

# **Oversight of the Office of the Queensland Ombudsman**

**Report No. 35, 57th Parliament**  
**Legal Affairs and Safety Committee**  
August 2022

## **Legal Affairs and Safety Committee**

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## Contents

<b>Abbreviations</b>	<b>ii</b>
<b>Chair's foreword</b>	<b>iii</b>
<b>Recommendation</b>	<b>iv</b>
<b>1 Introduction</b>	<b>1</b>
1.1 Role of the committee	1
1.2 Purpose and functions of the Queensland Ombudsman	1
1.3 The committee's responsibilities regarding the Queensland Ombudsman	2
1.4 Strategic review of the Office of the Queensland Ombudsman	3
1.5 The committee's process	3
<b>2 Examination of Annual Report 2020-21</b>	<b>4</b>
2.1 Investigating complaints	4
2.2 Engagement, training and advice	4
2.3 Client satisfaction with the Office's services	5
2.4 Managing complaints about the Office	5
2.5 Internal review of decisions	5
2.6 Financial performance	5
2.7 Public interest disclosures oversight	6
<b>3 Oversight public hearing</b>	<b>7</b>
<b>4 Committee comment</b>	<b>9</b>

## Abbreviations

annual report	The annual report of the Queensland Ombudsman for the 2020-21 financial period tabled on 27 September 2021.
committee	Legal Affairs and Safety Committee
Office	Office of the Queensland Ombudsman
Queensland Ombudsman	Mr Anthony Reilly
Ombudsman Act	<i>Ombudsman Act 2001</i>
PID(s)	public interest disclosure(s)
Standing Orders	Standing Rules and Orders of the Legislative Assembly (Queensland)
public hearing	The public hearing held with the Office on 9 May 2022

## Chair's foreword

The Legal Affairs and Safety Committee has oversight responsibilities for the Queensland Ombudsman. This report provides information regarding the performance by the Queensland Ombudsman of his functions under the *Ombudsman Act 2001*.

The committee reviewed the Queensland Ombudsman's Annual Report 2020-21, which was tabled on 27 September 2021. The committee also held a public hearing with the Queensland Ombudsman, Mr Anthony Reilly, and his staff on 9 May 2022.

On behalf of the committee, I thank Mr Reilly and his staff who assisted the committee throughout the course of its oversight of the Queensland Ombudsman's Office for the 2020-21 financial year period. I also thank the Parliamentary Service staff for their assistance with this report.

I commend this report to the House.



Peter Russo MP

Chair

## Recommendation

### Recommendation

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The committee recommends that the House notes the contents of this report.

## 1 Introduction

### 1.1 Role of the committee

The Legal Affairs and Safety Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 26 November 2020 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly (Standing Orders).<sup>1</sup>

The committee's primary areas of responsibility include:

- Justice and Attorney-General
- Women and the Prevention of Domestic and Family Violence
- Police and Corrective Services
- Fire and Emergency Services.

In addition to the Ombudsman, the committee also has oversight responsibilities for the:

- Electoral Commissioner
- Information Commissioner
- Queensland Family and Child Commission.<sup>2</sup>

### 1.2 Purpose and functions of the Queensland Ombudsman

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

The majority of investigations arise from complaints received, but the Ombudsman also conducts own initiative investigations.<sup>3</sup>

The *Ombudsman Act 2001* (Ombudsman Act) provides the Ombudsman with the following functions:

- (a) to investigate administrative actions of agencies –
  - (i) on reference from the Legislative Assembly or a statutory committee of the Legislative Assembly; or
  - (ii) on a complaint; or
  - (iii) on the Ombudsman's own initiative
- (b) to consider the administrative practices and procedures of an agency whose actions are being investigated and to make recommendations to the agency –
  - (i) about appropriate ways of addressing the effects of inappropriate administrative actions; or
  - (ii) for the improvement of the practices and procedures
- (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
- (d) to provide advice, training, information or other help to agencies, about ways of improving the quality of administrative practices and procedures
- (e) the other functions conferred on the Ombudsman under the Ombudsman Act or any other Act.<sup>4</sup>

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<sup>1</sup> *Parliament of Queensland Act 2001*, section 88 and Standing Orders, s 194.

<sup>2</sup> Standing Orders, schedule 6.

<sup>3</sup> Queensland Ombudsman, *Annual Report 2020-21*, pp 10 and 29.

<sup>4</sup> *Ombudsman Act 2001*, s 12.

The Ombudsman Act also provides that, subject to any other Act or law, the Ombudsman is not subject to direction by any person about the way the Ombudsman performs his functions under the Ombudsman Act, or the priority given to investigations.<sup>5</sup>

The Ombudsman may investigate administrative actions of agencies despite a provision in any Act to the effect that the action is final or cannot be appealed against, challenged, reviewed, quashed or called in question.<sup>6</sup>

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

Further, 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 Corruption Act 2001*
- a police officer, if the officer is liable to disciplinary action, or has been disciplined under the *Police Service Administration Act 1990* because of the action
- 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*, the repealed *Health Quality and Complaints Commission Act 2006* or the *Health Ombudsman Act 2013*, and
- the Information Commissioner in the performance of the Commissioner's functions under the *Right to Information Act 2009*.<sup>8</sup>

### **1.3 The committee's responsibilities regarding the Queensland Ombudsman**

In addition to the oversight jurisdiction conferred by the Legislative Assembly in the Standing Orders,<sup>9</sup> the Ombudsman Act provides that the committee has the following functions:

- to monitor and review the performance by the Ombudsman of the Ombudsman's functions under the Ombudsman Act
- to report to the Legislative 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 Legislative Assembly's attention
- to examine each annual report of the Office tabled in the Legislative Assembly under the Act and, if appropriate, to comment on any aspect of the report
- to report to the Legislative Assembly any changes to the functions, structures and procedures of the Office the committee considers desirable for the more effective operation of the Ombudsman Act
- any other functions conferred on the committee by the Ombudsman Act.<sup>10</sup>

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<sup>5</sup> Ombudsman Act, s 13.

<sup>6</sup> Ombudsman Act, s 14.

<sup>7</sup> Ombudsman Act, s 16(1).

<sup>8</sup> Ombudsman Act, s 16(2)(a)-(h). Also note there are other exceptions under the *Government Owned Corporations Act 1993*.

<sup>9</sup> Standing Orders, s 194A and schedule 6.

<sup>10</sup> Ombudsman Act, s 89.



## 1.4 Strategic review of the Office of the Queensland Ombudsman

The Act requires a strategic review of the Office to be undertaken every seven years, to assess whether the Ombudsman's functions are being performed economically, effectively and efficiently (among other factors as determined by the terms of reference). The review must be conducted by an appropriately qualified person who is appointed by the Governor in Council, and the reviewer may be appointed only after the Minister has consulted with the committee on the appointment of the reviewer, and terms of reference for the review.<sup>11</sup>

The seven-year period between reviews is counted from the date the report of the previous strategic review was given to the Minister and the Ombudsman, or, if the committee reported on the previous report and made recommendations, from the date of the Minister's response to those recommendations up to when the reviewer is appointed to undertake the latest strategic review.<sup>12</sup>

The report of the most recent strategic review was given to the Minister and the Ombudsman on 24 January 2018 and was tabled on 15 February 2018. The parliamentary committee did not make any recommendations.<sup>13</sup> Therefore, the next strategic reviewer must be appointed by 24 January 2025, with the committee to have been consulted on the appointment of the strategic reviewer and on the terms of reference of the strategic review prior to that time.

## 1.5 The committee's process

In conducting its oversight of the Office, the committee undertook the following activities:

- examined the 2020-21 Annual Report (annual report) (see section 2 of this report), and
- held a public hearing on 9 May 2022 (public hearing) (see section 3 of this report).

The following representatives from the Office participated in the public hearing:

- Mr Anthony Reilly, Queensland Ombudsman
- Ms Angela Pyke, Deputy Ombudsman
- Ms Leanne Robertson, Director, Corporate Services
- Ms Louise Rosemann, Principal Advisor, Public Interest Disclosures.

A copy of the transcript of the public hearing is available on the committee's webpage.

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<sup>11</sup> Ombudsman Act, s 83.

<sup>12</sup> Ombudsman Act, s 83.

<sup>13</sup> Legal Affairs and Community Safety Committee, 56<sup>th</sup> Parliament, *Report No. 25, 56<sup>th</sup> Parliament – Inquiry into the Strategic Review of the Office of the Queensland Ombudsman*, November 2018.

## 2 Examination of Annual Report 2020-21

The Office tabled its annual report on 27 September 2021. The annual report meets reporting obligations under the *Financial Accountability Act 2009* and the annual report requirements for Queensland Government agencies.<sup>14</sup>

The Office reports on a range of performance and service measures in its annual report, including:

- investigating complaints
- improving decision-making through engagement, training and advice
- public interest disclosure oversight, and
- financial performance and staffing.

Unless otherwise stated, the information set out below relates to the 2020-21 period as noted in the annual report.

### 2.1 Investigating complaints

- 10,758 contacts were made to the Office for advice, assistance or complaint resolution.<sup>15</sup>
- 2,553 of the contacts were matters assessed as out of jurisdiction and referred to the appropriate agency.<sup>16</sup>
- The Office directly referred 3,857 premature complaints to an agency.<sup>17</sup>
- 2,159 cases were assessed as involving a human rights element (up from 779 cases in the previous year).<sup>18</sup>
- The average time to finalise a preliminary assessment of a complaint was 3.2 days (exceeding the target of 10 days).<sup>19</sup>
- 7,051 complaints were received.<sup>20</sup>
- 1,071 investigations were undertaken.<sup>21</sup>
- 100% of the 190 investigation recommendations made by the Office were accepted by the respective agencies (down from 244 recommendations made in the previous year).<sup>22</sup>

### 2.2 Engagement, training and advice

- 97 training sessions were delivered to 1,718 public sector officers. This was down from 151 training sessions delivered to 2,785 public sector officers in 2019-20. The reduction in training

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<sup>14</sup> Queensland Ombudsman, *Annual Report 2020-21*, p i.

<sup>15</sup> Queensland Ombudsman, *Annual Report 2020-21*, p 6.

<sup>16</sup> Queensland Ombudsman, *Annual Report 2020-21*, p 6.

<sup>17</sup> Queensland Ombudsman, *Annual Report 2020-21*, p 8.

<sup>18</sup> Queensland Ombudsman, *Annual Report 2020-21*, p 7; Queensland Ombudsman, *Annual Report 2019-20*, p 7.

<sup>19</sup> Queensland Ombudsman, *Annual Report 2020-21*, pp 2 and 9.

<sup>20</sup> Queensland Ombudsman, *Annual Report 2020-21*, p 6.

<sup>21</sup> Queensland Ombudsman, *Annual Report 2020-21*, p 10.

<sup>22</sup> Queensland Ombudsman, *Annual Report 2020-21*, p 11; Queensland Ombudsman, *Annual Report 2019-20*, p 11.

sessions and training participants this year was attributed to the impact of the COVID-19 pandemic.<sup>23</sup>

- Subscriptions to the Office's newsletter increased to 8,139 (up from 7,460 in the previous year).<sup>24</sup>
- The Office conducted 5 own initiative investigations<sup>25</sup> and published the following:
  - *Fire ants report: An investigation into the timeliness of responses to notifications of suspected fire ant activity*
  - *Casebook 2020 – Helping agencies to improve decision-making* (a collection of investigative case studies).<sup>26</sup>

### **2.3 Client satisfaction with the Office's services**

- The Office implemented a new process for measuring client satisfaction following a review of past methodology. The Office reported that this new process is in its early stages.<sup>27</sup>
- The Office reported that 93% of participants reported training improved their decision-making capability.<sup>28</sup>

### **2.4 Managing complaints about the Office**

- 22 service delivery complaints were received relating to poor customer service, inaccurate information, unfair treatment or tone. All complaints received were closed during the year. None were relevant to the *Human Rights Act 2019*. Five matters were substantiated.<sup>29</sup>

### **2.5 Internal review of decisions**

- 164 internal review requests were received and 180 were finalised:
  - The original decision was confirmed in 137 cases
  - Reviews were withdrawn by the complainant or declined by the office in 30 cases
  - Decisions were not upheld in 13 cases.<sup>30</sup>

### **2.6 Financial performance**

- The Office reports that it ended the year in a secure financial position with adequate reserve and forecast income to fulfil its statutory responsibilities for 2021-22.<sup>31</sup>
- The budget for the Office for 2020-21 was \$9.467 million. Actual operational expenditure totalled \$8,830 million.<sup>32</sup>

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<sup>23</sup> Queensland Ombudsman, *Annual Report 2020-21*, pp 12 and 13; Queensland Ombudsman, *Annual Report 2019-20*, p 14.

<sup>24</sup> Queensland Ombudsman, *Annual Report 2020-21*, p 12; Queensland Ombudsman, *Annual Report 2019-20*, p 13.

<sup>25</sup> Queensland Ombudsman, *Annual Report 2020-21*, p 10.

<sup>26</sup> Queensland Ombudsman, *Annual Report 2020-21*, p 13.

<sup>27</sup> Queensland Ombudsman, *Annual Report 2020-21*, p 21.

<sup>28</sup> Queensland Ombudsman, *Annual Report 2020-21*, p 21.

<sup>29</sup> Queensland Ombudsman, *Annual Report 2020-21*, p 21.

<sup>30</sup> Queensland Ombudsman, *Annual Report 2020-21*, p 21.

<sup>31</sup> Queensland Ombudsman, *Annual Report 2020-21*, p 22.

<sup>32</sup> Queensland Ombudsman, *Annual Report 2020-21*, p 22.

- The annual report stated that \$554,000 in unused appropriation is to be repaid in 2021-22.<sup>33</sup>

## **2.7 Public interest disclosures oversight**

- 1,766 public interest disclosures (PIDs) were reported to the Office (similar to the previous year being 1,744).<sup>34</sup>
- PIDs relating to corrupt conduct was the most commonly reported type of wrongdoing, representing 87.9%.<sup>35</sup>
- The first PID self-assessment audit was implemented by the Office in 2020-21 and 'has provided a valuable whole-of-sector picture of the state of compliance with the *Public Interest Disclosure Act 2001* and PID Standards'.<sup>36</sup>
- Although the delivery of face-to-face PID training workshops were impacted by the COVID-19 pandemic, 449 people (including face-to-face and online) participated in PID training sessions.<sup>37</sup>

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<sup>33</sup> Queensland Ombudsman, *Annual Report 2020-21*, p 22.

<sup>34</sup> Queensland Ombudsman, *Annual Report 2020-21*, p 23; Queensland Ombudsman, *Annual Report 2019-20*, p 27.

<sup>35</sup> Queensland Ombudsman, *Annual Report 2020-21*, p 23.

<sup>36</sup> Queensland Ombudsman, *Annual Report 2020-21*, p 25.

<sup>37</sup> Queensland Ombudsman, *Annual Report 2020-21*, p 25.

### 3 Oversight public hearing

In his opening statement at the public hearing, the Ombudsman provided an update on the Office's performance during 2020-21. The Ombudsman noted that the service levels during the 2020-21 year were similar to the 2019-20 year and that the timeliness of the complaints and investigation services remained strong.<sup>38</sup>

The Ombudsman reported on the various publications issued by the Office including the May 2021 investigation report called *Fire ants report: an investigation into the timeliness of responses to notifications of suspected fire and activity* and the two casebooks which were published in February 2021 and May 2022.<sup>39</sup>

The Ombudsman also discussed the Office's administrative improvement program which includes 'an integrated, multilayered strategy that provides a range of supports and resources for improving administrative processes'. As part of this strategy, the Good Decisions video was released in October 2021 and has been viewed over 1,850 times as at 5 May 2022. The Good Decisions checklist was published in September 2021 and has been downloaded over 1,000 times as at May 2022.<sup>40</sup>

The Office delivered training to 1,718 public sector officers at 97 training sessions. Due to disruptions caused by COVID-19, the training outputs were lower than the previous year. However, the Office has transitioned to online delivery and anticipates that they will 'be able to rebuild our training numbers in the year ahead'. Feedback has been strong regarding the quality and effectiveness of the online training 'with over 90 per cent of participants who provided feedback about the training reporting that it has improved their capability in the area they were being trained in'.<sup>41</sup>

The Office has also recently established a new complaints handler network to build skills and knowledge across the sector in complaints handling. The Ombudsman advised that:

The network meets quarterly with officers who are involved in complaints management in agencies being a part of the network and aims to improve complaints handling across agencies. The complaints handler network uses the same model as our successful public interest disclosure network, which is the same mode of operation.<sup>42</sup>

In terms of the oversight by the Office of the system of PIDs, the Ombudsman outlined that in 2021 there were 1,766 PIDs reported which was a small increase of 1.3% compared to the previous year. The first PID self-assessment audit was coordinated by the Office in 2020. The Ombudsman noted that 'the self-assessment responses showed good progress towards compliance requirements'. The Ombudsman was pleased to report that when the Office conducted the second self-assessment audit in late 2021, 'the audits showed further improvement in PID management capacity across a number of key indicators such as appointment of a PID coordinator'.<sup>43</sup>

The Ombudsman also mentioned that the Office was 'very heavily impacted' by the February and March floods due to the flooding of their building in Albert Street. The Ombudsman foreshadowed an impact in terms of timeliness in particular when the Ombudsman reports on the 2021-22 year due to the power being cut off for over a week and employees not being able to go into the office.<sup>44</sup>

<sup>38</sup> Public hearing transcript, Brisbane, 9 May 2022, p 1-2.

<sup>39</sup> Public hearing transcript, Brisbane, 9 May 2022, p 2.

<sup>40</sup> Public hearing transcript, Brisbane, 9 May 2022, p 2.

<sup>41</sup> Public hearing transcript, Brisbane, 9 May 2022, p 2.

<sup>42</sup> Public hearing transcript, Brisbane, 9 May 2022, pp 2-3.

<sup>43</sup> Public hearing transcript, Brisbane, 9 May 2022, p 3.

<sup>44</sup> Public hearing transcript, Brisbane, 9 May 2022, p 3.

Questions from the committee during the public hearing focused on:

- the management of complaints received about the Office
- the handling of premature investigation complaints by the Office
- the impact of the floods on the work of the Office and the response times
- the migration of IT infrastructure from Albert Street premises and the likely timing
- the proposed new role of the Ombudsman as the Inspector of Detention Services and whether a commitment of funding had been made and the timing of the first strategic review of the new role
- the report on COVID-19 complaints in the annual report
- the powers and functions of the Ombudsman in relation to corrections and youth justice and whether the inspections are all announced, scheduled and planned inspections or unannounced
- the status of the regional services program
- the increase in the number of assessments conducted regarding human rights, and
- the handling of complaints.<sup>45</sup>

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<sup>45</sup> Public hearing transcript, Brisbane, 9 May 2022, pp 3-10.

## 4 Committee comment

The committee congratulates the Ombudsman and his staff on their performance in 2020-21, especially in light of the continuing challenges presented by the COVID-19 pandemic.

The committee acknowledges the new innovations introduced by the Office to foster good decision making across the public sector. During the year, the Ombudsman continued to release high quality publications of vital importance to Queensland. The committee also commends the Ombudsman and his Office for the important contribution they make to the oversight of PIDs, training and good governance in Queensland.

The committee appreciates the assistance and information provided by the Office's management and staff who have helped to facilitate the committee's oversight role.

### **Recommendation**

The committee recommends that the House notes the contents of this report.