of the response to the 2011 Staff Survey outcome are endorsed generally as worthy of continued support for their implementation.

13 Appendix C: List of Stakeholders Interviewed

External:

Crime and Corruption Commission

Department of Aboriginal and Torres Strait Islander Partnerships

Department of Communities, Child Safety and Disability Services

Department of Education and Training

Department of Environment and Heritage Protection

Department of Housing and Public Works

Department of Infrastructure, Local Government and Planning

Department of Justice and Attorney-General

- Director-General
- Ethical Standards Unit

Department of the Premier and Cabinet

Department of Transport and Main Roads

Queensland Audit Office

Queensland Health

Queensland Treasury

External Consultation on Targeted Issues:

Information Commissioner

Public Service Commission

Internal:

Chair (External, independent member), Queensland Ombudsman Audit and Advisory Committee

Immediate Past Chair (External, independent member), Queensland Ombudsman Audit and Advisory Committee

Ombudsman; Deputy Ombudsman; Assistant Ombudsmen (x 4); Director, Corporate Services; Manager, Education and Engagement Team; Principal Advisor, Public Interest Disclosures – Individual Interviews

Staff of the Office of the Ombudsman- 7 x Focus Groups for all work teams without management, 1 x Workshop (across teams and levels), Individual Interviews as requested

14 Appendix D: List of Substantive Written Submissions: External Stakeholders

Council of the City of Gold Coast

Department of Agriculture and Fisheries

Department of Infrastructure, Local Government and Planning

Department of National Parks, Sport and Racing

Department of Natural Resources and Mines | Department of Energy and Water Supply

Department of Transport and Main Roads

Energy and Water Ombudsman, Queensland

Flinders Shire Council

Griffith University

Gympie Regional Council

Information Commissioner

Livingstone Shire Council

Logan City Council

Office of the Health Ombudsman

Queensland Family and Child Commission

Queensland Fire and Emergency Services

Queensland University of Technology

Southern Downs Regional Council

The Public Trustee of Queensland

The University of Queensland

List of Responses from External Stakeholders – expressing thanks for the opportunity to be consulted and advising of no substantive submission for the Reviewer

Brisbane City Council

Department of Tourism, Major Events, Small Business and the Commonwealth Games

Longreach Regional Council

Public Service Commission

Queensland Police Service

15 Appendix E: List of Recommendations for Legislative Amendment

Recommendation 3 (p.28)

The Ombudsman's suggested legislative clarification to enable preliminary inquiries with agencies before commencing an own initiative investigation, is strongly supported.

Recommendation 8 (p.30)

The Ombudsman's suggestion to amend the *Ombudsman Act 2001* to insert a provision(s) which gives the Ombudsman a formal discretion, following consultation with the agency, to refer a matter to an agency for investigation with a report-back mechanism about the results of action taken, is supported.

Recommendation 20 (p.43)

Legislative amendment to enable the Office of the Queensland Ombudsman and the Queensland Audit Office to share complaints and investigation data and other systemic information in confidence is recommended, and should be supported by a formal Memorandum of Understanding including detail of the permissions, access protocols and confidentiality arrangements.

Recommendation 22 (p.44)

Reintroduction of the proposed legislative amendments in relation to the Ombudsman that were contained in Part 6 of the *Crime and Corruption and Other Legislation Amendment Bill 2017* of the 55th Parliament is strongly supported.

Recommendation 29 (p.53)

The Ombudsman's suggested clarification of s.16(2)(a) in the *Ombudsman Act 2001* to better define jurisdiction for "deliberative functions of tribunals" is supported.

Recommendation 30 (p.53)

Legislative amendment of the *Ombudsman Act 2001* to require at least that the Ombudsman be consulted prior to any person using the name "Ombudsman" similar to the New Zealand provision, or alternatively, similar provision to South Australia in not permitting use, is supported.

Recommendation 36 (p.66)

Amendment of Schedule 3, s.12 of the *Right to Information Act 2009* to include s.92 of the *Ombudsman Act 2001* is recommended.

Recommendation 48 (p.80)

The Ombudsman is encouraged to develop a "shared learning" strategy to connect agencies and common issues learned from investigative outcomes in improving administrative practices and procedures. Confirmation of permission, or legislative clarification or amendment, enabling the implementation of the strategy such as casebook material and practitioner discussions in a timely and ongoing way needs to be pursued.

Recommendation 57 (p.90)

The Ombudsman's suggested amendment to s.76 of the *Ombudsman Act 2001* to ensure that work experience students and participants in rehabilitation schemes are regarded as "officers" to ensure they are covered by other work arrangements under the Act, particularly secrecy obligations under s.92, is recommended.

Recommendation 64 (p.99)

To achieve significant efficiency, effectiveness and economies in human resource management of the staff of the Office, the Ombudsman should consider seeking legislative amendments for appointment of the staff of the Office of the Ombudsman under the *Public Service Act 2008*, and then employed by the Ombudsman, in a similar manner and with similar readily available protections as the staff of other Ombudsmen in Australia.

Pending the relevant amendments to the *Ombudsman Act 2001* and the *Public Service Act 2008* to facilitate this new employment framework, the Ombudsman is encouraged to-

- liaise with the Public Service Commission to arrange for notices and other information flow to go to the Office directly notwithstanding its unique status outside the public service legislation; and
- liaise with the Department of Justice and Attorney-General and other relevant agencies to include the Office in networks for notices about temporary and shorter-term employment opportunities.

Recommendation 27 (p.49)

Suggested amendment to s.10(c) of the *Ombudsman Act 2001* to give the Ombudsman jurisdiction over non-government organisations and other providers of contracted service delivery is *not supported* at this time until its inclusion in a more comprehensive whole of government review of the accountability framework for contracted service-providers.

16 Appendix F: Comments by the Ombudsman on the Proposed Report

The Reviewer provided a copy of the Proposed Report on the Strategic Review to the Attorney-General and the Ombudsman on 29 December 2017 under section 85(1) of the *Ombudsman Act 2001* and in accordance with the agreed Strategic Review timetable.

Section 85 provides that the Ombudsman may give the Reviewer written comments on anything in the Proposed Report within 21 days and, after dealing with those comments in accordance with the Act, the Reviewer is to provide a final Review Report to the Attorney-General for tabling, as well as a copy of the final Review Report to the Ombudsman.

The Ombudsman provided the Reviewer with comments on 15 January 2018. As the Ombudsman described, the comments were limited and the Reviewer and the Ombudsman agreed to some minor amendments under s.85(3)(a) of the *Ombudsman Act 2001*. Two comments are included in full, on the following pages, in accordance with s.85(3)(b) of the Act.



Our ref: EDOCS 2015-00235(P1)

15 January 2018

Ms Simone Webbe
Reviewer
Strategic review of the Office of the Queensland Ombudsman
By email: sjwebbe@bigpond.com

Dear Ms Webbe

I refer to your letter of 28 December 2017, inviting my comment on your Proposed Report on the Strategic Review of the Office of the Queensland Ombudsman.

Before making my comments, I wish to acknowledge the very positive and constructive approach you have taken during the review of this Office. The level and range of engagement within the review, both internal and external to the Office, was particularly valuable. I appreciate the consultation offered to staff and management of this Office and to me personally.

Overall, I have quite limited comments to make about the proposed report, indicative of the extensive consultation throughout the review. Please find my comments attached (**Attachment A**) for your consideration. I would be pleased to provide any further information you may need to fully consider my comments.

I look forward to the publication of your final report in due course.

Yours sincerely

Phil Clarke
Queensland Ombudsman

Encl: Attachment A

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Attachment A comments from the Ombudsman under s.85(3)(b) of the *Ombudsman Act 2001*:

“Recommendation 64: The recommendation that staff of the Office be employed under the Public Service Act has been made previously and not been pursued. In my view, the argument as to why it would benefit officers, or the Office, has not, on balance, been sufficiently made out. Any change to the relationship between the Office and the public sector, over which it has oversight, will need great care. Engaging ombudsman staff under the Public Service Act would need clear and specific legislative provisions to ensure no dilution of control of the Office or its independence.

Recommendation 72: I agree in principle that a review is necessary. However, any review of functions and levels of various positions would encompass a range of factors, particularly related to overall Office productivity, and would be dependent on the necessary additional funding to increase the overall salary budget. This particularly relates to budget pressures mentioned elsewhere in this report.”

Response by the Reviewer on the Ombudsman’s comments:

Recommendation 64:

The Reviewer agrees that change would need to be implemented carefully to ensure that the Ombudsman retains control of the staff of the Office and that the independence of the Ombudsman and the Office is protected, including that the independence of the Office should not be undermined over time by any change in the employment framework. However, as outlined in pp.97-99 of this Report, there are readily available protections, and precedents within and outside Queensland, to protect the independence of the Office and the relationship of the Office with the public sector.

Apart from staff mobility and development opportunities, officers would benefit from contemporary human resource management under the *Public Service Act 2008* and supporting frameworks to more reliably address HR concerns raised by staff in this Review, as well as in other previous Strategic Reviews, such as for performance management obligations and in recruitment and selection practices (e.g. pp. 91, 93, 95-96, 98-99). The Office would benefit in savings in overhead costs from seeking to duplicate industrial relations and human resource arrangements of the public service with a small corporate support base. Positive impacts on productivity also could be expected to follow. With the protections for independence, control and relationships in place, these benefits should promote the efficiency, effectiveness and economy of the Office.

Recommendation 72:

Noted, and agreed. The Review suggests a cost-neutral aim for structural realignment with strategy (p.111) on account of productivity factors (pp.107-111) and there are existing budget pressures (pp.100-101).