

Oversight of the Office of the Queensland Ombudsman

Report No. 6

Legal Affairs and Community Safety Committee

August 2012

Legal Affairs and Community Safety Committee

| | |
|-----------------|--|
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Acknowledgements

The Committee wishes to acknowledge the assistance provided by the Queensland Ombudsman and his staff.

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Abbreviations

| | |
|-----------|---|
| Act | <i>Ombudsman Act 2001</i> |
| A-G | Auditor-General |
| Committee | Legal Affairs and Community Safety Committee |
| LAPCSESC | Legal Affairs, Police, Community Safety, Emergency Services Committee |
| QAO | Queensland Audit Office |

Glossary

| | |
|------------------------|--|
| agency | A government department, local council or university that falls within the jurisdiction of the Queensland Ombudsman |
| assessment | The complaint is finalised through research and assessment, without contacting the agency concerned |
| Audit | The Ombudsman may conduct a review of the administrative practices and procedures of an agency and make recommendations for improvements |
| Complainant | A person bringing a complaint to the Ombudsman's Office |
| Complaint finalised | A complaint that the Ombudsman's Office reviews and establishes an outcome |
| Complaint open | A complaint outstanding at the close of the financial year |
| Corporate governance | The system by which an organisation is controlled and operates, and the mechanisms by which it is held to account. Ethics, risk management, compliance and administration are all elements of corporate governance |
| Formal investigation | Conducting recorded interviews or requesting a formal written response from the agency concerned |
| Informal investigation | A complaint finalised by making informal inquiries with the agency involved and/or by negotiating with the parties involved |
| Inquiry | Contact where the person seeks information or assistance but does not make a specific complaint |
| Internal review | Investigation of a decision undertaken by the agency that made the initial decision |
| Major investigation | Cases where significant time and resources is expended on investigating systemic maladministration |

| | |
|--|---|
| Maladministration | Decisions and administrative actions of public agencies that are unlawful, unfair, unreasonable or wrong |
| Ombudsman | Ombudsman is a Swedish word that means ‘the citizen’s defender’ or ‘representative of the people’. The first Ombudsman was appointed in Sweden in the 1800s to investigate complaints about government decisions. There are now more than 150 Ombudsmen around the world. Australia has an Ombudsman in each state and territory and in the Commonwealth ¹ |
| Out of jurisdiction | A complaint that the Office of the Ombudsman does not have the power to investigate |
| Own initiative investigation | The Ombudsman decides to undertake an investigation into systemic issues in a certain agency without first receiving a complaint |
| Positive outcome | A complaint where no maladministration finding was necessary |
| Public administration | The administrative practices of Queensland public sector agencies |
| Public agencies/public sector agencies | State government departments and local councils |
| Public interest disclosure (PID) | The confidential disclosure of wrongdoing with the public sector. PIDs commonly include allegations of official misconduct or maladministration. The identity of the complainant and the details of the complaint cannot be disclosed except to authorised staff |
| Recommendation | Formal advice given by the Ombudsman, to a government agency to improve administrative practices. The Ombudsman cannot direct agencies to implement recommendations but they rarely refuse to do so. If agencies refuse to implement recommendations, the Ombudsman can require them to provide reasons and report to the relevant Minister, the Premier, or Parliament if not satisfied with the reasons |
| Referral | When a complaint is outside the Ombudsman’s jurisdiction, it is referred to another complaint agency |

¹ Queensland Ombudsman Annual Report 2010-2011, page 1.

Chair's foreword

This Legal Affairs and Community Safety Committee (the Committee) has oversight responsibilities of the Office of the Queensland Ombudsman.

The Committee met with the Queensland Ombudsman, Mr Phil Clarke and his staff on 20 June 2012. The Committee also reviewed the Queensland Ombudsman's Annual Report 2010-2011 which was tabled in the Legislative Assembly on 26 September 2011.

On behalf of the Committee, I thank the Queensland Ombudsman and his staff who assisted the Committee throughout the course of this inquiry.

I commend this Report to the House.



Mr Ray Hopper MP

Chair

Recommendations

Recommendation 1

7

The House note this Report.

1 Introduction

1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (the Committee) is a portfolio committee of the Legislative Assembly which commenced on 18 May 2012 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.²

The Committee's primary areas of responsibility include:

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

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

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

The Committee also has oversight responsibilities for the Office of the Information Commissioner, the Queensland Ombudsman, the Electoral Commissioner and the Criminal Organisation Public Interest Monitor.

This report is made in relation to the Committee's statutory oversight responsibility of the Office of the Queensland Ombudsman.

1.2 Purpose and functions of the Office of the Queensland Ombudsman

The Office of the Queensland Ombudsman was established in 1974 to investigate the administrative actions of Queensland government agencies, local councils and universities.

Under the *Ombudsman Act 2001* (the Act), the Ombudsman has a dual role:

- to provide a fair, independent and timely investigative service for people who believe that have been adversely affected by the decisions of a public agency; and
- to help public agencies improve their decision-making and administrative practice.

The majority of investigations arise from complaints received, but the Ombudsman also conducts own-initiative investigations.³

The Act provides the functions of the Ombudsman as:

- (a) to investigate administrative actions of agencies –
 - (i) on reference from the Assembly or a statutory committee of the Assembly; or
 - (ii) on a complaint; or
 - (iii) on the ombudsman's own initiative; and
- (b) to consider the administrative practices and procedures of an agency whose actions are being investigated and to make recommendations to the agency –

² *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

³ Queensland Ombudsman, *Annual Report 2010-2011*, page 2.

- (i) about appropriate ways of addressing the effects of inappropriate administrative actions; or
- (ii) for the improvement of the practices and procedures; and
- (c) to consider the administrative practices and procedures of agencies generally and to make recommendations or provide information or other help to the agencies for the improvement of the practices and procedures; and
- (d) the other functions conferred on the Ombudsman under [the Act] or any other Act.⁴

The Act also provides that, subject to any other Act or law, the ombudsman is not subject to direction by any person about –

- (a) the way the ombudsman performs the ombudsman's functions under [the Act]; or
- (b) the priority given to investigations.⁵

The Ombudsman may investigate administrative actions of agencies, and an administrative action despite a provision in any Act to the effect that the action is final or can not be appealed against, challenged, reviewed, quashed or called in question.⁶

The Ombudsman must not question the merits of a decision, including a policy decision, made by a Minister or Cabinet; or a decision that the Ombudsman is satisfied has been taken for implementing a decision made by Cabinet.⁷

The Ombudsman must not investigate administrative action taken by any of the following:

- a tribunal, or a member of a tribunal, in the performance of the tribunal's deliberative functions;
- a person acting as legal adviser to the State or as counsel for the State in any legal proceedings;
- a member of the police service, if the action may be, or has been, investigated under the *Crime and Misconduct Act 2001*;
- a police officer, if the officer is liable to disciplinary action, or has been disciplined under the *Police Service Administration Act 1990*;
- the Auditor-General;
- a mediator at a mediation session under the *Dispute Resolution Centres Act 1990*;
- a person in a capacity as a conciliator under the *Health Rights Commission Act 1991* or the *Health Quality and Complaints Commission Act 2006*; or
- the Information Commissioner in the performance of the Commissioner's functions under the *Right to Information Act 2009*.⁸

1.3 Committee's responsibilities regarding the Office of the Queensland Ombudsman

In addition to the jurisdiction conferred by the *Parliament of Queensland Act 2001*, the Act provides that the Committee is required to:

- monitor and review the performance by the Ombudsman of the Ombudsman's functions under [the Act];

⁴ *Ombudsman Act 2001*, section 12.

⁵ *Ombudsman Act 2001*, section 13.

⁶ *Ombudsman Act 2001*, section 14.

⁷ *Ombudsman Act 2001*, section 16(1).

⁸ *Ombudsman Act 2001*, section 16(2)(a)-(h); also note there are other exceptions under the *Government Owned Corporations Act 1993*.

- report to the Assembly on any matter concerning the Ombudsman, the Ombudsman's functions or the performance of the ombudsman's functions that the committee considers should be drawn to the Assembly's attention;
- examine each annual report tabled in the Assembly under [the Act] and, if appropriate, to comment on any aspect of the report;
- report to the Assembly any changes to the functions, structures and procedures of the office of the ombudsman the committee considers desirable for the more effective operation of [the Act];
- and any other functions conferred on the parliamentary committee by [the Act]⁹

1.4 Strategic Review of the Office of the Ombudsman

Section 83 of the Act provides that strategic reviews of the office of the Ombudsman must be conducted at least every 5 years and that the review must include a review of the Ombudsman's functions; and the performance of the functions to assess whether they are being performed economically, effectively and efficiently.

Matters concerning the strategic review of the Ombudsman's Office will be dealt with in a subsequent Committee report.

2 Oversight of the Ombudsman

2.1 Process followed by the Committee

In conducting its oversight functions of the Ombudsman, the Committee followed the processes adopted by previous committees.

The process included:

- Questions on Notice being provided to the Ombudsman with a request for responses to be provided prior to the meeting;
- a public hearing with the Ombudsman to discuss his responses to the Questions on Notice and to ask questions without notice; and
- providing this Report.

On 19 December 2011, the former Legal Affairs, Police, Corrective Services and Emergency Services Committee (LAPCSESC) wrote to the Ombudsman regarding the annual parliamentary committee review of the performance of the Ombudsman and provided Questions on Notice.

On 10 February 2012, the LAPCSESC received the Ombudsman's written response to the Questions on Notice. The responses to the Questions on Notice are at **Appendix A**.

The LAPCSESC ceased to operate when the 53rd Parliament was dissolved on 19 February 2012 and could not continue the oversight process of the Ombudsman which it had commenced. One of the first orders of business of the Committee after it commenced operation on 18 May 2012, was to continue the oversight process commenced by the former LAPCSESC where it left off.

On Wednesday 20 June 2012, the Committee held a public hearing with the Queensland Ombudsman, Mr Phil Clarke and the following officers from his Office:

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

⁹ *Ombudsman Act 2001*, section 89.

The transcript of the hearing is attached at **Appendix C**.

3 Meeting with the Ombudsman

3.1 Issues considered by the Committee

In his opening statement, the Ombudsman confirmed the increased workload of his Office, illustrated in the total number of contacts and the number of complaints both received and closed.¹⁰

As at 16 June 2012, five complaint cases were over 365 days in the office. The Ombudsman explained that those cases were in the final stages, but there was a prospect that some of them may remain open at 30 June 2012.¹¹

The Ombudsman also discussed: implementing outcomes from the strategic review; the Office's new newsletter *Community Perspectives*; changes to the case management system; training sessions; staffing; and the Ombudsman's investigative role and responsibilities.

Questions from the Committee focussed on the following:

- the location of training sessions outside South-East Queensland;
- the Ombudsman's advocacy role and responsibilities;
- staffing;
- parent relinquishment of care for children with disabilities;
- the Ombudsman's ability to monitor the implementation of recommendations within his reports;
- the relationship between the Ombudsman's office and agencies;
- out of jurisdiction complaints and the timeliness of referrals;
- own motion investigations and budget considerations.

At the meeting, the Ombudsman took a Question on Notice, undertaking to provide more detail regarding the regional delivery of training programs, and the number of FTE temporary employees within his office. The Ombudsman's response to these questions is at **Appendix B**.

3.2 Annual Report 2010-2011

The Annual Report of the Queensland Ombudsman for the 12 months ending 30 June 2011 was tabled on 26 September 2011.

Complaints received

The following table details the number of complaints received by agency type.¹²

| | 07/08 | 08/09 | 09/10 | 10/11 |
|---------------------------|-------|-------|-------|-------|
| State government | 4,268 | 4,370 | 5,099 | 4,587 |
| Local government | 1,843 | 1,979 | 2,275 | 2,126 |
| Universities | 130 | 182 | 262 | 270 |
| Other/out of jurisdiction | 931 | 929 | 1,081 | 1,371 |
| Total | 7,172 | 7,460 | 8,717 | 8,354 |

¹⁰ Transcript of Proceedings, *Meeting with the Queensland Ombudsman*, Wednesday 20 June 2012, page 2.

¹¹ Transcript of Proceedings, *Meeting with the Queensland Ombudsman*, Wednesday 20 June 2012, page 2.

¹² Queensland Ombudsman, *Annual Report 2010-2011*, page 19.

In 2010-2011:

- 55% of complaints were about state government agencies
- 25% of complaints were about local government
- 3% of complaints were about universities.

The increase in university complaints over recent years continued. In 2010-2011, there were 270 complaints (up from 262 complaints in 2009-2010 and 182 in 2008-2009). The growth in complaints has been driven by the introduction of the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007*. The code was introduced in July 2007 and requires that overseas students be afforded rights of external appeal against decisions by universities.¹³

Time to finalise complaints

In 2010-2011:

- 69% of complaints were finalised within 10 days
- 84% of complaints were finalised within 30 days
- 99% of complaints were finalised in less than 12 months.

Early intervention strategies were used to manage 97% of complaints. This means that within 10 days, the complaint was closed or early intervention action was initiated. Examples of early intervention include contacting the complainant to obtain additional information, requesting documents from the relevant agency and researching relevant legislation.¹⁴

Managing complaints

How the Queensland Ombudsman managed complaints:

| | 08/09 | % | 09/10 | % | 10/11 | % |
|------------------------|--------------|----------|--------------|----------|--------------|----------|
| Assessment | 5,673 | 76% | 6,842 | 79% | 6,743 | 81% |
| Preliminary inquiry | 172 | 2% | 421 | 5% | 428 | 5% |
| Informal investigation | 1,529 | 21% | 1,377 | 16% | 1,055 | 13% |
| Standard investigation | 73 | <1% | 65 | <1% | 51 | <1% |
| Major investigation | 1 | <1% | 3 | <1% | 1 | <1% |
| Total | 7,448 | | 8,708 | | 8,278 | |

Complaint outcomes

In the 2010-2011 financial year, 6,846 complaints were declined. More than half of the complaints were declined as premature (3,617 complaints – 53%). This means that the complainant did not exhaust the agency's internal complaints management process before contacting the Ombudsman. Agencies should be given an opportunity to consider and resolve complaints, including undertaking an internal review of the agency's original decision.

A further 1,261 complaints (18%) were declined because they were outside the Ombudsman's jurisdiction.

Where the complaint was subject to a decision-making process that was not yet complete, it was declined (558 complaints – 8%).

¹³ Queensland Ombudsman, *Annual Report 2010-2011*, page 19.

¹⁴ Queensland Ombudsman, *Annual Report 2010-2011*, page 21.

Other reasons complaints were declined included:

- the investigation was considered unnecessary or unjustifiable (351 complaints – 5%);
- other appeal rights should be exhausted (298 complaints – 4%); and
- another complaint entity has or will investigate 9147 complaints – 2%).¹⁵

Ombudsman's recommendations

Where maladministration is identified, the Ombudsman generally makes a recommendation to rectify the action. Recommendations are considered to be either:

- direct benefit – produce a positive outcome for the individual complainant; or
- systemic – that address issues with policies, procedures or practice.

This year, the Ombudsman made 45 direct benefit recommendations and 130 systemic recommendations. The Ombudsman's recommendations addressed a wide variety of administrative deficiencies, however the majority concerned improvements to agencies' policies or procedures (60%).

The Ombudsman has no power to make an agency implement his recommendations, however in practice agencies generally accept all recommendations.

In 2010-2011, 99% of recommendations were accepted (where a response had been received from the agency by 30 June 2011).¹⁶

Types of investigative recommendation made to agencies:¹⁷

| | 10/11 | % of total |
|---------------------------------|--------------|-------------------|
| Improve policy or procedure | 105 | 60% |
| Give better explanation/reasons | 15 | 9% |
| Follow policy or procedure | 14 | 8% |
| Admit error or apologise | 12 | 7% |
| Change decision | 10 | 6% |
| Provide training | 7 | 4% |
| Compensate | 5 | 3% |
| Expedite action | 4 | 2% |
| Explanation given by agency | 21% | |
| Review decision | 1 | <1% |
| Total | 175 | |

Financial Performance

The general purpose financial statements, included in the *Annual Report 2010-2011*, are certified as having been prepared pursuant to section 62(1) of the *Financial Accountability Act 2009*, relevant sections of the *Financial and Performance Management Standard 2009* and other prescribed requirements.¹⁸

¹⁵ Queensland Ombudsman, *Annual Report 2010-2011*, page 23.

¹⁶ Queensland Ombudsman, *Annual Report 2010-2011*, page 24.

¹⁷ Queensland Ombudsman, *Annual Report 2010-2011*, page 24.

¹⁸ Queensland Ombudsman, *Annual Report 2010-2011*, page 138.

Additionally, the *Annual Report 2010-2011* includes an independent auditor's report which includes an opinion that the financial reports represent a true and fair view, in accordance with the prescribed accounting standards, of the transactions of the Office of the Queensland Ombudsman for the financial year 1 July 2010 to 30 June 2011 and the financial position as at the end of that year.¹⁹

4 Committee comments

The Committee acknowledges the work of the staff of the Office of the Ombudsman and the initiatives they are implementing. The Committee also acknowledges the reduction in the number of open cases to approximately 200 at the end of May 2011 and congratulates the 'backlog team' on this achievement.

The Committee notes the introduction of the newsletter, *Community Perspective*, and looks forward to its online publication twice a year. The Committee shares the Ombudsman's view, and hopes that the part of the newsletter that sets out the due process for making complaints goes some way towards addressing the number of out of jurisdiction complaints received.

The Committee also notes the changes to the case management system, progressed within current budget constraints, which are designed to improve complaint handling efficiencies.

The Committee congratulates the Ombudsman on conducting 162 training sessions and notes that 2,527 officers participated in those sessions, an increase from the 2009-2010 reporting period. The Committee encourages the Ombudsman to remain mindful of the needs of constituents beyond the South-East corner of Queensland and encourages the office to continue to pursue regional visits and training programs.

The Committee also congratulates the Ombudsman on his approach in following up the implementation of his recommendations, and remains committed to monitoring and supporting the Ombudsman in this regard.

The Committee notes that three major investigations were published in 2010-2011: an audit of local government complaints management systems; a report into noise from night-time surface work on the Airport Link project; and a two-part report into systemic issues arising from the 2002 death of Elise Neville.

The Committee congratulates the office on these inquiries and notes the publication of the following reports:

- The Airport Link Project Report, An investigation into complaints about night-time surface work, June 2011;
- Complaints Matter, A review of the complaints management systems of local councils in Queensland, September 2010; and
- The Neville Report, An update on the implementation of recommendations from an investigation into the adequacy of the health complaint mechanisms in Queensland, and other systemic issues identified as a result of the death of Elise Neville aged 10 years, June 2011.

Recommendation 1

The House note this Report.

¹⁹ Queensland Ombudsman, *Annual Report 2010-2011*, page 139.

Appendix A

Written Responses to Questions on Notice



Your ref: 11.9.1.4.2012
Our ref: CSU/00001

10 February 2012

Confidential

Ms Barbara Stone MP
Chair
Legal Affairs and Police, Corrective Services and
Emergency Services Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Ms Stone

Response to Questions on Notice

I refer to your letter dated 1 February 2012 concerning the Premier's intention to seek the dissolution of Parliament on 19 February.

As a result of that occurring, I note that it is no longer necessary for me to meet with the Committee on 14 March.

However, as requested, I attach a copy of my responses to the Committee's questions on notice.

I look forward to meeting with the Committee in due course after the upcoming State election.

Yours faithfully


Phil Clarke
Queensland Ombudsman

Enc

Review of the performance of the Queensland Ombudsman
Response to questions on notice - February 2012

Complaints

1. Please provide the Committee with the complaint statistics from 1 July 2010 to 30 June 2011, and 1 July 2011 to 31 December 2011, including:

a) Complaints received and finalised

| | Complaints received | Complaints finalised |
|----------------------------|---------------------|----------------------|
| 1 July 2010 – 30 June 2011 | 8,354 | 8,278 |
| 1 July 2011 – 31 Dec 2011 | 4,055 | 4,135 |
| 1 July 2010 – 31 Dec 2010 | 4,249 | 4,155 |

b) Proportion of cases finalised within 12 months of lodgement

| | Complaints finalised within 12 months |
|----------------------------|---------------------------------------|
| 1 July 2010 – 30 June 2011 | 99% |
| 1 July 2011 – 31 Dec 2011 | 99% |
| 1 July 2010 – 31 Dec 2010 | 99% |

c) Proportion of cases more than 12 months old

| | Cases > 12 months old |
|--------------------|-----------------------|
| As at 30 June 2011 | 1% |
| As at 31 Dec 2011 | 11% |
| As at 31 Dec 2010 | 12% |

d) Age of outstanding complaints more than 12 months old

| | Age of outstanding complaints > 12 months |
|----------------------------|--|
| 1 July 2010 – 30 June 2011 | <u>1 outstanding complaint > 12 months</u> 1 complaint: 394 days |
| 1 July 2011 – 31 Dec 2011 | <u>33 outstanding complaints > 12 months</u> 5 complaints: 12 months 12 complaints: 13 months 9 complaints: 14 months 7 complaints: 16 months |
| 1 July 2010 – 31 Dec 2010 | 48 outstanding complaints > 12 months |

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e) Average time taken to deal with complaints

| | < 10 days | < 30 days | < 12 months |
|----------------------------|-----------|-----------|-------------|
| 1 July 2010 – 30 June 2011 | 69% | 84% | 99% |
| 1 July 2011 – 31 Dec 2011 | 62% | 80% | 99% |
| 1 July 2010 – 31 Dec 2010 | 76% | 89% | 99% |

f) Proportion of complaints resolved informally

| | Complaints resolved informally |
|----------------------------|--------------------------------|
| 1 July 2010 – 30 June 2011 | 99% |
| 1 July 2011 – 31 Dec 2011 | 99% |
| 1 July 2010 – 31 Dec 2010 | 99% |

g) Proportion of cases where early intervention occurred

| | Cases where early intervention occurred |
|----------------------------|---|
| 1 July 2010 – 30 June 2011 | 97% |
| 1 July 2011 – 31 Dec 2011 | 95% |
| 1 July 2010 – 31 Dec 2010 | 98% |

h) Proportion of complaints where maladministration was established

| | Complaints where allegations of maladministration were investigated | Complaints where maladministration was established | % |
|----------------------------|---|--|----|
| 1 July 2010 - 30 June 2011 | 1,065 | 54 | 5% |
| 1 July 2011 – 31 Dec 2011 | 362 | 15 | 4% |
| 1 July 2010 – 31 Dec 2010 | 472 | 14 | 3% |

i) Number of recommendations for improvements in public administration

| | Investigative recommendations | Audit recommendations | Total |
|-----------|-------------------------------|-----------------------|-------|
| 2010-2011 | 175 | 72 | 247 |

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Implementation of recommendations*

| | Recommendations accepted by agency | Recommendations rejected by agency | Pending | Total |
|--------------------|---------------------------------------|---------------------------------------|---------|-------|
| As at 30 June 2011 | 147 | 2 | 98 | 247 |
| As at 31 Dec 2011 | 206 | 2 | 39 | 247 |

*For further information on recommendations, please see Q10.

j) Proportion of complaints related to local government matters

| | Complaints about local government |
|----------------------------|-----------------------------------|
| 1 July 2010 – 30 June 2011 | 25% |
| 1 July 2011 – 31 Dec 2011 | 22% |
| 1 July 2010 – 31 Dec 2010 | 26% |

2. How old is the one complaint open at 30 June 2011 (page 12 of Annual Report 2011-12)? Is it now finalised, if not why?

The one complaint open at close of business on 30 June 2011 was finalised on 15 July 2011. The case was opened on 17 June 2010. It was 379 days old as at 30 June 2011 and 394 days old at the date of closure.

3. The Committee notes:

- a 4% decrease in complaints received during 2010-11 (page 19 of Annual Report 2010-11)
- an increase in the use of preliminary inquiries to finalise complaints without complex intervention during 2010-11 (page 23 of Annual Report 2010-11)
- advice from the Ombudsman to the Law, Justice and Safety Committee in February 2011 that the Office had caught up with the backlog of complaints received during the time the Office was evacuated due to the floods (Law, Justice and Safety Committee, Report No.80, Meeting with the Ombudsman 18 February 2011, Appendix C, p1)

In light of the above points, please explain the increase in complaints carried forward from 295 in 2009-10 to 371 in 2010-11 (page 16 Annual Report 2010-11).

My comments to the Law, Justice and Safety Committee in February 2011 related to the registration and assessment of the backlog of complaints as a result of the flooding of our offices in January 2011. As is normal, a number of these cases would have taken some time to finalise and eventually close. The tracking of individual cases from this backlog group requires manual counting and would be time consuming.

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The table below details the complaints carried forward each year as a proportion of the total complaints handled each year. While the number of cases carried forward in 2010-11 did increase from the previous year, this increase does not represent a material difference in comparison to the variation in complaints carried forward over the previous five years.

| | FY 05-06 | FY 06-07 | FY 07-08 | FY 08-09 | FY 09-10 | FY 10-11 |
|------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Cases handled | 7,684 | 7,463 | 7,501 | 7,760 | 9,029 | 8,649 |
| Cases carried forward | 379 | 329 | 300 | 312 | 295 | 371 |
| % | 4.93 | 4.41 | 4.00 | 4.02 | 3.27 | 4.29 |

4. Have any complaints relating to the natural disasters of late 2010 and early 2011 led to any findings of maladministration or any concerns of systemic failures?

Complaints were received regarding the actions and decisions of state government agencies and local councils following the natural disasters of late 2010 and early 2011.

Complaints related to a wide range of matters, including:

- eligibility, processing and payment of state financial assistance
- emergency service communication and response activities
- restoration of services
- road damage and property access issues.

No complaint resulted in a finding of maladministration against a state government agency or local council, or led to the identification of any systemic failures.

5. Page 12 of the Annual Report 2010-11 states that there was a positive outcome for 44% of complainants. Please explain what constitutes a 'positive outcome' for a complainant. What was the outcome for the remaining 56% of complainants?

A 'positive outcome' is defined as when the agency agrees to address the complaint (in full or in part) or when the complainant is provided with information obtained from the agency that satisfactorily explains the decision.

In 2010-11, of the 1,065 investigations completed, a 'positive outcome' was achieved in 473 cases (44% of complaints).

In the remaining cases:

- maladministration was found in 54 (5%) of total cases investigated (namely, the Ombudsman concluded that the agency's decision or action

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was unreasonable, unjust, oppressive or improperly discriminatory, or reasons were inadequately provided); and

- no maladministration was found in 538 (51%) of total cases investigated (namely, the Ombudsman concluded that the agency's action or decision was reasonable).

Where maladministration is established, recommendations are made by the Ombudsman to address the issue/s.

Investigations

6. How many own-motion investigations have been completed since 1 July 2010 and how many are ongoing? For each investigation please advise how it was selected and how long it took.

Since 1 July 2010, three own-motion investigations have been completed.

- a) Complaints Matter:** This was a review of the complaints management systems of local councils in Queensland, and was tabled in Parliament on 15 September 2010. This investigation and the subsequent report were part of the Complaints Management Project, a long-term project to help agencies improve the way they manage complaints. During the investigation, an audit of the complaints management systems of 57 local councils was completed to assess compliance with the general complaints process requirements in the *Local Government Act 1993*. The audit, the analysis of the audit findings and liaison with local councils was completed within 18 months.
- b) The Neville Report and Neville Report Update:** These two reports were published with the authority of the Speaker on 30 June 2011. The original Neville Report (2006) considered the adequacy of health complaint mechanisms in Queensland and other systemic issues identified as a result of the death of Elise Neville, aged 10 years. The original report was provided to the Office of the Queensland Coroner in accordance with s.57A (2) of the *Ombudsman Act 2001*, to assist with the 2008 inquest into Elise Neville's death. Following the inquest, the Coroner made a number of recommendations to various state government agencies, including that the original Neville Report be published. The Neville Report Update examined the implementation of a number of recommendations arising from the earlier investigation and the Coroner's findings. The Neville Report Update was initiated in February 2011 and completed within five months.
- c) The Hendra Virus Report:** This report was tabled in Parliament on 3 November 2011. This own-motion investigation arose out of a routine regulatory audit of the then Department of Primary Industries and Fisheries in 2009. As a result of information received during that audit, the then Ombudsman decided to examine the Queensland government's response to a number of Hendra virus incidents that had occurred between 2006 and 2009. This investigation considered the responses of a number of agencies, including the Department of Employment, Economic Development and Innovation, the Department of Justice and Attorney-General, Queensland Health, the

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Department of Environment and Resource Management, the Veterinary Surgeons Board and Queensland Treasury.

This was the largest single investigation conducted by the Queensland Ombudsman's Office since its inception in 1974 and involved six separate government agencies, more than 50 witness interviews and the examination of tens of thousands of documents. A draft report was delivered to the agencies in early April 2011 and a significant period of time was required for all of these agencies to respond to the proposed report. Some agencies sought detailed legal advice in preparing their responses. The investigation was initiated in August 2009 and completed in just over two years.

There are currently four own-motion investigations underway. It is anticipated that these investigations will be progressively concluded during 2012.

All investigative reports tabled in Parliament are available at www.ombudsman.qld.gov.au.

7. Have any significant systemic issues emerged as a result of recent investigations of administrative actions?

A number of significant systemic issues have emerged as a result of recent investigations.

- a) Ex gratia payments:** It became clear during the Hendra investigation that there was a need for a whole-of-government position on ex gratia payments.

The Ombudsman's investigation indicated that:

- there was confusion among agency officers about whether conditions could be attached to ex gratia payments
- there was a concern that if the payment became public knowledge, it would set a precedent requiring further payments
- agencies believed it would be inappropriate to have any guidelines for ex gratia payments because such payments were seen as being 'outside' normal departmental processes
- there was a concern that creating a specific, publicly available framework for discretionary payments would result in the government being overwhelmed by claims for ex gratia payments.

The Ombudsman made the following recommendations:

- a) The Under Treasurer should consider the feasibility of the Queensland Government developing a discretionary payments framework that provides for a range of payments to be made in different circumstances.
- b) The Under Treasurer should prepare a submission to government in this regard.
- c) Until such time as a discretionary payments framework is in force in Queensland, the Under Treasurer should issue guidance to all Queensland Government agencies on:

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- the situations in which discretionary payments may be appropriate, such as the principles relevant to determining whether a discretionary payment is appropriate
- how requests for discretionary payments should be received and processed
- the appropriate amount of discretionary payments and how such amounts can be calculated
- how to determine whether conditions should be attached to discretionary payments and examples of appropriate conditions
- common standards of service or administration against which claims of maladministration can be measured by an agency.

We are currently following up the implementation of these recommendations with Treasury.

b) The parental relinquishment of care for children with disabilities: In Queensland parents who require extended or full-time care for a child with a disability are required to relinquish custody of their child to the Department of Communities under a Child Protection Order. In the complaint that triggered our investigation, the mother of a disabled child, who was a sole parent, argued that:

- she has always provided a loving and caring environment for the child
- now, in the child's teenage years, he has become physically difficult to handle due to his size and will.

These arguments were not disputed by the Department. Yet the only way for her to secure appropriate out-of-home care for her son was to declare that her son was in danger of being abandoned so that a Child Protection Order could be granted by the Children's Court.

Following investigation, an opinion was formed that the practice of providing extended or full-time out-of-home care to certain disabled children by way of a Child Protection Order because the Disability Services Act does not have a clearly defined mandate to provide extended or full-time out-of-home care for children with a disability is unreasonable (see s.49 (2) (c) of the Ombudsman Act).

It is unreasonable because:

- the Child Protection Act facilitates 'protection' for children. In cases such as the complaint described above, the child does not require 'protection'. Instead, the child requires 'care'
- for many parents of a disabled child, the thought of declaring that they are in danger of abandoning their children and their child's case being put before the Children's Court may cause them severe and unnecessary emotional trauma.

A recommendation was made that the practice of providing extended or full-time out of home care to certain disabled children by way of a Child Protection Order under the Child Protection Act be reviewed at the earliest opportunity.

The Department has accepted this recommendation and advised that it is currently reviewing the legislative and policy frameworks that underpin provision of out-of-home care for children with a disability.

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- c) **Record-keeping:** A number of investigations have illustrated that record-keeping remains a significant problem for agencies. Examples include agencies failing to make appropriate records of significant decisions and having poor record-keeping systems. Recommendations have been made to agencies in most investigations about improvements to record-keeping practices.
- d) **Bunk bed safety standards:** This issue arose in the 2006 Neville Report and 2011 Neville Report Update. Elise Neville's family was staying in a holiday unit in 2002 when she fell from a bunk bed that was not fitted with a guard rail. The bunk bed predated the mandatory safety standard, which only applied to new bunk beds. Recommendations were made in the 2006 Neville Report that this anomaly be addressed. A regulatory impact statement process was subsequently undertaken by the Office of Fair Trading. We were advised in December 2011 that the consultation and regulatory assessment process had been completed. A new regulation requiring all bunk beds to meet minimum safety standards has been gazetted. Accommodation providers have until 21 October 2013 to ensure bunk beds are compliant.
- e) **Complaints management:** The Complaints Matter Report, which focused on the complaints management systems of local councils in Queensland, was tabled in Parliament in September 2010. The review revealed that, with the exception of one council, all councils had approved a general complaints process (GCP). Forty-four councils had adopted fully or with minor amendment the model GCP developed and recommended by the former Department of Local Government, Planning, Sport and Recreation. Thirteen councils had developed their own GCPs.

Our review also found that:

- almost half of the GCPs failed to comply in one or more significant respect with the minimum requirements under the Local Government Act
- the GCPs of the 12 councils that had developed their own GCP had limited compliance with other best practice indicators
- approximately half of the council websites audited provided a limited level of visibility and accessibility to GCP information
- councils' annual reports revealed limited compliance with the requirement to report on complaints resolved through their GCPs
- very few complaints were reported by councils as having been resolved through their GCPs. In 2008 and 2009, only 138 and 165 complaints were reported by councils as having been resolved under this process. It was difficult to accept that many of the city and new regional councils could have received so few complaints when this Office received nearly 2,000 complaints about councils in each of those years.

The legislatively mandated scheme for dealing with complaints was ineffectual because, although councils have adopted GCPs, they did not use that process to deal with the vast majority of complaints they receive. As a result, there was little consistency in how complaints are dealt with and recorded.

In light of the problems the review identified with the operation of council GCPs, submissions were made to the Department of Infrastructure and Planning on the draft Local Government (Operations) Regulation 2010 and draft Local Government

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(Finance, Plans and Reporting) Regulation 2010 which contained new requirements for GCPs.

The then Ombudsman recommended that the new complaints process requirements be strengthened and made more flexible to ensure that all complaints are dealt with under the complaints management process, in accordance with best practice complaints management principles. It was also recommended that councils be required to report on the performance of their complaints process in their annual reports.

These recommendations were incorporated into the new regulations, which commenced on 1 July 2010. Councils had until 30 June 2011 to implement a complaints management process that complies with the new regulations.

- f) **Airport Link:** In November 2008, construction began in Brisbane on a \$4.8 billion infrastructure project known as the Airport Link Project. The project consists of a toll road, busway and roundabout upgrade.

Following a complaint about the impact of construction from the Kalinga Woolloowin Residents Association, the former Ombudsman commenced an investigation into noise from night-time surface work on the Airport Link project. The principal objective was to investigate the administrative actions of the government agencies involved in the project:

- the Coordinator-General
- the former Department of Infrastructure and Planning
- the Department of Environment and Resource Management (DERM)
- City North Infrastructure.

A report on the investigation was tabled in Parliament on 27 June 2011.

Based on the investigation, I found failures to:

- make local residents aware that surface work could take place 24 hours a day, 7 days a week
- define the level of noise permitted
- properly monitor and regulate noise from night-time surface work.

I made 24 recommendations to improve practices and procedures, including:

- proponents of significant projects clearly and unambiguously communicate to the community about the likely extent and duration of night-time surface work in any Environmental Impact Statement
- the agencies assess their capacity, in terms of human and technical resources, to effectively discharge their regulatory responsibilities for significant projects, such as the Airport Link Project
- for future significant projects, written agreements are put in place between agencies to improve the coordination of regulatory responsibilities.

We are currently following up the implementation of these recommendations with the Coordinator-General and DERM.

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- g) Regulation of light trailers:** In my 2010-2011 Annual Report to Parliament I reported on a case which showed systemic failures in relation to the regulation of light trailers in Queensland (Case study 33 at page 65).

This investigation revealed that a non-compliant and structurally unsafe trailer was able to be manufactured and registered in Queensland through fraudulent means.

DTMR's current practice of registering light trailers without checks or inspections has allowed manufacturers and owners to become complacent. Unsafe, faulty or overloaded trailers are capable of causing a serious road accident. The current processes are failing the public and do not incorporate a reasonable regime of checks and balances. They need to be reviewed and tightened in the interests of public safety and consumer protection.

I concluded that there should be a review of the registration of light trailers. I made 12 recommendations, including that DTMR:

- seek a legislative basis to require that the tare weight of light trailers is stated as part of the registration process
- introduce a requirement that all people seeking to register light trailers produce a current safety certificate and/or a recent weighbridge certificate for their trailer
- where there is inaccurate information on a vehicle plate, direct the owner or manufacturer to replace the plate within 30 days
- clarify the chief executive's powers and obligations to cancel the registration of vehicles when there is evidence that the vehicle does not conform with legal requirements.

We are currently following up the implementation of these recommendations with DTMR, including DTMR's liaison on the issue with the federal Department of Infrastructure, Transport, Regional Development and Local Government.

- 8. Has the Office finalised the major investigation stemming from a complaint (page 22 Annual Report 2010-11)? If so, provide details; if not, please advise the stage that the investigation has reached.**

This investigation related to the parental relinquishment of care for children with disabilities and was finalised on 30 June 2011. This investigation is discussed in response to Question 7 – see 7b.

- 9. In answer to question on notice 6 to the Law, Justice and Safety Committee, Report no. 80, Meeting with the Ombudsman February 2011, the Office advised that it was undertaking the University CMP audit. Please advise of the progress on this investigation since that time, and the costs to date.**

In 2010-2011, the Office developed a self-audit toolkit for seven universities: Central Queensland University, Griffith University, James Cook University, Queensland University of Technology, University of the Sunshine Coast, University of Queensland and University of Southern Queensland.

The self-audit questionnaire was designed as a starting point to gather more information about the complaint systems in place at Queensland universities. It

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involved a review of each university's complaint management policies and procedures and the visibility and accessibility of complaints information on their websites.

The universities completed the self-audit in March 2011. The responses are being evaluated and reviews undertaken of each university's website for visibility and access, responsiveness and effectiveness.

The audit has been undertaken by senior officers as part of a program of tasks. Given that it has not been a full-time activity, it is difficult to provide an accurate assessment of costs for one particular project or investigation for this office.

Ombudsman recommendations

- 10. The committee notes that the number of recommendations accepted by agencies only relates to responses received by 30 June 2011. How many recommendations were made in 2010-11, how many recommendations were accepted, and how many were outstanding at 1 July 2011? What are these figures to 31 December 2011?**

Number of recommendations made in 2010-11

| | Investigative recommendations | Audit recommendations | Total |
|------------------|--|----------------------------------|--------------|
| 2010-2011 | 175 | 72 | 247 |

Implementation of recommendations

| | Recommendations accepted by agency | Recommendations rejected by agency | Pending | Total |
|---------------------------|---|---|----------------|--------------|
| As at 30 June 2011 | 147 | 2 | 98 | 247 |
| As at 31 Dec 2011 | 206 | 2 | 39 | 247 |
| As at 7 Feb 2012 | 239 | 2 | 6 | 247 |

In 2010-11, the Ombudsman made a total of 247 recommendations – this included 175 made in the course of investigations and 72 relating to administrative audits. As at 30 June 2011, 147 recommendations were accepted by the relevant agencies and two were rejected. As at 1 July 2011, there were still 98 recommendations outstanding.

As at 31 December 2011, 39 recommendations were still pending a response from the relevant agencies.

As at 7 February 2012, six recommendations were still pending a response from agencies. These outstanding recommendations relate to three investigations. Three recommendations made to a university about systemic improvements to policy, record-keeping and training are still pending a response. One recommendation made to the Coordinator-General as part of a public report into the Airport Link Project is still pending a response. Two recommendations made to the Department

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of Communities (Child Safety) relate to proposed remedial action and remain outstanding.

My officers are continuing to engage with the relevant agencies to obtain their final responses to outstanding recommendations.

Office resourcing

11. Please update the Committee on the staffing changes in 2010-11, and between 1 July 2011 and 31 December 2011.

In July 2011, former Deputy Ombudsman Forbes Smith was appointed Energy and Water Ombudsman. Andrew Brown was subsequently appointed Deputy Ombudsman in October 2011.

There have been no other significant staffing changes between 1 July 2011 and 31 December 2011. Vacancies have been recruited and filled as necessary.

12. Do you envisage any staffing issues for the remainder of 2011-12? If so, how are these issues being managed?

The current strategic review of the Office being undertaken by Mr Henry Smerdon may make recommendations which impact on staffing. These could include both additional staffing, subject to State budget processes, and internal adjustments to resource priority areas of activity. Specific impacts will only be clear when the report is received.

13. At page 4 of its report, Meeting with the Ombudsman – 18 February 2011, the Law, Justice and Safety Committee of the 53rd Parliament commented that it was concerned that due to the advice from the Ombudsman that the Office was working at capacity that the introduction of the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007 (the National Code) would adversely impact on the resources of the Office and its ability to carry out its other functions. What impacts has the introduction of the National Code had upon the Office and how has the Office managed those impacts?

Despite the establishment of an Overseas Students Ombudsman, most publicly-funded Queensland universities continue to refer dissatisfied complainants to the Ombudsman as their nominated external review body.

Since the introduction of the National Code, the number of complaints about universities has doubled.

However, despite the relative increase in complaint numbers, the Queensland Ombudsman received 270 complaints about universities last year – representing just 3% of all complaints received in 2010-11.

As at 30 January 2012, we had received 182 complaints about universities.

14. How does referral of the large number of contacts affect the workload of the Office (page 19 Annual Report 2010-11 – 55% of all contact to the Office is referred)? What work is the Office undertaking with those agencies to which the majority of the contacts are referred to reduce the impact on the Office in future?

The Queensland Ombudsman's Office is a small agency with limited resources. The increasing number of referrals – due to premature and out of jurisdiction complaints – places a heavy burden on our frontline enquiry and complaint officers. The Queensland Ombudsman website, online complaint form and telephone information are being upgraded to improve their effectiveness as “self-referral” tools. It is hoped that these changes will result in a lower number of referrals being handled by officers. The *It's OK to Complain* website is a ‘one stop shop’ designed to help Queenslanders identify the best agency to deal with their complaint. This website is run in partnership with Queensland's various complaint agencies and acts as an effective online referral tool.

The current strategic review of the Office is also expected to make recommendations about improved handling of referrals. Once these recommendations are clear, further changes to complaint management systems are likely.

The Office works with state government agencies, councils and universities to improve their complaints management processes. This is achieved through regular audits, training sessions and resources.

Ombudsman officers also meet regularly with agencies that generate a high number of complaints and have established formal liaison agreements with several agencies. These arrangements facilitate preliminary inquiries and investigations, which enable more effective and efficient resolution of complaints. Ombudsman officers also meet regularly with their counterparts in other independent complaint agencies to discuss issues of mutual interest, including referrals.

Improvements

15. Please advise of the implemented improvements identified in the Complainant Satisfaction Survey (page 13 Annual Report 2010-11)

The Complainant Satisfaction Survey is designed to identify improvements in our delivery and service processes.

The improvements implemented from the 2010 Complainant Satisfaction Survey include:

- changes to Office procedures to reduce the number of officers who deal with a complainant to promote an on-going relationship and avoid unnecessary rework on case details
- improved frequency of contact with complainants on long cases, with less formality and greater availability of staff
- review of template letters to reduce complexity and improve readability for complainants

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- greater clarity of reasons for decisions to explain Ombudsman actions more effectively
- major review of the Ombudsman website – project has been documented and procurement of contractors is progressing.

16. How has the Office updated the case management system (page 13 Annual Report 2010-11)? What improvements has this update had on the management of complaints?

Throughout 2010-11, routine updates were made to ensure that Resolve remained an effective case management tool. Changes included:

- updating agency structures within Resolve to mirror departments' complaints management processes, enabling direct comparison of complaint numbers
- updating university structures within Resolve, enabling more accurate and detailed entries about university complaints
- using Resolve to manage internal administrative files, enabling improved record-keeping practices.

In 2010-11, preparatory work was also undertaken to support an upgrade to the latest version of the case management system, Resolve 8.

The Office installed Resolve 8 during November 2011.

The new upgrades have enhanced the ability of the system to support efficient case management and improved the flexibility and speed of reporting.

Budget

17. Are there are significant budgetary matters you wish to raise with the Committee?

The following routine budget discussions are underway:

- funding for enterprise bargaining increases
- funding to cover rent increases of 4.5% over the next four years. A collocated agency budget submission has been made by the Department of Public Works (DPW) in the following amounts:

| Timeframe | Cost |
|-----------|------------|
| 2012-13 | \$ 32,000 |
| 2013-14 | \$ 66,000 |
| 2014-15 | \$ 101,000 |
| 2015-16 | \$ 122,000 |

Appendix B

Written Response to Questions taken on Notice at the Meeting



Our ref: CSU/00001

20 June 2012



Mr Steven Finnimore
Acting Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Finnimore

I refer to my appearance today before the Legal Affairs and Community Safety Committee, during which I undertook to provide more detail in regard to regional delivery of training programs by my office in response to a question by Mr Watts.

For the Committee's information, please find attached a summary of the visit, session, location and participant numbers for regional training delivery this year (to date).

In addition, in regard to Question-on-notice 7(b), I confirm that the latest advice received from the Department of Communities was on 25 May 2012. This advice confirmed that drafting instructions for necessary legislative amendments were being prepared.

Finally, in answer to a question from Mr Byrne, I wish to clarify that there are 7.4 FTE temporary employees within my office (8 staff), two of which will finish on 30 June 2012. Of these two, one has been with the office for six months and the other is returning to the Crime and Misconduct Commission at his own request after a secondment to my office.

I trust this answers the Committee's questions.

Yours sincerely

A handwritten signature in black ink, appearing to read "Phil Clarke".

Phil Clarke
Queensland Ombudsman

Enc

**Summary of regional training sessions
1 July 2011 to 20 June 2012**

| Region | Session | Participant numbers | Visit number |
|----------------|--|----------------------------|---------------------|
| Cairns | Good Decisions Training | 13 | 1 |
| Cairns | Good Decisions Training | 24 | 1 |
| Cairns | Complaints Management Frontline | 24 | 1 |
| Cairns | Complaints Management Frontline | 22 | 1 |
| Gold Coast | Good Decisions Training | 15 | 2 |
| Rockhampton | Good Decisions Training | 30 | 3 |
| Toowoomba | Good Decisions Training | 16 | 4 |
| Toowoomba | Good Decisions Training | 24 | 4 |
| Toowoomba | Complaints Management Frontline | 9 | 4 |
| Toowoomba | Your Ethical Compass | 6 | 4 |
| Cairns | Good Decisions Training | 30 | 5 |
| Cairns | Complaints Management Frontline | 8 | 6 |
| Cairns | Good Decisions Training | 16 | 6 |
| Cairns | Good Decisions Training | 19 | 6 |
| Cairns | Complaints Management Frontline | 26 | 6 |
| Townsville | Good Decisions Training | 18 | 7 |
| Townsville | Complaints Management Frontline | 18 | 7 |
| Toowoomba | Your Ethical Compass | 6 | 8 |
| Longreach | Complaints Management Frontline | 20 | 9 |
| Longreach | Good Decisions Training | 16 | 9 |
| Longreach | Administrative Investigations Training | 8 | 9 |
| Gold Coast | Good Decisions Training | 22 | 10 |
| Nambour | Good Decisions Training | 16 | 11 |
| Kingaroy | Good Decisions Training | 21 | 12 |
| Townsville | Complaints Management Internal Review | 23 | 13 |
| Townsville | Your Ethical Compass | 20 | 13 |
| Townsville | Your Ethical Compass | 9 | 13 |
| Rockhampton | Complaints Management Internal Review | 20 | 13 |
| Tablelands | Just Scenarios | 31 | 14 |
| Tablelands | Just Scenarios | 19 | 14 |
| Tablelands | Just Scenarios | 30 | 14 |
| Tablelands | Just Scenarios | 19 | 14 |
| Cairns | Good Decisions Training | 13 | 15 |
| Cairns | Good Decisions Training | 19 | 15 |
| Mount Isa | Good Decisions Training | 21 | 16 |
| Mount Isa | Complaints Management Internal Review | 10 | 16 |
| Mount Isa | Your Ethical Compass | 9 | 16 |
| Maryborough | Good Decisions Training | 11 | 17 |
| Sunshine Coast | Good Decisions Training | 15 | 18 |
| Sunshine Coast | Your Ethical Compass | 29 | 19 |
| Townsville | Good Decisions Training | 27 | 20 |
| Townsville | Good Decisions Training | 6 | 20 |
| Rockhampton | Good Decisions Training | 12 | 20 |

| | | | |
|--------------|-------------------------|------------|----|
| Gold Coast | Good Decisions Training | 26 | 21 |
| Toowoomba | Good Decisions Training | 11 | 22 |
| Gold Coast | Good Decisions Training | 17 | 23 |
| TOTAL | 46 sessions | 824 | |

We did 23 visits to regional areas where we delivered 46 sessions and had 824 participants so far this financial year.

We have one further session in Toowoomba to be delivered on 26 June 2012.

Appendix C

Transcript of Meeting with the Office of the Queensland Ombudsman



LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Members present:

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

Staff present:

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

MEETING WITH QUEENSLAND OMBUDSMAN

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 20 JUNE 2012

Brisbane

WEDNESDAY, 20 JUNE 2012

Committee met at 9.33 am.

BROWN, Mr Andrew, Deputy Ombudsman

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

CLARKE, Mr Phil, Ombudsman

GUNTON, Ms Diane, Manager, Corporate Services Unit

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr Cantwell: Outside of South-East Queensland?

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

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

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

ACTING CHAIR: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr Clarke: Is temporary.

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

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

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

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

Mr BYRNE: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr Clarke: That is correct, yes.

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

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

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

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

Mr Cantwell: Absolutely.

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

Mr CHOAT: Like a follow-up.

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

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

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

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

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

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

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

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

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

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

Mr CHOAT: No.

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

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

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

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

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

Mr Clarke: No.

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

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

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

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

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

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

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

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

Committee adjourned at 10.30 am.