



LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Members present:

Mr PS Russo MP (Chair)
Mr JP Lister MP
Mr SSJ Andrew MP
Mr JJ McDonald MP
Mrs MF McMahon MP
Ms CP McMillan MP

Staff present:

Ms R Easten (Committee Secretary)
Ms K Longworth (Assistant Committee Secretary)
Ms M Westcott (Assistant Committee Secretary)

PUBLIC MEETING—OFFICE OF THE OMBUDSMAN

TRANSCRIPT OF PROCEEDINGS

MONDAY, 30 APRIL 2018

Brisbane

MONDAY, 30 APRIL 2018

The committee met at 9.30 am.

CHAIR: Good morning. I declare this public meeting open. The purpose of the meeting today is to hear evidence from representatives of the office of the Ombudsman as part of the committee's oversight of the Ombudsman. I am Peter Russo, the member for Toohey and chair of the committee. Other committee members are James Lister MP, member for Southern Downs and deputy chair; Stephen Andrew MP, member for Mirani; Jim McDonald MP, member for Lockyer; Melissa McMahon MP, member for Macalister; and Corrine McMillan MP, member for Mansfield.

Under section 88 of the Parliament of Queensland Act 2001 and schedule 6 of the standing orders, the committee has oversight responsibility for entities including the Ombudsman. Section 89 of the Ombudsman Act 2001 sets out the committee's functions with respect to the Ombudsman. These include monitoring and reviewing the performance of the Ombudsman against its functions; reporting to the Assembly on any matter concerning the Ombudsman and its functions; and examining the Ombudsman's annual report. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath, but I remind them that intentionally misleading the committee is a serious offence. These proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders. In this regard, I remind members of the public that, under the standing orders, the public may be admitted to, or excluded from, the hearing at the discretion of the committee.

The proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and will be subject to my direction at all times. The media rules endorsed by the committee are available from the secretariat if required. All those present today should note that it is possible you might be filmed or photographed during the proceedings.

CLARKE, Mr Phil, Ombudsman, Queensland Ombudsman

RAWLINGS, Mr Graham, Acting Director, Corporate Services Unit, Queensland Ombudsman

ROSEMANN, Ms Louise, Principal Advisor (Public Interest Disclosures), Queensland Ombudsman

WELLARD, Ms Jessica, Acting Deputy Ombudsman, Queensland Ombudsman

CHAIR: Welcome. I invite you to make a short opening statement, after which committee members will have some questions for you. I understand that we are due to finish this hearing at 10.30. Mr Clarke or, for that matter, anyone else, I invite you to make an opening statement.

Mr Clarke: I would like to make some opening remarks if I could. I will keep them brief and try not to go over the material already provided to the committee in responses to questions on notice. However, some of the material does relate. The work of the office during 2016-17 has continued to play a pivotal role in public agencies making fair and accountable decisions. It is a key element of open and transparent public administration. Whether through handling complaints, preparing major reports for tabling in the parliament, training public officers, auditing agency complaints management systems, engaging with community organisations or overseeing public interest disclosures, the office helped to ensure accountability for citizens in their dealings with public agencies.

The office's annual report and responses to the committee's questions on notice outlined the many achievements for 2016-17 and since. The office has now some 44 years in existence and has collaborated with other integrity bodies to ensure that citizens have an effective and comprehensive review framework for public agency decisions and actions. In 2016-17, 10,954 Queenslanders contacted the office for advice, assistance or resolution of their complaint. Matters outside of jurisdiction for the office fell by seven per cent with the implementation of a new recorded message telephone service in November 2015—which does seem a long time ago now—and the launch of a new website and online complaint form in December 2016.

The office continued its major role of investigating complaints about the actions and decisions of state government departments and agencies, including state schools and TAFE colleges, local councils and public universities. In total, 6,958 complaints were finalised during the year. Of these, 69 per cent were finalised within 10 days of receipt and 93 per cent were finalised within 30 days. In 2016-17 the office completed 1,407 investigations, a 26 per cent increase on the previous year, and some comment has been made about that in my responses to questions. Of these, 232 investigations resulted in the total or partial rectification of an issue—16.5 per cent of investigations finalised, up from 209 in the previous year. The office made 306 investigation recommendations, including agreed actions with agencies, of which 100 per cent were accepted by the respective agencies at 30 June 2017. These outcomes underline the vital role played by the office in improving public administration.

We tabled five public reports in 2016-17—the *Patient Travel Subsidy Scheme report*, the *Redland City Council defamation report*, the *Toowoomba Regional Council auction notices report*, the *Management of child safety complaints report* and the *Overcrowding at Brisbane Women's Correctional Centre report*. That is the largest number of public reports tabled in the House for the office, I believe, ever. During the year 105 training sessions were delivered to 1,591 public sector officers, with 42 sessions delivered in regional Queensland. This was a substantial reduction from the 2015-16 financial year caused largely by a reduced demand for courses by public agencies. Training numbers returned to traditional levels during the second half of the year and have continued at very high levels between July and December 2017.

The office continued to provide accessible services for all Queenslanders through the RSP, which is designed to improve awareness of the office and access to its services for communities in regional and remote areas. As part of the program, Ombudsman officers visit correctional centres, deliver training programs and information sessions and attend community meetings to meet with local councillors and members of parliament. Officers visited 26 regional centres in 2016-17. In conjunction with the RSP, the office continued to promote awareness and accessibility by Indigenous and multicultural communities, the homeless and prisoners. Activities included delivering presentations, attending events, meeting with peak agencies and distributing brochures and newsletters.

2016-17 saw an increase of 36 per cent in the number of reported PIDs across all agencies. Of the 798 PIDs reported to the office, 53 per cent were about corrupt conduct. State government departments were the main source of PIDs at 56.3 per cent followed by statutory authorities and local councils, with the balance comprising university or TAFE PIDs, government owned corporations and other Public Service officers. The office continues to work with agencies to ensure that PIDs remain an accessible avenue for reporting wrongdoing across the public sector. My report into the operations of the PID Act was provided to the honourable the Attorney-General and Speaker of the Legislative Assembly in January 2017. The report was tabled in the Legislative Assembly by the Attorney-General on 27 February 2017. The report remains with the government for its consideration.

2017-18 will be a year in which the office builds on its recent achievements to ensure the timely and effective management of complaints and the conduct of investigations. New business systems will support improved performance and better service to citizens. Recent recommendations from reviews in correctional services and youth justice accepted by the Queensland government foreshadow the establishment of a new oversight body or bodies in these areas. Whether or not the Ombudsman's office is asked to take on these new roles, these decisions will have a significant impact on its current inspections regime for prisons and youth detention centres.

There are clear synergies between the role of the Ombudsman and the independent inspections regime of closed environments which could lead to major improvements to both oversight and humane treatment of prisoners and young people in detention. The recent ratification by the Commonwealth government of the United Nations Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, OPCAT, will require each jurisdiction to establish a compliant inspections regime for closed environments and will contribute to a more cohesive and comprehensive regime of corrections oversight. The Ombudsman's office is well placed to make a major contribution in that area.

Finally, and yet again, I wish to acknowledge and thank the Ombudsman's officers for their dedication and hard work. Their experience and capability within the office are the major reasons for its success and for my confidence that we will continue to contribute to enhanced public administration for all Queenslanders. Thank you, Mr Chair.

Mr LISTER: Thank you, Mr Clarke, and thank you to your staff for appearing today. I note that you afforded us a tour of your office and a briefing on site some time ago. I certainly got a lot from that and I am sure we all did, so thank you for that.

Mr Clarke: Pleasure.

Mr LISTER: I note that there is a divergence of views in the community about complaints to the Ombudsman's office concerning the application of a fee. Currently there are no fees associated with accessing your services and some of the submissions before us, in particular one from a Professor Bedford from Bond University, insist that it is in the public interest that there be no fee associated with applications. There are others, including I note the Southern Downs Regional Council, which is my local council, that are concerned about what they describe as the rising cost of dealing with complaints, including their concern about vexatious complaints or persistent complaints over a matter which they feel has been dealt with. What would be the proportion of the complaints that you deal with that you would say are vexatious or malicious or frivolous complaints? Do you think that the application of a fee would make a material difference to the workload that you have in that area?

Mr Clarke: Thank you for the question. I have been aware for some time of the view that there is an aspiration in public agencies to certainly try and deal with a number of what they would regard as trivial, and perhaps not vexatious but vexatious as well, complaints where the agency believes that they have dealt with the issue and that any further dealing with that particular issue or complaint is essentially unnecessary. The committee will be aware from the statistics I have provided in responses to questions on notice that a very significant volume of material that comes to the office by way of complaint is adjudged to be premature for the office to deal with and therefore is referred back, either directly referred which is a service provided by the office or the complainant is asked to go back to the agency and exhaust the complaints management system in that agency.

When we deal with complaints in that space we do not form a view about the complaint. We simply say to the complainant that there is a process issue that has not been dealt with by you adequately—by the complainant adequately—and I believe it is reasonable to give the agency the opportunity to deal with that matter. If the agency is of the view that they have already dealt with the matter, then it is simply open to them to say that and then I will adjudge or Ombudsman officers will adjudge whether that dealing was fair and reasonable. Typically the issues that arise with agencies are where we believe the dealing with the complaint was not reasonable or was not sufficient or complete or robust enough.

The introduction of a fee for the Ombudsman's service—that is, to try to mitigate that demand—is not something that I support. I do not believe that it is a reasonable step to be taken. Where an agency believes that the matter is vexatious, it is certainly open to the agency to argue that point with my office and that is a material consideration in terms of whether we would seek to pursue the matter further. If they believe that it is trivial, in deciding whether to directly refer a matter to an agency the consideration of whether a matter is trivial is part of that decision. Typically, if we form a view that a complaint is trivial, we will not directly refer the matter to the agency. That is not something that we seek to do. We instead would say to the complainant, 'You need to take this back to the agency and seek to resolve the matter.' In that regard, while we are not seeking to distance ourselves from the complaint—because it has been brought to us—we certainly do not wish to add any weight to the complaint and ask the complainant to try to deal with it with the agency concerned.

The argument in favour of a fee is similar to other things that have been tried in the past in similar spaces. In regard to the Crime and Corruption Commission, there was a process put in place to have statutory declarations signed by parties who wish to make a disclosure of corrupt conduct to the commission. I believe that had a similar motive, which was to try to remove trivial or vexatious complaints. At the time I expressed a view in regard to the requirement to have a statutory declaration. I thought that, while there is no doubt that there will be from time to time trivial and there will be even less frequently vexatious complaints, the administration of those matters is a small price to pay for the public at large having a free and available complaints management process about public sector decisions. It really falls upon the agencies—my office and other integrity bodies—to be able to manage their affairs appropriately with the agency concerned so that we deal with those matters as expeditiously as possible and according to their merits.

Mr LISTER: Thank you very much. There are no more questions from me.

Mrs McMAHON: You indicated that the number of reports that have been tabled in the past 12 months was probably the most that your agency had done in that period. Could you give us an indication of some of the upcoming reports that you are working on tabling over the next 12 months?

Mr Clarke: Thank you for the question. We have an in-house process by which we decide major reports, or own-initiative investigations largely. It is discretionary work. The numbers and complexity of reports that are tabled in the House depend upon the complexity of the issues that are being investigated.

Over the next 12 months, I have an interest in mental health and may well do some work in mental health. I also have an interest in disability. I have had a number of pieces of information supplied to my office and complaints that have come into the office about the treatment of people with a disability.

I also have an ongoing responsibility in the child safety space. I have already tabled a report in regard to the management of complaints in child safety. The director-general advised me late last year—I think it was—that all of the recommendations from that report had been implemented. After a period of time in which we let those recommendations and the department's implementation settle a little bit—perhaps 12 months—I would then feel it necessary to do some more work in regard to child safety complaints as well.

Mrs McMAHON: Does that involve an evaluation of that implementation?

Mr Clarke: It will probably involve a more extensive investigation into the administration of child safety complaints. If you recall in the initial report about managing child safety, the complaint was that I was unable to form a view about how comprehensively well child safety complaints were being managed because of the issues that we discovered in that investigation. Assuming that the recommendations made will go some way to improving that situation, I would probably go back to my original intent, which was really to investigate the effectiveness of the management of child safety complaints by the department and the implementation of those recommendations would be included as part of that investigation.

Mrs McMAHON: Thank you. I have no further questions.

Mr ANDREW: Are you saying that complaints about mental health and child safety are trending up? Have you seen more complaints coming into your office? Are you going to address that as the trend increases or the trend has been increasing over time?

Mr Clarke: Thank you for the question. Off the top of my head, I cannot quote the increases or reductions in complaints about mental health issues and child safety issues into the office. Just immediately off the top of my head, I think they are relatively stable. I do not think that I am aware of any particular trends.

In the child safety space, the committee may remember that the Carmody review provided that agencies have the principal responsibility for managing child safety complaints—the respective agencies—with oversight by my office. It is that oversight role that I am seeking to put into place as effectively as I can. It will likely lead to a series of reports over time and working through the issues that arise in each of those reports and other intelligence that I get, whether that comes through the media, the publication of other reports, patterns in other jurisdictions, or whether it comes through the general confidence that I get from monitoring child safety complaints that would lead to either a more intense or less intense oversight role over time.

With regard to mental health, the situation is that, over the past three or four years, I have had an increasing range of information coming into the office about the effectiveness of mental health services. Whether they are for people who are in treatment or people who are not in treatment, that level of information coming into the office both from other agencies, including the Public Advocate and Public Guardian, and the office's own complaints, raises a series of issues for me that I think warrant an investigation.

Whether that investigation will ultimately turn up serious issues in the mental health space is a matter for the investigation. We simply start off with a series of issues and then investigate those issues. The outcome of the investigation is not predetermined, of course.

Mr ANDREW: Thank you.

CHAIR: One of the submissions from Legal Aid Queensland is in relation to section 45 of the Ombudsman Act, which provides that the state or an agency is not entitled to claim privilege in response to a request by the Ombudsman for the production of documents. Often these documents relate to persons who have received legal aid and are subject to legal professional privilege under the legal aid act. Their submission suggests that your office regularly seeks access to such documents. Legal Aid submits that section 45 should be clarified to provide that the legal professional privilege of legally assisted persons is not waived by the provision of the privileged information to your office. Do you have a view on that?

Mr Clarke: Certainly. Thank you very much for the question. I must say that, as far as I am aware, the question of privilege for Ombudsman investigations in Queensland is no different from that of any other jurisdiction. I am subject to correction on that, but I believe that is the circumstance.

I believe that the access by my office to documents related to legal advice to parties to an investigation, particularly agencies—and Legal Aid is an agency for the purposes of the Ombudsman Act—is essential for us to be able to conduct a satisfactory review of those matters. It seems to me that the issue about privilege is whether I take steps that would otherwise harm the privilege for the client or the agency. We are extremely careful in terms of the way we deal with matters when we see what would otherwise be privileged advice to a complainant.

In my time, in terms of the release of privileged information—and again, I would be subject to correction—I do not believe that we have released any material that would be regarded as privileged without the consent of the person to whom that privilege would attach to. I do not believe that we have done that. Whether, in fact, there is an argument at law that, by simply releasing the information to the Ombudsman, that privilege is waived by the agency, equally, I am not aware of any case where that has been argued. I am not sure there is a problem to be dealt with.

CHAIR: If someone lodges a complaint about Legal Aid Queensland or the handling of their matter, what is the process for that person? When they sign their complaint, are they also signing a waiver of privilege at that point?

Mr Clarke: No, they are not.

CHAIR: Do they later sign a document to waive privilege?

Mr Clarke: No. I am not aware that we have ever asked anybody to waive privilege on legal documents. As I said, under the Ombudsman Act there is no privilege for the state in regard to legal advice. I am entitled to see any agency based legal advice. If that legal advice is provided to a complainant by Legal Aid, again, subject to taking my own advice, I believe that that information fits into that same category. In other words, it is a public record. Therefore, I am entitled to receive it. We do not ask anybody to waive their legal privilege in the conduct of an investigation.

For complainants, of course, it may be in their interests to provide the information to us, but that is part of their willing participation in the investigation and providing the evidence upon which probably—most likely—their complaint about Legal Aid is based.

CHAIR: If someone has a complaint about their lawyer, or the organisation, there are other avenues for those people to pursue?

Mr Clarke: Yes.

CHAIR: You have the Legal Services Commission.

Mr Clarke: Yes. Generally, if it is a behaviour issue about a legal practitioner, we would exercise the opportunities available to us under section 23 of the Ombudsman Act to recommend that the complaint be taken to the Legal Services Commission. I also have oversight of the Legal Services Commission, so at the same time we would probably advise the complainant that, if they are not satisfied by the dealings of the Legal Services Commission, they can bring the matter back to the office.

If it is about an administrative decision of Legal Aid—for example, a grant of aid—that is something that we are more likely to take on ourselves, because it is not a behaviour issue, or a professional conduct issue about a particular lawyer.

CHAIR: If it is an application for a grant of assistance that you are looking at, whether they complied with their guidelines or whatever, I do not want to put words in your mouth, but does that create this issue that Legal Aid Queensland is worried about in relation to professional privilege?

Mr Clarke: Without seeing the submissions from Legal Aid it is difficult for me to comment. Perhaps if I can make a general comment: in regard to considering complaints about the grant of aid, much of it comes down to the exercise of discretion. If the matter is straightforward and Legal Aid basically has no capacity to provide legal aid for a particular client group or a particular set of legal proceedings or in a particular court as the case may be, then there is little room for us to exercise any sort of alternative recommended action than Legal Aid would take itself. Legal Aid also has a pretty sound external review process in terms of complaints that are handled by Legal Aid itself. It typically would come down to a situation where Legal Aid has the opportunity to exercise discretion and that is where we would probably end up in a discussion. Most complaint cases with Legal Aid would be about their exercise of discretion and whether they have handled that in a reasonable, fair, open, appropriate way. I might ask Jess if she would care to comment further.

Ms Wellard: That is fairly consistent. A lot of the times the complaints go through the external review process that Legal Aid has so when we look at it it's essentially judging whether that exercise of discretion was sound, whether there is any evidence of maladministration in line with our act.

Mr Clarke: I guess if I could just in summary say what we do not seek to do is change Legal Aid's policy framework et cetera. We really look to see whether they are exercising their discretion in an appropriate way given that their policy framework cannot deal with every set of circumstances that arise that comes through their door.

Ms McMILLAN: I have a question in relation to your anticipated challenges for your office going forward over the next 12 months, including any budget concerns or restraints?

Mr Clarke: Thank you for the question. I have tried to set out some of that in my responses to questions on notice. Generally the case within the office over the last period of time is there has been limited escalation for our non-labour costs, and that would include things like rental and other costs. With the escalation of—again this is over time—comparable salary arrangements across the public sector for which I compete for labour—if I wish to keep good people I have to pay them what they would be paid elsewhere in the public sector—I am currently unable to fully fund the full establishment of the office. I think we are probably able at the moment, in terms of the full cost of the full establishment, to fund about 95 per cent of the full salary costs. That is currently managed through vacancy rates. Some positions are vacant in the office. We have people who are on leave, people who are on secondment to other agencies, those sorts of things. Within that general administrative framework we are able to operate the office within its current budget, but that is effectively at less than full establishment.

CHAIR: This may dovetail into the previous question: could you give an overview of how your office interacts with other integrity agencies like the Auditor-General's office and the Queensland Crime and Corruption Commission?

Mr Clarke: Overall I would say we have a very positive relationship. We participate in a number of engagements typically over a 12-month period. There are specific ongoing arrangements in regard to, for example, local government where the Crime and Corruption Commission, the department, the Auditor-General and my office meet at officer level to look at trends, to look at any emerging issues so that we are all aware, effectively collectively aware, of some of the issues that are going to arise. It also means that we have an opportunity to manage the interface between the offices. For example, there are many matters that would be sent to the Crime and Corruption Commission that might not meet the test of corrupt conduct and the Crime and Corruption Commission is then in a position to make a decision about where to send them. They can either say to the complainant this is not corrupt conduct, does not meet the definition, over to you, or they can choose to send the matter to my office. I am not aware of whether the Crime and Corruption Commission sends matters to the QAO but I suspect that it is open to them to do that. Having a positive relationship with the department in regard to local government matters is also important because the department does exercise a substantial investigative regime in regard to local councils and the minister has an oversight responsibility in regard to local councils and some of that has been in the media recently.

As well as those structured and ongoing arrangements, we also meet on an ad hoc basis very regularly and interact very regularly. Jess in her role as deputy ombudsman would interact with the Crime and Corruption Commission certainly at least monthly and many times weekly about individual matters. Generally that is a very positive arrangement. It really is aimed at two things: one is the efficient operation of the overall oversight system—in other words, where is a matter better dealt with. If it is corrupt conduct, section 38 of the Crime and Corruption Act requires me to refer anything I reasonably believe to be corrupt conduct to the commission. The commission, of course, then has an option to send it back to me if the commission does not want to investigate it themselves, but more likely it will be sent to an agency and then be oversighted by the Crime and Corruption Commission in one of its forms.

There is, I think, a pretty smooth system of operating complaints management across the public sector. The public may not always get it right in terms of going to which agency they choose to take something to but I think the agencies, the Crime and Corruption Commission, my office, the other oversight bodies like the Health Ombudsman, Anti-Discrimination Commission, for example, and the Energy and Water Ombudsman's office, have quite a good system of being able to quickly assess a matter, determine which is the appropriate place and then either to send it to them if the power exists under an act to allow that to occur or to advise the complainant accordingly that they can take the matter to an office. That I think works quite well. I have in the past indicated that I think it works as well as anywhere else in the country in terms of referring matters to and from agencies for them to be dealt with.

In regard to agencies exercising their power, I am an agency for the purposes of the Crime and Corruption Act. If the Crime and Corruption Commission wishes to exercise a power over my office they certainly can do that. The frequency with which that occurs is very low. It is very low. They can do that on two grounds: one is actually a matter about my office. If someone says the Ombudsman is

corrupt, the Crime and Corruption Commission can certainly deal with it and we have a process to deal with that. Alternatively, about other matters which do not relate specifically to my office but which I might have an interest in. There is a complicating factor—not a complicating factor, but many complainants will simply distribute their complaint to a variety of agencies all at the one time, some of which will be MPs' offices, ministers' offices, the Ombudsman, the Crime and Corruption Commission, the Anti-Discrimination Commissioner and anybody else that they think might have an interest in it. Complainants regularly do that, that jurisdictional inclusion—I will not call it jurisdictional shopping—so that everybody knows about the complaint. At that point it generally is a matter that if we are not sure we will get on the telephone with the Crime and Corruption Commission or the other bodies that have been nominated to decide whether we have an interest in it or not and whether we wish to pursue it or not.

CHAIR: I note that you have referred to the expedited merits assessment process as being a significant driver behind the improvement in timeliness. Could you explain, for the committee's benefit, how the merit process works?

Mr Clarke: Yes, I would be happy to do that. Just quickly, the process for a complaint being brought to the office, firstly it goes through two stages of assessment. The first assessment is the initial assessment where we determine whether the complaint is in jurisdiction and is not affected by numbers of the exclusions contained in the Ombudsman Act. In other words it is not out of time, it is not more reasonable that it be dealt with by another body or is not premature—perhaps the biggest category of all. Once it gets through that stage of assessment, that preliminary assessment, it then goes to merits assessment. Merits assessment is the first stage of investigation. We would not generally claim a matter was being investigated until it had passed through the preliminary assessment stage.

The merits assessment stage has potentially multiple players in it. When it is referred to an investigations team, a principal investigator will assess it and then an investigator will be nominated to manage the case. Then they will go through the process. They may find flaws with it. That process can take quite a long time. Typically, it takes at least several weeks. The expedited merits assessment process aimed to cut down on the number of people that touch a complaint, particularly complaints that do not have a great deal of complexity associated with them. What we do is put a principal investigator as the first point of contact with the preliminary assessment officers so that we can form a view very quickly about the complexity of a matter and then the merits of a matter that is not particularly complex.

What assists those decisions is a great deal of experience and in many cases substantial precedent within the office. For example, if I use higher education as an example, a student, particularly an international student, that is potentially being excluded from the university for non-attendance is essentially a very straight forward matter from our point of view. The rules for student exclusion in universities are quite strict and they do not allow a great deal of discretion for the university. Basically what it boils down to is if you do not attend the prescribed share of lectures at a university you are excluded.

For an international student that can have dire consequences, because they may be here on a student visa studying and if they are excluded from the university they may have to go home, back to their country of origin. Depending upon the particular circumstances of those matters, if the facts of the matter are not complex—in other words, the student is not claiming they had some other extenuating circumstance—then essentially the pattern of decisions made by universities is very straight forward. Our review of the decision is very straight forward and we are able to deal with that very quickly and provided we have delegated decision-makers, which principal investigators are delegated at that level in the office, they can deal with the matter very quickly and typically it can be done in a shorter period of time than it would if it were to go through a full investigative process. I hope that has helped you to understand.

Mr McDONALD: I have just a couple of questions. Firstly, I was very impressed with the contemporary office you have. It was great to go on the tour. I had a sense from that tour that you know your business. Can you outline for the committee any trends or patterns that you might have seen over the most recent time and what you might be doing about them?

Mr Clarke: In complaints, do you mean?

Mr McDONALD: Yes, complaints or quantity.

Mr Clarke: When I first arrived in the office about seven years ago, one of the first things I was interested in was whether there was any seasonality in ombudsman work, in other words, are there patterns that need to be managed. The analysis undertaken at that time indicated there was no reliable seasonality and that continues to be the case. Ombudsman complaints typically come in month on month. They do vary from month to month, but it is not predictable in terms of how it is going to vary.

The pattern that we have tried to establish over time is to maximise the available resource to in-jurisdiction complaints, so that we have the best opportunity to deal with the matters that we were established to deal with. For the past seven or eight years, we tried quite hard with out-of-jurisdiction matters to streamline the processes so that we have as little resource as possible in dealing with out-of-jurisdiction matters, but at the same time advising people where best to go or quickly referring matters to where they should be undertaken. We have worked hard to streamline those things.

The majority of complaints into the ombudsman office come from big service delivery agencies or big councils, that is, any agency that has large numbers of interactions with complainants. There is a logic to that and it is upheld by the analysis and the figures. Education, housing, transport: those are the bodies that generate large numbers of complaints on the state agency side. The Brisbane City, the Gold Coast City, Moreton Bay Regional councils, et cetera: those are the big councils that generate the greater number of complaints from councils. That holds true across the years.

There is some variation across years and it does happen. There are events that occur. For example, around about budget time in councils is always an interesting time, because people are aggrieved by the decisions of councils about budgeting, particularly increasing rates, increasing charges. I might say that many of the complaints—I will not say 'most'—that come in about rating decisions by councils and increasing fee decisions by councils are in the expedited merit assessment process, because what we seek to do is establish whether the council followed due process and, provided they have properly fixed that rate or charge, there is little purpose in us investigating further.

Generally with the increasing size of government, the numbers of complaints received are trending upwards in a long slow flat incline. It goes up by a few per cent a year when you take all the seasonality out of it and take the average of averages. That is driven by the size of government increasing, and government is increasing in size in terms of the number of transactions. Whether it is increasing physically in size in terms of the number of employees is not a matter of concern to me; it is the number of transactions that occur in government that drive the work into my office.

There are two other things that drive work into the office. There is the increasing complexity of government and it is becoming more complex over time and then there is the increasing cost of the other jurisdictional options for people. Going to court is becoming more complex and more expensive. As that happens, people are less likely to be able to afford those avenues, so they come to the ombudsman office which, as we discussed earlier, is a free and accessible service.

Mr McDONALD: My other question relates to the *Toowoomba Regional Council auction notices report*. I note at your table 7, page 111, there were three recommendations: two to the council that were implemented and a third to the department that was implemented, but you were not satisfied with the department's response. Could you expand on that that?

Mr Clarke: My dissatisfaction at the department's response was really at the level of control that the department chose to take in that circumstance. I recommended to the department that they exert a higher level of control than they ultimately did. They did respond; I am not saying that the agency did not respond. They certainly did do that, but at the end of the day my view was that they should have had a more hands-on role in that space, which they chose not to do. It is matter of opinion, really.

Mrs McMAHON: When we did the tour, you mentioned your training component that travels around and engages with various departments. I note the annual report talks about cost recovery. Could you tell me how the relationship between your agency and those departments works in terms of the training you provide and the cost recovery aspect of it?

Mr Clarke: The fee setting arrangement for training in the office is really one of cost sharing and demand management. If we ran the programs for free, we would not be able to meet demand; I am absolutely sure of that. My personal view in terms of the relationship with agencies is that there is a shared responsibility on my office to try to improve public administration through skilling and also the agency has a responsibility to assist with the cost of doing that. If we had to run the programs at no cost to agencies, I believe there would be substantially more demand for the training programs and substantially fewer options for the delivery of the programs. I would not be able to deliver as much training, is what it boils down to, within the available resources of the office.

Having said that, the fee that I choose to set for those training programs is substantially below the market value of those programs if they were delivered in a for-profit situation. Again, subject to correction, I think it would be somewhere around half the cost that agencies would pay on a per-day basis for the training program if they chose to go to an alternative supplier. There are alternative suppliers of the training programs that we deliver or the types of training programs that we deliver. Agencies are free to use them. There is no compulsion on agencies to participate in the training programs. They do so, I like to believe, because they get good quality, fair value training programs for their officers.

I believe that this year will be probably the biggest training year the office has had, certainly in my time as Ombudsman. The numbers of training participants this year and the numbers of training programs delivered this financial year will be substantially increased from last year. We may well get into the high 2,000s and maybe even 3,000 participants in training programs this year. They are a really important element of public awareness and skill for officers.

Over time, one of the areas we see of greatest failure, if I could call it that, in decision-making is officers who do not understand the proper administrative decision-making process. They will basically not follow the rules. It is not that they do not understand their policy or their procedure; they do not make public administrative decisions in a robust and sound way so that they stand up to scrutiny. An example might be a failure to give a complainant due process in terms of being able to be heard on a particular complaint or a likely outcome of a complaint; or a failure to take material evidence into account or taking immaterial or unreasonable evidence into account. It is those sorts of things. For example, the good decision training that we run in the office deals with those matters. It deals with them at nowhere near the level you would expect, for example, for a trained lawyer, but they deal with it in a way that hopefully assists agency officers to understand why they have to follow a process to get a decision that will ultimately withstand scrutiny. That is what we seek to achieve.

With the fee-setting process, I am careful to make sure that I do not rely upon it as a substantial revenue source for the office. We do not set the fees because we are trying to earn money off training; we set the fees because we are trying to have it as a reasonably shared process between the agency and the office.

Mrs McMAHON: With the increase in training that your agency is conducting, have you seen a correlation between training in those agencies and departments and how that impacts on the number and quantity of complaints that are coming through?

Mr Clarke: I wish I could say 'yes' to that. We have occasionally asked that question, but the data we have does not support even the analysis, so the truth is that I just do not know.

Ms McMILLAN: On that, is there any correlation between the training and the reduction of 11 per cent in investigations completed?

Mr Clarke: I wish I could say that there was a correlation there, as well. The truth is that the answer is the same as it was to the previous question, which is that there is just not enough data in the office to be able to support that. On the reduction of 11 per cent, we do not really know at this point in time why that is the case apart from the comments that are made in the responses to the question on notice. We do know that the reduction in prisoner complaints will be part of the contribution to that, but the full impact of what is driving that we will not know until the end of the financial year when we can look at all the agencies that have had complaints come in throughout the year.

CHAIR: There being no further questions, I thank you for your attendance today. That concludes our meeting. Thank you very much to the witnesses who have participated today. Thank you to our Hansard reporters. A transcript of these proceedings will be available on the committee's parliamentary web page in due course. I declare this public meeting closed.

The committee adjourned at 10.25 am.