



Inquiry into the Strategic Review of the Office of the Queensland Ombudsman

**Report No. 25, 56th Parliament
Legal Affairs and Community
Safety Committee
November 2018**

Legal Affairs and Community Safety Committee

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Abbreviations

CCC	Crime and Corruption Commission
committee	Legal Affairs and Community Safety Committee
LGAQ	Local Government Association of Queensland
Office	Office of the Queensland Ombudsman
OIC	Office of the Information Commissioner
Ombudsman	Mr Phil Clarke
Ombudsman Act	<i>Ombudsman Act 2001</i>
POQA	<i>Parliament of Queensland Act 2001</i>
PS Act	<i>Public Service Act 2008</i>
QAO	Queensland Audit Office
Reviewer	Ms Simone Webbe
RTI Act	<i>Right to Information Act 2009</i>
SDRC	Southern Downs Regional Council
strategic review report	<i>Report on the Strategic Review of the Office of the Queensland Ombudsman</i>

Chair's foreword

The Legal Affairs and Community Safety Committee is pleased to report on its inquiry into the strategic review of the Office of the Queensland Ombudsman.

On behalf of the committee, I thank those individuals and organisations who provided submissions.

The committee benefitted from meeting with Ms Simone Webbe, the Reviewer; Mr Phil Clarke, the Ombudsman; Ms Jessica Wellard, Acting Deputy Ombudsman; and Ms Leanne Robertson, Director, Corporate Services Unit of the Office of the Queensland Ombudsman.

I would like to thank my fellow committee members and Parliamentary Service staff.

I commend this report to the House.



Mr Peter Russo MP

Chair

Recommendation

The committee recommends that the Legislative Assembly notes the contents of this report.

1 Introduction

1.1 The committee

The Legal Affairs and Community Safety Committee is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* (POQA) and the Standing Rules and Orders of the Legislative Assembly.¹

The committee's primary areas of responsibility are:

- Justice and Attorney-General
- Police and Corrective Services
- Fire and Emergency Services.

This report is made pursuant to the committee's responsibilities under the POQA regarding reports on strategic reviews conducted under the *Ombudsman Act 2001* (Ombudsman Act).

1.2 Strategic reviews of the Office of the Ombudsman

The Ombudsman Act provides for a strategic review of the Office of the Ombudsman to be conducted at least every seven years by an appropriately qualified person who gives a report on the review to the Minister.²

The strategic review includes a review of the Ombudsman's functions and a review of the Ombudsman's performance of the functions to assess whether they are being performed economically, effectively and efficiently.³

The strategic review report is automatically referred to the relevant committee when it is tabled.⁴ Under the POQA, the committee may consider the reviewer's report, report on it, and make recommendations about it to the Legislative Assembly.⁵

Prior to the tabling of the most recent strategic review report in January 2018, the last strategic review report was tabled in the Legislative Assembly on 17 May 2012.⁶ The Legal Affairs and Community Safety Committee of the 54th Parliament reported back to the Legislative Assembly on that strategic review report on 22 November 2012.⁷

1.3 2017 strategic review

In September 2017, following consultation by the Attorney-General and Minister for Justice and Minister for Training and Skills with the committee and the Ombudsman, Mr Phil Clarke, the Governor in Council appointed Ms Simone Webbe (the Reviewer) to conduct a strategic review of the Office of the Queensland Ombudsman.

1.3.1 Scope

The terms of reference of the 2017 strategic review included that:

¹ *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

² *Ombudsman Act 2001*, s 83. Prior to 2017, a strategic review had to be conducted at least every five years: Simone Webbe, *Strategic Review of the Office of the Queensland Ombudsman*, January 2018, p 18.

³ *Ombudsman Act 2001*, s 83(9).

⁴ *Ombudsman Act 2001*, s 85(7), *Parliament of Queensland Act 2001*, s 92(2).

⁵ *Parliament of Queensland Act 2001*, s 92(3).

⁶ Henry Smerdon, *Strategic Review of the Office of the Queensland Ombudsman*, May 2012.

⁷ See Legal Affairs and Community Safety Committee, *Report on the Strategic Review of the Office of the Queensland Ombudsman*, Report No. 15, tabled 22 November 2012.

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

The review will examine all structural and operational aspects of the Ombudsman, as well as its relationship with public sector entities, relevant Ministers, the parliamentary committee, and the Legislative Assembly.⁸

1.3.2 Methodology

The terms of reference specified the methodology for the strategic review:

In conducting the strategic review, the reviewer is to have regard to the functions of the Ombudsman and the objects of the Act in assessing the ongoing economy, efficiency and effectiveness of the Office. The reviewer is to also have regard to the Ombudsman's annual reports, the organisational structure, goals, operational conduct, strategic direction, internal/external policies, operational management, corporate management and service provision of the Office, and operational models in other Australian and international jurisdictions. The reviewer should also consider the impact on the Office of chapter 5 of the Public Interest Disclosure Act 2010.⁹

In undertaking the strategic review, the Reviewer:

- conducted initial scoping reviews with the Ombudsman and the Department of Justice and Attorney-General
- developed and agreed with the Ombudsman and the project manager of the Department of Justice and Attorney-General a detailed Review Methodology and Project Plan, including a consultation strategy
- reviewed all previous strategic review reports and parliamentary committee reports
- received detailed briefings from the Ombudsman and senior management in response to the terms of reference and to advise on the implementation status of the recommendations from the 2012 Strategic Review
- identified recent data sets relevant and available to the review, and reviewed survey materials in relation to staff, complainants and agencies conducted since 2013
- reviewed materials, information and documents provided by the Ombudsman
- implemented a consultation strategy with external and internal stakeholders which included writing to all state government departments, all local councils, the public universities, other integrity bodies, industry ombudsmen, external complaints bodies and representative community peak bodies, and conducting 14 individual interviews with various departmental and agency heads
- reviewed and analysed various aspects of the functional areas of the Office
- researched, inquired, reviewed and analysed extensive publicly available materials and reports and conducted interjurisdictional analysis of various aspects relevant to the review
- liaised with the Ombudsman, including consultation on key stakeholder feedback, key issues of analysis, and possible responses throughout the course of the review

⁸ Simone Webbe, *Strategic Review of the Office of the Queensland Ombudsman*, January 2018, p 114.

⁹ Simone Webbe, *Strategic Review of the Office of the Queensland Ombudsman*, January 2018, p 19.

- received, researched and consulted on the Ombudsman’s list of suggested legislative amendments
- presented draft findings and recommendations, and a draft report for discussion with the Ombudsman and senior management in two half-day meetings.¹⁰

1.3.3 Strategic review report

The Reviewer presented her report titled *Strategic Review of the Office of the Queensland Ombudsman* (strategic review report) to the Attorney-General and Minister for Justice, the Honourable Yvette D’Ath MP, on 24 January 2018. The Attorney-General tabled the strategic review report on 15 February 2018.

The strategic review report sets out the Reviewer’s findings and recommendations. In summary:

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

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

...

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

The Office of the Ombudsman enjoys productive and positive relationships with agencies and is well-respected by agencies for its professionalism, fairness and independence.¹¹

Despite this positive overall assessment, the Reviewer made 72 recommendations to help improve ‘the quality of administrative practices and procedures’.¹²

At the public hearing, the Reviewer explained the large number of recommendations:

Please do not be confused from the number that the system needs to be fixed. That is not the case. The Ombudsman’s office is working very well. My recommendations are merely to improve and enhance the efficiency, effectiveness and economy of the performance of their functions as it was in my terms of reference to do. ...

Because it is operating at such a sophisticated level, the Ombudsman can easily cope in its quality assurance and its strategic planning processes with a comprehensive assessment of where it is at. Rather than me say at a high level that it would be beneficial for the public value in the performance of his work to improve the proactivity of his office in pursuing his second role of improving quality of public sector administration, it is incumbent on me to say here are some examples and this is why and here are some specific areas. That is why there is that number of recommendations.¹³

¹⁰ Simone Webbe, *Strategic Review of the Office of the Queensland Ombudsman*, January 2018, pp 19-21.

¹¹ Simone Webbe, *Strategic Review of the Office of the Queensland Ombudsman*, January 2018, p 5.

¹² Simone Webbe, *Strategic Review of the Office of the Queensland Ombudsman*, January 2018, p 5.

¹³ Simone Webbe, public hearing transcript (Reviewer), Brisbane, 11 June 2018, p 5.

1.3.4 Response of the Ombudsman to the strategic review report

The Ombudsman supported the majority of the strategic review report's recommendations and was pleased with the review process:

... I would like to acknowledge the very professional and positive review that was undertaken by Ms Webbe. It was entirely a positive experience for the office and it was very welcome.

In my view, a strategic review of independent offices is a vital element of their independence in making sure that that independence is carried out in a positive way both in support of the parliament and to build confidence in the community that the independence is being properly administered. Both the 2012 and the 2017 strategic reviews were positive experiences for the office.

The 2017 review report contains many recommendations of which I am supportive. I have laid out those for you in my responses to questions on notice. I have also commenced consideration and implementation of many of those recommendations already. I will shortly write to the committee about the review of the office's strategic plan, which reflects a number of the review's recommendations and I look forward to your comment about that strategic plan.

Overall, subject to the completion of this inquiry, I am very optimistic and I look forward to working through the full list of recommendations and benefiting from the improvements that, hopefully, will flow from those recommendations. ...¹⁴

1.4 The committee's inquiry into the strategic review report

In line with previous practice, the committee determined that its review of the strategic review report would include:

- seeking written submissions from stakeholders and the general public
- providing pre-hearing questions on notice to the Ombudsman
- holding a public hearing with the Reviewer followed by a public hearing with the Ombudsman.

The nine submissions received by the committee, the answers provided by the Ombudsman to the pre-hearing questions on notice, and the transcripts of the public hearings are available on the committee's website. See Appendix A of this report for a list of submitters and Appendix B for a list of the witnesses at the public hearings.

¹⁴ Phil Clarke, public hearing transcript (Ombudsman), Brisbane, 11 June 2018, pp 1-2.

2 The strategic review report

This section of the committee's report discusses a selection of the recommendations in the strategic review report that propose legislative change.

2.1 Proposed legislative change supported by Reviewer and Ombudsman

2.1.1 Widening the scope of preliminary inquiries beyond complaints

Reviewer recommendation 3: The Ombudsman's suggested legislative clarification to enable preliminary inquiries with agencies before commencing an own initiative investigation, is strongly supported.

Under s 22 of the Ombudsman Act the Ombudsman may make reasonably necessary inquiries to decide whether a complaint should be investigated. In discussions with the Reviewer, the Ombudsman suggested that this section should be amended to clarify that preliminary inquiries can be made for other matters besides complaints.¹⁵

The Reviewer 'strongly supported' this suggestion 'to ensure investigation and agency resources are not wasted in commencing an unjustified own initiative "investigation"'.¹⁶

The amendment would also be consistent with legislative provisions in other jurisdictions such as New South Wales and the Commonwealth.¹⁷

The proposed amendment was supported by the Crime and Corruption Commission (CCC) and Southern Downs Regional Council (SDRC), with SDRC supporting the proposed amendment 'in order to qualify the validity of complaints prior to an investigation taking place'.¹⁸

2.1.2 Ability to formally refer a matter and monitor an investigation undertaken by an agency

Reviewer recommendation 8: The Ombudsman's suggestion to amend the *Ombudsman Act 2001* to insert a provision(s) which gives the Ombudsman a formal discretion, following consultation with the agency, to refer a matter to an agency for investigation with a report-back mechanism about the results of action taken, is supported.

The Ombudsman suggested to the Reviewer that it would be appropriate for the Ombudsman to have similar discretion as the Health Ombudsman under s 92 (Referral to other government entities) and s 93 (Reports from state entities) of the *Health Ombudsman Act 2013*. This would enable the Ombudsman to choose not to progress to a major investigation of a complaint, pending the outcomes of a formal referral to the agency with a report-back mechanism about the results of actions taken.¹⁹

The Ombudsman advised that the recommendation:

... would provide a specific power for me to formally refer a matter and monitor an investigation undertaken by an agency. This would build on current informal monitoring in certain areas, particularly child safety complaints. Such a power would enhance the Office's role and allow for closer liaison with agencies on matters which may have significant and/or systemic implications.
...²⁰

¹⁵ Simone Webbe, *Strategic Review of the Office of the Queensland Ombudsman*, January 2018, p 28.

¹⁶ Simone Webbe, *Strategic Review of the Office of the Queensland Ombudsman*, January 2018, p 28.

¹⁷ Simone Webbe, *Strategic Review of the Office of the Queensland Ombudsman*, January 2018, p 28. See s 13AA of the *Ombudsman Act 1974* (NSW) and s 7A *Ombudsman Act 1975* (Cth).

¹⁸ Southern Downs Regional Council, submission 1, p 1; Crime and Corruption Commission, submission 2, pp 1-2.

¹⁹ Simone Webbe, *Strategic Review of the Office of the Queensland Ombudsman*, January 2018, p 30.

²⁰ Queensland Ombudsman, Questions on notice and responses, p 6.

The CCC advised that the *Crime and Corruption Act 2001* contains similar provisions, and that based on its own experience, a formal discretion to refer a matter to an agency for investigation and report-back 'is a useful mechanism to ensure agency resources are used efficiently and sufficient oversight of an investigation is maintained.'²¹

2.1.3 Sharing complaints and investigation data and other systemic information with the QAO

Reviewer recommendation 20: Legislative amendments to enable the Office of the Queensland Ombudsman and the Queensland Audit Office to share complaints and investigation data and other systemic information in confidence is recommended, and should be supported by a formal Memorandum of Understanding including detail of the permissions, access protocols and confidentiality arrangements.

The Reviewer noted that there is coordination and sharing of general information at officer level between external oversight bodies but existing legislation prevents the Ombudsman sharing information of complaints and investigations with the Queensland Audit Office (QAO).²²

The Reviewer provided the following example of duplication of public resources that arises because of an inability to coordinate more fully between integrity bodies:

*... of the Ombudsman's five public reports of investigations in 2016/17, the Auditor-General produced three reports that year on the same subject. Had the Queensland Audit Office known for example that the Ombudsman was conducting a major investigation into the Patient Travel Subsidy Scheme, it could have chosen to wait to consider the Ombudsman's report before deciding whether there were additional matters that warranted the Auditor-General's specific attention, or vice-versa.*²³

Assistant Professor Narelle Bedford supported legislative amendment to enable the Office of the Ombudsman and the QAO to share complaints and investigation data and other systemic information:

*The Queensland Audit Office is also an integral accountability institution and the links between these institutions should be given a statutory footing, rather than potentially left exposed to criticism of an abuse of executive power that may be directed at a non-statutory arrangement.*²⁴

The QAO also supported amendments to enable greater sharing of information to minimise duplication of investigation activity with the Ombudsman:

*General information is currently shared with the Queensland Ombudsman in a limited capacity, but this is not as valuable as the relationship QAO has with the Crime and Corruption Commission where we can share information openly.*²⁵

The Local Government Association of Queensland (LGAQ) supported greater information sharing between integrity agencies however it wanted to ensure that the Ombudsman remains responsible and accountable for any information shared with the QAO. The LGAQ submitted:

*If the proposed amendments enable more wide-spread sharing of information (and by extension of complaints against councils), this could also extend to matters which are not substantiated by the Ombudsman at the end of their investigative process. Information sharing should be done in such a way that the integrity of the investigations conducted by the Ombudsman is maintained.*²⁶

²¹ Crime and Corruption Commission, submission 2, p 2.

²² Simone Webbe, *Strategic Review of the Office of the Queensland Ombudsman*, January 2018, p 42.

²³ Simone Webbe, *Strategic Review of the Office of the Queensland Ombudsman*, January 2018, p 42.

²⁴ Narelle Bedford, submission 4, p 4.

²⁵ Queensland Audit Office, submission 6, p 2.

²⁶ Local Government Association of Queensland, submission 7, p 2.

2.1.4 Confusion generated by the use of the title ‘Ombudsman’ by other appeal bodies

Reviewer recommendation 30: Legislative amendment of the *Ombudsman Act 2001* to require at least that the Ombudsman be consulted prior to any person using the name “Ombudsman” similar to the New Zealand provision, or alternatively, similar provision to South Australia in not permitting use, is supported.

The Reviewer noted the confusion caused by multiple ‘Ombudsman’ within a jurisdiction that might also be adding to costs and delays through the increased volume of out-of-jurisdiction handling of matters across offices.²⁷ For example, in Queensland there is the Training Ombudsman, the Health Ombudsman and Energy and Water Ombudsman in addition to the Queensland Ombudsman.²⁸

The Ombudsman outlined some of the ways confusion can arise for citizens:

It most often plays out in people understanding the differences between a truly independent Ombudsman office and an office that exercises some degree of advocacy. People will come to our office and not understand the differences between the powers of an Ombudsman who makes recommendatory decisions, such as my office of the Ombudsman does, and the powers of a Health Ombudsman to commence proceeding against an individual, against a practitioner. Citizens do not understand the difference between those things. That is where I think the principal issue arises. ...

I attribute some of that confusion to the overuse of the term ‘Ombudsman’. For example, there is now a substantial practice of having an industry ombudsman across the country and to try to reverse that would be somewhat frivolous. In my view, those terms have built up a level of expectation in the community as to the level of intervention that an Ombudsman office will be able to undertake. Citizens who have experienced those ombudsman functions and the parliamentary Ombudsman function sometimes struggle to understand why, for example, I cannot simply remake a decision that an agency made and direct the agency to do something different. It is a different construct, as I am sure you understand, but I am not sure that it is clear to citizens across-the-board. In my view, the overuse of the term contributes to that significant level of confusion.²⁹

The Reviewer made reference to the strategies that have been put in place by the Ombudsman to manage the confusion:

The Ombudsman currently manages any confusion as best it can through a number of strategies such as various committees that the Ombudsman sits on with other bodies, with memorandums of understanding, with other industry ombudsmen as to how they can carve out their jurisdiction and practice efficiently between themselves. The Ombudsman also has innovated in minimising waste within the office in handling out-of-jurisdiction complaints by automating their telephone service to redirect automatically to the correct ombudsman or other body as well as their online facility that also enables that to be redirected. ...³⁰

2.1.5 Confidentiality in informal investigative proceedings

Reviewer recommendation 36: Amendment of Schedule 3, s 12 of the *Right to Information Act 2009* to include section 92 of the *Ombudsman Act 2001* is recommended.

²⁷ Simone Webbe, *Strategic Review of the Office of the Queensland Ombudsman*, January 2018, p 53.

²⁸ See for example Phil Clarke, public hearing transcript (Ombudsman), Brisbane, 11 June 2018, p 4.

²⁹ Phil Clarke, public hearing transcript (Ombudsman), Brisbane, 11 June 2018, p 4.

³⁰ Simone Webbe, public hearing transcript (Reviewer), Brisbane, 11 June 2018, p 7.

The Ombudsman must conduct investigations in a way that maintains confidentiality and must not disclose information obtained during a preliminary inquiry or investigation.³¹

The ability to guarantee confidentiality of investigative material is critical to the Ombudsman's ability to encourage disclosures, including public interest disclosures, about maladministration and facilitate the cooperation of witnesses. It also helps protect reputations from unsubstantiated allegations made in the course of informal procedures.³²

The Ombudsman raised concerns with the Reviewer that there had been instances where agencies and witnesses had become hesitant or reluctant to provide all information in informal investigative proceedings due to a concern that the *Right to Information Act 2009* (RTI Act) may override the confidentiality and secrecy provisions of the Ombudsman Act.³³ The Ombudsman advised that the inconsistency between s 92 of the Ombudsman Act and the provisions of the RTI Act becomes particularly relevant after an investigation is completed.

*... When an investigation is ongoing, the protections under the Ombudsman Act to be able to protect individuals and use any of the offence provisions under the Ombudsman Act are essentially quite apparent and we can apply them. However, when an investigation is closed and what we are dealing with is public records—so the investigation is finished but there is a public record, for example, the transcript of any interviews that might have been had or any written submissions that might have been had from a witness—that is when the provisions of the RTI Act become inconsistent with the Ombudsman Act.*³⁴

To resolve this issue, the Reviewer recommended that s 92 of the Ombudsman Act (concerning information obtained in preliminary inquiry or an investigation or the performance of another function of the Ombudsman) be included in schedule 3, s 12 (Information disclosure of which prohibited by Act) under the RTI Act. This would '[assure] the people participating in that informal investigation that their material will remain confidential, notwithstanding the operation of the RTI Act.'³⁵

The QAO advised that the recommended amendment is consistent with exemptions it receives under the *Auditor-General Act 2009* which provides clients with the knowledge that any sensitive information provided as part of an audit is protected and confidential.³⁶

The Office of the Information Commissioner (OIC) submitted that it is important that individual legislative proposals to exempt or exclude information from the operation of the RTI Act 'are considered in the context of the broader policy and departures from such are clearly justified.'³⁷ With respect to this, the OIC noted that the recommended amendment to the RTI Act 'responds directly to specific concerns identified by the Ombudsman about an operational issue affecting the efficient and effective pursuit of informal and early resolutions by undermining the Ombudsman's ability to conduct confidential investigations.' The OIC considered that the proposed amendment:

... is appropriately limited to specifically exempt information obtained in a preliminary inquiry or an investigation by the Ombudsman from the operation of the RTI Act. Further, this approach is consistent with how other confidentiality provisions are treated under the RTI Act where

³¹ Ombudsman Act 2001, ss 25, 92.

³² Simone Webbe, *Strategic Review of the Office of the Queensland Ombudsman*, January 2018, p 65.

³³ Simone Webbe, *Strategic Review of the Office of the Queensland Ombudsman*, January 2018, pp 65-66.

³⁴ Phil Clarke, public hearing transcript (Ombudsman), Brisbane, 11 June 2018, p 3.

³⁵ Simone Webbe, public hearing transcript (Reviewer), Brisbane, 11 June 2018, p 3.

³⁶ Queensland Audit Office, submission 6, p 2.

³⁷ Office of the Information Commissioner, submission 8, pp 2-3.

*Parliament considers it is, on balance, not in the public interest to disclose this type of document.*³⁸

Regarding its concerns about adding exemptions or exclusions to the RTI Act, the OIC submitted:

*... in the circumstances of this particular case, it is OIC's view that the proposed amendment to Schedule 3, section 12 of the RTI Act to include secrecy provisions contained in section 92 of the Ombudsman Act is the preferred approach to address identified concerns raised by the Ombudsman should amendments to the RTI Act be considered necessary.*³⁹

2.1.6 Clarifying the scope of 'officer'

Reviewer recommendation 57: The Ombudsman's suggested amendment to s.76 of the *Ombudsman Act 2001* to ensure that work experience students and participants in rehabilitation schemes are regarded as 'officers' to ensure they are covered by other work arrangements under the Act, particularly secrecy obligations under s.92, is recommended.

The Reviewer noted advice from the Ombudsman that, in relation to temporary staff working in the Office, s 76 of the Ombudsman Act requires amendment to ensure that work experience students and participants in rehabilitation schemes are also classified as 'officers' so that they become subject to 'other work arrangements in the provisions of the Act, particularly secrecy obligations under s.92'.⁴⁰ Section 92 of the Act prohibits the unauthorised disclosure of, or dealing with, confidential information obtained in an inquiry or investigation, by officers of the Ombudsman and others.

2.1.7 Developing a shared learning strategy

Reviewer recommendation 48: The Ombudsman is encouraged to develop a 'shared learning' strategy to connect agencies and common issues learned from investigative outcomes in improving administrative practices and procedures. Confirmation of permission, or legislative clarification or amendment, enabling the implementation of the strategy such as casebook material and practitioner discussions in a timely and ongoing way needs to be pursued.

During consultations with the Reviewer some departments and councils asked for the learnings from others' experiences be shared. For example, it was suggested that learnings from de-identified investigative outcomes be shared in order to learn from others' experiences, so as to avoid complaints and investigations of their own.⁴¹

SDRC submitted to the committee's inquiry that it supported a 'proactive knowledge management approach whereby learnings from previous investigations are accessible by all.'⁴²

The Reviewer indicated that the Ombudsman's interpretation of s 92 of the Ombudsman Act had prevented the publication of case material for the purposes of shared learning.⁴³

One of the communication channels that has been tried is an 'ombudsman advisory'. This is an advice outcome of an investigation that is circulated on subscription across the public sector to people who have an interest in a particular area. However, the process has been constrained to areas where information could be sufficiently de-identified (for example, councils) so that published material does not contradict the secrecy provisions under s 92 of the Ombudsman Act.⁴⁴

³⁸ Office of the Information Commissioner, submission 8, p 4.

³⁹ Office of the Information Commissioner, submission 8, p 4.

⁴⁰ Simone Webbe, *Strategic Review of the Office of the Queensland Ombudsman*, January 2018, p 90.

⁴¹ Simone Webbe, *Strategic Review of the Office of the Queensland Ombudsman*, January 2018, p 80.

⁴² Southern Downs Regional Council, submission 1, p 1.

⁴³ Simone Webbe, *Strategic Review of the Office of the Queensland Ombudsman*, January 2018, p 80.

⁴⁴ Phil Clarke, public hearing transcript (Ombudsman), Brisbane, 11 June 2018, p 6.

According to the Ombudsman, there are only two ways to release information for the purposes of agency learning:

One is to table it in the House; the other is to get the Speaker's approval to release the information ... I do not want to have to constantly go back to the Speaker to get approval to release a particular piece of information. That solution is simply unworkable.⁴⁵

The Ombudsman suggested there was a need for some form of administrative release channel under the Ombudsman Act to support a shared learning strategy:

... It would be a significant enhancement, I think, if provision for administrative release of information under the Ombudsman Act was available to me for a purpose similar to that set out in recommendation 48, so that where it was for a training purpose or a purpose of sharing information to improve public administration the capacity for me to decide, in a de-identified way if necessary, that information should be released would be a useful thing for me. I actually have legal advice to tell me that I cannot release some of this information. It is a difficult situation. I would like to be able to do it. We attempted it through the ombudsman advisory process, but it is more desirable, I think, that there is an administrative release channel for me to use.⁴⁶

Further:

The capacity to have an administrative release arrangement which took account of the various contexts—so, in other words, yes a particular department might be identified but given that departments are not particularly going to be negatively impacted for example, there is no possibility for a reprisal against a department if information is released. Whereas the protection of the information about the individual who complained or where there is other identifying information would give us a better framework within which we could push information out to agencies and make it more consumable—if that is the way I can describe it—because people can understand better the nature of the thing we are talking about rather than having it so deidentified that it is a state agency and a person cannot even identify the region from which they came et cetera. It is almost not irrelevant, but it is not very interesting for agencies to consume that information. I think the point made in the review report is we have to take steps to make it more engaging with agencies and public offices, and I think an administrative release arrangement would help us do that.⁴⁷

The Ombudsman advised that, subject to the committee's inquiry, he 'would be pleased to progress discussions to seek the necessary amendments.'⁴⁸

2.2 Proposed legislative change not supported by the Ombudsman

2.2.1 Appointing staff under the *Public Service Act 2008* not the *Ombudsman Act 2001*

Reviewer recommendation 64: To achieve significant efficiency, effectiveness and economies in human resource management of the staff of the Office, the Ombudsman should consider seeking legislative amendments for appointments of the staff of the Office of the Ombudsman under the *Public Service Act 2008*, and then employed by the Ombudsman, in a similar manner and with similar readily available protections, as the staff of other Ombudsmen in Australia.

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

⁴⁵ Phil Clarke, public hearing transcript (Ombudsman), Brisbane, 11 June 2018, p 7.

⁴⁶ Phil Clarke, public hearing transcript (Ombudsman), Brisbane, 11 June 2018, p 7.

⁴⁷ Phil Clarke, public hearing transcript (Ombudsman), Brisbane, 11 June 2018, p 7.

⁴⁸ Queensland Ombudsman, Questions on notice and responses, p 5.

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

Staff of the Office of the Queensland Ombudsman (the Office) are employed under ss 76 and 78 of the Ombudsman Act and are not public servants under the *Public Service Act 2008* (PS Act). The conditions of employment of the staff of the Office are approved by the Governor in Council but in practice they are consistent with the Public Service Award under the PS Act and the Public Service Regulations 2008.⁴⁹

The Reviewer's reasons for the recommendation to appoint Office staff under the PS Act included:

- increased mobility of staff of the Ombudsman
- better career development opportunities for staff of the Ombudsman
- lower overhead costs for the Office of the Ombudsman.⁵⁰

In addition, the Reviewer suggested that justification for employing Office staff under the Ombudsman Act rather than the PS Act was historically for reasons of protecting the Ombudsman's 'independence'. However, the Reviewer noted that, in principle and practice, there are several reasons that undermine that justification:

- the Ombudsman's independence is not dependent on the way the Office staff are employed; the Ombudsman's independence is legislatively mandated under the Ombudsman Act (s 13 - the Ombudsman is not subject to direction by any person and s 11 - the Ombudsman is an officer of the Parliament).
- other independent officers of the Queensland Parliament, such as the Auditor-General, have staff who are public servants employed under the PS Act
- Ombudsmen in other Australian jurisdictions have their staff employed under general public service legislation without compromising their independence.⁵¹

Responding to the strategic review report, in accordance with s 85 of the Ombudsman Act, the Ombudsman commented:

The recommendation that staff of the Office be employed under the Public Service Act has been made previously and not been pursued. In my view, the argument as to why it would benefit officers, or the Office, has not, on balance, been sufficiently made out. Any change to the relationship between the Office and the public sector, over which it has oversight, will need great care. Engaging ombudsman staff under the Public Service Act would need clear and specific legislative provisions to ensure no dilution of control of the Office or its independence.⁵²

At the public hearing the Ombudsman was more open to moving at least part of the workforce under the PS Act:

My concern that I expressed to the reviewer at the time was to make sure that it was not done as essentially a quick policy decision, that any shift was taken in full consideration of the impacts on the various provisions in the Ombudsman Act and making sure those provisions were not

⁴⁹ Simone Webbe, *Strategic Review of the Office of the Queensland Ombudsman*, January 2018, p 97.

⁵⁰ Simone Webbe, *Strategic Review of the Office of the Queensland Ombudsman*, January 2018, p 98.

⁵¹ Simone Webbe, *Strategic Review of the Office of the Queensland Ombudsman*, January 2018, p 97.

⁵² Simone Webbe, *Strategic Review of the Office of the Queensland Ombudsman*, January 2018, p 131.

*diminished or undermined in any way. Provided that that level of analysis is undertaken, I think that it is possible that at least part of the ombudsman workforce could be employed under the Public Service Act without essentially diminishing the independence of the office. I would think it is more problematic for the senior staff in the office and there may need to be an alternative arrangement for senior staff in the office.*⁵³

The QAO's submission noted that its own strategic review tabled in Parliament in March 2017 recommended the *Auditor-General Act 2009* be amended:

- *to provide for the Auditor-General's employment of staff under that Act, rather than the Public Service Act*
- *to give the Auditor-General the authority to employ staff necessary to carry out the Auditor-General's functions, and*
- *to enable the Auditor-General to determine the remuneration and other terms and conditions of employment of QAO staff.*⁵⁴

This recommendation was based on recruitment and retention difficulties experienced by the QAO.⁵⁵

2.3 Proposed legislative change not supported by the Reviewer

2.3.1 Giving the Ombudsman a wider jurisdiction

Reviewer recommendation 27: Suggested amendment to s 10(c) of the *Ombudsman Act 2001* to give the Ombudsman jurisdiction over non-government organisations and other providers of contracted service delivery is not supported at this time until its inclusion in a more comprehensive whole of government review of the accountability framework for contracted service providers.

The Ombudsman suggested amendments to s 10(c) of the *Ombudsman Act* to provide the Ombudsman with jurisdiction over bodies which perform a function on behalf of an agency, particularly contracted service delivery, arguing that such amendments were necessary to ensure no dilution of oversight when an agency decides to outsource delivery of a function previously delivered by the agency.⁵⁶

The Reviewer disagreed, suggesting that consideration of the Ombudsman having jurisdiction over non-government organisations should be included in a more comprehensive whole of government review of the accountability framework for contracted service providers.⁵⁷

*... it was my view in the final analysis that it needs to be considered as part of a broader picture so that we are not cherry-picking in the system because that can lead to adverse consequences and it would be beneficial to have a sense of the whole.*⁵⁸

The Reviewer's reasons for not wanting to widen the Ombudsman's jurisdiction at this time included budget constraints for the Ombudsman.⁵⁹

The Ombudsman responded:

I note the reviewer's recommendation. However, there is an emerging pattern across public sector agencies to outsource areas of government service delivery which have traditionally been

⁵³ Phil Clarke, public hearing transcript (Ombudsman), Brisbane, 11 June 2018, p 5.

⁵⁴ Queensland Audit Office, submission 6, p 3.

⁵⁵ Queensland Audit Office, submission 6, p 3.

⁵⁶ Simone Webbe, *Strategic Review of the Office of the Queensland Ombudsman*, January 2018, p 48.

⁵⁷ Simone Webbe, *Strategic Review of the Office of the Queensland Ombudsman*, January 2018, p 49.

⁵⁸ Simone Webbe, public hearing transcript (Reviewer), Brisbane, 11 June 2018, p 8.

⁵⁹ Simone Webbe, *Strategic Review of the Office of the Queensland Ombudsman*, January 2018, p 49; Simone Webbe, public hearing transcript (Reviewer), Brisbane, 11 June 2018, p 8.

within Ombudsman oversight. In my view, these changes put at risk the level of oversight available to such services. The delivery of some child safety services is a good example. It is still to be seen whether contracted service delivery will deliver the level of effective oversight the public has come to expect of the public sector through this Office.⁶⁰

⁶⁰ Queensland Ombudsman, Questions on notice and responses, p 4.

3 Committee comment

The Reviewer conducted a thorough review of the Office of the Queensland Ombudsman and made 72 recommendations across two key areas – strategic directions and performance of functions of the Ombudsman. The bulk of the recommendations are practical and relate to internal management of the Office.

The Reviewer praised the work of the Office, in particular in relation to its complaints function:

In terms of key findings, this strategic review confirmed the essential role and functions of the Ombudsman in the Queensland accountability and integrity system in helping protect against maladministration through both investigating complaints against administrative actions as well as assisting agencies with an improved quality of administrative practices and procedures.

This is the fifth strategic review of the Office of the Queensland Ombudsman since 1998 but the first time where the reviewer can report that, after five successive years in which the office dealt with all complaints within 12 months, no backlog in complaints for the Ombudsman is the new normal. This is a tremendous achievement for the leadership, management and all staff of the office and their sustained efforts and continual improvements to achieve this outcome is to be commended. The office has used performance management measures well to drive this success.

...⁶¹

Regarding the recommendations, the Reviewer advised:

*The Ombudsman's office is working very well. My recommendations are merely to improve and enhance the efficiency, effectiveness and economy of the performance of their functions as it was in my terms of reference to do. ...*⁶²

The committee acknowledges that its report does not discuss all of the recommendations submitters commented on. Importantly, however, the Ombudsman is aware of the content of the submissions and has responded to the issues raised.⁶³ The Ombudsman supported most of the recommendations and has already commenced consideration and implementation of a number of those.⁶⁴ The committee notes that the recently passed *Crime and Corruption and Other Legislation Act 2018* implements recommendation 22.⁶⁵

The committee considers that the passage of the other legislative amendments that are supported by both the Reviewer and the Ombudsman would enhance the efficient and effective operation of the Office.

⁶¹ Simone Webbe, public hearing transcript (Reviewer), Brisbane, 11 June 2018, p 2.

⁶² Simone Webbe, public hearing transcript (Reviewer), Brisbane, 11 June 2018, p 5.

⁶³ See Queensland Ombudsman, correspondence dated 1 June 2018, pp 7-8.

⁶⁴ Phil Clarke, public hearing transcript (Ombudsman), Brisbane, 11 June 2018, p 1.

⁶⁵ Recommendation 22: Reintroduction of the proposed legislative amendments in relation to the Ombudsman that were contained in Part 6 of the Crime and Corruption and Other Legislation Amendment Bill 2017 of the 55th Parliament is strongly supported.

Appendix A – Submitters

Sub #	Submitter
001	Southern Downs Regional Council
002	Crime and Corruption Commission
003	Legal Aid Queensland
004	Assistant Professor Narelle Bedford
005	Department of Transport and Main Roads
006	Queensland Audit Office
007	Local Government Association of Queensland
008	Office of the Information Commissioner
009	Mr Peter Wilkins

Appendix B – Witnesses at public hearings, 11 June 2018

Reviewer, Strategic Review of the Office of the Queensland Ombudsman

- Ms Simone Webbe

Office of the Queensland Ombudsman

- Mr Phil Clarke, Queensland Ombudsman
- Ms Jessica Wellard, Acting Deputy Ombudsman
- Ms Leanne Robertson, Director, Corporate Services Unit

