

# **REPORT**

**Strategic Review**

**of the**

**Office of the Queensland Ombudsman**

**Reviewer: Mr Henry Smerdon AM**

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## Acronyms and Definitions Used in this Report

AIU	Administrative Improvement Unit
ART	Assessment and Resolution Team
AO	Assistant Ombudsman
CRU	Communication and Research Unit
CSCT	Community Services and Corrections Team
EEO	Equal Employment Opportunity
FTE	Full Time Equivalent
HQCC	Health Quality and Complaints Commission
IC	Innovation Committee
LGIT	Local Government and Infrastructure Team
LJSC	Parliamentary Law Justice and Safety Committee
MP	Major Projects
OMG	Ombudsman Management Group
OOJ	Out of Jurisdiction
QAO	Queensland Audit Office
QGAP	Queensland Government Agent Program
WHSC	Workplace Health and Safety Committee
The Office	The Office of the Queensland Ombudsman
The Act	The Ombudsman Act 2001
The 2006 Review	The Strategic Management Review of the Office of the Queensland Ombudsman undertaken by Mr Henry Smerdon in 2005/06

## SECTION A: EXECUTIVE SUMMARY

### Introduction:

Division 4 of the *Ombudsman's Act 2001* (the Act) provides for a strategic review of the Ombudsman's Office to be conducted at least every 5 years. The review is to be conducted by an appropriately qualified person appointed by the Governor in Council.

At the end of the review process, the reviewer is to provide a draft report to the Ombudsman and the Minister. The Ombudsman then has 21 days to respond to the report. The reviewer must take any comments from the Ombudsman into account and can only change the draft if agreed with the Ombudsman. The report is then finalised and presented to the Ombudsman and to the Minister for tabling in the Parliament.

The last review was undertaken in 2005/06 and the report presented to the Minister on 24 April 2006. The appointed reviewer for this review was also the reviewer for the previous review.

### Section B.1: Terms of Reference

The Terms of Reference for the review were also approved by the Governor in Council on 14 July 2011 and are set out in full in **Attachment A**.

The approved Terms of Reference also set out a methodology which has been followed in principle for this review.

### Section B.2: Review Process

The review process has essentially followed similar lines to the 2006 review process. It involved

- meetings and briefings on a regular basis with the Ombudsman and his senior staff
- meetings with individual senior staff and forums for current and past staff
- meetings with a representative range of stakeholder agencies (**See Attachment B**)
- examination of internal documents and submissions provided by the Ombudsman, his staff and other stakeholders as well as access to on line and other publicly available information sources
- visits to the NSW Ombudsman Office and Ombudsman Offices in the UK and Scotland
- an examination of a representative sample of 200 files both closed and open relating to “contacts” with and complaints to the Office.

No formal submissions were publicly called for or public meetings arranged, as the material provided plus other discussions and meetings were considered sufficient for the purposes of the review.

## **SECTION C: OVERVIEW**

The Ombudsman's Office is now quite different to the one reviewed in 2006. It has made significant progress although some problems still remain.

The present Ombudsman has only been in the position since early 2011 and has provided the utmost co-operation in the process.

While the workload as measured by "contacts" has increased quite dramatically in recent years, in part it could be said to reflect the success of the Ombudsman in getting the message out to the community that *"It's OK to Complain"*.

The review is an important opportunity to take stock of what has happened with the Office in the period since the last review and to provide some constructive suggestions and a framework to assist the Office going forward.

The Office has an important role to play in the overall accountability processes of Government. While its role is important, it must also be mindful of the fact that agencies make many thousands of good decisions every day and that those that for various reasons find their way to the Ombudsman's Office for review on a complaint basis, are a very small part of the service delivery process.

The encouragement of agencies to make good decisions and learn from the not so good is an important part of the overall process of which the Ombudsman's Office is an essential part.

## **SECTION D: STRATEGIC MATTERS**

### **Section D.1: The Role of the Ombudsman**

In terms of the Act, the Ombudsman has the dual function of investigating administrative actions of agencies when a complaint is made or is initiated by himself. The Ombudsman also has the role of considering and making recommendations for administrative improvement in agencies.

Getting the decisions right in the agency in the first place should be a high priority for the agency and the Ombudsman also has an important role to play in this process.

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

The resources available to the Office have increased but not by the same extent and the Office has had to drive greater efficiencies of process to cope with the increase in demand for services.

**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.*

## **Section D.2: Advocacy and Resolution Roles**

The Ombudsman is the last resort and generally only can be accessed when all avenues of appeal of a decision within an agency have been exhausted. Many of the “contacts” with the Ombudsman are premature in that this has not yet happened.

I have a view that the matters should be referred back to the agency by the Ombudsman rather than always requiring the person complaining to take it back. This does not need to happen in every case though.

The Ombudsman has increasingly used the referral back to agency to improve the overall service to the complainant. This is supported and encouraged but care must be taken not to be seen as an advocate for the complainant nor to encourage greater use of the Ombudsman rather than the proper channels available within an agency.

Survey results suggest that complainants referred back to agency are increasingly taking up that option.

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

**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.*

### Section D.3: Benchmarking

Benchmarking performance to take account of external as well as internal issues is a vexing question that has no easy resolution. There is not a large appetite for serious benchmarking among Ombudsman Offices but the matter should continue to be pursued by the Queensland Ombudsman.

**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.*

### Section D.4: Receival Centre Operations

Many of the “contacts” with the Ombudsman’s Office relate to other agencies and not within the jurisdiction of the Ombudsman. Where possible these persons are generally referred on to the appropriate agency.

In part the problem arises because of the growth in use of the Ombudsman brand to give credibility to the services provided by the many new ombudsman/commission roles created in recent times by the private sector and Governments.

There is also the issue of how successful the Ombudsman has been in marketing the services of the Office and also the access now available through on-line options. The marketing/communication strategies have created a strong increase in workload which in many respects have limited relevance for the core work of the Ombudsman. The majority of “contacts” relate to out of jurisdiction matters or are premature in their approach to the Ombudsman.

Being a primary point of contact with the level of demand that this engenders does have significant resource implications for the Ombudsman and the issue is whether there is merit in looking at an alternative call centre or receival and referral mechanism which may provide a better more relevant service to the community.

The 4 options explored were:

- maintain the current system but look for more efficiencies;
- set up a small central facility servicing the needs of entities co-located with the Ombudsman;
- set up a significant receival or call centre operation for complaints along the lines of a “Complaints Queensland”;
- outsource the function.



**Recommendation 8:** *The Ombudsman investigate the opportunities for improvements to the current “contact” receival 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](http://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.*

## **Section D.5: Complaints Standards Authority**

The Public Service Commission has issued a Directive (No 13/06) that seeks to provide guidance for agencies in terms of complaint management processes to be implemented in agencies. Local Government Regulations have similarly been issued to provide guidance for local government and all councils must have a process in place by 30 June 2011.

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

The Complaints Standards Authority in the Scottish Ombudsman’s Office could provide a good model.

**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.*

## Section D.6: The Ombudsman and the Non-Government Sector

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

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

However it is significant policy issue.

**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.*

## Section D.7: Advisory Board

While the Ombudsman has been well served over the years by the diligent work of the Parliamentary Committee in terms of reporting and monitoring and review of operations, there may be merit in the Ombudsman setting up an advisory type body (or extending the remit of the Audit Committee) to take some of the workload from the Committee and to allow the Ombudsman more regular access to a range of views, skills and feedback not otherwise readily available to him. Such a committee would not have a role in resolution of complaints.

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

**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.*

## **SECTION E: OPERATIONAL MATTERS**

### **Section E.1: Outcome of 2010 Complainant Satisfaction Survey**

The Survey is conducted regularly but the 2010 Survey was quite negative in some key areas eg clear reasons for decisions, usefulness of advice, fair and reasonable outcome, and overall satisfaction rating.

There were positives as well but the overall feel was one of less satisfaction with the Office and its services.

The Survey outcome provided a rather sobering backdrop to the review process.

### **Section E.2: The Intake Process**

The source of the 20382 “contacts” received in 2010/11 has changed a little in the past 5 years with more “Out of Jurisdiction” receivals being registered.

How the “contacts” are made has also changed significantly with fewer telephone and mail “contacts” and more being received by Email or on-line.

There are issues about how “contacts” are recorded which needs to be addressed.

The issue of the large number of “out of jurisdiction” or other agency-related “contacts” also needs to be investigated further.

There are concerns about the effectiveness of the current processes in the Assessment and Resolution Team (ART) and what can be done to improve and assist the process, given that the backlog of files has been increasing.

However very difficult workload pressures have had to be dealt with in recent years and this has placed great pressures on staff and the Office generally.

There is an issue around recording and closing files and when and how they should be created that needs to be investigated further to ensure the integrity of the data and the efficiency of the process.

**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.*

### **Section E.3: Assessment and Resolution Process**

Reference has already been made to the problems around the current intake process and the significant increase in demand on the individuals in the Assessment and Resolution Team.

While all staff including those in ART are committed and passionate, organisationally it is not without its problems.

The issues around what should be the role of ART and whether it has a role in the investigation process is important and must be resolved quickly if ART is to regain the confidence of colleagues.

The Ombudsman has recently put in place a revised structure for ART and how it deals with the backlog of files and workflow generally. It has been successful to date and a possible solution to the longer term structural issue.

The guidelines for the creation and closure of files needs to be reviewed to ensure that the quality and relevance of the recording and management system is not compromised.

**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.*

### **Section E.4: The Investigations Process**

While the negative comments in the 2010 Complainants Survey was a surprise to many, generally the Office is perceived by stakeholders as being good at what it does.

There are considerable skills and experience available which may not be being fully utilised and may provide an important contribution capacity assisting ART.

There is a need to consider carefully the outcome of the 2010 Complainant Survey and to deal positively with the findings so that the next Survey provides a more positive result.

Part of the response should be to ensure that the investigation process is tight, relevant, not overly legalistic and conscious of the audience to be addressed.

**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.*

### **Section E.5: Access to the Ombudsman's Services**

There is an increasing need to reach out to those who may for various reasons have some limitations in their capacity to access the services of the Ombudsman.

The Ombudsman is doing some good work in this area with the homeless, the young, indigenous persons and in the regions. However more needs to be done.

There is a need for Liaison Officer(s) for the Indigenous community and if resources permit, youth and the homeless as well as other disadvantaged groups.

There is also a need to spread the regional visits program wider but in a very targeted way to reach regional Queensland as well as those with some limitation in their ability to access services.

For the proposals to be successful, additional funding and resources would be needed as there are simply not sufficient resources to be found within the current budget of the Office.

**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.*

## **Section E.6: Communication**

The Ombudsman has been quite proactive in getting the message out to the community as evidenced by the increase in “contacts”.

A variety of communication mediums are being used and are relatively effective. The 2010/11 annual report was a good example of effective and readable communication with stakeholders.

However more needs to be done.

There is a proposal to allow the Ombudsman greater capacity to publish reports without having to have them tabled in the Parliament first. It is a good suggestion and one that would be welcomed by stakeholders.

Greater efforts have also been made to make formal investigation reports more readable and user friendly and this is to be encouraged.

**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.*

## **Section E.7: Education Issues**

The Ombudsman has been very active and successful in delivering a variety of programs to agencies based around good decisions and administrative improvement. The programs are in high demand and valued by agencies as evidenced by the evaluations of programs and comments made to me during interviews.

Care needs to be taken that programs are appropriately priced and costed.

The programs do place a high demand on staff and consideration could be given to outsourcing some programs in appropriate circumstances.

The work of the Office in this area is to be commended.

**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).*

## **Section E.8: Compliance**

Agencies are required to have compliant complaint management processes in place and operating.

It is important that the Ombudsman undertake regular compliance audits to ensure that the requirements are being met.

**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.*

## **Section E.9: “Own Initiative” Investigations**

The Ombudsman has shown a greater willingness in recent times to undertake “own initiative” reviews.

It is an important part of the overall activities of the Ombudsman to ensure that complaints are minimised, dealt with expeditiously and appropriately where required and systemic issues identified early.

There is also an issue about the role of the Ombudsman to undertake reviews of the delivery systems of programs to assess whether they are likely to give rise to complaints and whether delivery design changes can be made early to eliminate preventable complaints being made.

There are aspects of this proposal that would need further discussion with the Auditor-General and others.

**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.*

## **SECTION F: ORGANISATIONAL MATTERS**

### **Section F.1: The 2011 Staff Survey**

The outcome of the Staff Survey was very disappointing as it reflected a significant level of staff dissatisfaction with the senior management group.

Staff were unhappy about job expectations and workloads among other things and 29% of staff had formed a specific intention to leave the Office. Distrust of the senior management group was particularly evident.

However there were a number of more positive aspects that gave support to possible ways forward.

The new Ombudsman has moved quickly to address many of the issues raised.

The significant issues raised in the Staff Survey also came through during staff forums.

### **Section F.2: Staff Numbers and Workloads**

A simple analysis of staffing and workloads suggest that relative to other jurisdictions (apart from Victoria), the Queensland Office carries a significant workload factor. It does support the view that the Office may be under-resourced.

There are around one-third of the staff in the administrative support areas which seems high. However it is a small office and not able to significantly access economies of scale in these support areas. Some further outsourcing of functions could perhaps be investigated.



The Ombudsman could undertake some further analysis of workload factors and comparisons and take the matter up with Treasury in the context of the very large increase in “contacts” that has taken place in recent years.

**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.*

### **Section F.3: Staff Turnover and Recruitment**

The Office has lived with a very high staff turnover rate for a number of years now but has been able to attract good staff to replace those who have left.

One of the key issues for staff is that promotional opportunities, particularly at the senior levels, are limited with a number of senior staff being in their positions for a number of years.

While there is no immediate solution to the problem given that the Office is quite small relatively, the Ombudsman needs to be monitoring the situation closely for any emerging systemic issues particularly in the light of the Staff Survey.

**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.*

### **Section F.4: Training and Development**

The previous review recommended that a target of 1.5% of the budget be spent on staff training and development. This has never been able to be achieved in recent years because of budget pressures.

The availability of appropriate training and development is an important issue to staff and there is some frustration that it is not happening to the extent they see as needed.

Staff training and development should be a high priority for a good organisation. A target of at least 1.5% (but desirably 2%) of employee cost budget should be set and achieved as it will be important to the confidence of staff in the staff performance appraisal process.

**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.*

### **Section F.5: Delegations**

Delegations are in place and operating. However, staff still feel that the delegations are not at a level that is appropriate and do not provide them with sufficient incentives to take responsibility and perform.

Delegations and their operation should be reviewed with one objective being greater empowerment of staff to take responsibility for service delivery by the Office.

**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.*

### **Section F.6: Budget Issues**

The budget position for the Office has been tight for a number of years consistent with the situation with public sector agencies generally.

The Office is prima facie under-resourced given the increase in work load as evidenced by the increase in "contacts" with the Office.

Treasury has provided additional funding support in recent years to meet higher rent costs associated with the move to new premises and for administrative improvement initiatives.

However there is a case for the Ombudsman to raise the issue of funding again with Treasury particularly around the appointment of liaison officers, the complaints standards authority and audits and workload factors.

**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.*

## **Section F.7: Gender/Equity Issues**

Gender and equity issues are matters that have been on the agenda for some time now. There is still an imbalance in the proportion of females at lower levels but it is not an uncommon problem.

There is recognition of the need for better gender balance to be achieved.

There is also an issue around the quality of available data to provide information on the staff profile of the Office. Some data is not collected that should be and more comprehensive data should be included in the annual report consistent with other similar organisations.

The Ombudsman should also address reporting on the key target groups for the public sector.

**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.*

## **Section F.8: Governance**

The Office has an Audit Committee that is working well.

The composition of the Committee, particularly the role of the Deputy Ombudsman, should be discussed with the Chair of the Committee.

The committee structure of the Office is being revitalised following the staff survey.

There may be some advantages to having the Innovation Committee's role expanded to include a staff consultation function given that a separate staff consultative committee no longer exists.

The 5 major projects implemented by the Ombudsman to address some of the issues raised in the Staff Survey are to be commended. The projects are:

- major investigations
- investigations
- public interface
- performance and development and career planning
- information management.

The use of internal staff to review decisions of the Ombudsman has worked well for a number of years and continues to be supported.

**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.*

## Section F.9: Strategic Planning

Staff are still strongly of the view that more involvement in the strategic planning process is desirable.

Staff have felt more involved but obviously they would like it kept firmly in the mind of the Ombudsman for the future.

**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.*

## Section F.10: Organisational Structure of the Office

The existing staff structure for the Office has been in place for a number of years now.

The Staff Survey indicated some inherent dissatisfaction with the structure and this was confirmed during staff discussions.

While there are issues with ART, there are more fundamental concerns that can really only be addressed by a review of the current structure.

There would be merit in changing the focus of ART. There would also be advantages in merging the investigation teams to form a single cohesive investigation unit under the Deputy Ombudsman.

However, the new Ombudsman needs some flexibility to reorganise the Office to meet his vision for delivering the services of the Office and to be judged and held accountable accordingly.

The Ombudsman has discussed possible changes and recently trialled new arrangements with ART, in part to address a backlog issue, but which provides a basis for a new structure moving forward.

The Office would also benefit from a specific community engagement function linked to the Administrative Improvement Unit, perhaps in the context of a wider public interface role.

While I do not want to be prescriptive about a new structure, leaving the detail to the Ombudsman to develop, I am strongly of the view that a new structure is needed to solve some of the cultural issues and to give staff the confidence and trust that change will happen.

**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 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.*

## **SECTION G: PUBLIC INTEREST DISCLOSURES**

The impact of the new arrangements was specifically included in the terms of reference. The impact is marginal at best and the Ombudsman is unconcerned about the capacity of the Office to deal with the issue.

## **SECTION H: PROPOSALS FOR LEGISLATIVE CHANGE**

The Ombudsman has proposed a number of amendments to the legislation, some of which represent a carryover of proposals not implemented from the last review.

The proposed changes are worthwhile and supported.

A key amendment proposed is to allow the Ombudsman to develop and publish complaint handling standards.

The proposals for legislative change are set out in detail in **Attachment D**.

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

## SECTION I: IMPLEMENTATION OF THE RECOMMENDATIONS OF THE 2006 REVIEW

All but one of the 70 recommendations from the 2006 Review have been implemented and completed or are on-going.

The Ombudsman did not take up the recommendation for publishing gender/equity data. The issue has been taken up again in this Report.

Also, while considered, there was no move to appoint an indigenous liaison officer and this has again been taken up in this Report.

While some of the recommendations were a little slow to be implemented, it was a large agenda and the Office and the staff are to be commended for their application to the task.

There are still issues around commitment to a referral back to agencies process but this has been taken up again in this Report.

## SECTION J: INTERNAL PROJECTS IN RESPONSE TO THE 2011 STAFF SURVEY OUTCOME

The projects cover 5 key areas –

- major investigations
- investigations
- public interface
- performance development and career planning
- information management.

The projects were developed and progressed with significant consultation and input from staff and this has contributed to significant staff ownership.

I have no concerns about the recommendations to be implemented as they are in many cases operational and able to progress independent of this review process.

**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.*

## SECTION K: REPONSE BY THE OMBUDSMAN TO THE DRAFT REPORT

In accordance with section 85(1) of the Act, a draft of this report was provided to the Minister and to the Ombudsman on 8 February 2012. Section 85(2) allows for the Ombudsman to have up to 21 days after receiving the draft report, to provide written comments to the reviewer on anything in the proposed report.

The Ombudsman provided a formal response to the draft report on 28 February 2012. A copy of that response is included at **Attachment G**.

The Ombudsman's response was generally positive in terms of the content and recommendations in the report as well as the positive and consultative way the review was conducted.

The issues raised in the response have been considered and where appropriate also discussed with the Ombudsman. The issues generally related to resourcing implications associated with some of the recommendations and the need for some flexibility in the implementation process. There are no matters of serious concern raised by the Ombudsman.

The issue raised by the Ombudsman in regard to **Recommendation 5** does have some merit and I have suggested to him that the comprehensive Referred to Agency Survey be undertaken say every 5 years with the next Survey preferably being conducted within the next 12 months. This required a minor change to the original recommendation in the draft report which the Ombudsman has accepted.

The Ombudsman also accepts that the required decisions in regard to the organisational structure of the Office may be difficult but are necessary. He has a very positive approach to the issue which I support.



## **SECTION B: INTRODUCTION**

Division 4 of the *Ombudsman Act 2001* (“the Act”) provides for a strategic review of the Ombudsman’s Office to be conducted at least every 5 years. The review is to be conducted by an appropriately qualified person appointed by the Governor in Council who is to give a report on the review.

The terms of reference for the review are also to be approved by the Governor in Council as is the remuneration and other terms of appointment.

The Minister for Justice and Attorney-General, in formulating a recommendation for appointment by the Governor in Council, must consult with the relevant Parliamentary committee which at the time was the Parliamentary Law Justice and Safety Committee (“LJSC”) about the appointment of the reviewer and the terms of reference for the review.

On 14 July 2011, the Governor in Council approved the appointment of Mr Henry Robert Smerdon AM to undertake the strategic review in terms of the legislation.

The strategic review was formally commenced on 1 September 2011.

### **Section B.1: Terms of Reference**

The terms of reference for the conduct of this strategic review were also approved by the Governor in Council on 14 July 2011.

The Scope of the Review was defined as:

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

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

*In addition, the appointee is to have regard to the Committee’s Report on the Strategic Management Review Report – Office of the Ombudsman, April 2006; Report on the 2005-06 Annual Report of the Office of the Ombudsman (Report No. 57); the Committee’s biannual review of the Office of the Ombudsman – May 2008 (Report No. 65), and the Committee’s reports concerning its biannual meetings with the Ombudsman (Reports No. 58, 62, 68, and 76).”*

The reviewer was also to have regard to, among other things, “*operational models in other Australian and international jurisdictions*”.

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

## **Section B.2: Review Process**

I should also mention at the outset that I was the appointed reviewer for the previous strategic management review which was undertaken in 2005/06. As a matter of general conduct, I have followed similar processes for the conduct of this review.

While section 84 of the Act does provide for the reviewer to have the powers of an authorized auditor in terms of the *Auditor-General Act 2009*, I have had the utmost co-operation from all concerned or interested in the review and its processes. I have appreciated the co-operation and support I have received as it has made the task that much more conducive to a good outcome.

The terms of reference approved by the Governor in Council do provide guidance in terms of the methodology for the conduct of the review. However I have taken the view that they provided a broad framework only and I have not felt constrained by them in terms of the conduct of the review.

The review process essentially has proceeded along similar lines to the previous review that I conducted. However there has been less emphasis on the detailed operational matters and more emphasis on what I believe are some significant strategic issues that need to be addressed.

I was also mindful that in 2011 before the review commenced, the Office had embarked on a series of five projects addressing some administrative and operational concerns flowing from the results of the Staff Survey that had been conducted in early 2011. I will have more comment on the Survey later in this report.

The following outlines the essential elements of the review process and its conduct:

- There were initial meetings with the Ombudsman and the Department of Justice and Attorney –General’s representative to discuss process and information requirements.
- There was a half day briefing session with the Ombudsman and the senior members of the Office at which details were provided as to where they believed the Office was at, where it had come from and identified some issues for consideration in the course of the review.
- A range of documents and reports were also provided which were helpful in understanding where the Office was at and the progress that had been made over the past five years or so.
- Meetings were arranged with all senior staff on an individual basis.

- All staff were provided with an opportunity to attend one of two forums where they could provide input to the review. The forums were well attended although not all staff took the opportunity to participate. A number of staff also availed themselves of an opportunity to meet individually. Several pieces of anonymous correspondence were also received.
- Staff who had left the Office in the previous five years were also invited to participate in a forum similar to that used for existing staff, although only three individuals ultimately attended the session. The attendance was a little below expectations given the strong attendance at a similar forum during the previous review. A number of other ex-staff, although not attending the forum, provided written comments to assist the review process.
- Meetings were arranged with agencies which have had a range of on-going interactions with the Office. These meetings were generally with the Director-General and other relevant senior staff. A full list of the agencies and others interviewed as part of the review process is set out in **Attachment B**.
- To address the requirement that regard be had to other operational models in Australian and international jurisdictions, visits were arranged to the New South Wales Ombudsman's Office, the Parliamentary and Health Service Ombudsman's Office in London, England and the Scottish Public Services Ombudsman's Office in Edinburgh, Scotland. (The latter visits were arranged in conjunction with other unrelated business meetings on the same trip to keep costs to a minimum on a shared basis.)
- Meetings were also arranged with the Director of the Aboriginal and Torres Strait Islander Legal Service and a representative group from Community Legal Centres in Queensland.
- A sample of 200 completed and open files was also examined. The files were drawn randomly from the Assessment and Resolution Team (ART) and also the three investigation teams of the Office. It was considered a sufficiently representative sample for the purposes of the review.
- Apart from the various meetings conducted as outlined above, there was a significant amount of written material provided to me via the Ombudsman and other stakeholders as well as access to a range of publicly available information from many other sources including other jurisdictions.

As with the previous review, public submissions were not sought or indeed requested. Similarly public meetings were not conducted. I believe the issues have been sufficiently identified through the processes used and the on-going internal processes of the Office as to not require public involvement via formal submissions and meetings.

The Office conducts complainant surveys on a reasonably regular basis with the last survey being completed in December 2010. It was considered sufficiently recent to be relevant for the review process and a further survey was not required.

The last referred to agency survey was conducted in 2008 and completed in September of that year. Referrals to agencies was a significant issue for this review as well as the previous review. While it may have been desirable to have a more up to date survey outcome to consider, it was felt that the time and expense of a further survey could not be justified given that the likely issues to flow out of such a survey had already been canvassed in various forums.

Similarly, a major agency survey was not felt necessary given the extensive interview process conducted.

Meetings were not arranged with the Parliamentary Committee. The advice to the reviewer was that it was the Committee's preference to wait and discuss the review findings in due course. This did not cause a major difficulty as there was access to the various Committee Reports on the outcomes of the regular meetings between the Committee and the Ombudsman.

A formal submission was not made by the Ombudsman as extensive written and other material was supplied as part of the review process and its deliberations. There were also regular meetings with the Ombudsman as well as follow up meetings with some staff which greatly assisted the formulation of the review findings.

I have been very gratified by the ready co-operation and support I have received in the conduct of the review and the very positive way that the Ombudsman and his staff have embraced the review and the potential to provide a platform for the future for the Office.

## **SECTION C: OVERVIEW**

It needs to be said at the outset that the Ombudsman's Office is in many respects quite different to the organisation that I reviewed in 2005/06. The recommendations in my 2006 Review Report have largely been adopted and implemented and good progress *prima facie* has been made.

The move to new accommodation has been welcomed by staff and the co-location with other bodies such as the Commonwealth Ombudsman's Office and the Commissioner for Children has been successful in terms of sharing of facilities such as meeting/training rooms and also co-ordinated reception activities.

While my high expectations for the organisation unfortunately have been somewhat downgraded during the course of my review, I would not want some inevitable negative comments in this report to unduly tarnish the efforts of all staff to make the Office one that is endeavouring to make a difference to public administration standards in the State.

A rather negative 2011 Staff Survey coupled with a surprising recession in the previous positive responses from complainants in the 2010 Complainant Survey have been a cause for considerable concern.

The arrival of the new Ombudsman, Mr Phil Clarke, at the start of 2011 has been received positively by staff and there are positive signs for the organisation going forward.

The aim of my review and this report is to provide the Office and the Ombudsman with a framework that will contribute to taking the Office forward. While ultimately it is somewhat a "rear-view mirror" exercise, I hope that there are sufficient positive suggestions and recommendations to contribute to this process.

It is also worth making the comment that public sector agencies literally make hundreds of thousands of decisions every day and by and large get them right. There is certainly evidence of a greater level of commitment by agencies to make good decisions and to get the decision right the first time. Complaints will never be eliminated completely and the agencies in general have recognised the value of having good processes for handling situations where a customer does not believe the agency has got it right.

Like their private sector counterparts, public sector agencies increasingly see the benefit of having good complaint handling processes in place as an essential part of the learning experience to get things right in the future for the people they do business with.

The Ombudsman has been an important part of the accountability processes of Government for many years now. The role is a critical one and maintaining the independence of the Office is something that Ombudsmen and indeed Governments of the day have jealously preserved. It is important that this continue.

What has changed in more recent times is the increasing role of the Office in working with agencies through administrative improvement processes to help them make better decisions and to handle complaints more effectively through improved complaint handling and management systems.

There may be some who would argue that there is a possibility of compromising independence through these processes. I agree there is a risk but the benefits to the processes of Government as a whole far outweigh the risks involved.

There is also a matter that is deserving of some overview comment but accepting that in many respects, it is outside the scope of this review. I refer to the increasing tendency for the establishment of positions with the name “Ombudsman” but which are by and large regulatory in nature. The use of the term “ombudsman” gives the position enhanced credibility and acceptability, such is the standing of the Ombudsman in the community.

I have set out in **Attachment F**, a sample of these bodies which are said to offer Ombudsman-type services.

The plethora of these independent regulators/complaint resolvers does add to the pressures faced by the Ombudsman’s Office because of the uncertainty created in the minds of potential complainants as to which one to approach to resolve their complaint. Increasingly they end up as a “contact” for the Ombudsman’s Office and adds to the pressures on service delivery and costs.

In Scotland, rather than disaggregation, there are moves for greater consolidation with the previous Corrective Services complaint body and more recently, the Water Ombudsman, being incorporated into the Ombudsman’s Office and achieving greater efficiency and effectiveness.

In Queensland, there is also a Health Quality and Complaints Commission (HQCC) which performs functions that in some other jurisdictions would be performed by the Ombudsman’s Office. While it does not carry the Ombudsman brand, it is to all intent and purpose, an ombudsman type role. Certainly in the UK and Scotland, many of the HQCC services appear to be carried out by the relevant Ombudsman.

I suggest that consideration needs to be given by all stakeholders, including the Government, as to how best to ensure that the potential complainant gets to the right agency to resolve their complaint in the shortest possible time with the minimum inconvenience. Such consideration could also include the whole issue of protection of the Ombudsman brand.

It is a matter that is of increasing concern both overseas as well as in Australia. In fact in the UK, there are moves to protect the brand by requiring aspiring members of Ombudsman Associations to meet certain criteria for membership. I understand that there may be similar discussions taking place in Australia within the Australian and New Zealand Ombudsman Association.

I have not made any specific recommendation but merely raise it as a matter of some concern that has been highlighted during the course of the review. It is a matter of policy that requires further research and investigation.

## **SECTION D: STRATEGIC MATTERS**

### **Section D.1: The Role of the Ombudsman**

Section 12 of the Act outlines the functions of the Ombudsman.

In summary these include:

- investigation of administrative actions of agencies, either on complaint, on own initiative or by reference from the Parliament;
- considering and where appropriate, making recommendations for improving the administrative practices and procedures of agencies.

While the Ombudsman continues to be active in terms of investigations from complaints lodged by the public, there has been a marked increase in recent times in the work of the Office in the areas of good decision making and administrative improvement within agencies as well as “own initiated” investigations.

There has been a growing awareness of the role and functions of the Office of the Ombudsman and this has resulted in a significant increase in the number of “contacts” generated by the Office and the number of formal complaints requiring investigation by the Office which flow from these “contacts”.

By way of example, according to the 2005/06 annual report of the Ombudsman, there were 11629 “contacts” resulting in 7271 new complaints in that year. Of the 7305 complaints finalised during that year, 1668 (including 496 withdrawn or discontinued after the investigation commenced) required some form of investigation, including 28 where extended investigation was required.

In 2010/11, there were 20382 “contacts” (up 75.3% on 2005/06) resulting in 8354 new complaints (up 14.9% on 2005/06). Of the 8278 complaints finalised during that year, 1107 required some form of investigation, including 52 where extended investigation was required.

There seems little doubt given the increase in the number of “contacts” in the past 5 years that the general public see the Office of the Ombudsman as the first point of contact when they have an issue or complaint that is causing them difficulty.

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

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

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

The Office has run at various times, advertising campaigns based on the philosophy that *“It’s OK to Complain”*. What is perhaps needed now is a more targeted effort to ensure that those seeking redress through a complaint mechanism, are directed to the right body earlier in the process.

It is also worth mentioning that my discussions with a variety of agencies indicated a high level of support for the Office and the important role it plays in the overall public administration of the State. That perception has been helped I believe by the more positive aspects of the role of the Office in good decision training and improved complaints management processes within agencies.

In discussions with the Ombudsman he has suggested some minor amendments to sections 5 and 6 of the Act to strengthen the role of the Ombudsman and his Office in the effectiveness of decision making and administrative improvement. These issues are discussed in more detail later in the report but I do endorse the strengthening and clarification of the role of the Ombudsman in these matters.

**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.

## **Section D.2: Advocacy and Resolution Roles**

It has been the traditional role of Ombudsman’s Offices to be the independent umpire in disputes between agencies and the public who may be affected by a decision by an agency. Over the years the Ombudsman has required the individual to exhaust all avenues of appeal and resolution with the agency concerned before the Office will formally accept a complaint for investigation.



Many of the “contacts” received by the Ombudsman are from individuals who have not as yet exhausted those processes and they are generally referred back to the agency concerned. This has drawn significant criticism at times, both externally and internally, as being an unhelpful process for the complainant.

In many cases the complainant is reluctant to go back to the agency for a whole lot of reasons and unfortunately are then lost to the system without any assessment of the merits of their complaint or indeed resolution thereof.

The most recent survey available of what are termed “Referred to Agency” complaints was completed in 2008. The results of that survey showed some improvement in the willingness of complainants to take the matter back to the agency concerned – but far too many complainants are still being lost to the system ie for whatever reason, they allow their complaint to lapse without seeking further redress.

The 2008 Referred to Agency Survey Report was completed in September 2008. There were 480 interviews conducted where the individual was asked to take the complaint back to the agency or the matter was referred directly by the Office. The interviewees were drawn from referrals advised in the second half of 2007. Some 59% of individuals physically took the complaint back to the agency concerned (although at the time of the report some 51% were still awaiting a decision from the agency which prima facie ought to have been a matter of concern). The outcome of the Survey was quite positive compared with the previous Survey conducted in 2004.

Referrals back to agency were a key element of and recommendations in my 2006 Review.

While the survey results would suggest that progress had been made, the survey results are now dated. A comprehensive Referred to Agency Survey should be undertaken, preferably within 12 months, and then be undertaken say every 5 years given the data in respect of referrals to agencies now obtained from the regular Complainant Satisfaction Survey.

Feedback from staff from a broad cross-section of the Office suggests that much more can and should be done to assist complainants to resolve issues. In fact there is a degree of frustration felt by staff who take the view that the Office is too willing to close files to keep throughput up rather than be more helpful to the complainant.

The critical issue is whether the referrals become the normal practice, and hence potentially increase in number, and whether the Office is then perceived to be advocating on behalf of the complainant rather than carrying out the more traditional role of the independent arbiter.

There are also privacy issues associated with the referrals but I do not see these as insurmountable. Provided the claimant offers no objection on privacy grounds, I see that there is no difficulty referring matters to an agency on the claimant’s behalf in appropriate circumstances.

On the specific issue of advocacy, in more recent times, there was a view that at least one Ombudsman's Office could have been perceived as having a higher level of commitment to an advocacy role than other Ombudsmen's Offices. The underlying argument was that claimants are customers and consumers of a service being provided by the Office and that there needed to be greater emphasis on a consumer service type role. However it is certainly not a view that is universally shared by most Ombudsmen that I met with, both in Australia and overseas. They remain very much of the view that the independence of the Office underpins all that they do and is to be protected at all costs.

However, while preservation of the independent role is the prevailing philosophical view, it is generally acknowledged that on odd occasions special assistance, including referrals back to agencies, is provided to complainants depending on the circumstances. It is also acknowledged that such a referral service, with clear guidelines, could be a valuable service to certain complainants who may otherwise be disadvantaged.

While I remain of the view that a targeted referral process can be justified, I must also stress that it needs to be constructed in a way that does not encourage complainants to avoid the proper processes within agencies.

I agree with the general view of Ombudsmen both in Australia and overseas that the independence of the Ombudsman is critical to the acceptance of their role within the broader community and I do not support any move to take the Ombudsman and his Office down an advocacy path.

In fact there would be quite some dismay within agencies if the Ombudsman was seen as encouraging good decision making and excellent complaint management processes within agencies on the one hand and then effectively encouraging or supporting complainants who seek to use the Office to avoid the due processes within the agency.

On the other hand, agencies need to ensure that their appeal processes are genuine and seen to be so and not be seen as "going through the motions". It has been put to me by staff that they have seen instances where in their view, an agency has only paid lip service to the requirement for proper higher level consideration of appeals. Thankfully such occurrences are said to be infrequent. I was assured by all agencies I spoke to that their appeal processes were genuine and compliant and seen as an important part of the complaint resolution process.

As with the my previous Report, I continue to encourage the Ombudsman to put in place appropriate processes of referrals of complaints back to agencies where the complainant has not exhausted all avenues of appeal/process with the agency. The referrals should be monitored for action, in part as a learning exercise related to the adequacy of complaint management systems within agencies.

I also make the point again that the referrals should be careful to avoid any hint of an advocacy role for the Ombudsman.

While it is only a small point, some staff raised with me the issue of use of the term “complainant” to refer to people who contact the Office. It has negative connotations even though generally correctly describing the person. I have some sympathy for their view that it would be better to use the term “client” or some variation of this. I have not made any recommendation in this matter as it is really for the Ombudsman to consider although I would point out that the Act refers to “complainants” in a number of areas.

**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.*

### **Section D.3: Benchmarking**

Benchmarking remains a vexing question with most Ombudsman Offices. It is generally claimed that the data collection processes are different and that it is difficult to get common data and indeed common definitions.

It is fair to say that the data collection processes even in the Queensland context, can be vexing. How a “contact” is recorded depends in some cases on how the “contact” is made and indeed whether there is clarity about whether it is a complaint or inquiry.

As an example, I am informed that “Out of Jurisdiction (OOJ)” issues are captured in different ways depending on how they are received. If by telephone or on-line, they are captured as “referrals” whereas if they are received as letters, faxes or Emails, they are captured as “complaints”. This at least needs to be tidied up.

Benchmarking is an issue that is regularly raised at meetings of Ombudsmen and I understand there is a project underway which would seek to identify data for which there is some commonality of collection and relevance.

But there is no ready solution despite various discussions and much thought.

Comparative data would be useful but the effort required to achieve it may not in fact be worth the effort.

In discussions with the Ombudsman there is a degree of willingness to continue to explore the issue with his colleagues and I encourage him to do so. I find it quite frustrating that so little progress seems to be able to be made in this area.

**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.*

#### **Section D.4: Receival Centre Operations**

The issue of a receival or call centre type operation was raised in my last review. It was not recommended at the time but was suggested that it could be kept under review.

While the prime source of “contacts” continues to be the telephone, the proportion of “contacts” received in this way has diminished over time although still in excess of 50% inclusive of the prisoner phone link. The issue therefore is not just about a call centre but how contact is made generally with the Office.

As has already been noted, a significant number of “contacts” to the Ombudsman’s Office relate to other bodies and jurisdictions, rather than the Office. In the sample of files that I examined, there were numerous examples of persons making contact with the Office that were clearly not dealing with issues of any relevance to the role of the Ombudsman or the service the Office might provide.

While there is the argument that a file should not have been created in the first place for these “contacts” – and this will be discussed later in the report – the majority of “contacts” now relate to other regulatory and complaint offices eg the Telecommunications Industry Ombudsman, the Energy and Water Ombudsman, the Commonwealth Ombudsman, the Fair Work Ombudsman or they relate to other agencies dealing with issues such as industrial relations, or work place health and safety matters or the Office of Fair Trading or other regulators.

The range of agencies likely to be contacted has increased and ranges across Commonwealth, State and Local Government as well as the private sector and I refer again to **Attachment F** outlining a sample of those Offices.

The major policy question is whether the Ombudsman ought to be the clearing house for these “contacts” or complaints or whether there is a better, more efficient system that will get people to the agency they need to contact, including the Ombudsman, with a minimum of fuss and a maximum of satisfaction for the person making the contact.

I held the view previously that serious consideration should be given to establishing a call or receival centre type operation. All complaints could be channelled to a single number or contact point and if necessary directed to the appropriate agency through call switching or a similar facility. Ideally with one phone call a person would be able to have their complaint on forwarded to the correct agency rather than simply being told to “*ring this number*” or “*it is not in our jurisdiction and we can’t help you*”.

The Welsh Ombudsman has set up an entity called “Complaints Wales” which was designed to address a very similar issue. It is relatively new but appears to be operating successfully.

I was advised during the course of this review that some years ago, New South Wales had undertaken a lot of work to develop a quite sophisticated call centre operation. However for various reasons, it did not proceed.

The concept of a sophisticated and comprehensive call centre operation is still seen as being a viable way to operate in addressing complaints to Government generally but it does require very careful and detailed evaluation in the light of current technology and circumstances.

In discussions with the Local Government Association, it was also mentioned that a number of councils are moving down the path of sophisticated call centre type operations, not just for complaints but contact generally to improve the services they offer to their customers.

There has been a Web site set up ([www.complaints.qld.gov.au](http://www.complaints.qld.gov.au)) on which are represented 15 agencies from various sectors, including the Queensland Ombudsman and the Crime and Misconduct Commission. The role of the site seems to simply be a referral to other relevant websites, including the Ombudsman and other complaint agencies plus multi-lingual brochures and information. It is fairly unsophisticated and only covers a small proportion of potential “contacts” as a person more comfortable with the telephone would not necessarily use the internet.

There is support in principle for a sophisticated call centre or intake facility from a number of quarters. However it is likely that the cost would be significant if it is to have the functionality and level of sophistication required to meet expectations and to deal with the multi-level Government and private sector involvement. High quality training of staff would be required and the development and maintenance of sophisticated scripting for calls given the range of services and activities likely to be covered. There are also the technology issues to be resolved.

Such a Centre could also deal with the Email and on-line contacts as well as telephony.

It could also be an excellent adjunct to the Government’s current Smart Services Queensland operation which addresses the coordination of Government services through a “one stop shop” operation.

Apart from the very real practical problems associated with the delivery of a sophisticated facility, the issues of cost-sharing and perhaps legislative implications would need to be given careful

thought and negotiation given that many of the complaints or “contacts” would be in respect of non-State Government agencies.

It is worth reiterating the point that of the 20382 “contacts” in 2010/11 made to the Queensland Office of the Ombudsman, more than 12000 were not of a character that required them to be registered as a complaint, even though the system may create a file for them in many cases. These cases were referred on to other agencies not necessarily in the State or Local Government.

(In addition, of the 8354 “contacts” which ended up as registered complaints ie had some indication that the person wished to make a complaint, around 80% find their way to another agency after “assessment”.)

The Office is currently managing to deal with the “contacts” without an increase of any magnitude in staff. Staff numbers have grown from 50.8 FTEs in 2005/06 to 53.7 FTEs at the end of 2010/11 an increase of just 5.7% when in the same period, “contacts” have grown by more than 75%. However the dramatic increase in numbers does put significant pressure on resources to the detriment of other important work related to things like “own initiative” investigations, administrative improvement strategies and audits of complaint management systems as well as stress on corporate support activities.

Part of the problem appears to have been created by the success of marketing and communication strategies such as “It’s OK to Complain” which doesn’t limit the impact to State agencies but invites complaints about any matter.

There are really 4 options:

**Option 1:**

*Maintain the present system but effect some efficiencies through the file creation process and perhaps investigate better links with the agencies that generate the larger number of the non-Ombudsman “contacts”. This would have some benefits for the Office, perhaps some additional costs in terms of call switching/transfer but with only minimal benefit to the “contactee”.*

**Option 2:**

*Endeavour to set up a small call centre facility essentially based on those agencies co-located with the Ombudsman, including the Commonwealth Ombudsman. May have some efficiencies and some savings but marginal and again not significant benefits for most “contactees”.*

**Option 3:**

*Set up a significant call centre type operation to address complaints about Government administrative decisions generally – the “Complaints Queensland” model. Would be expensive but would remove the problem from the Ombudsman’s Office. There would be benefits for the “contact” person in being directed quickly and seamlessly to the right agency but has many policy issues to be resolved. The downside may be that the facility is seen as the first point of contact and takes away the important initial interface between customer and service provider.*

**Option 4:**

*Outsource the function. It would be a brave move but one that should not be totally discounted without some investigation.*

In reality the more viable short term solutions lie in **Option 1** and **Option 2**. **Option 3** is a matter of significant Government policy and it does need further investigation and analysis particularly for the potential benefits to the customers of Government services generally.

Whatever decision that is eventually made in respect of the call centre question, the [www.complaints.qld.gov.au](http://www.complaints.qld.gov.au) does need further work and refinement. One simple improvement would be inclusion of a relevant phone number to call. I assume that the absence of the phone number is to get people to go to the relevant web site for further explanations and advice. That can still happen but it should not be forced on people.

**Recommendation 8:** *The Ombudsman investigate the opportunities for improvements to the current “contact” receival 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](http://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.*

**Section D.5: Complaints Standards Authority**

The Scottish Public Service Ombudsman has established within his Office, a Complaints Standards Authority. In many respects, it is an internal audit type operation which has the objective of ensuring that agencies have in place appropriate complaint handling procedures. Part of its role is to establish appropriate principles and standards that must be followed by agencies in establishing and operating complaints management systems.

It follows two major reports (the Crerar and Sinclair Reports) into complaints and the systems in agencies in Scotland that are set up by agencies to handle such complaints.

The Crerar Report in particular found that complaint management systems in agencies were cumbersome, overly bureaucratic and generally not fit for purpose.

While initially viewed with some suspicion, the Authority and its role, embracing both standard setting and monitoring, has been widely accepted by agencies.

In the Queensland context, while the Office of the Ombudsman has been undertaking some audits of complaints management systems in agencies, the principles that govern complaint management systems are set by external agencies.

In the case of public sector agencies, the Public Service Commission issued in November 2006, Directive No. 13/06 dealing with Complaints Management Systems.

The key elements of the Directive are:

- Visibility and Access
- Responsiveness
- Assessment and Action
- Feedback
- Monitoring Effectiveness

There is some concern that the Directive does not cover all public sector agencies although it was clear to me that all significant agencies are covered.

In the case of Local Government, the principles are embodied in recent amendments to the *Local Government Act* with all local government bodies required to have in place appropriate complaint management systems by 30 June 2011. There is some concern within the Office as to whether all councils have been able to meet this deadline.

The capacity of the Office to be more active in auditing complaint management systems is governed by a lack of resources. It is an issue that the Office needs to take up with Treasury as a matter of some priority.

While I understand the rationale for using the *Local Government Act* and the Public Service Commission as the vehicles to set down principles to underpin good complaint management systems, I am very attracted to the Scottish Model of having the setting of complaint handling standards and the monitoring thereof resting with the Office of the Ombudsman.

It would require some amendment to the Act to achieve this (and the Ombudsman has suggested this also) but I see it as a very positive step.



While establishing a Complaints Standards Authority within the Office of the Ombudsman would clearly put the quality of complaints handling systems “front and centre”, it is not a prerequisite to the general principle of making the Office responsible for standard setting and monitoring aspects of the complaints management process.

There will be the philosophical argument that there should be a separation of the standard setting from the policing. I really don’t find much to commend this in a practical sense. There would be a far better outcome if it was invested in one body. There is always the Parliamentary Committee to keep a check on the activities of the Office as and when required.

I believe giving the Ombudsman appropriate powers to set standards would complement the existing excellent work being done through the work of the Administrative Improvement Unit and good decision training.

I believe a much stronger focus on standards will ultimately pay off in terms of better decisions and less complaints about the handling of complaints and an overall better service to the customer.

**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.*

## **Section D.6: The Ombudsman and the Non-Government Sector**

A recent strategic review of the Queensland Audit Office (QAO) resulted in adoption of the concept of “follow the dollar” as a basis for extending the reach of the Auditor-General in the accountability chain to include entities that may normally be seen as outside the scope of the Auditor-General’s remit but who receive substantial Government funding to operate. In other words, even though a particular entity may not be a public sector agency in the usual sense, and hence subject to audit by the QAO, the fact that a substantial part of funding for the entity comes from Government sources allows the QAO to engage in audit activity of the entity.

If the principle of “follow the dollar” is followed more broadly than for simply audit purposes, one could envisage a situation where those clients of a Government funded entity who are aggrieved by the decisions of the entity, can access the services of the Ombudsman’s Office to complain about such decisions and have them reviewed.

It is very doubtful that the Ombudsman would have power under existing legislation to become involved in the non-Government sector. An amendment to the Act is likely to be required to facilitate such actions.

I think that extension of the role of the Ombudsman to include the non-Government sector where significant public money is involved has much to commend it. However there would need to be very clear guidelines to ensure that there was not an intrusion of the Ombudsman into areas that are not and should not be within the scope of his normal activities.

It is also worth noting that there has been an increasing trend to outsourcing services by public sector agencies and it would seem inequitable for clients of a particular service that they should lose the access to the Ombudsman simply because that service is now provided by a non-Government agency rather than a Government agency.

**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 the delivery of their services.*

#### **Section D.7: Advisory Board**

The Ombudsman is appointed by the Governor in Council. The legislation prescribes that the Ombudsman is an officer of the Parliament. The Ombudsman also has significant independent powers, reporting to and only accountable to the Parliament.

The Parliament exercises a governance responsibility over the Ombudsman through a Committee of Parliament, namely the Legal Affairs, Police, Corrective Services and Emergency Services Committee (previously the Law, Justice and Safety Committee) which has prescribed roles and responsibilities in the legislation.

Over the years the relevant Parliamentary Committees have been diligent in exercising their responsibility for the oversight of the Ombudsman and are to be commended for that.

In the case of the Parliamentary and Health Service Ombudsman in England, the Ombudsman has appointed a small board of advice to assist with the governance and oversight process as well as assist with transparency with which the Office operates and bolster the independence of the role. The board is chaired by the Ombudsman and has up to four independent members.

The board provides specific advice and support on:

- purpose, vision and values;
- strategic direction and planning
- accountability to stakeholders, including stewardship of public funds;
- internal control and risk management arrangements.

The board has no role in casework processes or decisions.

The board also has 2 sub-committees, an Audit Committee and a Pay Committee.

The Scottish Ombudsman does not have a specific board of advice but has an Audit and Advisory Committee. The Committee's role is to support the Ombudsman and his team by monitoring the adequacy of the Office's governance and control systems through offering advice on issues concerning risk, control and governance of the Office as well as providing a source of advice and feedback on the strategic objectives and annual business plans.

Again the Committee plays no role in the decision making processes of the Office with respect to complaint cases.

In both cases there is also some oversight by a Parliamentary Committee.

It should also be noted that in the UK, the complaint must be lodged via a Member of Parliament and hence is quite visible and responsible to the whole of Parliament via the members.

The UK Ombudsman recently completed an extensive consultation process to obtain the views of stakeholders on the continued use of the submission via Member process. The overwhelming response, not surprisingly, is that most people prefer direct contact with the Ombudsman's Office. At the time of writing, the Government was still to address the findings of the consultation process. Whatever the outcome, it is unlikely to affect the Ombudsman's view of the value of the board of advice.

While it could be said that such a board is unnecessary given the role of the Parliamentary Committee in Queensland, such a board may well offer the Ombudsman some added comfort in the carrying out of the responsibilities of Office, be more readily available than the Committee and provide a valuable conduit to the community in terms of feedback. I would see it as complementary to the more formalised and acknowledged excellent work of the Parliamentary Committee.

I am reluctant to specifically recommend that a board of advice/advisory board be established given the potential for it to conflict with the perceived responsibilities of the Parliamentary Committee. However it may be that the Ombudsman could consider reviewing membership of the Audit Committee to include all external members and widen its charter to embrace more involvement of the Committee in issues such as strategic planning, business plans and community aspirations.

I do note though that the Public Service Commission has an advisory type board drawn from the private sector which I understand provides very valuable support, insight and advice to the Commission leadership and staff on a range of issues.

I am also mindful that the Health Quality and Complaint Commission which does perform ombudsman type functions, does have among other things, a Consumer Advisory Committee.

**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 the option of an expanded role for the Ombudsman's Office Audit Committee along the lines of the Scottish Ombudsman Office.*

## **SECTION E: OPERATIONAL MATTERS**

### **Section E.1: Outcome of 2010 Complainant Satisfaction Survey**

Before discussing specific issues surrounding the operations of the Office, it is worthwhile to reflect on the outcome of the Complainant Satisfaction Survey which was completed in December 2010.

This comprehensive Survey was based on cases closed in the period July 2008 to June 2010. The survey report was completed in December 2010. It was based on some 409 respondent complainants out of an eligible population of around 1160.

The Office had conducted similar surveys in 2004, 2006 and 2008.

It was somewhat surprising that the Survey results showed a decline and in some cases quite markedly so, in a number of key areas relative to the previous surveys. Perhaps what was more disconcerting is that in some cases the decline was in areas where the Office had been endeavouring to improve its service delivery.

Some of the key areas of decline were:

- Provision of clear reasons for the decisions,
- Usefulness of advice provided,
- Fair and reasonable outcome achieved,
- Impartiality, and
- Overall satisfaction rating.

The perceptions of ART also declined quite markedly between 2008 and 2010. The perception of the service provided by ART was also quite negative.

The Corrective Services and Communities Team (CSCT) provided the weakest result of the investigation teams and it is difficult to really find a logical explanation as to why.

It is also difficult to understand why the advice from the Office is generally not perceived in a more positive light. There is certainly no evidence that I have seen that would support such a view and may well be a communication issue.

The Survey did show that there is not a strong awareness or understanding of the role of the Ombudsman and any awareness is mostly driven by general knowledge. Active marketing of the role of the Ombudsman and his Office through TV, radio and press seems to have very little impact on awareness.

It is clear from the Survey results that complainants want more face to face contact and site visits as well as mediation. This is consistent with Recommendations 5 and 6 from my 2006 Review.

The Table 1 below sets out selective comparative results of key elements from the 2010 and past surveys.

**Table 1: 2010 Complainant Survey – Selected Results Comparison with Previous Surveys**

	2004 %	2006 %	2008 %	2010 %
Given clear reasons for decision	61.9	64.3	71.2	56.2
Sufficiently informed of progress	53.5	47.6	57.1	51.5
Timely completion	51.5	38.8	47.8	51.5
Decision fair and reasonable	36.9	45.4	43.5	32.3
Provided helpful advice	48.1	46.2	64.6	44.2
<b>(Respondents were asked to rank the following out of 5)</b>				
Staff were courteous	-	3.94	3.85	3.78
Staff were professional	-	3.46	3.64	3.49
Overall Satisfaction with Office	-	3.15	3.41	3.07

The results of the 2010 Complainant Survey together with the Staff Survey results suggest that the Office has much to work on in terms of achieving the high standards it aspires to.

It would be a little unfair to focus solely on the negatives from the Complainant's Survey. There are some positives which need to be recognised and acknowledged. For example the work of the Local Government Investigation Team (LGIT) is widely acknowledged as being of a very high standard and

seemingly acknowledged as being close to best practice. It is a matter of transforming the good results in this area more widely across the organisation at all levels.

It is against this background that I have looked at the key stages of the core business of the Office, namely:

- the intake process
- the assessment and resolution process
- the investigation process
- the decision-making and communication process

## Section E.2: The Intake Process

The 20382 “contacts” received by the Office in 2010/11 generally all come through the Assessment and Resolution Team (ART). They can be generated in a number of ways – telephone, mail, email, online, prisoner phone link, correctional centre interview, fax, in person, or voicemail.

The following table sets out how the 8354 new complaints received in 2010/11 were generated and then compares with the situation in 2005/06.

**Table 2: Source of Complaints to the Ombudsman – 2005/06 and 2010/11**

	2005/06	%	2010/11	%
Telephone	3983	54.8	3710	44.4
Mail	1668	22.9	1205	14.4
Email	430	5.9	1291	15.5
Online Complaint Form	167	2.3	1219	14.6
Prisoner Phone Link	629	8.7	605	7.2
Fax	142	1.9	93	1.1
Correctional Centre Interview	157	2.2	66	0.8
In Person	56	0.8	116	1.4
Other incl Voicemail	39	0.5	49	0.6
<b>Totals:</b>	<b>7271</b>	<b>100.0</b>	<b>8354</b>	<b>100.0</b>

It is clear that there has been a significant shift in the source of complaints with more than 30% sourced through the internet compared with only 8% just 5 years ago. It has been at the expense of traditional mail and telephone complaints.

The source of complaints in terms of agency type has also changed over time as set out in the following Table 3:

**Table 3: Source of Complaints by Agency Type – 2005/06 and 2010/11**

	2005/06	%	2010/11	%
State Government	4271	58.7	4587	54.9
Local Government	1961	27.0	2126	25.5
Universities	74	1.0	270	3.2
Other/Out of Jurisdiction	965	13.3	1371	16.4
<b>Totals:</b>	<b>7271</b>	<b>100.0</b>	<b>8354</b>	<b>100.0</b>

Clearly the Office is now dealing with more complaints that are out of jurisdiction and the question needs to be asked is whether this is a product of the system used to record complaints or some other factor.

There has been considerable effort in recent years to streamline the intake process although there is still a focus on the complaint being in writing, in part to strengthen the authenticity of the complainant's "contact".

The Office is also looking at the opportunities that social networking sites like Facebook, Twitter and Blogs might present in terms of creating a greater awareness of the Office and also providing greater access to the Ombudsman's services. However it is still early days and there are a number of issues that need to be well thought through before any serious commitment is given to use of these facilities.

Overall the intake process appears to be smooth and functioning acceptably in an operational sense. There are issues around time spent on phone calls with length of calls at times reflecting the helpfulness of staff rather than dealing quickly and efficiently with a caller. However, management has this in hand and there are guidelines in place which could be usefully reviewed.

The recording of "contacts" and hence complaints does have some issues.

One issue regarding out of jurisdiction (OOJ) matters is the different way they are recorded in the system. If "contact" is through the telephone or on-line, they are captured as "referrals" whereas if through letter, fax or Email, they are captured as "complaints", despite both being essentially OOJ issues.

A number of staff across the Office raised with me, the over focus of the ART area on "numbers" to the point where some staff question how priorities are set. I have already mentioned that the recording process for "contacts"/complaints was not consistent in some cases. I also have some concerns that the Office goes to the trouble of creating files from "contacts" rather than more tightly defined complaints.

By way of example, if a person makes contact with the Office, then even if it is clear that the matter is not one that the Ombudsman can deal with ie it is of an inquiry nature and really meant for another entity, a file is created and then closed on the same day. As a matter of principle, there is some value in the creation of a file in such circumstances. However, it does seem superfluous in some cases and perhaps tighter guidelines need to be developed.

Staff also reported to me that in some cases, more than one file can be created for the same person's complaint. A similar situation could potentially occur with the on-line facility. It is an issue that needs further work and examination.

It is worth noting again that of the 20382 "contacts" in 2010/11, more than 12000 were not considered worthy enough to record as a complaint, but in many cases a file is created.

Of the 8278 complaints finalised in 2010/11, only 52 required "standard" or "major" investigation, with 1055 requiring "informal" investigation and the balance of 7171 dealt with by "assessment" or "preliminary inquiry".

In terms of outcomes, the 8278 complaints finalised during the 2010/11 year were dealt with as set out in Table 4:

**Table 4: Summary of Outcome of Finalised Complaints – 2010/11**

Declined at the outset or after preliminary inquiry	6846
Withdrawn before or during investigation	157
Discontinued	210
Completed	1065
<b>Total</b>	<b>8278</b>

Unfortunately, the use of "contacts" or a variant thereof does seem to be common practice at least in the Australian context, although they are described in various terms eg NSW uses "complaints and notifications", Victoria uses "approaches" as does South Australia, Western Australia uses "contacts". The UK Ombudsman uses "inquiries" while the Scottish Ombudsman uses "contacts".

Comparison with other jurisdictions has its problems and hence my earlier comments about benchmarking. However of interest in terms of an intake process is that in NSW, WA, the UK and Scotland, the complaints per '000 of population on a reasonably comparable basis are less than one per '000 whereas for Victoria it is well in excess of two per '000 and in Queensland it is just under two per '000.

While there could be many explanations for this outcome, I am concerned that the policies adopted for recording of complaints in Queensland may produce this outcome ie an apparent high level of people wanting to complain, rather than any suggestion that Queenslanders are more likely to complain.



It is a matter that requires more detailed investigation by the Ombudsman of the whole intake data collection process to ensure that unnecessary administrative work is not being generated through file creation and ultimate closure and that the number of files created reflects realistic and relevant recording of the work of the Office and the use of its services.

A simple enquiry event though with some element of complaint that is clearly at the outset not relevant for the Office of the Ombudsman, may be able to be recorded and counted in another way to ensure that an appropriate range of management-related data is available.

**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.*

I accept that any fundamental change to the process for creation of files and collection of data may impact on the public presentation of performance data. But with an appropriate communication strategy, the public and other stakeholders should have no difficulty understanding the change and the impact.

### **Section E.3: Assessment and Resolution Process**

As indicated in the previous section, “contacts” between the Office and the public generally come through the ART area of the Office.

At the initial point of contact, some understanding is made by the officer of the problem or issue of the person making the “contact” and for the more than 12000 contacts that don’t progress to a complaint, either the person is referred on to the appropriate agency or a file is created and virtually closed on the same day.

Where a “contact”/complaint is recorded and a file created, the matter can generally be dealt with and the file closed quickly because it is out of jurisdiction or the complainant has contacted the Office prematurely before the person has exhausted appeal avenues with the agency concerned, with the decision being that the claimant be referred back to the agency concerned. The vast bulk of “contacts” are therefore dealt with in ART without further referral to one of the investigation teams and generally on the same day.

However in the course of the review, it was brought to my attention that it is not uncommon for ART files that could and should be closed on the same day being delayed for up to two weeks or more

before a response is provided to the person contacting the Office. The response may be simply that the Office cannot assist and then referring them to another agency or simply declining the request.

I could imagine that there would be nothing more frustrating to a person contacting the Office to be told two weeks or more after the issue is raised, that the Office cannot help and they should contact another agency. Frankly this is unacceptable.

However, I do acknowledge that In some cases, it is not clear that the complainant's issue can be dealt with quickly, in which case a preliminary assessment/investigation is made of the file and in many cases this will enable a decision to be made and advised to the complainant without further investigation.

Where it is clear that the matter is more complex and requires further investigation which cannot be undertaken in a relatively short period, the file is passed to one of the investigation teams.

While the process provides a relatively simple set of procedures to deal with the complaints raised with the Office, in fact ART and the way it operates, has generated some negative comments from some quarters.

The comments seemed to me to be ones of genuine concern and well-intentioned with a desire to see positive improvements in the way ART operates.

The processes in ART were a concern in the previous review. In fairness to the ART team, I am sure that every effort has been made to turn things around following the previous review and there is little doubt that real progress has been made.

However I do need to say that the leadership of ART is aware that a difficult set of circumstances does exist. The increase in the number of "contacts" dealt with by ART has been quite dramatic. Some additional resources have been provided but it has still left high individual workloads and the unrelenting pressure of daily grind and high expectations. There has also been a significant backlog of work which has been growing and increasingly difficult to deal with.

The Ombudsman has recently put in place significant changed arrangements for the operation of ART, effectively creating two units, one to deal with the backlog and one to deal with the day to day operations. It appears to be quite successful with reducing the backlog without undue impact on other areas of the Office. The structural changes plus accompanying process changes for dealing with files seem to have been well received.

The ART leadership had readily assured me of their commitment to resolving the issues – and indeed, they have embraced the new arrangements put in place by the Ombudsman.

It has been my view that an organisational structure issue exists and this is borne out by the success of the changes initiated recently by the Ombudsman. Simply changing processes within ART was not going to solve all of the issues.

I had initially proposed to redefine the role of ART more along the lines of a call centre or referral centre. All contact might still be through an ART type operation but any matter not dealt with and file closed within say 72 hours of receipt would automatically be passed to the investigation teams for resolution. This would place some pressure on ART to perform or be seen to be not pulling its weight.

It is a concept that is easily embraced by the new arrangements proposed by the Ombudsman.

While some staff in the Office have a view that the investigation teams are under-utilised and could do more than they do, it is really a matter for the Ombudsman to review as he is best placed to drive this matter.

Subject to what may be decided in regard to **Section F.10** of this report, my recommendations are as follows:

**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.*

#### **Section E.4: The Investigations Process**

Complaints that are lodged with the Office that are not dealt with in ART are passed to one of three investigation teams – Major Projects (MP), the Local Government and Infrastructure Team (LGIT), and the Community Services and Corrections Team (CSCT). Own initiative investigations originated by the Ombudsman are also dealt with in these areas, mainly MP.

There is considerable experience and skills within the teams particularly at the leadership level, where the Assistant Ombudsman in charge of each area has held the position for a number of years including at the time of the previous review.

The teams have developed significant documentation of processes with operational guidelines and with detailed reporting of progress of individual investigations. Different standards are set for complaints classified as “preliminary”, “standard” and “major”.

While workload statistics are maintained, they are difficult to interpret because of the peculiarities of individual files and the time that might be involved. The number of files dealt with is relatively small and as already alluded to, there may be some capacity to take on additional responsibilities.

Each team was represented in the sample of files I examined. The investigation process in each case was thorough, generally timely, at times perhaps overly legalistic, with a tendency to deeply investigate most issues.

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

Several comments were made to me about the scarcity of opportunities to gain experience in the various investigation teams in the Office, including ART. The concerns were largely around the staff rotation policy not operating as it should. I have raised this issue later in this Report without making any judgment about the substance of the comments.

I have no specific recommendations in regard to the operations of the investigation teams operationally (although there are structural issues that need to be addressed). They perform well in my assessment but there remains the need to draw ART more into the investigations process and this may require some structural reorganisation within the Office.

**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.*

## **Section E.5: Access to the Ombudsman’s Services**

The Ombudsman’s Office has expanded the opportunities for persons to complain to the Office and this is reflected in the rapid growth in “contacts” in the past 5 years or so with a growth over the period of 75%.

While considerable efforts have been made for persons within the corrective services system to complain through mediums such as the prisoner phone link, it would appear to me that there are other groups within the community who do not yet enjoy a level of access that their circumstances might suggest is required.

The Ombudsman is to be commended for reaching out to the homeless for example through field visits to establishments providing services to the homeless. However resources are stretched and the capacity of the Office to provide and indeed increase such outreach is problematic.

The Ombudsman is also to be commended for efforts being made to reach out to young people.

The Ombudsman sees a greater need in these areas than he is able to address with the resources available and this need, which is increasingly urgent in my view, should be taken up with Treasury.

Of particular interest to me as part of this review has been the access afforded to members of the indigenous community and people in regional areas.

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

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

There are a number of potential programs that the Ombudsman could consider, including the use of indigenous radio programs to connect with the community and to put a more personal and trusted face to the Office of the Ombudsman.

There are cultural issues that need to be addressed eg many members of the indigenous community have an aversion to filling out forms. Also, use of QGAP offices in regional areas, while prima facie a good way to spread the word for many people in regional Queensland, does have issues around trust and sensitivity for indigenous persons accessing Government services in regional areas.

The Ombudsman needs to build on the early work he has done and provide the sort of commitment to the indigenous community that will give them confidence that their needs are being taken seriously.

I do need to say that that the Ombudsman has been very supportive of the need to more comprehensively address the indigenous access issue.

Regional visits have been important to the Office particularly the visits to the correctional services facilities which are undertaken at least once a year. In 2010/11 there were 9 visits to correctional centres, 49 visits for regional training purposes and 14 associated with regional investigations. However most visits were centred on the South East Queensland region or along the Coast with only a visit to Mt Isa effectively taking place west of the Great Divide.

While every regional visit for whatever purpose ought to be an opportunity for connection with the local community, there should also be a targeted program of regional visits over say a 3 year horizon that takes the Office to communities throughout the State. I encourage the Ombudsman to review the current program to provide a greater level of connection to the broader community throughout the State. These visits could focus not just on the broad community but on those disadvantaged in terms of access.

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

**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 targeted regional visits program largely based around corrective services facilities.*

## **Section E.6: Communication**

In recent times, the Ombudsman's Office has been quite proactive in developing a range of written material based on the philosophy that "It's OK To Complain". The Ombudsman issues a series of regular reports targeted at specific segments of the community eg Local Perspective, State Perspective, Corrections Perspective and Legal Perspective. They are by all reports, well received in the community.

The Ombudsman has a quite active Communications and Research Unit (CRU) although the Director is currently on secondment to the Public Service Commission.

The Ombudsman produced a new and refreshing annual report for 2010/11 which is commendable and I am sure well received because of its readability.

I was impressed by the commitment of staff in the CRU and also the recognition of the importance of good communication by the Ombudsman.

The Ombudsman's web site while not outstanding is practical and useful and serves the purpose.

My interviews with the various agencies and stakeholders of the Ombudsman suggest that the Office has been fairly effective in communicating with them and there is fair degree of goodwill towards the Office.

While I have not spoken directly with the Parliamentary Committee, there is nothing to suggest that the relationship is not other than cordial and professional.

Similarly the relationship between the key agencies of Auditor-General and Crime and Misconduct Commission is one of respect and informality with care taken to ensure that duplication of investigative effort is avoided where this potentially might occur.

A number of MOUs are in place to strengthen the relevant relationships. A list of current MOUs is set out in **Attachment E**.

Obviously reports prepared by the Ombudsman as an outcome of an investigation process are also important means of communication with stakeholders and the community generally. In the past they had been perceived as overly long and legalistic in form and hence less user friendly than they might otherwise have been. In more recent times there has been a concerted effort to improve the style of the reports to make them more readable and accessible.

The Ombudsman is committed to further improvement in this area and is to be commended for that.

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

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

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

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

The Ombudsman is encouraged to continue to build on the good work undertaken in regard to improving the communication outcomes and to encourage further ideas flows.

**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.*

## **Section E.7: Education Issues**

The Office through the Administrative Improvement Unit has been very active in providing access to various training programs for agencies under the good decision making banner. Feedback from agencies I have spoken to is very positive and the courses are highly valued and the staff of the Office highly respected for the good work that they do.

Again expansion of the role of the Office in this area was a key recommendation in my previous report and it is pleasing that it has been implemented so successfully.

The programs on offer are regularly evaluated and improvements effected where required.

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

While a significant number of agency staff have been through the programs, there still appears to be a high level of demand.

One of the on-going issues is the availability of appropriate staff to deliver the programs and whether alternative or complementary delivery mechanisms need to be explored.



The Ombudsman's Office could explore the options of outsourcing the delivery of some programs to ensure that undue pressure is not exerted on staff undertaking the program delivery and perhaps to expand the offerings without requiring additional resources.

I can only encourage the Office to keep up the good work and to continue to explore opportunities for agencies to avail themselves of the educational opportunities on offer.

I see the training programs as important adjuncts to the complaints standards process.

**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).*

## **Section E.8: Compliance**

Section 12(c) of *the Act* provides power for the Ombudsman to consider the administrative practices and procedures of an agency and to make recommendations for improvement.

The Public Service Commission has issued Directive No. 13/06 requiring agencies to have appropriate complaint management systems in place and there is an expectation and responsibility on the Ombudsman to ensure that agencies do comply with the Directive.

New Regulations under the *Local Government Act* also require all councils to have a compliant complaint management system in place by 30 June 2011.

The new Regulations followed a review of the complaint management systems of 57 local councils in Queensland, the Report for which was tabled in the Parliament in September 2010 and which found that almost half of the councils failed to comply in one or more serious respects with the minimum requirements under the *Local Government Act*.

The Ombudsman has also been undertaking individual audits of complaint management systems of key agencies, including audits of the Gold Coast City Council and the Department of Transport and Main Roads in 2010/11. In the case of the Council, some 58 recommendations were made while in the case of the Department, there was a satisfactory level of compliance although helpful suggestions were made as an outcome of the audit process.

Clearly to undertake comprehensive audits of every council and agency would involve significant resources which are simply not available to the Ombudsman at the moment.

Compliance audits are important tools available to the Ombudsman and indeed to the councils and agencies concerned, to raise the standard of complaint management and handling.

It may well be that the comprehensive resource intensive audits need to be scaled back and refocussed on key areas of a council or an agency's complaints management process so that there can be greater coverage on a more regular basis.

It is a matter that the Ombudsman needs to consider in the light of available resources and the need to ensure an appropriate level of compliance by all agencies and councils.

**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.*

## **Section E.9: "Own Initiative" Investigations**

Section 18(1)(b) of the *Ombudsman Act 2001* provides a capacity for the Ombudsman to undertake an investigation into administrative action if he otherwise considers that the administrative action should be investigated. He does not necessarily require a complaint to have been made to undertake an investigation.

The Ombudsman uses this power to undertake what are commonly referred to as "own initiative" or "own motion" investigations. It is a power that can be used to investigate perceived systemic issues or any other relevant issue.

In my previous report, I encouraged the Ombudsman to make greater use of "own motion" investigations conducted in a timely way, as a powerful means of contributing to improvement in complaint management processes in agencies. I am pleased to say that the Ombudsman has increased the commitment to "own motion" investigations.

There is a strategic issue that may well be appropriate for the Ombudsman to perhaps consider the use of "own initiative" investigations to address.

There is an argument that an Ombudsman could be more proactive and step in early where there is a judgment that administrative actions/processes supporting the delivery of a Government program may give rise to an unnecessarily high level of complaints in the future. In other words, a program could be being delivered in a way that suggests that there is a high risk of consumers of the program service being aggrieved by the manner in which it is being delivered and hence likely to complain about decisions.

The issue is whether the Ombudsman should audit the service delivery aspects of the program to ensure that there are appropriate mechanisms in place that will minimise the risk of complaint and that appropriate strategies are in place to deal with such situations.

This concept does take the Ombudsman into territory that may cause some concern to the Auditor-General and also to Directors-General and others responsible for the program delivery. I suggest that the Ombudsman needs to give some thought to his policy position on the issue and the legal implications thereof. He should also engage in discussion with the Auditor-General in the first instance.

This matter is one that the Ombudsman could usefully take up with other State and Commonwealth Ombudsmen.

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

## **SECTION F: ORGANISATIONAL MATTERS**

One of the key matters overlaying any consideration of organisational matters is the results of the most recent staff survey.

### **Section F.1: The 2011 Staff Survey**

A Staff Survey was conducted in early 2011. The Survey had a very high response rate of 93% which was positive but perhaps also indicative of the high level of feeling in the organisation.

The Survey identified a number of problems but particularly with the level of trust and communication between the staff and the senior management group.

In fact there was a high level of dissatisfaction with decision-making and communication, plus high levels of frustration in regard to:

- problem resolution,
- job expectations,
- management and
- workloads.

It follows that respondents had quite high negative perceptions of the career opportunities, management, colleagues and workloads. While around half the respondents had concerns about discrimination in the Office as well as lack of career opportunities, it would appear that that this was driven more by concerns about favouritism within the Office.

While 64% of respondents reported distrust with the Office's senior management group, there was a high level of reported trust between the individual managers and their respective staff.

60% believe they have no say in the organisation.

29% of respondents were said to have formed a specific intention to leave the Office while 63% had given some thought to leaving.

While it would be easy to form a view that the Survey results indicated significant problems, it should be noted that it was conducted after the retirement of the previous Ombudsman and before the arrival of the current Ombudsman. The thrust of the negativity seemed to be directed at senior management as a group and the way that group had operated. However I would not want to suggest that this was the only issue that needed to be addressed from the Survey.

The Survey and its outcomes and implications permeated many of the conversations with staff and has been the thrust of much activity since the Survey Report was delivered.

The new Ombudsman has acted quickly to address the issues raised. He set up 5 project groups lead by relevant senior staff members to address some of the issues. Further comment is provided on this matter later in this report.

My forums with staff and also one on one discussions with some staff indicated that there are significant issues to be addressed with the negative comments. There is little doubt that there are elements of frustration and disempowerment with staff which really seemed to be directed at the senior management group.

Not unsurprisingly, the senior managers were very disappointed at the outcome.

While I have not undertaken any detailed analysis, I was struck by the fact that a similar type of staff survey undertaken in 2010/11 by the Queensland Health Quality and Complaints Commission showed a 90% plus response rate by staff to the survey, with more than 50% of staff feeling engaged

in the organisation and 67% believing it to be a great place to work. The Commission has 75 staff and has a relatively low staff turnover rate.

Before dealing with the whole issue of the survey outcome, I will cover a number of the more traditional organisational matters. I do need to say though that while there were negative elements in the Survey outcomes, there were also many positives which form a good basis to take the organisation forward.

## Section F.2: Staff Numbers and Workloads

The staff numbers (on a full time equivalent (FTE) basis) for the Queensland Ombudsman's Office and other Ombudsman Offices as well as comparative workloads as published in the Annual Reports for the 2010/11 year, are set out in the following Table 5:

**Table 5: Comparative Staff Numbers and Workloads - 2010/11**

	<b>Staff Nos (FTEs)</b>	<b>Contacts per FTE Staff</b>	<b>Complaints per FTE Staff</b>
New South Wales	185.17	178.6	48.2
Victoria	69.01	370.3	242.9
Western Australia	60.3	135.8	32.7
Queensland	53.7	379.6	155.6

It needs to be stressed that there are differing jurisdictional issues which are difficult to deal with and the above numbers should be seen as indicative only.

While the statistics for Victoria are somewhat perplexing, and even allowing for any concerns about the Queensland data, it is clear that the workload applying in the Queensland context is well above States like New South Wales and Western Australia, even allowing for jurisdictional differences. (As an example, in New South Wales, the Ombudsman is responsible also for investigating police matters as well as recently acquiring the team set up to review child deaths.)

It does come back to the whole question of obtaining quality benchmarking data. Prima facie one would say that in the Queensland Ombudsman's Office, staff are carrying a much heavier workload than their counterparts in New South Wales and Western Australia.

On these numbers, there is a strong case for Treasury to consider additional resources for the Ombudsman. However, some of the administrative functions of the Office are outsourced to the Parliamentary Services Commission which reduces the FTE staff numbers required to run the Office.

Also the vast bulk of complaints are ones that can be dealt with speedily without any significant investigation. As the numbers are large, any change or inconsistency can distort comparisons.

I have already referred in other sections of the report to the need for additional resources in key areas. I think the Table 5 above, simple though it may be, supports a view that the workload of the Office has increased significantly which has not been matched by a comparable resource increase.

What is indisputable is that all Ombudsman Offices essentially have the same or similar core functions and there should not be the disparity in workloads per staff member, even allowing for some jurisdictional differences.

The relative split of positions between assessments and investigations and other support areas has tended to move around. Currently about 31% (16.8 FTEs) of staff are in the professional and administrative support area with the balance in assessment and investigation or senior management. It is at the high end of where it has been in the past three years which means that the investigations area is at the low end of its historic levels.

Some may argue that there are too many staff in the support area particularly as some significant administrative functions are already handled by the Parliamentary Services Commission which might free up additional resources that could perhaps be devoted to assessment and investigation. From a practical point of view, I don't see any capacity to support such a proposition.

My overall assessment was that despite the relative percentages, the Corporate Support area has major problems in delivering consistently high quality services because of insufficient resources compounded by the inherent difficulties of a small office environment.

The Office could look at further outsourcing of some administrative support functions to ease some of the pressures on existing corporate support staff.

**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.*

### **Section F.3: Staff Turnover and Recruitment**

In my 2006 review, I pointed out that staff turnover had started to increase to worrying levels being 19% in 2004/05 and heading for a similar level in 2005/06.

The situation continues to be a cause for concern with staff turnover being:

29%	in	2005/06
23%	in	2006/07
18%	in	2007/08
24%	in	2008/09
14%	in	2009/10
19%	in	2010/11

It is of concern that the Staff Survey indicated that 29% of staff were definitely thinking of leaving the Office in the near future.

Staff members leave for many reasons with promotional opportunity being a key one given by staff in exit interviews. This is not unexpected as Ombudsman staff are generally well trained and capable and highly sought after for agency complaint management areas. I am concerned though that some staff members may simply have had enough and leave for reasons of dissatisfaction that was evident in the Staff Survey and which is a very unfortunate outcome for the Office given the investment made in recruitment and training.

Fortunately the Office has been able to recruit new staff to fill the vacant positions and it may be that the regular departures are a fact of life for the Office because of the nature of small offices. I hope that this is not the case as it creates a undercurrent of instability in the organisation.

One of the difficulties for staff is that promotional opportunities within the Office are limited. The Office is not expanding and the senior echelons of the organisation have been very stable. Each of the Assistant Ombudsman has been in the organisation in the positions they are currently in for a long period of time. There has been a change of Ombudsman and changes at the Deputy level but the appointments have come from outside the Office rather than internally. A similar situation applies to several positions just below the Assistant Ombudsman level.

A higher than average turnover of staff is not unusual in small professional offices. Staff are well trained when they join the Office and as I have already indicated, become very marketable to agencies looking to improve their complaint management capability. However the Ombudsman's Office level does seem consistently too high.

There is no easy resolution to the issue of staff turnover. Most staff who join the Office do so because they want to make a difference and help people. Frustration enters when they feel they are not able to make that contribution and in part this may be reflected in the Staff Survey. Remuneration, a good working environment and a friendly work place certainly are helpful to any retention strategy.

I know the Ombudsman is aware of and concerned about the issue and accepts that the resolution is likely to be complex.

At this stage I encourage him to maintain vigilance about why staff are leaving and provide a supportive environment for staff generally through a variety of mechanisms including access to training, job rotation, positive performance appraisal systems and the like.

**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.*

#### **Section F.4: Training and Development**

The Ombudsman's Office is an organisation that relies on the professionalism and dedication of its staff. Quite a number of staff have legal training. Some staff have extensive experience as a practising solicitor. Maintaining the overall skill and professionalism of all staff is important if the organisation is to continue to deliver the services that the community has come to expect from the Ombudsman's Office. It ought to be a matter of high priority that all staff have appropriate access to on-going training and development.

Good organisations will expend 1.5% - 2.0% plus of the budget on training and development.

The Office's expenditure on training and development in the past 5 years has been as set out in Table 6:

**Table 6: Expenditure on Training and Development in the Past 5 Years**

	<b>Allocated \$</b>	<b>% of Budget</b>	<b>% of Empl Cost</b>
2006/07	66000	1.1	1.5
2007/08	70000	1.1	1.5
2008/09	90000	1.3	1.7
2009/10	50483	0.7	0.9
2010/11	54856	0.8	1.0

This is a disappointing outcome as the amount being spent is now less than previous years and certainly not achieving a target of 1.5% of budget being devoted to training and development that was recommended in my previous review. Even if the percentage is applied solely to overall Employee Remuneration costs, the 1.5% has not been achieved in the past two years.

it is claimed that budget pressures have forced the scaling back of the amount allocated to training and development. This is false economy and it is a matter that should be reviewed and if necessary brought to the attention of the Treasury.



At a time when workloads are increasing, the expenditure on training and development should be increasing as a more skilled workforce is more likely to be able to deal with the workload efficiently and effectively.

It must also be mentioned that feedback from staff on this issue has been quite negative. Many staff believe that the organisation is not committed to training and development and that what training and development is done is directed primarily at the professional staff to the detriment of the administrative and support staff. This is potentially quite divisive.

The general view seems to be that while training and development is supposed to be a key part of the performance appraisal and management system, it is seen by many as token only and not sufficiently supported or promoted by senior management. This is particularly strongly felt by the administrative support staff.

**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.*

## **Section F.5: Delegations**

Organisations need to have in place effective delegations of responsibility and authority to ensure that staff are sufficiently empowered to deliver high quality services efficiently and effectively.

I have examined the formal delegations and these appear to be appropriate and suitable for the needs of the Office from both an operational and financial responsibility perspective.

However delegations can be seemingly empowering on paper but be constraining in practice if they are frustrated in their application.

It is again an issue that was raised by a number of staff that senior staff seem unwilling to let go and it was a particular concern in the ART area.

I don't see it as the objective of this review to rewrite delegations. This is the responsibility of management.

However management needs to take the issue seriously and not simply rewrite the rules but make sure they are working as intended.

It was put to me that highly paid and skilled staff want to take more responsibility and be more productive but are being frustrated and in the view of some, a reason why some staff leave. I have no direct evidence of this but obviously I have concerns if true.

Management does need to ensure that the delegations are appropriate and fit for purpose.

I would prefer that staff had more authority not less and be allowed to take more initiative.

There will be occasions when inevitably their judgement could be better but it will be an empowering learning experience for them rather than a source of frustration.

**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.*

## **Section F.6: Budget Issues**

As with many small agencies, there is always a certain amount of budgetary pressure to provide the “core” services to be delivered, to cater for the inevitable increases in demands for those services as well as the new areas of demand that potentially emerge and to deal with the plethora of necessary governance, accounting and compliance requirements. The Ombudsman’s Office is no different.

As has already been pointed out, there has been a dramatic escalation (75%) in the past 5 years in the number of “contacts” which the Office must deal with. It is the “core” function of the Office.

The Ombudsman has also been active in facilitating and supporting administrative improvement and training in agencies with acknowledged success and hopefully with positive benefits in the longer term. In fact, there is difficulty keeping up with demand.

The Office has been supported by Treasury in recent times with some additional funding eg with higher rents for the new office accommodation and some of the administrative improvement initiatives.

The budget for the Office over the previous 5 years has been as follows:

	\$'M
2006/07	5.978
2007/08	6.214
2008/09	7.006
2009/10	7.049
2010/11	6.984

The increase in budget over the past 5 years has been 16.9%, which after allowing for additional rent costs, is not large.

By way of comparison with some other Ombudsman Offices, the Queensland Office is on a comparable funding base as set out in Table 7:

**Table 7: Comparative Budget Expenditures Per Staff Member - 2010/11**

	<b>Expenditures</b>	<b>Staff Nos</b>	<b>Per Capita</b>
	<b>\$'M</b>	<b>(FTEs)</b>	<b>\$'000</b>
New South Wales	24.297	185.2	131.2
Victoria	9.004	69.0	130.5
Western Australia	7.732	60.3	128.2
Queensland	6.983	53.7	130.0

The real issue for the Office is the lack of staff resources relative to say Western Australia and New South Wales even allowing for some differences in functions.

Unless the Office is able to access additional resources, or significantly change the way it operates, there will be continuing pressures to deal with complaints and to provide the necessary support for agencies as well as the necessary compliance auditing and related activities.

One opportunity might be to engage Treasury in additional funding for recoverable cost activities such as for training and administrative improvement. Properly costed and charged, these activities ought not be a drain on the Ombudsman budget.

I have reviewed the Office budget and there is very little opportunity for significant savings available, although that is not to say that changed approaches to delivering the service will not result in efficiencies and cost savings. The Office has already had to deal with a great increase in workload and by and large has been successful albeit with great stress on staff.

I have already indicated in other areas of the Report, high priority items eg the appointment of Liaison Officers and higher workloads, where Treasury should consider providing additional resource support. I am also concerned about the tight situation with Corporate Support and staff training and development.

**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.*

## Section F.7: Gender/Equity Issues:

There is a view that appears to have prevailed for some time that the Office is a male dominated organisation.

Table 8 provides a gender and remuneration profile of the Office staff in 2010/11 compared with the situation in 2007/08:

**Table 8: Gender and Remuneration Classification Profile – 2007/08 and 2010/11**

Class Range	2007/08			2010/11		
	M	F	Total	M	F	Total
	- FTEs -			- FTEs -		
AO8 – CEO	8	3.5	11.5	6	3.5	9.5
AO5 – AO7	11.6	16.9	28.5	13.9	17.1	31.0
AO2 - AO4	-	15.6	15.6	-	13.2	13.2
<b>Totals:</b>	<b>19.6</b>	<b>36.0</b>	<b>55.6</b>	<b>19.9</b>	<b>33.8</b>	<b>53.7</b>
	%					
	35.3	64.7		37.1	62.9	

There is still a significant gender imbalance with an under-representation of females in senior management although proportionally the situation has improved with the reduction in the number of males.

The Office has in place policies and practices designed to ensure females are given every opportunity for appointment but movement can only come about if there are vacancies at the senior levels and these vacancies have been relatively rare.

In the case of the two most senior positions, Ombudsman and Deputy Ombudsman, appointments in recent times have been of males who have come from outside the organisation.

Ideally one would like to see a better gender balance overall and particularly at the senior levels. However in a small organisation, it is always going to be an issue as to how proactive management can be to achieve a target balance in the senior levels of the organisation.

However, again using the Health Quality and Complaints Commission, there does seem to be a better balance of male and female staff particularly in the senior ranks. There is a majority of females at the lower levels primarily because females make up two-thirds of staff.

**Recommendation 46:** *The Ombudsman continue to ensure that achieving better gender balance remains firmly on the agenda for the Office.*

The Government has established target groups where there is an expectation that better representation of certain groups needs to be achieved within the organisational staffing structure. These target groups have been in place for a number of years now and agencies are required to report on the outcomes being achieved on a regular basis.

The currently nominated target groups are:

- women,
- persons of non-English speaking background,
- indigenous persons,
- persons with a disability.

This is an issue that was raised in my previous report and my recommendations were that

- the Office review its HR policies to ensure they appropriately address EEO issues,
- the strategic planning process should meaningfully address EEO issues, and
- the Office consider publishing information on EEO as well as more comprehensive staff data.

The Office has given consideration to these recommendations and has come to the view that because of the small number of staff totally, representation of these groups is likely to be small and hence publication of numbers may have some sensitivity for any individual concerned. I appreciate the concerns but have some difficulty accepting that publication of the statistics would have the significant sensitivity that is claimed.

I again use the example of the Health Quality and Complaints Commission (HQCC) where a range of useful and informative data on staff is published seemingly with no adverse consequences for any staff member. I encourage the Ombudsman to follow the example of HQCC. I also suggest that further thought be given to publication and there are good examples of relevant published data available in other Ombudsman Office annual reports.

I also have a concern that whereas the Office used to regularly collect EEO data, even though not published, it has been some time since the Office has undertaken the collection process. While I appreciate that like most agencies, the Office has had resource pressures and an increasing workload, this data is important and should be collected regularly even if the Office has decided not to publish the data.

**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.*

## **Section F.8: Governance**

### **(a) Internal:**

The Office has established three committees to assist with governance and management processes. These are:

- the Ombudsman Management Group (OMG),
- a Workplace Health and Safety Committee (WHSC), and
- Innovation Committee (IC).

As its name suggests, the WHSC is responsible for co-ordinating workplace health and safety issues and seems to be performing its functions in a reasonable manner. It does work closely with other co-located agencies in the building to effect improvements in workplace health and safety in the shared areas of the building.

The IC seems to have evolved from the previous Staff Consultative Committee. The concept is commendable – a committee of ideas and innovation – but like most committees it depends on the membership and the commitment of individuals plus the willingness of the Ombudsman and his senior management team to take the work of the Committee seriously enough. I also have some concerns that some of the positive aspects of the previous Staff Consultative Committee may not have been embraced in it.

The IC has set up two sub-committees under the guidance of a steering group, one to deal with Business Technology and People Innovation and the other with Social Innovation.

There is a willingness on the part of management to be receptive to new ideas from the IC where there is an understanding and appreciation of the practicality of what is proposed.

I have no issue with either the WHSC or the IC as they are performing important functions.

There has been a problem with the OMG which was starkly drawn out in the 2011 Staff Survey. The Survey showed that staff were critical of the OMG and its members and there had been a break down in the essential trust between staff generally and the senior management team.

However as I have already pointed out in other sections of the Report, the Staff Survey was conducted in early 2011 and is in many respects a “rear-view mirror” on the world that has been. It preceded a new Ombudsman and also later a new Deputy Ombudsman. And I hasten to add that this comment is not intended as a criticism of the previous occupants of these positions.

The Ombudsman moved quickly to deal with the survey results by revamping the OMG and considerably improving the communication between the OMG and the staff. There is now a regular staff meeting at which key information is passed to staff. There were also five project teams set up to address key identified issues. These were:

- Major Investigations Project
- Investigations Project
- Public Interface Project
- Performance and Development and Career Planning Project
- Information Management Project.

Each Project was sponsored by one or more senior staff members. The draft reports were completed in September 2011 and circulated to staff for comment and were signed off by the Ombudsman once the consultation comments had been received and appropriately considered.

While in some respects the Projects cut across the work of this review, they were timely to deal with some of the more detailed aspects and I have broadly endorsed the findings and recommendations and will provide additional comment in a later section of the Report.

The Ombudsman has gone a long way to turning around perceptions among staff. He has a more open, communicative and consultative style of management and staff seem prepared to look to the future rather than the past, at least in principle.

Hopefully the changes to the way the OMG operates have gone some of the way to restoring the essential trust between management and the staff generally. There are some signs that it has although there is still room and indeed a need for a higher level of trust to be achieved.

The Ombudsman’s Office did have a Staff Consultative Committee until a couple of years ago. Such a Committee, properly functioning, could provide a valuable means of maximising the lines of

communication between staff generally and management. I accept that there are pros and cons for establishing such a committee. It can be simply a pressure group rather than a genuine partnership with management and give the appearance of a “management by committee”. However if the longer term goal of “One Office” is to be truly achieved, then there needs to be some significant longer term solutions to some of the endemic issues identified in the Staff Survey.

An alternative I have discussed with the Ombudsman is to expand the remit of the Innovation Committee to take on board focussed staff consultation matters. It would obviate the need for a new committee and link the new ideas with those who have to work with them. I am supportive of such a concept.

**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.*

#### **(b): External**

Recommendation 56 from my 2006 Review proposed the establishment of an Audit Committee. The Audit Committee was established in 2009/10 and while one might have hoped that it was set up earlier, it is functioning well with an experienced and independent Chair and member as well as the Deputy Ombudsman.

An internal auditor has also been appointed and has been working with the Committee, although following a tender process, I understand that a new internal auditor is about to be appointed.

I have discussed the work of the Committee with the Chair and also informally discussed the formulation of the work plan for the internal auditor. I passed on a view that like many small organisations, the Office is struggling with keeping up to date with the full suite of necessary policies and procedures manuals. An example is the operations manuals associated with the Resolve Computer System, a key aspect of the functioning of the Office. There have been a number of new versions of Resolve that have been implemented in the Office but the manuals have not been updated to reflect the changes.

There are also some significant issues with various HR and Finance manuals and policies which need to be attended to. By way of example, the Equal Employment Opportunity Management Plan, the HR Management Plan and the Workforce Capability Strategy and the Succession Plan therein are all in need of updating.

Internal audit may provide some helpful assistance in this area.



**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.*

I have some concerns about the membership of the Committee by the Deputy Ombudsman. The Deputy Ombudsman is the Office's nominated Head of Internal Audit (HIA) and hence fulfils a very important role and in terms of *the Financial Accountability Act and Financial Accountability Regulation 2009*, carries primary responsibility in the Office for internal audit functions. The HIA is also responsible for communication between the Office and relevant entities including the Audit Committee.

Communication between the internal audit function and the Office is important, but it does not require the HIA to be a member of the Audit Committee although he would need to attend all Committee meetings.

While there are no hard and fast rules, I see some merit in the Audit Committee being comprised of all external members. The HIA in his role as committee member may well find himself on occasions having to sit in judgement of matters that may well concern his colleagues. On occasions it is useful for the Committee to meet in camera without staff which would place the HIA and indeed other members of the Committee in a difficult situation.

My preference is for the Audit Committee to be comprised of all independent members although I accept that there are numerous examples where the Committee does have one or more staff members. However it is a matter that the Ombudsman should discuss with the Chair of his Audit Committee for guidance.

**Recommendation 53:** *The Ombudsman should discuss with the independent Chair of the Audit Committee my 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.*

### **(c) Internal Reviews**

Any claimant feeling aggrieved by a decision of the Ombudsman has a right of review of that decision. For a number of years now, the reviews when required, have been conducted by a senior member of the Office not connected in any way with the original decision.

This matter was discussed and canvassed in my previous review and the recommendation at that time was that the process worked well in practical terms.

I remain of that view and have not found any reason to depart from my original thinking on this issue.

### **Section F.9: Strategic Planning**

The strategic planning process is as important if not more so than the outcome as reflected in the published strategic and operational plans. Ownership by all staff is critical to success and appropriate staff involvement in the process goes a long way to achieving that necessary ownership. There does appear to be greater involvement by all staff in the planning process although lack of a feeling of participation was raised in the staff forums.

It has been my experience that it is very difficult to get unanimous views of staff on the outcome of the strategic planning process and for all staff to feel that they have been able to participate fully in it and own it. There is potential for staff to feel left out if their particular views have not been adequately captured or included in the outcome.

Again I suspect some of the negativity reflects lingering concerns about issues.

My assessment is that considerable progress had been made on inclusion of all staff in the planning process and management and staff are to be commended for this.

The strategic and operational plans represent quite reasonable documentation of what the organisation is and should be all about. The management and staff need to own the plan and its blueprint for going forward and unless I see major flaws with them, I do not see it appropriate to “wordsmith” them. Also I do not wish to unduly fetter the capacity of the new Ombudsman to put his stamp on the future of the Office.

My only comment is to exhort the Ombudsman and his management team to continue to involve staff to the maximum extent possible as one means of building the “One Office” that all aspire to.

**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.*

### **Section F.10: Organisational Structure of the Office**

It had become increasingly clear to me during the course of the review that some fundamental changes were necessary in the structure of the organisation.

Generally, staff in the organisation across all levels are very passionate about the Office, its role and what it can achieve in terms of helping people in the community. There is no doubt that passion and commitment are very positive when harnessed in the right direction.

It can also lead to quite negative views when it is not well harnessed and that was manifested in the Staff Survey results and the underlying negative questioning of the “One Office” mantra.

The 2011 Staff Survey outcome, coupled with the comments made to me during the course of the review by a range of individuals strongly suggests that staff are not as satisfied with the organisation as they might have a reasonable expectation to be. The negativity has implications for the senior management team and ART.

My own assessment is that while ART is in need of a makeover, there is not necessarily a realistic appreciation across the organisation of the additional workloads that ART has had to bear in recent years. I feel that some of the negativity is misdirected and not well founded.

I have already referred in an earlier section of the report to the need to fundamentally change the way ART operates so that it reverts to more of a call/receival centre type operation. A change of name may be helpful and one suggestion could be Intake and Referral Team which would reflect its proposed role as the first point of contact and its role in referring “contacts” to appropriate agencies.

I have already referred to concerns about the effectiveness of staff rotation arrangements. It is important for all staff that they be given an opportunity to upskill and broaden their experience by taking on different roles in the organisation.

If the comments made to me by several staff are correct – and I have no reason to doubt their veracity – staff rotations are not as effective as they might be and are not seen as positively as they should be by staff.

A further issue relates to the Major Projects team in the Administrative Improvement Unit (AIU) where the commitment to major projects requires staff to be drawn from other teams in some cases to get the job done in a timely fashion.

There is an argument that the Major Projects team is misplaced in AIU and that it would be better placed within the investigations teams generally. At the moment it does fit the AIU because of the experience and background of the AO who heads the AIU.

Having given much thought to the situation, having heard from a wide cross-section of staff and also had the benefit of seeing first hand what happens in other jurisdictions, I see a strong argument for a single investigations team, which may or may not include Major Projects but which would not include the current ART. A single investigation team approach facilitates flexibility with staffing and resourcing.

Within the investigations team, a single group could more actively engage in sharing information and ideas. For example within other businesses I have been associated with, a weekly or fortnightly meeting occurred for staff in which problems and issues were discussed. It also helped consistency of decision making because everyone was aware of decisions made and why.

In the international jurisdictions I visited, these regular meetings were considered very important to discuss the ramifications of proposed decisions or to tap into more experienced colleagues in a supportive environment.

Investigations as a whole would still report to the Deputy Ombudsman through an appropriate senior officer structure.

One other thing I would like to see incorporated in any revised structure is the creation of a community engagement area. My thought would be that the Administrative Improvement Unit could incorporate the community engagement area and hence become the Administrative Improvement and Community Engagement Unit. Community engagement embraces the recommended indigenous liaison person (s) plus others involved in areas like youth, homeless and other disadvantaged and would work closely with the Communications and Research Unit. It could also accept responsibility for elements of the regional visits program.

I would also see the recommended Complaints Standards Authority or at least the function being located in the AI&CE Unit which separates the audit function from the investigations function.

While I certainly have views about my preferred structure, I am reluctant to be dogmatic about how the organisation should be structured in the future. There is generally no one right answer to any structural issue and the personality issues and current incumbents of the senior positions cannot be ignored.

For example I have discussed with the Ombudsman, an alternative structure which I have no great difficulty with as it involves a redefinition of the role of ART and the bringing together of the “public interface” elements of the Office (training, audit, research, community engagement and contacts).

I am also conscious that there is a new Ombudsman and he should be given every opportunity to put his stamp on the organisation rather than have it imposed from above or via a report such as this one. He should have the organisation he believes is needed to get the job done and to be judged and held accountable accordingly.

Naturally I would hope he gives careful consideration to the views I have expressed in coming to his decisions on the structure.

**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 AIU to deal with community engagement as well as potential authority to deal with complaint management standard and audits,*

- the investigation teams being amalgamated as a single investigations unit reporting to the Deputy Ombudsman through an appropriate senior officers 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 a new role,
- the name of AIU being changed to reflect its role in administrative improvement and community engagement as well as public interface,
- the Corporate Support Unit remaining essentially as is.

## **SECTION G: PUBLIC INTEREST DISCLOSURES**

The Terms of Reference specifically make reference to the impact of Chapter 5 of the *Public Interest Disclosure Act 2010*, in particular section 63. Section 63 provides that the Ombudsman is not required to report to the oversight agency (the Public Service Commission) about the way the Ombudsman exercises his powers under the *Ombudsman Act 2001*. The exception to this general rule is where a public officer of the Ombudsman's Office makes a public interest disclosure to the Ombudsman or where a public interest disclosure is referred to the Ombudsman by an agency about whom the public interest disclosure is made.

The legislation commenced from 1 January 2011 and no longer requires agencies to report disclosures in their annual reports as this is now the province of the Public Service Commission. In the period 1 July 2010 to 31 December 2010, no public interest disclosure was made to the Ombudsman by a public officer of the Ombudsman's Office.

There were 17 public interest disclosures referred to the Ombudsman which were dealt with in accordance with the Ombudsman's normal procedures.

The impact on the Ombudsman of the new legislation has been minimal although it may take several years for the pattern of behaviour to be fully established. The Ombudsman is quite comfortable that the impact is minimal and no agency had adverse comments about the role of the Ombudsman.

## SECTION H: PROPOSALS FOR LEGISLATIVE CHANGES

The Ombudsman has provided a detailed submission on various amendments he would like to see to the *Ombudsman Act 2001*. In some cases he has picked up on amendments proposed by the previous Ombudsman and which were not implemented for various reasons since the last review.

One particularly important change is the proposed amendment of section 54 which would give the Ombudsman power to publish a report in certain circumstances rather than always publishing through the Speaker of the Parliament. I believe this amendment is particularly important for transparency reasons and I have specifically dealt with this in **Section E.6** of this Report.

A further proposed amendment is to require a Mayor to table at a meeting of the Council, an Ombudsman's report on the Council so it might be debated rather than simply providing for each Councillor to receive a copy.

There has been an issue about whether staff of the Ombudsman's Office ought to be public servants or not. I previously held the view that on balance they may be better placed in the Public Service. Both the previous Ombudsman and the current Ombudsman hold quite strong views about the need for Ombudsman Office staff to be independent and to be seen to be independent. In the circumstances and given that it is not of great moment in terms of the operations of the Office from a practical point of view, I am comfortable to offer no objection to the staff remaining outside the Public Service.

The Ombudsman is also seeking authority to bring Government Owned Corporations (GOCs) within the ambit of the Ombudsman's Act. There seems to be some support for this in a Government Green Paper. The Government has already committed to amending legislation to allow the Crime and Misconduct Commission (CMC) to investigate misconduct in a GOC. In the circumstances, it seems logical that the Ombudsman also have similar powers in appropriate circumstances.

A further proposed amendment is to enable the Ombudsman to have power to make and publish complaint handling standards for the public sector. I support this for the reasons I have outlined in the discussion on the setting up of a Complaints Standards Authority in **Section D.5**. I strongly support this proposal.

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

## SECTION I: IMPLEMENTATION OF THE RECOMMENDATIONS OF THE 2006 REVIEW

The final Report on the 2006 Review was presented to the Minister on 24 April 2006. It contained 70 recommendations.

The Report and its recommendations were reviewed by the Parliamentary Committee with their findings reported in Report No 56 tabled on 12 December 2006.

The Committee generally supported the recommendations.

The Ombudsman provided a detailed report on the implementation of the recommendations by the Office. With one exception, all recommendations have either been completed in terms of implementation or have been adopted and there is on-going implementation.

Recommendation 68 identified the need for and desirability of appointing liaison officers for groups with potential special needs including youth. After investigation, the then Ombudsman decided that due to the size of the Office, it was not beneficial at that stage.

I remain of the view that the appointment of a liaison officer(s) particularly for the indigenous community is a high priority and I have taken this up in **Section E.5** of this report. Such an appointment would be welcomed by the indigenous community as a positive step. The experience in New South Wales Ombudsman's Office which has had a liaison unit for a number of years, is also positive.

I am not quite as strong of the view that liaison officers are absolutely necessary for other groups eg youth, homeless, disabled and the like. The proposal for a community engagement area within the current Administrative Improvement Unit should go much of the way to address the liaison issues.

Recommendations 29-32 dealt with referrals back to agencies. There has been a reluctance to address this issue with the degree of urgency that I had expected. It is now happening but referrals are at low levels and there is a certain amount of staff feeling that not enough is being done. Again it is an issue I have addressed in this Report. Interestingly, it is a position that has been supported by staff but perhaps less enthusiastically by some management.

I do need to say that the present Ombudsman is supportive of a more active profile in this area.

Recommendations 65 and 67 suggested that consideration be given to Memorandums of Understanding (MOUs) being entered into with relevant agencies including the Crime and Misconduct Commission. The Ombudsman has been active in this area and **Attachment E** outlines MOUs that have been entered into.

Recommendation 70 supported the amendments proposed by the Ombudsman in his submission to me and which was incorporated in full in Attachment F of the Report. While some of the more

important amendments have been dealt with, the majority of the proposals are still outstanding. This was a little disappointing but the outstanding proposals have generally been taken up by the Ombudsman in a new submission to the current review. See **Section H**.

While in an ideal world, I would have preferred a greater sense of urgency in some areas, it was a big agenda and I am satisfied that the Ombudsman and his Office have genuinely responded to the recommendations positively.

**Attachment C** outlines the 70 recommendations from the 2006 review.

## **SECTION J: INTERNAL PROJECTS IN RESPONSE TO THE 2011 STAFF SURVEY OUTCOME**

As mentioned previously, following the results of the Staff Survey released in early 2011, the Ombudsman embarked on a number of strategies to address the issues raised by the Survey.

A key strategy was to set up five project working groups under the leadership of relevant senior staff, to address specific issues. The five projects and their outcomes are discussed briefly below.

### **Project A: Major Investigations**

The main areas of concern identified were:

- the “single investigator” model,
- inadequacy of Resolve as an electronic document management system,
- reduced time between completion of a major investigation and publishing the report.

The agreed responses to address the concerns were:

- the current trial of a team based approach be continued in 2011/12 and then reviewed,
- a trial of Sharepoint as the electronic document management system be undertaken
- a more succinct style of report be developed for reporting purposes.

I support the responses in principle but hold the view that the team based approach should be permanent rather than a trial.

### **Project B: Investigations**

This project dealt at some length with the investigation process largely related to how investigations are managed, recorded and reported as distinct from the general intake process. Some 43 proposals were developed for improvement with the objectives of streamlining the process, gaining access to a greater range of tools, improving response times and character of responses, updating and making manuals more meaningful to day to day operations.



The findings and proposals were developed by a group of committed practitioners and I support their outcome.

### **Project C: Public Interface**

As its name implies, the project was about external relationships and the project team was drawn from all areas of the Office. Key strategies were generally consistent with my own views and findings. Key strategies were developed to:

- increase media and community presence of the Ombudsman,
- improve assistance to complainants to prepare a complaint to the appropriate agency,
- improve quality and timeliness of communication with claimants and other stakeholders,
- improve initial assessment and recording of cases and contacts, including data consistency,
- increase referral of premature complaints to agencies,
- review Resolve case management to identify improvements to support new business practices.

As indicated above, the key strategies were generally consistent with my own views and findings and I support them.

### **Project D: Performance Development and Career Planning**

The Project Team identified 13 issues and 19 improvement strategies across a range of personnel issues.

In the consultation process, there was some difference of views about some of the strategies and these are still being worked through.

In general, the improvements suggested in terms of performance plans and processes, training, career development and equity have been broadly accepted while issues remain around succession planning and related matters.

I have accepted the thrust of the report as an important step in resolving some of the key issues, some of which I have taken up in the body of my report.

### **Project E: Information Management**

The Project Team identified 23 issues and 42 improvement strategies. The number of issues and strategies largely reflects a lot of comparatively minor management issues rather than matters of significant strategic importance. This is not to downplay the importance of addressing the concerns.

Some of the more important issues revolve around training and management of records including compliance with the State Archives Retention and Disposal Policy. This was raised with me by

several long term staff member who are concerned that there are not clear responsibilities for this function.

There are also issues about security and remote access as well as support generally for the system.

There are positive improvements set out in the work program and I support the initiatives. It also needs to be said that replacing Resolve was not an option available.

**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.*

## **SECTION K: RESPONSE BY THE OMBUDSMAN TO THE DRAFT REPORT**

In accordance with section 85(1) of the Act, a draft of this report was provided to the Minister and to the Ombudsman on 8 February 2012.

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

The Ombudsman provided a formal response to the draft report on 28 February 2012. A copy of that response is included in this report as **Attachment G**.

The Ombudsman's response was generally positive in terms of the content and recommendations in the report. He was also positive about the process for conduct of the review and the consultation and discussion afforded him.

The Ombudsman has raised a number of matters in his response and I have carefully considered these and where necessary, discussed them with the Ombudsman.

The following specific comments are provided in response to the Ombudsman's letter.

### **Section D.2: Advocacy and Resolution Roles**

The Ombudsman was concerned that **Recommendation 5** proposes that a comprehensive Referred to Agency Survey be conducted within 12 months given the time that has elapsed since the last Survey of this nature was conducted. He has pointed out that a limited set of questions was included in the 2010 Complainant Satisfaction Survey undertaken by the Office and which covered referrals to agencies and which would be included in future surveys. He therefore prefers that a separate Referred to Agency Survey not be conducted on the basis that it may be more effective to use the combined survey model.

I remain of the view that a separate survey has merit at this time given the lapse of time since the previous survey which was completed in 2008. While the information gleaned from the Complainant Survey is very useful, it does lack information about the complainant's experience with referral agencies which I believe is important in terms of how agencies deal with disaffected clients. Referral to agency has been a significant issue in both this review and the 2006 review.

A reasonable compromise longer term might be that a comprehensive Referred to Agency Survey be conducted every 5 years or so and that the more regular Complainant Satisfaction Survey continue to include a limited set of questions surrounding referrals to agencies. However I would prefer that the recommended survey be conducted within a reasonable time frame, preferably within 12 months.

#### **Section D.5: Complaints Standards Authority**

The Ombudsman has expressed some concern about a shared or outsourced “call centre”, particularly for co-located offices. I appreciate his concerns about the concept of integrated service delivery within the Office and the priority he attaches to this. However the data shows that there is a very significant issue with the growth in “contacts” (75% over 5 years) many of which have no relationship with the Office.

I have drawn attention to the wider implications of complaints processes generally and whether there is a more efficient and effective whole of Government solution, which I see as outside the brief for this review. I note the concerns but do not see a need to change the draft report.

The Ombudsman supports the concept of a Complaints Standards Authority and the effective role it could play but has concerns about the need to ensure appropriate legislative safeguards and also an appropriate level of funding to support the initiative. This is consistent with my own views and generally consistent with the recommendations in the report. There is little doubt that additional funding would be required to make a complaints standards function within the Office, a reality.

#### **Section D.6: The Ombudsman and the Non-Government Sector**

The Ombudsman has also highlighted the need for additional resources if the role of the Office is expanded to include publicly funded non-Government services. He agrees that clear guidelines would be necessary which is consistent with my own view. However my recommendation is limited to investigation of the concept as it is a significant policy issue not just for the Ombudsman but for the Government. The potential level of additional demand for the Ombudsman’s services is difficult to estimate but intuitively, I think the demand may not be as great as might be envisaged.

I note the Ombudsman’s concerns but do not see a need to provide further comment in the report.

#### **Section E.2: The Intake Process**

The Ombudsman has concerns that my comments/recommendations on the Intake Process and the creation of files could suggest that excessive records are being kept for no purpose. The file creation process does need to be reviewed to overcome some procedural concerns and I think the Ombudsman agrees that improvement is needed. There is not a major problem and it would be unfortunate if my comments were misconstrued as suggesting excessive records being kept for no purpose.

### **Section E.3: Assessment and Resolution Process**

The Ombudsman has suggested that 72 hours is an appropriate standard for simple matters that require no investigation but up to 10 days may be required as the benchmark where further information is sought to resolve the matter. I suggested that any file that required any further investigation be referred to the investigations team(s). The Ombudsman recently reviewed the processes within the Office such that only relatively uncomplicated files are dealt with in the initial receipt area of the Office and this has allowed matters to be dealt with in more acceptable time frames.

The draft report reflected my concerns that the previous ART area had a significant build up in files to the point where in many cases the first contact with the complainant after initial receipt of the complaint, was taking a number of weeks to occur which should not be acceptable. I have no difficulty with what the Ombudsman has proposed provided the timelines are adhered to and an appropriate and timely level of service is provided to the complainant.

### **Section E.5: Access to Ombudsman's Services**

The Ombudsman's comments about regional visits to correctional centres are noted. However the key issue remains that there is a significant dearth of visits to regions west of the Great Divide which needs to be addressed.

### **Section F.5: Delegations**

No additional comment required.

### **Section F.6: Budget Issues**

The Ombudsman has drawn attention to the broad budget implications of a number of recommendations in the report. I agree that the budget implications need to be addressed with Treasury and I think there is a strong argument for some positive consideration to be given to additional resourcing. My own assessment is that the Office has been quite diligent in dealing with significant increases in workloads and demands by adjustment to work practices to achieve greater efficiencies. The capacity for further efficiency gains is somewhat problematic and increasing cost pressures may result in reduced service levels which are already at comparatively modest levels. There is hence very limited capacity to take on new or expanded roles within the current budget framework.

### **Section F.10: Organisational Structure of the Office**

I appreciate the Ombudsman's comments and recognise the considerable skill base that exists within the Office with its senior staff. However for a number of years, the Office has consistently had a high turnover of staff (see **Section F.3**) with much of the turnover occurring in the more junior ranks. I was also very mindful of the quite negative staff survey outcome.

It was my view that the Office has both structural and cultural issues that needed to be addressed. I did not propose a specific organisational structure but left the Ombudsman and the organisation with a set of principles to guide the development of an appropriate organisational structure going forward.

Some initial proposals for changes to the organisational structure were discussed with me and I supported their implementation. However these are as yet limited in scope and do not really address some of the important cultural issues. My concern is "more of the same" will be a lost opportunity to move the Office forward to realise the legitimate aspirations of all staff. Some decisions will be difficult but need to be made to refresh and reinvigorate the Office. Stability is important but should not be the only answer.

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## 2011 Strategic Review of the Office of the Queensland Ombudsman

### TERMS OF REFERENCE

#### Context

In accordance with section 83 of the *Ombudsman Act 2001* (the Act) a strategic review of the Queensland Office of the Ombudsman (the Office) is to be conducted at least every five years. The “strategic review” as defined in section 83(8) of the Act is 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 inaugural strategic review of the Ombudsman’s Office was conducted by Professor Kenneth Wiltshire in 1997-98. The second review was conducted by Mr Henry Smerdon in 2005-2006. In addition, a management review of the Ombudsman’s Office was conducted by *The Consultancy Bureau* in 2000.

The Parliamentary Law, Justice and Safety Committee (the Committee), has statutory responsibilities with respect to the Ombudsman and administrative review reform generally. The Committee’s functions with respect to the Office of the Ombudsman are stated in section 89 of the Act. These functions include monitoring and reviewing the performance by the Ombudsman of the Ombudsman’s functions under the Act. To fulfil its functions the Committee reviews the reports of the strategic reviews and the annual report of the Office of the Ombudsman. In addition, the Committee meets twice each year with the Ombudsman and tables reports on each meeting.

The Attorney-General will nominate a delegate as a point of contact for consultation for the duration of the review.

#### SCOPE

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

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



The appointee will have the powers vested in them under section 84 of the Act in order to conduct the review.

## **QUALIFICATIONS OF APPOINTEE**

The strategic review is to be conducted by persons/agencies of high professional standing with a sound understanding of modern decision making frameworks and public sector administration and the management of a public sector agency. The appointee will need to demonstrate they have no pecuniary interest in the outcome of the review and have no established relationship with the Office. The appointee will also be required to demonstrate independence from the Office. In addition, knowledge of contemporary managerial and organisational standards and techniques would be beneficial.

## **METHODOLOGY**

In conducting the strategic review, the appointee is to have regard to existing strategic plans, annual reports, the organisational structure, goals, operational conduct, internal/external policies, operational management, corporate management and service provision of the Office, and operational models in other Australian and international jurisdictions. In addition, the appointee is to have regard to the Committee's Report on the Review of the Strategic Management Review Report - Office of the Ombudsman, April 2006; Report on the 2005-2006 Annual Report of the Office of the Ombudsman (Report No. 57), the Committee's biannual review of the Office of the Ombudsman – May 2008 (Report No. 65), and the Committee's reports concerning its biannual meetings with the Ombudsman (Reports No. 58, 62, 68, and 76).

Particular reference is to be given to:

- (a) current and alternative complaint handling methodologies and processes, including case management, demand management and early intervention strategies;
- (b) current and alternative strategies used to improve the quality of decision-making and administrative practice of agencies;
- (c) awareness of, and access to, the Office by Indigenous Queenslanders, especially those living in remote locations;
- (d) Appropriate protocols for communication by and with the Office, including:
  - i) with other complaints agencies;
  - ii) whether procedures are adequate to ensure that complaints from the public which are referred back to the relevant agencies are appropriately addressed;
  - iii) whether rural and remote areas are given adequate support.

- (e) the extent to which the recommendations of the 2005-2006 strategic review of the Office have been implemented, and whether the changes introduced are achieving the desired objectives;
- (f) the strategic direction and the operation of the Office, including the organisational structure, skill profile and/or culture of the Office and whether it is adequate for the Office to effectively discharge its functions;
- (g) the impact upon the operations of the Office of the *Ombudsman Act 2001* and whether any amendments to that Act are necessary or desirable to enhance operational effectiveness including the proposals raised by the Ombudsman in the 2005-2006 review which have not been implemented;
- (h) the effectiveness of existing processes and methodologies in fulfilling the legislative mandate of the Office, having regard to the contemporary accountability requirements of Queensland's government agencies and local governments;
- (i) the impact on the Office of Chapter 5 of the *Public Interest Disclosure Act 2010*, (which commences 1 January 2011) and in particular, the impact of the operation of section 63(2)(b) which allows the Public Service Commission to review and monitor the functions of the Ombudsman as a public sector entity in relation to a public interest disclosure made to the Ombudsman by a public officer of the Ombudsman, or a public interest disclosure referred to the Ombudsman under section 31(1)(a);
- (j) examination of trends in the workload of the Office, including an examination of current and past methodologies relating to practices and procedures employed by the Office;
- (k) the standard and quality of service provided by the Office to agencies, Ministers of the Crown, complainants and other participants;
- (l) the level of resourcing available to the Office and whether this resourcing is adequate and appropriately used to discharge the functions and objectives of the Office;
- (m) differentiation of the role of the office from other complaints agencies, and how this difference can be used to minimise duplication of investigative resources and promote the role of the office in the community; and
- (n) any other matters which impact on the strategic direction, economy, efficiency and effectiveness of the Office.

## **DURATION**

The review is expected to take a maximum of three months, commencing on or about 1 June 2011, through to the presentation of a proposed report required to be delivered under section 85 of the *Ombudsman Act 2001*.

## **REPORTING**

The reviewer is to prepare a written progress report at the end of the first and second months and is to provide a copy of each progress report to the Attorney-General and the Ombudsman. The Attorney-General will determine the matters the reviewer is to address in the progress reports.

As required under section 85 of the Act, the reviewer will provide a copy of the proposed report to the Attorney-General and the Ombudsman prior to finalising the report. The Ombudsman may, within 21 days of receiving a copy of the proposed report, provide comments on the proposed report, in which case the reviewer must comply with section 85(3) of the Act

The final report of the review is to be presented to the Attorney-General and the Ombudsman, in a suitable format for tabling in the Legislative Assembly.

**List of Agencies and Organisations Interviewed**

Department of Communities

Department of Community Safety

Department of Environment and Resource Management

Department of Education

Department of Health

Department of Justice

Department of Premier and Cabinet

Public Service Commission

Department of Transport and Main Roads

Treasury Department

Auditor-General

Legal Aid (Qld)

Local Government Association

Public Trustee of Queensland

Queensland University of Technology

Aboriginal and Torres Strait Islander Legal Service

Community Legal Centres Forum

Chair of Ombudsman Office Audit Committee

**Interstate and Overseas:**

New South Wales Ombudsman

Scottish Ombudsman

United Kingdom Ombudsman

Departments and Agencies were generally represented by the Director-General and other senior staff.

Interviews were supplemented by access to other on-line resources.

## RECOMMENDATIONS OF THE REPORT OF THE STRATEGIC MANAGEMENT REVIEW

APRIL 2006

### Section C: Strategic and Operational Issues

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

1. The current role of the Ombudsman in the overall accountability process of government is endorsed

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

2. The Ombudsman should examine the current operations of ART with a view to ensuring sufficient resources are available at all times to deal with complaints as they are lodged, particularly via the telephone. While establishment of a call centre type operation along the lines of the New South Wales Ombudsman model is an option, changes should be made to the current resourcing and operations of ART to address the current queuing difficulties.
3. The role of the present Case Assessment Committee should be reviewed with a view to the Committee being disbanded. Decisions in regard to allocation of complaints to the investigative teams should be made by the Assistant Ombudsman responsible for ART, if necessary, in consultation with the Deputy Ombudsman.
4. All staff in ART should have access to appropriate training and skills development having regard to the particular demands and pressures of working in ART in a close client contact environment. A staff rotation policy should also be developed and implemented to ensure that staff have the opportunity to work in both ART and the investigative teams. Such a policy needs to take account of any potential impact on the day to day operations of both ART and the investigative teams.

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

5. The object of the *Ombudsman Act 2001* ie the timely, effective, independent and just way of investigating administrative actions of agencies should continue to guide the investigative processes of the Office with informal resolution techniques and face to face contact being utilised wherever possible in resolving complaints.
6. The processes and procedures applied to the conduct of investigations should ensure that bureaucracy is kept to the absolute minimum consistent with appropriate resolution of complaints.

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

7. While the continuation of the current Major Projects Unit is endorsed, its on-going focus needs to clearly be its core activities of administrative improvement and special investigations, using a small staff and drawing resources temporarily from other units as required, as currently occurs. The Unit should also be renamed the Administrative Improvement Unit.
8. More appropriate procedures should be established to identify systemic issues or other matters worth of investigation by the Ombudsman as an integral part of the complaint investigation process.
9. Where an “own motion” investigation is undertaken by the Ombudsman, tight timelines of completion of the review should be established at the outset and except in exceptional circumstances, the investigation should be completed within 6 months of commencement.

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

10. The Ombudsman continue to maintain dialogue with the Chief Inspector of Prisons to ensure that there is no or minimal overlap of responsibilities between the two Offices. The dialogue should include but not be limited to, an appropriate exchange of information to assist with the carrying out of the respective roles.
11. Appropriate measures should be put into place to monitor the impact of the legislative and other changes dealing with prisoners and the management of correctional facilities to assess what impact the changes have on the operations of the Office in both the short and longer term.
12. The Prisoner Phone Link continue to be maintained as an important means whereby prisoners can have their grievances considered by an independent agency.

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

13. Regional visits should continue to be embraced as an important forum for rural and regional communities and an opportunity to keep the communities informed about the Ombudsman’s Office and its role and functions.

14. The current trial of a modified regional visit format should be evaluated after a reasonable period and changes made where appropriate consistent with an over-riding objective of servicing the needs of rural and regional Queensland.
15. The requirement that visits to correctional facilities take place within the normal regional visit program be reviewed on the basis that visits to correctional facilities should be conducted by appropriately skilled and experienced staff.
16. Good decisions training as a primary strategic focus of visits should continue to be integral to any visit program.

#### **C.7 Demand Management:**

17. Efforts should continue to be made to improve decision making within agencies through programs such as the good decisions training program.
18. Developments in the other jurisdictions that are designed to maximise the effectiveness of application of scarce available resources to resolving substantive complaints, particularly where these have implications for better decision-making and complaint handling in agencies, should continue to be monitored and evaluated in the context of existing powers in the *Ombudsman Act 2001*.
19. Given the benefit to agencies, good decisions training should be conducted by the Ombudsman on a cost recovery basis. Good decisions training should be an integral part of any regional visits program.
20. If required, additional funding should be sought from Treasury to ensure that adequate training is provided to staff of the Ombudsman's Office to conduct good decisions training and to engage specialist resources to assist with development and delivery of the program.
21. A directive should be issued under the *Public Service Act 1996* requiring departments and agencies to develop and implement, by a specified date, a complaints management system that complies with the relevant Standards.
22. The Ombudsman should seek additional funding from Treasury to ensure that Phase two of the Complaints Management Project is completed in a timely manner.

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

- 23. a) Every effort should continue to be made to improve timelines particularly with day to day dealings with all stakeholders, consistent with aspirations expressed in the Strategic Plan for “Our Service Standards”.  
b) Improved processes need to be put in place to ensure that files are not left idle during absences of the assigned officer.
- 24. A credible set of performance indicators needs to be developed to measure the effectiveness of the espoused “Service Standards”. The Office is also encouraged to publish these in the annual report.

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

- 25. The Ombudsman should continue to explore options for implementing a system of audits of complaint management systems within agencies.
- 26. In the meantime, the Ombudsman should use his “own motion” investigative powers to undertake, when circumstances are appropriate, evaluations of the complaint management processes and procedures within an agency.
- 27. The Ombudsman should continue to discuss with the Auditor-General, ways by which the Auditor-General and his department might play a role in evaluating the complaint management systems within agencies.

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

- 28. The Ombudsman should continue to implement the recommendations of the Referred to Agency Research Report.
- 29. In appropriate cases, complainants who are to be referred back to the agency concerned, should have the option of agreeing to have the Ombudsman’s Office provide their contact details and other information to the relevant agency so that the agency can contact the complainant.
- 30. The Ombudsman should instigate a follow up process with agencies in appropriate circumstances. The follow up could involve simply a phone call to determine whether the agency and the complainant are pursuing the issue. However the Office needs to be mindful for the risks of being seen as an advocate for the complainant rather than a facilitator.



31. The Office should continue with the Referred to Agency Research Reports but evaluate the costs and benefits of undertaking the research on a more frequent basis.
32. Suitable mechanisms that can be put in place to receive more regular feedback from complainants who are referred back to the agency concerned should be investigated.

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

33. The Strategic and Operational Plans from the Office should continue to address the areas for improvement identified in the Complainant Satisfaction Research Report.
34. Appropriate mechanisms to receive more regular feedback from complainants whose complaints involve some form of investigation by the Office rather than referral back to an agency should be investigated as a matter of priority.

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

35. The Ombudsman continue to explore opportunities with his counterparts in other jurisdictions for the sharing of performance information that is relevant to benchmarking the performance of the Office.
36. The capability of Catalyst to produce appropriate performance data to assist the Office in measuring its performance against stated objectives should continue to be developed.

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

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

37. The structure of the office should be changed to better reflect the key deliverables of the Office, namely investigation of administrative decisions and improvement of the quality of decision-making and administrative practice in agencies.
38. In delivering the objectives for which the Office was established, the Office should adopt a flatter management structure more consistent with modern management practices.
39. The current 3 Deputy structure should be replaced by a single Deputy with responsibilities for the investigation teams. It will have a more strategic, whole of Office focus providing support to leadership role of the Ombudsman.

40. The current administrative improvement of priorities such as good decision training, complain management, complaint analysis and research, “own motion” investigations etc should be drawn together under the leadership of an Assistant Ombudsman. Given the strategic importance of these issues going forward, the position should report to the Ombudsman direct.
41. The Advice and Communication Unit should be renamed Communication and Research Unit and be refocused with responsibilities for both internal and external communication and relationships. The Unit should report directly to the Ombudsman.
42. The Corporate Services Unit should report directly to the Ombudsman.

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

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

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

44. The Office should continue to monitor closely the workloads of individual officers, particularly in ART to ensure that officers are not carrying a disproportionate workload.

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

45. An evaluation of key positions within the Office should be undertaken in the light of potential changes to job descriptions and responsibilities following the review of delegations and other structures.

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

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

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

47. The current high level of staff departures should continue to be closely monitored to ensure that any potential systemic issues are quickly identified and dealt with.

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

48. The further review of delegations be undertaken to fully reflect the need to provide maximum opportunity for staff to make decisions consistent with their skills and experience and developmental needs.
49. All staff should have access to appropriate training and development to ensure skill levels are appropriate.

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

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

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

51. Existing policies and procedures in regard to recruitment and selection of staff should be reviewed to ensure that females are not disadvantaged or deterred from applying, particularly for senior positions.
52. Existing HR policies, practices and procedures should be reviewed to ensure that they appropriately address EEO issues.
53. The strategic planning process for the Office should address EEO issues in a meaningful way.
54. Consideration should be given to publishing more comprehensive and appropriate information on EEO and staff generally in the annual report.

#### **D.3.1 (Governance) Structures:**

55. The operations and functions of the Ombudsman Management Group and Senior Officers Group should be reviewed with a view to merging the two Groups under an appropriate charter.
56. The establishment of an Audit Committee for the Office with an independent Chair and one other independent member under a suitable charter should be investigated. The Committee would also be responsible for the internal audit oversight.
57. The charter of the Ombudsman Management Group include specific responsibilities for participation by the Group in the budget development and monitoring processes.

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

- 58. During the next strategic plan review, the emphasis given in Goal 1 to achievement of administrative justice should be reconsidered with a view to giving greater emphasis to the legislated objective of investigating administrative actions.
- 59. The Ombudsman and senior management should ensure that they maximise opportunities for staff input during the strategic planning process from all levels of the organisation. They should also ensure that appropriate feedback strategies are in place and implemented.

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

- 60. Options for relocation of the Office to more appropriate accommodation, preferably within the government precinct, with appropriate fit out strategies, should continue to be investigated.

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

- 61. The Ombudsman should continue to investigate opportunities to improve communication with all stakeholders using all available mediums.
- 62. The Ombudsman should take more opportunities to raise the profile of the Office and promote its services with all stakeholders, including Directors-General and CEOs.

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

- 63. The process that has been put in place to address issues raised in the staff survey should be completed as soon as possible and the agreed strategies implemented in a timely manner.
- 64. A staff survey should be undertaken at least every two years and the survey results should be capable of benchmarking to measure movements in key indicators over time.

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

- 65. The Ombudsman should investigate with agencies the desirability of formally entering into a Memorandum of Understanding (MOU) which would clearly set out the policies, protocols, practices and processes that the Office and the agency would follow in the resolution of complaints received by the Ombudsman. The MOUs would replace any existing informal agreements.
- 66. The current format of the annual complaints report to agencies could be reviewed in consultation with agencies to address any concerns they might have.

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

67. The Office should consider entering into a Memorandum of Understanding with the Crime and Misconduct Commission to document the arrangements and protocols that characterise the relationship between the two agencies.

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

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

#### **Section G: Davies Report**

69. The Ombudsman should continue to monitor developments in regard to the Davies Report as they may affect the Office and should also keep funding agencies such as Treasury apprised of potential funding needs.

#### **Section H: Legislative Issues**

70. A review of the *Ombudsman Act 2001* in accordance with the proposals outlined in the Ombudsman's letter to the reviewer of 8 February 2006 should be undertaken and progressed through normal channels. The review also should incorporate appropriate changes to the legislation to facilitate the Ombudsman staff becoming public servants, with an appropriate recognition of operational independence.

## SUGGESTED AMENDMENTS TO THE OMBUDSMAN ACT 2001

(as at 28 October 2011)

## A: Suggested amendments to existing provisions contained in the Ombudsman Act

Section	Suggested amendment	Reason
Amend s.5, s.6 and s.12  <i>Objects and functions</i>	<p>Amend s.5(b) to provide:</p> <p><i>The objects of this Act are –</i></p> <p>...</p> <p>(b) <i>to improve the quality <b>and effectiveness</b> of decision-making and administrative practice in agencies.</i></p> <p>Amend s.6(b)(ii) to provide:</p> <p><i>The objects of this Act are to be achieved by –</i></p> <p>...</p> <p>(b) <i>authorising the ombudsman -</i></p> <p>...</p> <p>(ii) <i>to make recommendations <b>and provide advice, training or other help</b> to agencies, generally or in particular cases, about ways of</i></p>	<p>Section 5(a) uses the word “effective” in terms of describing the investigative function of the Ombudsman. It is recommended that section 5(b) be amended to also incorporate the concept of “effectiveness” and to make clear that an object of the Act is to improve not only the quality of decision-making and administrative practice in agencies, but also the effectiveness of these actions.</p> <p>The Office is committed to providing training to agencies in making good administrative decisions. It also provides training and advice to agencies in establishing and maintaining internal complaints management systems. However, there is no clear authority under the Act to provide such advice other than as the result of an investigation or in making recommendations generally. For example, under s.12(c), the Ombudsman must <u>first</u> consider the practices and procedures of agencies, before making recommendations or providing information etc.</p>

Section	Suggested amendment	Reason
	<p><i>improving the quality of decision-making and administrative practices.</i></p> <p>Insert a new s.12(ca) to recognise the training function:</p> <p><i>The functions of the ombudsman are</i> – ... <i>(ca) to provide advice, training or other help to agencies to improve the quality of decision-making and administrative practices; ...</i></p>	<p>It is recommended that clear authority be inserted in the Act to authorise the Office’s good decisions and complaint management training and any similar activities in the future which are designed to further the object of the Act as set out in s.5(b) “to improve the quality of decision-making and administrative practice in agencies”.</p>
<p>Amend s.16(2)(b)</p> <p><i>What ombudsman may not investigate</i></p> <p>Jurisdiction over legal advisers</p>	<p>Make necessary amendments to clarify that the Ombudsman has jurisdiction to investigate administrative actions of a legal adviser to the State, except where the legal adviser is acting for the State in a legal proceeding.</p>	<p>The Ombudsman cannot investigate administrative action taken by a person acting as legal adviser to the State or as counsel for the State in any legal proceedings. Query whether the words “in any legal proceedings” apply to legal advisers or only Counsel? If the words do not apply to legal advisers, the Ombudsman would be prevented from investigating administrative actions taken by the many in-house lawyers employed in the public sector. This appears to be inconsistent with the fact that the State</p>

Section	Suggested amendment	Reason
		<p>or an agency required to provide information for an Ombudsman investigation is not entitled to claim any privilege it could claim in a legal proceeding (see s.45).</p>
<p>Amend s.20</p> <p><i>Complaints</i></p>	<p>Amend s.20(3)(b) to read as follows:</p> <p><i>(3) Despite subsection (1), the ombudsman may –</i></p> <p><i>(c) if the person who could have made a complaint under this Act has died or the ombudsman considers the person cannot, for any reason, act for himself or herself, accept a complaint from an individual who is, in the ombudsman's opinion, suitable to represent the person (also a <b>complainant</b>).</i></p>	<p>There is currently inconsistency between s.20(3)(b) and s.20(5) regarding when a complainant can be represented by another person. The Ombudsman's view is that a complainant should represent him or herself in making a complaint unless the Ombudsman is satisfied that it is not reasonable for them to do so.</p>



Section	Suggested amendment	Reason
	Omit s.20(5)	
Amend s.24 <i>Investigations generally</i>	<p>Renumber existing section as s.24(1) and insert new s.24(2) as follows:</p> <p>(2) <i>The principal officer of the agency must give the ombudsman reasonable help in the conduct of an investigation conducted informally under s.24(1)(a).</i></p>	<p>Section 22(2) provides that the principal officer of the agency must give the Ombudsman reasonable help in the conduct of a preliminary inquiry. This needs to be extended to include the conduct of informal investigations.</p> <p>While part 4 powers are available for investigations, it is quicker and less resource intensive for both the Ombudsman and the agency being investigated if the Ombudsman conducts investigations informally (as permitted under s.24(a)).</p>
Amend s.38 <i>Contempt of ombudsman</i>	Amend s.38(g) to provide that a person is in contempt if the person, in contravention of an order of the Ombudsman (see suggested amendment to s.91 below), publishes or permits or allows to be published, information/reports provided <u>by</u> the Ombudsman.	At present, s.38(g) provides that a person is in contempt if he or she publishes, or permits or allows to be published, information given to the Ombudsman, in contravention of an order by the Ombudsman. The contempt needs to be expanded to cover the publication of a report or information provided by the Ombudsman where the Ombudsman has made an order prohibiting such publication. See the suggested

Section	Suggested amendment	Reason
		amendment to s.91 below.
<p>Amend s.45</p> <p><i>Information disclosure and privilege</i></p>	<p>Amend/clarify s.45(1) and/or (2) to provide that, if the Ombudsman considers that there are compelling public interest reasons favouring disclosure, the Ombudsman may disclose privileged material when reporting on the results of an investigation.</p>	<p>Sections 45(1) and (2) provide, inter alia, that agencies cannot rely on legal professional privilege to refuse to give to the Ombudsman privileged documents where such documents are relevant to a preliminary inquiry or an investigation by the Ombudsman. This is to ensure that, in conducting the inquiry or investigation, the Ombudsman has access to all information, including legal advice, that an agency may have obtained and taken account of in handling a matter. In significant investigations, there may have been a substantial amount of legal advice sought and obtained by an agency, and it may have played a central role in influencing an agency's actions. It is important that the Ombudsman have access to this advice so as to be able to make an informed assessment of the reasonableness or lawfulness of an agency's actions.</p> <p>An issue has arisen regarding whether s.45 gives the Ombudsman authority then to disclose and discuss such legal advice in a report prepared at the conclusion of an investigation and that is to be made publicly available. That is, while an agency is compelled to give legal advice to the Ombudsman for the purposes of an investigation, it is arguable that the advice is provided only for that specific and limited purpose, and does not amount to a waiver of the privilege that exists in the advice vis-à-vis the world at large. As the privilege in the advice has not been waived, the Ombudsman is prevented from publicly disclosing it in a</p>

Section	Suggested amendment	Reason
		<p>report.</p> <p>Agencies often maintain their claim to privilege in respect of legal advice that they have provided during an investigation. That is, while they accept that s.45 requires them to give the advice to the Ombudsman for the purposes of an investigation, they argue that this does not amount to a general waiver of privilege, such that they do not consent to the public disclosure of the advice in an Ombudsman report. It is often difficult for the Ombudsman to meaningfully discuss the actions taken by an agency in reliance on legal advice when the advice itself cannot be disclosed.</p> <p>The alternative argument is that s.45 operates to remove <u>any</u> right that an agency has to make a claim for privilege over legal advice, either for the purposes of an investigation, or in respect of any report that is prepared at the conclusion of an investigation.</p> <p>It is recognised that legal professional privilege is a substantive common law right that cannot be abolished by statutory provisions except by express language or clear and unmistakable implication.</p> <p>However, it is also recognised that the Ombudsman performs an important function in investigating complaints against government agencies and reporting on the results, and that this</p>

Section	Suggested amendment	Reason
		<p>reporting function may be hampered in some instances if he is unable to discuss the legal advice relied upon by an agency.</p> <p>It is recommended that clear authority be inserted into the Act to authorise the Ombudsman, where he is satisfied that there are compelling reasons for doing so, to disclose the contents of legal advice in a public report.</p>

Section	Suggested amendment	Reason
	<p>Amend s.45 to override privileges and to include appropriate protection for individuals where they provide information in response to an investigation requirement.</p> <p>See, for example, ss.192-197 of the <i>Crime and Misconduct Act 2001</i> or ss.94-96 of the <i>Criminal Justice Act 1989</i> (repealed)</p>	<p>The operation of the current s.45(4) is unclear. On its face, it seems that s.45(4) operates to prevent persons to whom investigation requirements are issued under division 4, from refusing to provide the information on the grounds of self-incrimination.</p> <p>However, advice received from Senior Counsel about the operation of s.45 is that the better view is that a person can refuse to comply with an investigation requirement if to do so would tend to incriminate them. In other words, although the Act appears to say that a person does not have court equivalent privileges in responding to an investigation requirement under part 4, Counsel's view is that, for these protections to be overridden, clearer wording is required.</p> <p>This has the potential to limit the effectiveness of the Ombudsman's powers to obtain information, especially from public servants, as they could object to answering simply on the basis that to do so may incriminate them in a disciplinary breach.</p>
<p>Amend s.47</p> <p><i>Protection of person helping ombudsman</i></p>	<p>Amend s.47 to provide protection for persons who:</p> <p>(a) <u>may</u> help the Ombudsman; or</p> <p>(b) are the subject of a reprisal because another person has helped or may help the</p>	<p>Section 47 makes it an offence for a person to cause or threaten to cause detriment to someone who gives the Ombudsman information or a document for the purposes of a preliminary inquiry or an investigation. However, it isn't an offence if a person causes or threatens detriment to someone:</p> <ul style="list-style-type: none"> <li>• in the belief that that the person</li> </ul>

Section	Suggested amendment	Reason
	Ombudsman	<p>may assist the Ombudsman; or</p> <ul style="list-style-type: none"> <li>in the mistaken belief that the other person has assisted the Ombudsman.</li> </ul> <p>Nor does it create an offence where a person is the subject of a detriment or threat of detriment because another person (e.g., a relative) has helped the Ombudsman.</p> <p>It is recommended that the section be amended to provide protection in these circumstances.</p> <p>It is also recommended that the section be amended to clarify that it protects complainants.</p>
Amend s.50(4) <i>Report and Recommendation</i>	Amend s.50(4) to require council mayors to table the report at a Council meeting.	Where the Ombudsman sends a report about a local council to the CEO of the council, the CEO is required by s.50(4) to provide a copy to each councillor. However, there is no requirement for the Mayor to table the report at a council meeting to ensure that it is debated.
s.54 <i>Other reports on authority of speaker</i>	<p>Amend s.54 to provide:</p> <p>54      <i>Publication of other reports</i></p> <p><i>The ombudsman may, in the public interest or in the interests of any agency, organisation or person, publish, in a form the</i></p>	At present, the Ombudsman is able to publish reports only through the Speaker (see ss.51, 52, 53 and 54). Because of the complicated process that is involved in tabling a report, only significant reports on major investigations are tabled for publication. Other reports of a more routine nature are summarised (in an anonymised form) in brief case reports contained in the Ombudsman's Annual Report.

Section	Suggested amendment	Reason
	<p><i>ombudsman considers appropriate, any report on a matter arising out of the performance of the ombudsman's functions whether or not the matters to be dealt with in the report have been the subject of a report tabled in the Assembly under this Act.</i></p> <p>As a corollary to giving the Ombudsman power to publish his reports administratively when he considers it appropriate, amend the <i>Right to Information Act 2009</i> to exempt Ombudsman reports from the ambit of the RTI Act.</p>	<p>The Ombudsman is of the view that, in line with the government's policy of ensuring greater transparency and making as much information available to the public as possible on a routine, administrative basis, it is appropriate that the Ombudsman be given the discretion to publish routine investigative reports whenever appropriate, and in an appropriate form. Publication of these reports would enhance the transparency and accountability of the Office as well as the agencies whose administrative actions are being investigated, and would assist the public to better understand the functions of the Ombudsman and the work that the Office performs on a daily basis. The Annual Report summaries that are currently prepared often are insufficient to discuss in a meaningful way the issues that the investigation dealt with.</p> <p>In addition, investigative reports are currently subject to the RTI Act. It has been the case where the Ombudsman has determined that it was not appropriate to seek publication of a report through the Speaker for a particular reason. However, the report is then released by a decision-maker under the RTI Act. By removing finalised investigative reports from the ambit of the RTI Act, and giving the Ombudsman a discretionary power to publish them administratively (in an appropriate form), control over the publication of the reports rests solely with the Ombudsman.</p>

Section	Suggested amendment	Reason
		While the Ombudsman considers it is appropriate that major reports on significant investigations that have wider implications for the public service should continue to be published formally through the Speaker under s.52, he considers that s.54 should be amended to give him the discretion to publish any other report on the Office's website.
Amend s.65 <i>Acting ombudsman</i>	Amend s.65(1)(b) to remove the words "...or from the State..".	<p>Section 65(1)(b) currently provides that the Governor in Council may appoint an Acting Ombudsman when the Ombudsman is absent from Queensland. This has the potential effect of requiring acting arrangements to be put in place if, for example, the Ombudsman is in Sydney for the day on business.</p> <p>It is submitted that, if the ombudsman is interstate for a short period of time on business, he is still able to communicate with the Office and to perform his duties, and that acting arrangements are therefore unnecessary.</p> <p>It is recommended that s.65(1)(b) be amended to remove the reference to the Ombudsman being absent from the State. The provision would still operate to give the Ombudsman the discretion to put acting arrangements in place if he is absent from the State and he is satisfied that he is unable to perform the duties of his Office.</p>
Amend s.86 <i>Delegation</i>	<p>Amend s.86 to provide that:</p> <ul style="list-style-type: none"> <li>the Ombudsman can</li> </ul>	<p>Section 86 of the Act provides:</p> <p>The ombudsman may delegate the</p>



Section	Suggested amendment	Reason
	<p>delegate <b>functions</b> as well as powers</p> <ul style="list-style-type: none"> <li>the Ombudsman can delegate, to the Deputy Ombudsman and Assistant Ombudsmen, his powers under s.50(1), and s.51(1) and (2)</li> </ul>	<p>ombudsman's powers under this Act, other than the power to make a report or recommendation, to an officer of the ombudsman.</p> <p>Firstly, it is recommended that the provision be amended to include the delegation of functions, as well as powers (as is provided for chief executives under s.103 of the <i>Public Service Act 2008</i>).</p> <p>Secondly, in practice, the latter part of s.86 is problematic as it means that all reports containing an opinion that there has been maladministration, with or without recommendations, must go to the Ombudsman, even in straightforward cases. This creates a significant workload for the Ombudsman, and leads to delays in finalising matters.</p> <p>It is considered appropriate that the Ombudsman's powers under s.50(1) (giving a report and recommendations to the principal officer of an agency); and s.51(1) and (2) (requesting that the principal officer advise of the steps taken to give effect of the recommendations) be delegable to the Deputy Ombudsman and Assistant Ombudsmen.</p> <p>It is noted that, under the NSW Ombudsman Act, the Deputy and Assistant Ombudsmen have wide powers to make reports and recommendations (see s.8A<i>ff</i>).</p>

Section	Suggested amendment	Reason
Amend s.91 <i>Prohibiting publication of information</i>	Amend s.91 to make clear that the Ombudsman can prohibit the publication of information/reports provided <u>to</u> an agency or person by the Ombudsman.	<p>At present, s.91 only authorises the Ombudsman to prohibit the publication of information given to the Ombudsman or the contents of a document produced to the Ombudsman. The Ombudsman cannot prohibit an agency or person from publishing information the Ombudsman provides to the agency or person for the purposes of an investigation or in a report of the Ombudsman.</p> <p>The problems that can arise from this limitation are illustrated by a case in which the Ombudsman gave a report on an investigation of a complaint about a local council to the council, which then disclosed the complainant's name while discussing the report in public session.</p>
Amend s.93(1) <i>Protection from liability</i>	<p>Amend s.93(1) to provide protection from civil liability for Ombudsman officers in respect of acts done negligently but honestly.</p> <p>Suggested amendment:</p> <p><b>93(1)</b> <i>An officer of the Ombudsman does not incur criminal or civil liability for any act, matter or thing done or omitted to be done under this Act or any other Act unless the act, matter or thing was done, or omitted to be done, in bad faith.</i></p>	<p>The protection given in the current s.93(1) does not extend to acts done negligently but honestly. This protection existed in the repealed <i>Parliamentary Commissioner Act 1974</i> (see s.29(1) and (2)).</p> <p>The justification for the change at the time was that Ombudsman officers would be protected in the same way as public servants are protected – that is, by a specific indemnity given by the Minister for Justice &amp; Attorney-General. However, the existing indemnity does not apply to officers of the Ombudsman and it is understood that the government does not intend to provide such an indemnity</p>

Section	Suggested amendment	Reason
		<p>as the Ombudsman is an officer of the Parliament and is not part of the Executive.</p> <p>Other agencies have the requested protection. See for example, s.265 of the <i>Anti-Discrimination Act 1991</i>.</p>
<p>Divisions 2 and 3 of Part 8</p> <p><i>Staff of the Office</i></p>	<p>Whether or not staff of the Office should become public servants</p>	<p>Recommendation 70 of the Smerdon Strategic Review report provided as follows:</p> <p>A review of the Ombudsman Act should be undertaken and progressed through normal channels. The review also should incorporate appropriate changes to the legislation to facilitate Ombudsman staff becoming public servants, with an appropriate recognition of operational independence.</p> <p>The Ombudsman has given careful consideration to this proposal and does not support it. In his view the proposal does not have appropriate regard to the fact that the Ombudsman is not part of Executive government but is an officer of the Parliament.</p> <p>Making the Ombudsman's officers part of the public service would mean they would be bound by directives of the Public Service Commission, which creates</p>

Section	Suggested amendment	Reason
<p>Amend s.76(3)</p> <p><i>Officers</i></p>	<p>Amend s.76(3) to give a clear head of power for conditions of service for officers of the Ombudsman to be decided by order of the Governor in Council (see for example, s.504(1) of the <i>Land Act 1994</i>; s.5A(2) of the <i>Local Government (Queen Street Mall) Act 1981</i>; s.3(2) of the <i>Newstead House Trust Act 1939</i> and s.44 of the <i>Constitution of Queensland Act 2001</i>).</p>	<p>at least the perception of a conflict in that the Ombudsman has jurisdiction over the administrative actions of the Commission (not including the decisions of its tribunals).</p> <p>The Ombudsman's reputation for independence with the community relies substantially on the ability of his officers to be able to say to complainants that neither the Office nor they are part of the public service.</p> <p>Advice received from the Executive Council Secretariat is to the effect that s.76(3), in its current form, does not contain a sufficient head of power to authorise the making of an order of council (which is a statutory instrument under the <i>Statutory Instruments Act 1992</i>) setting out terms and conditions of service. Rather, it is only sufficient to authorise the making of an Executive Council Minute, which is not a statutory instrument. A Minute does not gain the benefit of s.23(1) of the Statutory Instruments Act and therefore cannot automatically apply, adopt or incorporate any Act, statutory instrument, other law or document as in force at a particular time, or from time to time. This means that each time a relevant change to the Public Service Act and Regulation, the Public Service Award or any applicable Directives occurs, a new Minute must be</p>

Section	Suggested amendment	Reason
		<p>prepared.</p> <p>By amending s.76(3) to permit conditions of service to take the form of an order in council, the resultant application of s.23(1) of the Statutory Instruments Act would avoid the Ombudsman having to prepare updated conditions of service each time an applicable section of the Public Service Act is amended, or a new Directive issued.</p>

## B: Suggested new provisions to be inserted into the Ombudsman Act

Section	Suggested amendment	Reason
Insert new s.14A <i>Administrative Audits</i>	Insert a new provision, similar to s.14A of the South Australian <i>Ombudsman Act 1972</i> , that gives the Ombudsman jurisdiction to conduct a review of the administrative practices and procedures of an agency, if the Ombudsman considers it in the public interest to do so.	Consistent with the Ombudsman's role of improving the quality of administrative practice in agencies, it would be of benefit to include a provision giving the Ombudsman power to conduct audits of agencies so as to identify any administrative practices and procedures in need of improvement.
Insert new s.23A <i>Ombudsman may issue direction in relation to an administrative act</i>	Insert a new provision, similar to s.19A of the South Australian <i>Ombudsman Act</i> , that gives the Ombudsman authority to direct an agency to refrain from performing an administrative act for a specified period.	Such a power is needed to prevent an agency from performing an administrative act where the Ombudsman is satisfied that the act is likely to prejudice an investigation or proposed investigation, or the effect or implementation of a recommendation that the Ombudsman might make as the result of an investigation or proposed investigation.
Insert new s.64A <i>Appointment</i>	Insert a new section requiring the Ombudsman to make a declaration of interests in terms similar to s.12 of the <i>Auditor-General Act 2009</i>	<p>The Ombudsman Act currently contains no requirement for the Ombudsman to make a declaration of interests. Section 12 of the Auditor-General Act requires the Auditor-General to make a declaration of interests under a scheme that has appropriate regard to the independence of that office.</p> <p>An amendment in similar terms should be inserted in the Ombudsman Act to require the Ombudsman to make a declaration of interests to the Speaker, consistent with the Ombudsman's status</p>

Section	Suggested amendment	Reason
		as an officer of the Parliament.
Insert new s.78A <i>Staff of the Office</i>	Insert a provision to give the Ombudsman's staff similar industrial appeal rights to officers of the Public Service Commission:	While the Ombudsman does not agree with the recommendation of the Smerdon report that officers should become public servants, it is important to clarify the appeal rights of officers who are aggrieved by certain decisions made by the Ombudsman concerning their employment. As it is not appropriate for officers of the Ombudsman to have appeal rights to the Public Service Commission, it is suggested that they be given appeal rights to the Industrial Relations Commission in line with those appeal rights enjoyed by officers of the Public Service Commission. See s.215 of the <i>Public Service Act 2008</i> .
Insert new s.76(4) <i>Criminal History Check</i>	Insert a provision similar to s.160 of the Public Service Act and s.330 of the Crime and Misconduct Act to provide that a person may not be employed as an officer of the ombudsman if the person does not consent to a criminal history check.	
<i>Legal proceedings</i>	Insert a provision similar to s.29(4) of the repealed <i>Parliamentary Commissioner Act</i> .	Under s.29(4) of the repealed Parliamentary Commissioner Act, the Ombudsman could not be called to give evidence or produce any document in court, or in any judicial proceedings, in respect of any matter coming to his or her knowledge in the exercise of his or her functions under that Act.

Section	Suggested amendment	Reason
		<p>However, that protection was omitted from the Ombudsman Act, for reasons which are unclear. Most other Ombudsman legislation in Australia contains such a protection – see s.35 of the NSW legislation; s.29(4) of the Victorian legislation; s.30 of the South Australian legislation; s.31(4) of the Northern Territory legislation; and also s.26(1)(b) of the New Zealand legislation. It is submitted that such a protection is appropriate for the Ombudsman, given the role he discharges and the fact that he is an officer of Parliament.</p> <p>In 2007, the Ombudsman was served with a Notice of Non-Party Disclosure in connection with legal proceedings commenced against a government department by a former complainant to this office. The complainant was seeking to use, in his legal proceedings against the government department, investigative documents prepared or received by the Ombudsman. The Ombudsman relied on a number of grounds of objection in response to the Notice of Non-Party disclosure, including that s.92 prohibited disclosure of the requested documents. The complainant ultimately chose not to pursue the Notice. However, it is submitted that a specific provision, such as the repealed s.29(4), should be inserted into the Act to make the position clear.</p>
<i>Government-Owned Corporations (GOCs)</i>	Widen the jurisdiction of the Ombudsman to include GOCs.	At present, the Ombudsman Act has no application to GOCs. The Office frequently receives calls from persons



Section	Suggested amendment	Reason
		<p>inquiring whether we have jurisdiction to investigate a complaint against a GOC.</p> <p>Over the past 12 months, the Ombudsman has made several submissions (including submissions to the government's Integrity and Accountability Green Paper, and the Public Service Commission's review of the Whistleblowers Protection Act) calling for the government to give this Office jurisdiction to investigate the administrative actions of GOCs.</p> <p>The Ombudsman is firmly of the view that entities that carry out public functions using public funds and public infrastructure are accountable to the public for the way in which they perform those services and spend those funds, and should be subject to all the usual accountability measures.</p> <p>The Ombudsman therefore recommended in his submission in response to the Green Paper that he be given jurisdiction to investigate the administrative actions of GOCs.</p> <p>In its response to the green paper, the government observed:</p> <p>GOCs are responsible for significant amounts of public money and should be subject to the highest levels of scrutiny and</p>

Section	Suggested amendment	Reason
		<p>ethical standards.</p> <p>In recognition of the need for high levels of scrutiny of GOCs, the government has committed to amending the <i>Government Owned Corporations Act 1993</i> to ensure that GOCs can be investigated by the CMC on misconduct matters.</p> <p>As matters stand, GOCs are audited by the Auditor-General and will soon be within the jurisdiction of the CMC. It is illogical that they are not also subject to the Ombudsman's jurisdiction (as is the case with the corresponding bodies in NSW).</p> <p>The Ombudsman remains of the view that all GOCs (whether or not they operate in a competitive environment) should be subject to his jurisdiction, and that he should have the ability to investigate maladministration, on complaint or on his own initiative.</p>
<i>Making and publishing standards</i>	Insert a provision giving the Ombudsman power to make and publish complaint-handling standards for the public sector.	As a logical corollary to the complaint-handling training and best-practice educative functions that the Ombudsman conducts across the public sector, it is recommended that consideration be given to giving the Ombudsman the power to make and publish complaint-handling standards (similar to the power given to the Public Service Commission under the <i>Public Interest Disclosure Act 2010</i> to publish a Public Interest Disclosure Standard),

Section	Suggested amendment	Reason
		<p>binding on all public sector agencies that fall within the jurisdiction of the Ombudsman. The Ombudsman would have an oversight/audit role in ensuring that agencies implement, and adhere to, complaint-handling policies and procedures that comply with the Standard.</p>

**Agencies with Memorandum of Understanding Arrangements with Ombudsman's Office**

Crime and Misconduct Commission

Health Quality and Complaints Commission

Commission for Children and Young People and Child Guardia

Energy and Water Ombudsman

Queensland Civil and Administrative Tribunal

In addition to the formal arrangements, the Office has a number of informal liaison arrangements with a variety of agencies including Department of Transport and Main Roads, Education Queensland, Brisbane City Council, Gold Coast City Council and Corrective Services.

### Some Examples of Available Ombudsman Type Services

#### Private Sector:

Telecommunications Industry Ombudsman

Financial Ombudsman Service\*

Tolling Customer Ombudsman

\* incorporates a number of Ombudsman under a Chief Ombudsman addressing issues related to banking, insurance, investment, stock broking etc.

#### Australian Government:

Private Health Insurance Ombudsman

Fair Work Ombudsman

Credit Ombudsman Service

Commonwealth Ombudsman

#### Queensland Government:

Energy and Water Ombudsman

Training Ombudsman

Queensland Workplace Rights Ombudsman

Health Quality and Complaints Commission

#### Universities:

Central Queensland University Student Ombudsman

Queensland University of Technology Student Ombudsman

Level 17, 53 Albert Street, Brisbane QLD 4000  
GPO Box 3314 Brisbane QLD 4001  
www.ombudsman.qld.gov.au



Our ref: CSU/00012

28 February 2012

Mr Henry Smerdon  
Strategic and Financial Consulting Services  
17 Cornell Street  
ROBERTSON Q 4109

Dear Mr Smerdon

I refer to your letter dated 8 February 2012 enclosing the proposed report on the strategic review of the Office of the Queensland Ombudsman.

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

Yours sincerely

A handwritten signature in black ink, appearing to read "Phillip Clarke".

Phillip Clarke  
Queensland Ombudsman

Enc

ombudsman

**Comments by the Queensland Ombudsman  
under s.85 of the *Ombudsman Act 2001* to the proposed report  
on the strategic review of the Ombudsman's Office – February 2012**

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

Section 85(1) of the Act requires a reviewer to give the Ombudsman a copy of the proposed report on the review. Section 85(2) of the Act authorises the Ombudsman to give the reviewer written comments on anything in the proposed report within 21 days of receiving it. A copy of the proposed report was provided to me on 8 February 2012.

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

At the outset, I wish to acknowledge that the reviewer has engaged in extensive consultation and discussion in the course of the review. He has met with me on several occasions to discuss numerous issues and has held focus groups for staff, agencies and other stakeholders. While I am not necessarily in total agreement with every comment or recommendation made in the report, I am satisfied that I have had the opportunity to express my views on all issues dealt with, and recommendations made, in the report.

I am pleased to note the reviewer's comments that the Office has "*made significant progress*" since the last strategic review of the Office in 2006, particularly in the light of a very significant increase in its workload. The reviewer notes that:

Staff numbers have grown from 50.8 FTEs in 2006/06 to 53.7 FTEs in 2010/11 an increase of just 5.7% when in the same period, "contacts" have grown by more than 75%.....the Office has had to drive greater efficiencies of process to cope with the increase in demand for services.

He also notes that:

It is also worth mentioning that my discussions with a variety of agencies indicated a high level of support for the Office and the important role it plays in the overall public administration of the State.

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

**Section D.2: Advocacy and Resolution Roles**

I do not object to the general intent of the discussion in regard to referrals. However, in regard to Recommendation 5, I would point out that persons who were referred to agencies for various reasons were included in the sample for the 2010 Complainant Satisfaction Survey. The 2010-2011 survey incorporated all "in-jurisdiction" contacts to our Office, including complaints, assessments and preliminary inquiries. Thus, it included referrals to other agencies for the first time. People we defined as "referrals" were asked a limited set of questions about the service they received from our Office, but not further questions about their experience of referral agencies. I submit that this practice, rather than a separate survey of referrals, may be a more effective means of informing strategy in this area.



#### **Section D.4: Receival Centre Operations**

While I acknowledge the opportunity and need to improve the receipt and processing of contacts, particularly “out-of-jurisdiction” contacts, I believe that it is essential that this activity remains core to the Office and very closely associated with other activities, especially investigations. For this reason, I am concerned that any concept of establishing a shared or outsourced “call centre” be heavily constrained by the objective of integrated service delivery within this Office. The current ART area, now RAPA, is a training ground for investigations staff, a vital process for career management within the Office. I agree that the Office web site needs priority attention and note that a procurement process for the development of a new web site is well advanced. Interim arrangements to better stream contacts to the most appropriate complaints agency have recently been introduced. In regard to recommendation 10, contact details for complaints agencies are available on the [www.complaints.qld.gov.au](http://www.complaints.qld.gov.au) web site, but only after selecting the contact card for the respective agency.

#### **Section D.5: Complaints Standards Authority**

I acknowledge the intent of this section is to provide a more “holistic” approach to setting and monitoring complaints management standards within public agencies and that the recommendations build on the current, limited, work undertaken in auditing agencies’ complaints management systems. My concern is solely to ensure that the necessary legislative safeguards for the independence of the Office from the broader public sector can be established and that adequate funding is provided for this additional function. Without additional resources, additional standards setting and monitoring would be of limited additional benefit and better left in the current arrangements.

#### **Section D.6: The Ombudsman and the Non-Government Sector**

I note that the recommendation is tempered by the need to establish very clear guidelines to avoid undue “intrusion” into the non-government sector operations by the Ombudsman. I also submit that any increase in jurisdiction to include the non-government sector would need substantial additional resources for the Ombudsman’s Office. A more moderate resource impact might be achieved by limiting the additional jurisdiction to the conduct of investigations, excluding complaints handling, even though this would arguably deny citizens the right of review on what are otherwise government policy initiated and funded activities.

#### **Section E.2: The Intake Process**

In regard to recommendations 19 and 21, it is appropriate that I clarify the purpose of creating “files” for contacts of limited relevance to the Office. In fact, even though these files (electronic only) are created, they have far less information than a full complaint file and only collect basic information about the contact. This is currently required for both reporting and public records purposes. While I acknowledge that improvement is necessary in this area, the proposed report might lead readers to assume that excessive records are being kept for no purpose. This is not the case in many instances.

#### **Section E.3: Assessment and Resolution Process**

Since the establishment of the internal review projects which followed from the 2011 staff survey, the Registration and Preliminary Assessment (RAPA) process has been established to trial similar approaches to those recommended. The major lesson from this trial to date is that resolution timeframes are very significantly impacted by “waiting” times for complainants to provide additional information when required. This “waiting” period can also apply to agency responses. The trial has demonstrated the need to consider straight-forward and more complex contacts in different timeframes. Straight-forward contacts can often be



finalised within a short period (say 72 hours), but more complex matters often take up to ten days to receive the information and make a considered decision. I therefore believe that a more realistic performance framework for this area would include a combination of both types of contact. Work on a suitable monitoring framework, which tracks the ages of all contacts, is being trialled and is showing good progress.

#### **Section E.5: Access to Ombudsman's Services**

In regard to visits to correctional centres, I should clarify that the nine visits noted in the proposed report occurred to regional centres, outside south-east Queensland. In addition, five visits were undertaken to correctional centres within south-east Queensland.

#### **Section F.5: Delegations**

I note and support the need for further delegation of decisions within the Office. However, I should point out that recent improvements in this area have meant that only in the case of written finalisation letter to complainants are senior officers required to sign responses. Junior officers already have delegations to handle many of the day-to-day tasks in case management and to deal with telephone contacts. Work will continue in this area to align delegations for all contacts no matter how received.

#### **Section F.6: Budget Issues**

The proposed report makes a number of recommendations about the need for additional budget supplementation if the proposed enhanced functions are to be effectively and meaningfully achieved. I agree with this analysis and would further submit that the capacity of the Office to continue to absorb the growth in contacts, complaints and investigations is very limited without budget supplementation. The Office has achieved significant efficiency gains in the last five years and these are now effectively exhausted. I will of course seek to garner whatever further efficiencies are possible, but these are likely to only support on-going growth in complaints to the Office. If no additional funding is available, the majority of enhancements outlined in the proposed report will not be possible.

#### **Section F.10: Organisational Structure of the Office**

As you outline, the choice of an appropriate organisational structure is one which is not set, but which may vary depending on the work and organisational priorities of the Office. In this regard, I believe that the mid-term challenges of the Ombudsman's Office require greater integration of public interface activities, currently spread between ART, CRU and AIU. I agree that greater integration of investigation teams is also desirable. The necessary changes must however be balanced against maintaining the high levels of expert knowledge within the Office and ensuring that appropriate career development opportunities exist to encourage senior staff to stay with the Office and to actively mentor junior professional staff. This balance is a difficult one and may require a compromise between existing structures and desirable changes over time.