

***Section Two:  
Parliamentary Oversight from the Agency  
Perspective***



# Parliamentary Oversight from the Perspective of the New South Wales Ombudsman

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## *Introduction*

While being under the scrutiny of a Parliamentary Committee can sometimes be challenging to me personally, as Ombudsman I recognise the importance of the Parliamentary Committee model to the effectiveness of my organisation and I don't hesitate in endorsing it.

The success of a Parliamentary Committee, the degree of oversight and the effect that it has, is clearly going to be variable. There are not only significant differences in the agencies that Parliament and Parliamentary Committees oversight both in jurisdiction and size, but also the particular traits of individual members of committees and how they see their role will also affect their approach. Because of this I will focus my observations today on the Committee on the Office of the Ombudsman and the Police Integrity Commission which of course is the Committee charged with oversight responsibilities in relation to my office.

## *History*

This year the Ombudsman's office celebrates its 30<sup>th</sup> birthday and it has been accountable to a Parliamentary Committee for 15 of those years. Over this time there have been 12 General Meetings with the Committee and a number of other meetings relating to specific issues or special inquiries.

It was in fact the Ombudsman office that provided the impetus for the creation of the Committee in the first place. Prior to 1990, the Ombudsman essentially answered directly to the Premier. There was some tension in this arrangement given

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\* NSW Ombudsman

that on the one hand the Ombudsman was an independent officer of the Parliament and, on the other, the Ombudsman was seen to report to the Premier, not only the head of government but also a Minister often responsible for the agencies the Ombudsman was charged with overseeing.

Clearly, the public expects and the public interest requires that the Ombudsman, given the breadth of powers available to the office — especially here in NSW — should be as open and accountable as possible. The usual refrain is ‘*who watches the watchdog*’. In my view a Parliamentary Committee is the most appropriate external accountability mechanism. It best ensures our continued independence from the executive and it makes us accountable to Parliament and not the government of the day.

In 1990, my predecessor, David Landa, issued a report recommending the establishment of a Parliamentary Committee to oversee the functions of the Office of the Ombudsman for these very reasons. His report included comprehensive recommendations relating to the role and functions of the proposed committee. At that time only one other committee existed. It was responsible for the oversight of the Independent Commission Against Corruption (ICAC). The report recommended that the Ombudsman Committee should be modelled on the ICAC’s but with certain differences and with more far reaching powers. The recommendations were adopted and in 1990 the *Ombudsman Act* was amended to allow for the creation of the Committee.

In passing I would note that the Queensland Ombudsman is also answerable to a Parliamentary Committee which has similar functions to our Committee but surprisingly, no other State Ombudsman, nor the Commonwealth Ombudsman has this type of accountability model in place. Today I will examine the functions of the Committee and how it operates in practice; our relationship with the Committee; some current issues of interest to the Committee and my office; and what the future might hold.

### ***Functions of the Committee and how it Operates***

The Committee’s functions and powers can be found in Part 4A of the *Ombudsman Act*. The Committee has the power to veto a proposal to appoint a new Ombudsman.

In addition, the Committee has a power to monitor and review the exercise by the Ombudsman of the Ombudsman’s functions. It is also responsible for acting as a type of conduit between our office and Parliament by referring questions from Parliament to us and reporting to Parliament on these and any other matter it sees fit. It carries out these functions by examining our policies and systems, reviewing our reports, examining complaints that have been made about us and making suggestions to us. A particular limit on its power is that it cannot review our work

in relation to findings and decisions that have been made about individual complaints or investigations. These primary functions of the Committee are largely similar to other Parliamentary Committees in NSW.

In addition, more recently our Parliamentary Committee was provided with a new function, to conduct a review of the *Community Services (Complaints Reviews and Monitoring) Act* to determine if its objectives are still being met. This obligation was placed into the Act when it was amended at the time of the merger of the Community Services Commission into the Office of the Ombudsman, back in December 2002. The review must take place after 5 years of operation of the amended Act.

As I indicated earlier, there have been 12 General Meetings held by the Committee in relation to the operations of the Ombudsman. General Meetings are the usual framework in which the Committee conducts its business with the office. The practice of the Committee is to provide a list of questions on notice several weeks prior to the scheduled meeting. This allows for a large number of questions to be asked covering all aspects of the office's operations and we in turn are able to provide very detailed and well considered responses.

This has been determined over the years to be preferable to simply giving a verbal response during the course of the meeting on many of these operational aspects. It also permits the answers to the questions on notice to stimulate further discussion during the course of the meeting. Of course, the discussion inevitably prompts the Committee to ask many other questions which we need to answer on the spot.

The Committee's questions will range over many themes. They will often arise from particular areas of interest of the Committee or alternatively from complaints that they have received about us during the year. They also usually reflect public opinion or issues of public interest or concern. The Committee will also ask about any significant changes or trends in our complaint numbers as well as any jurisdictional or procedural issues of relevance. Additionally, if they are conducting an alternate inquiry, they may well seek additional information from us to inform that inquiry.

At the start of the meeting, we take an oath or affirmation before giving evidence. I am usually given the opportunity to make an opening address and over the years I have used the address to raise those issues that I think are important and relevant and which will be of interest to the Committee and public generally.

Undoubtedly, the interaction with the Committee is a two-way process. In the one direction they identify issues for us to answer but in return, we have the capacity to identify and raise issues with the Committee. For example, some issues that we have raised directly with the Committee include the Committee's views on our reporting functions and whether we ought to consider changing our annual reporting framework to one where more separate reports to Parliament about our key

functions were made. We have also raised the idea of a one-stop-shop complaints line with the Committee where complaints handling and watchdog agencies within NSW share a central call line and receipt area for complaints. I have also sought the Committee's advice and assistance in ensuring that their fellow members of Parliament were better informed about the role and practices of my office.

Conversely, over the years the Committee has taken a keen interest in some of the policy concerns of our office — supporting our calls for reviews of legislation concerning access to information and whistleblowing as well as some of the issues we must tackle as an organisation, for example where Ministers have delayed tabling in Parliament review reports we have provided to them.

In my view, the importance of the role of the Committee is highlighted when the Committee considers these types of issues and then makes recommendations to government. The Committee is not only demonstrating a bipartisan approach to particular issues but making strong recommendations to government in the public interest.

Another important accountability aspect of the Committee's meetings is that they are conducted in the open. For an agency like ours, which handles private and sensitive information mostly under strict confidentiality provisions, this is an important part of public accountability. The meetings provide an avenue for members of the public including the media to be present while we answer to the Committee on our work. Of course, it is always open during the course of the meetings should the questions and answers stray into particularly sensitive or confidential areas for the evidence and answers to be taken in camera.

### ***Our Relationship with the Committee***

I recognise as did my predecessors the importance of maintaining a positive and cooperative relationship with the Committee. We start from the position of being as open as we can about providing information and explaining our decisions. We take the view that it is best to interpret the Committee's powers broadly and we try to accede to all reasonable requests made of us. In my view we have a good relationship with the Committee and its secretariat. I have emphasised to my staff the importance of the work of the Committee and I have also taken the opportunity of inviting the Chairperson to a meeting of our staff to address them about the role and functions of the Committee.

Although the relationship must, in my view, be a positive and constructive one, it also must be one that is maintained at a distance. The Ombudsman must never become politicised or be seen to be doing the bidding of the Committee. If the Committee's exercise of its powers were to become too intrusive, the very purpose for which it has been set up would be threatened and the integrity of the office of the Ombudsman might be compromised. Neither should the Committee

be captured by the Office of the Ombudsman. Each has an important role, which must be performed professionally and without favour, if it is to maintain credibility.

As I have indicated, one of the Committee's responsibilities is to take complaints (and hopefully on the odd occasion, compliments) about our office from the public. The Committee's usual practice is to respond to these and where it is unable to do so directly, it will refer the complaints to us for further information so that it is in a position to respond. A risk flowing from this is that the Committee may form a skewed perception about our work and the public's perception about our office. Not surprisingly given the significant numbers of people that we deal with and the many decisions that we must make, there will be people who will from time to time be unhappy with our decisions and will be disaffected as a consequence. They are often the people who will bring their concerns, after exhausting internal review mechanisms in my office to the Parliamentary Committee's attention. It would be very easy given that much contact from the public will be in this sense negative, for the Committee to base its views on the success or otherwise of our office simply by reference to this type of correspondence. Being aware of this risk I think reduces the likelihood of such a view being formed.

### ***Trends/Current Issues***

One of the most significant issues affecting both our office and the Committee is the change that the office of the Ombudsman has experienced since the commencement of the Committee. In 1975, our first year of operation, the Office of the Ombudsman had 14 staff and received under 2000 complaints.

When the Committee was first formed in 1990, we had 74 staff and we received almost 5000 formal complaints. Today we have over 180 staff managing in excess of 36,000 matters a year relating to many thousands of agencies and we no longer work only in the traditional area of Ombudsman with public sector agencies, but we also now have broad jurisdiction and reach over many private sector agencies and private individuals.

The nature of how we do our work has also changed. When the office was established we were responsible for overseeing government agencies through addressing individual complaints about those agencies. Because of the changes in our jurisdiction and structure, we now perform many of our functions through a direct oversight model and our work has become increasingly strategic with a marked shift towards a more systemic focus. While of course individual complaints will always continue to be the backbone of our operation, we deal with these also now with a focus on where these matters might contribute to a better understanding of problems within systems or an agency as a whole. Traditionally where we have identified problems, we have used our investigation powers. Now, in addition to those powers, we use a range of strategies including

auditing of systems and the inspection of records, we review other agency investigations and we undertake considerable research and project work.

I mention these changes because, as a consequence of them, the Committee has needed to adapt to the way in which it performs its functions in monitoring and reviewing our office. There is a significantly larger amount of material for the Committee to come to grips with. Much of the focus of the Committee's interest and questions in General Meetings over the past few years has been on the issues arising from the expansion of our office and how the office is managing the significant change and additional responsibilities.

The Committee takes a keen interest in whether we are adequately resourced and how well we are managing the challenging mix of responsibilities. This is best evidenced by the Committee's recent advice to me of its intention to conduct a stakeholder review into the merger of the Community Services Commission into the office of the Ombudsman and any issues arising from this. It will not only inform the Committee of how well the office is undertaking these new responsibilities but it will also provide direct and relevant feedback to me and my senior staff about how we are managing these important new functions.

### ***The Future***

In giving a brief overview to you of some of the issues relating to the Committee's oversight of the Ombudsman, I hope I have also touched on those issues which I think are key to ensuring the future effectiveness of the Committee's role. Going into the future we need to ensure that our relationship with the Committee is one that is in good balance — on the one hand a cooperative, open and frank relationship, but on the other one that respects and maintains appropriate independence not only between the Committee and the office of the Ombudsman but also of the office itself. This balance though can change with changes in Committee Members or alternatively Ombudsman. It is something that must be worked at continually.

As our office and its work continues to expand and change, we need to ensure that we have systems in place to provide quality and detailed information to the Committee. Similarly, the Committee needs to devote the time, resources and energy to keep up with all of the changes and the work of the office. The Committee's functions of monitoring and reviewing the way the office does its business can only be meaningfully undertaken if the Committee is very active in keeping on top of these issues.

Given those demands on the Committee, it would seem sensible to endorse a future direction where from time to time the Committee conducts specific reviews or inquiries. Such inquiries would not only provide an opportunity for the Committee to look at particular issues in detail but they would allow my office to have a health



check in relation to how it is performing and meeting its obligations in relation to a discreet area under review.

In conclusion, it should be clear that in my opinion the Parliamentary Committee model, at least for the Ombudsman's office, works well. Its purpose is being met. It has, and I trust will continue, to hold my office to account in a constructive and meaningful way. ▲