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Submission by Assistant Professor Narelle Bedford to the Inquiry into the Strategic Review of the Office of the Queensland Ombudsman by the Queensland Parliament Legal Affairs and Community Safety Committee

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Submission by Assistant Professor Narelle Bedford to the Inquiry into the Strategic Review of the Office of the Queensland Ombudsman by the Queensland Parliament Legal Affairs and Community Safety Committee.

17 April 2018

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Summary of major points:

1. It is extremely important in terms of access to justice that the Queensland Ombudsman remain a free service.
2. Given the uniqueness and importance of the non-legal remedy of a formal apology, consideration should be given to the need for legislative amendment to protect against any adverse consequences in any related litigation claimed to arise from the making of an apology by a government agency.
3. Consideration should be given to strengthening the statutory provisions of the *Ombudsman Act* relating to responses to Ombudsman reports, including strengthening the role and powers of Parliament and its Committees in their oversight of any future non-responses.
4. Legislative amendment to enable accountability institutions (such as the Ombudsman and the Audit Office) to share complaints and investigation data and other systemic information in confidence is supported as necessary.
5. There is an urgent need for a whole of government review on contracted service delivery and the need for accountability over contracted service delivery to ensure that there are no “accountability gaps”.

Introductory comments

1. I welcome the opportunity to make a submission to the Inquiry into the Strategic Review of the Office of the Queensland Ombudsman by the Queensland Parliament Legal Affairs and Community Safety Committee.
2. This submission is intended to be made public.
3. I am currently an Assistant Professor in the Faculty of Law at Bond University, where I research and teach in the field of administrative law. Therefore, I have professional expertise in the subject matter of this inquiry. My comments and recommendations below are based on my expertise in administrative law issues.
4. In respect of section 83(8) of the *Ombudsman Act* which requires the Inquiry to report on whether the Ombudsman is performing “economically, effectively, and efficiently”, my submission is concerned only with effectiveness and how the Ombudsman may be assisted by reforms to improve this aspect of its operations.
5. I support the recommendations of the Independent Reviewer contained in the Report issued in January 2018, and I offer the following additional comments and recommendations.

Generally about the Queensland Ombudsman

6. The Ombudsman has an important place in the system of accountability and integrity of government decision-making in Queensland. This has been the case since the Parliamentary Commissioner for Administrative Investigations was established by statute in 1974 by the *Parliamentary Commissioner Act 1974* (Qld).
7. The original intention of the title Parliamentary Commissioner was explained by Professors Lane and Young (in their 2001 book *Administrative Law in Queensland*) as being to emphasise that the office “was responsible to parliament and parliament alone”. With the repeal of that Act and the establishment of the Ombudsman in 2001, the institution became more aligned to other similar offices at the federal and state/territory level. Yet the strong link to the Queensland Parliament has been maintained and is reflected in the statutory obligation to conduct an independent inquiry every five years. It is critical that this link to Parliament be maintained and the Parliament and its Committees continue to provide strong public support for the role of the Ombudsman.
8. Accountability is important to the proper functioning of Queensland society as recognised by the ground-breaking Fitzgerald Inquiry report published in 1989. The Fitzgerald Inquiry strengthened the accountability mechanisms in Queensland and respected the unique role of the then already existing institution. As Queensland has a unicameral Parliament, oversight and accountability mechanisms such as Parliamentary Committees and indeed the office of the Ombudsman have a heavy responsibility and essential role.

Access to justice through a free service

9. It is extremely important in terms of access to justice that the Ombudsman remain a free service. Access to justice is a key concern for all levels of government in Australia, and the Ombudsman provides an informal, free, and accessible service to members of the public who require assistance with review of government decision-making.

Apology issued by a government agency cannot be used against the government in any related litigation

10. The importance of non-legal remedies able to be recommended by the Ombudsman has long been recognised as a defining characteristic of the Ombudsman and is one of its defining and unique recommendatory powers. Specifically, the power to recommend a formal apology be made by a government agency is much valued by the community and it is a remedy unique to the Ombudsman amongst Queensland accountability institutions. Indeed, on page 112 of the Report of the Independent Reviewer, there is highlighted positive feedback from a client about the impact of an apology by a government agency.
11. Given the uniqueness and importance of this remedy, consideration should be given to the need for legislative amendment to protect against any adverse consequences claimed to arise from the making of an apology by a government agency.

Strengthening of statutory provisions relating to responses to reports

12. I submit that consideration be given to strengthening the statutory provisions in sections 49 – 54 of the *Ombudsman Act* relating to responses to Ombudsman reports. There is currently a very cooperative and respectful relationship between various Queensland government agencies and the Ombudsman, however the possibility always exists for a negative change in the future. The Act must protect against any future disregard of Ombudsman Reports. Consideration could be given to strengthening the role and powers of Parliament and its Committees in the event of non-responses.

A statutory basis for coordination between administrative law institutions

13. Legislative amendment 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 strongly supported. 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.

Urgent importance of a whole of government review on contracted service delivery and the need for accountability over contracted service delivery

14. I strongly support the urgent need for a whole of government review on contracted service delivery and the need for accountability over contracted service delivery. This issue is contained in Recommendation 27 of the Report of the Independent Reviewer.
15. The issue of the provision of government service delivery by non-governmental organisations and other providers is very topical and presents a current challenge to the scope of power for Queensland accountability institutions. Where services are provided by government agencies, existing accountability mechanisms are effective, however contracting and out-sourcing of government services continues to occur, and there is an urgent and pressing need to conduct a review of the extent of this occurrence to ensure our accountability institutions are adequately conferred legislative powers so that accountability cannot be avoided. In the event that the review reveals an accountability gap, then legislative amendment to section 10(c) of the *Ombudsman Act* will be a necessity.

Concluding comments

16. The Ombudsman in Queensland has a long and proud history and its role in upholding accountability and integrity in government actions is well accepted. It is essential that regular independent reviews be conducted not just in response to issues that have arisen but also to take a pro-active and best practice approach to ensure that the office of the Ombudsman has the best possible statutory foundations to prevent any future problems or accountability gaps arising.



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