

Review of the Queensland Workplace Rights Ombudsman and the Queensland Workplace Rights Office

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Executive Summary

In 2006-2007, the Queensland Industrial Relations Commission (QIRC), at the direction of the Minister, conducted an Inquiry to examine the impact of the Federal Government's Work Choices amendments to the *Workplace Relations Act 1996* (Cth) on Queensland workplaces, employees and employers. The QIRC delivered its final report on 29 January 2007, making 16 recommendations on the establishment and functions of a statutory body "similar to that of the Victorian Workplace Rights Advocate".

The Queensland Workplace Rights Ombudsman (the Ombudsman) and the Queensland Workplace Rights Office (QWRO) were established in July 2007 under the *Industrial Relations Act 1999* (IR Act) to facilitate and promote fair industrial relations practices in Queensland and provide information and assistance to the public.

The current provisions under the *Industrial Relations Act 1999* (IR Act) require that a person is appointed as Ombudsman or a person is appointed to act as Ombudsman. These provisions also require the existence of the QWRO, which consists of the Ombudsman and the officers of the QWRO.

The Queensland Ombudsman exercises functions under sections 339D to 339G of the IR Act. As an independent officer, the Ombudsman cannot be directed about the conduct of his functions or the priority given to investigations.

The present Ombudsman was first appointed on 1 July 2007 for a 3 year term which expired on 30 June 2010. He was reappointed on 1 July 2010 for a period of 6 months to 31 December 2010.

Following the introduction of Work Choices, Victoria and the Northern Territory also established a dedicated body to facilitate and promote fair industrial relations practices and provide information and assistance to the public. Both bodies have since been abolished.

The Ombudsman and QWRO have developed a range of industrial relations services which can be categorised as follows:

- Information and education
- Advice and referral
- Investigations
- Industry reviews
- Cross sectoral reviews, such as sham contracting and workplace bullying.

Of importance is the capacity of the Ombudsman to focus on issues of unfairness, even in cases where there may not be breaches of industrial law. In his submission to this review the Ombudsman stated "The QWRO has the almost unique legislative function to 'publicise' unfair, inappropriate, or unlawful activities." He also submitted that "...QWRO can focus attention on unfairness in a way that assists both employer and employee with a minimum of formality which often helps the parties to avoid the costly process of litigation."

There are two major drivers for the current review of the Ombudsman and the QWRO:

1. The changed industrial relations environment since the abolition of Work Choices and the referral of private sector industrial relations powers to the Federal jurisdiction.

2. The recommendation for a review of the Ombudsman by the Independent Review of Queensland Government Boards, Committees and Statutory Authorities (IRGB) conducted in 2008-2009. Recommendation 35 of the Report states that “A review of the ongoing need for the Ombudsman in response to national industrial relations reform is supported”.

The Terms of Reference for the review are to:

1. Inquire into the achievements of the Queensland Workplace Rights Ombudsman (Ombudsman) and the Queensland Workplace Rights Office (QWRO).
2. Inquire into and make recommendations to the Minister about the future of the Ombudsman and the QWRO, as a result of the change of government at the federal level, the introduction of the Fair Work Act 2009 and the referral of Queensland’s private sector industrial relations powers to the Commonwealth.
3. Apply the methodology set out in the report of the Independent Review of Government Boards, Committees and Statutory Authorities (IRGB), which is intended to identify those government bodies that are necessary and working efficiently and those that can be abolished.

The Threshold test is the question: *Why have a (non-departmental) government body?* The review applies the Public Interest Map (PIM) developed in the course of the IRGB. The PIM seeks to satisfy this test by posing the following three questions:

1. Does the activity need to be done?
2. Should the Queensland Government undertake the proposed activity?
3. Is there any compelling reason why a department (or other existing body) cannot, or should not, undertake the proposed activity?

These questions provided the framework for interviews with a broad range of industrial relations stakeholders, including:

- Minister for Industrial Relations
- Ombudsman
- QWRO
- QIRC commissioners
- Fair Work Ombudsman
- OFSWQ
- Unions
- Employer groups
- Other government agencies
- Non-government organisations

Stakeholders were generally of the view that the State has referred jurisdiction for private sector industrial relations, and should allow the Federal government to assume full responsibility for the system. However, as the national system transitions, stakeholders submitted that there would be value in preserving some capacity within a department to continue information, advice and referral services for vulnerable workers. There was agreement that the QIRC had and should retain its existing functions to undertake independent industry and cross-sector reviews. Overall, stakeholders agreed that the new Federal system was a fair system and could not be compared with Work Choices. On the basis of consultation, data analysis, and application of the PIM, the review finds that there is not a compelling reason to maintain the independent Office and functions of the Ombudsman.

Introduction to the report

Origins of the Queensland Workplace Rights Ombudsman and Queensland Workplace Rights Office

1. In 2006-2007, the Queensland Industrial Relations Commission (QIRC) conducted an Inquiry as directed by the Minister under s.265(3)(b) of the *Industrial Relations Act (Qld)1999*, to examine the impact of the Federal Government's Work Choices amendments to the *Workplace Relations Act 1996* (Cth) on Queensland workplaces, employees and employers. The QIRC delivered its final report on 29 January 2007, making 16 recommendations on the establishment and functions of a statutory body "similar to that of the Victorian Workplace Rights Advocate".
2. Following the Inquiry, in July 2007 the Queensland Workplace Rights Ombudsman (the Ombudsman) and the Queensland Workplace Rights Office (QWRO) were established under the *Industrial Relations Act 1999* to facilitate and promote fair industrial relations practices in Queensland and provide information and assistance to the public.
3. The current provisions under the *Industrial Relations Act 1999* (IR Act) require that a person is appointed as Ombudsman or a person is appointed to act as Ombudsman. These provisions also require the existence of the QWRO, which consists of the Ombudsman and the officers of the QWRO.
4. The present Ombudsman was first appointed on 1 July 2007 for a 3 year term which expired on 30 June 2010. He was reappointed on 1 July 2010 for a period of 6 months to 31 December 2010.
5. The Ombudsman, Donald Keith Brown, was appointed as a member of the QIRC on 2 August 1999 and holds that position simultaneously with the position of Ombudsman, although he is not permitted to exercise the powers of a member of the QIRC while appointed as the Ombudsman.
6. The QWRO is currently funded to employ seven staff, including a manager, two principal investigations officers, one senior advisor and investigations officer, two information officers and one administration officer.
7. The 2009-2010 Budget for the Ombudsman and QWRO was \$1,136,900.

Functions of the Ombudsman and QWRO under the Industrial Relations Act 1999

8. Sections 339A - 339ZB of the IR Act provide for the appointment of the Ombudsman and the QWRO. Section 339D outlines the functions of the Ombudsman, which are:
 - a. to consult with any persons the ombudsman considers are affected by industrial relations and other work-related matters;
 - b. to inform, educate and promote informed decision-making by persons the ombudsman considers are affected by industrial relations and other work-related matters;

- c. to facilitate and encourage fair industrial relations and work practices in Queensland, including the development of codes of practice;
 - d. to investigate and publicise unlawful, unfair or inappropriate industrial relations and other work-related matters in Queensland;
 - e. to refer instances of possible unlawful industrial relations and other work-related matters to appropriate authorities or services;
 - f. to make representations to an appropriate person or body about industrial relations and other work-related matters;
 - g. to monitor and report to the Minister on industrial relations and other work-related matters in Queensland;
 - h. to investigate and report to the Minister on the impact of any aspect of industrial relations and other work-related matters affecting Queenslanders;
 - i. to advise the Minister on the operation of this chapter and generally about industrial relations and other work-related matters;
 - j. to inform the Minister about strategies to—
 - i. mitigate the negative effects of legislation from any source about industrial relations and work-related matters; and
 - ii. improve protection for vulnerable workers; and
 - iii. promote fair and equitable industrial relations and work practices in Queensland;
 - k. to ask for help or information from any public entity about work-related matters; and
 - l. other functions conferred on the ombudsman under this or any other Act.
9. Section 339T of the IR Act provides that the function of the QWRO is to help the Ombudsman perform its functions.
10. The Ombudsman exercises functions under sections 339D to 339G of the IR Act. As an independent officer, the Ombudsman cannot be directed about the conduct of his functions or the priority given to investigations.
11. The Ombudsman is required to provide an annual report subject to Section 339ZA of the IR Act. Under this provision, the Minister must table a copy of the report within 14 days of receipt.
12. In addition to the statutory obligation to provide an annual report, the Ombudsman has provided quarterly reports to the Minister on the activities undertaken by his office.

Workplace rights advocates in other jurisdictions

13. Following the introduction of Work Choices, a number of state governments established a dedicated body to facilitate and promote fair industrial relations practices and provide information and assistance to the public.

Victoria

14. In Victoria the Office of the Workplace Rights Advocate (OWRA) was established in March 2006 through the *Workplace Rights Advocate Act 2005* (WRA Act). The powers and functions of the Workplace Rights Advocate (WRA), set up in section 5 of the WRA Act, are similar to those of the Queensland Ombudsman. The WRA was also charged with administering a ‘fairness test’ for public sector agreements, and was empowered to intervene in a proceeding in any court, although this power was never exercised.

15. The OWRA operated from 1 March 2006 till 31 December 2008. The major achievements during this period include:
 - Provision of information for employers and employees through the Workplace Rights Information Line (WRIL), which received 11,768 calls.
 - Initiation of 123 formal investigations by the WRA.
 - Commissioned 10 different research projects highlighting the impact of Work Choices on Victorian employees and fair employment practices.
 - Delivery of 45 seminars for employer and employees.
 - Review of the racing industry, including the development of a series of seminars for stable hands and trainers.
 - Development of 'Pregnancy, Discrimination and Workplace Rights and Obligations' booklets for employers and employees.
 - Development of an educational package for secondary schools, focusing on the rights and obligations of employers and employees in the workplace and the benefits of fair and co-operative workplace practices (schools curriculum project).
16. In May 2008 the Deputy Premier, the Honourable Rob Hulls directed Industrial Relations Victoria (now Workforce Victoria) to conduct an assessment of the OWRA. As part of the process unions, employer organisations and OWRA staff were asked for feedback.
17. On 26 November 2008, the Honourable Rob Hulls announced the closure of the OWRA from 31 December 2008. He indicated that the election of the Rudd Labor Government and the development of the Fair Work legislation, providing for a fair and equitable national industrial relations system, were behind the decision to close the office. In addition, the Victorian Government legislated in April 2008 to remove the fairness test for all public sector workplace agreements because the Commonwealth's new 'no disadvantage' test was considered to restore a proper safety net.
18. Since the closure of the OWRA, JobWatch has continued to provide assistance to Victorian workers on their rights in the workplace through a free telephone and referral service, community legal education and legal casework. Workforce Victoria took over a number of the OWRA projects, including the schools curriculum project and delivery of seminars and guides relevant to the racing industry.

Northern Territory

19. The Northern Territory Workplace Advocate (NTWA) was established in May 2006 by the Northern Territory Government in response to Work Choices. Unlike other jurisdictions, the NTWA was established through an administrative appointment instead of a legislative appointment. The functions of the NTWA were limited compared to similar advocates in other jurisdictions and focussed on providing information, education and advice for Territory workers and employers.
20. The NTWA operated from 2 May 2006 till 30 June 2009. An interim report was produced by the NTWA and presented to the Northern Territory Minister for Public Employment in February 2007. This was the only report produced on the achievements of the NTWA. The interim report provides an overview of the activities for the period from 2 May 2006 to 31 January 2007, which include:

- Provision of information for employers and employees in response to the 225 inquiries the NTWA received; over a quarter were from employers and employer associations.
 - Provision of information and resources through the NTWA website, which between June 2006 and 31 January 2007 had over 13,000 hits and 6,000 visits (i.e. visitor spent time viewing site content).
 - Consultations with a wide variety of stakeholders (e.g. unions, employer organisations, government departments) on general industrial matters, specific policy issues and individual cases.
 - Dealing with complaints concerning the application of the Northern Territory Long Service Act.
 - Development of a series of facts sheets for young workers, employees generally and employers about their workplace rights and responsibilities to the community.
 - Development of seminars and educational resources for senior school students, university students, career teachers and youth support services on key aspects of Work Choices.
 - Advice to the Northern Territory Government on private sector industrial relations, long service leave, procurement, occupational health and safety, the Australian Fair Pay Commission and federal legislative and system developments.
21. Following the change of Federal Government and the consequential changes to the Federal industrial relations legislation, the Northern Territory Government decided to cease the operations of the NTWA from 30 June 2009 with little opposition from unions and employers.

South Australia

22. In South Australia the Office of the Employee Ombudsman has been in operation almost 15 years and is still functioning. The Office of the Employee Ombudsman was established through the *Industrial and Employee Relations Act 1994*, sections 57-63. Its focus tends to be on state matters rather than federal industrial relations issues. The South Australian Ombudsman was appointed before the Work Choices legislation and not as a result of Work Choices as was the case in other States, including Queensland.
23. The South Australian Ombudsman has quite different powers from the Queensland Ombudsman and provides the following services:
- Advises employees on their rights and obligations under awards and enterprise agreements.
 - Investigates claims by employees or associations representing employees of coercion in the negotiation of enterprise agreements.
 - Scrutinises enterprise agreements lodged for approval under the Fair Work Act 1994 (SA) and intervenes in the proceedings for approval if required.
 - Represents employees in proceedings (other than proceedings for unfair dismissal) if the employee is not otherwise represented.
 - Advises individual home-based workers who are not covered by awards or enterprise agreements.
 - Provides an advisory service on the rights of employees in the workplace on occupational health and safety issues.

Chapter 1 - Current review of the Ombudsman and QWRO

Rationale for the review

24. There are two major drivers for the current review of the Ombudsman and the QWRO.
25. The first driver is the changed industrial relations environment since the abolition of Work Choices. The major rationale for the establishment of the Ombudsman and the QWRO was the introduction of the federal Work Choices legislation. However, there has since been a change in government at the federal level and the federal *Fair Work Act 2009* (FWA) has commenced. With this change, Queensland referred its industrial relations powers for the private sector to the Commonwealth. The referral commenced on 1 January 2010 and will be complete in 2011 when all remaining state awards will transition into the federal system.
26. The Queensland Government's referral of its private sector industrial relations powers to the Commonwealth effectively means that only the State public sector and the State local government sector remain in the State industrial relations system, a considerably reduced jurisdiction.
27. The second driver for the current review is the recommendation for a review of the Ombudsman by the Independent Review of Queensland Government Boards, Committees and Statutory Authorities (IRGB) conducted in 2008-2009. The IRGB Report of March 2009 states: "The Ombudsman was established in July 2007 in response to the Federal Government's controversial industrial relations laws. The ongoing need for the Ombudsman is under review in the context of national industrial relations reform". Recommendation 35 of the Report states that "A review of the ongoing need for the Ombudsman in response to national industrial relations reform is supported".

Terms of reference

28. The current review is to:
 1. Inquire into the achievements of the Queensland Workplace Rights Ombudsman (Ombudsman) and the Queensland Workplace Rights Office (QWRO).
 2. Inquire into and make recommendations to the Minister about the future of the Ombudsman and the QWRO, as a result of the change of government at the federal level, the introduction of the Fair Work Act 2009 and the referral of Queensland's private sector industrial relations powers to the Commonwealth.
 3. Apply the methodology set out in the report of the Independent Review of Government Boards, Committees and Statutory Authorities, which is intended to identify those government bodies that are necessary and working efficiently and those that can be abolished.

Process followed for the review

29. The IRGB recommended that a Public Interest Map (PIM) should be adopted by the Queensland Government as the public sector governance model for improving the

30. The Threshold test is the question: *Why have a (non-departmental) government body?* The PIM seeks to satisfy this test by seeking answers to the following three questions :
1. Does the activity need to be done?
 2. Should the Queensland Government undertake the proposed activity?
 3. Is there any compelling reason why a department (or other existing body) cannot, or should not, undertake the proposed activity?

31. These questions provided the framework for consultation with stakeholders. The consultation strategy is at Appendix 2. Key stakeholders included:

- Minister for Industrial Relations
- Ombudsman
- QWRO
- QIRC commissioners
- Fair Work Ombudsman
- OFSWQ
- Unions
- Employer groups
- Other government agencies
- Non-government organisations

A list of stakeholders consulted throughout the course of the review is at Appendix 3.

32. The outcomes of the consultations, together with analysis of data provided by QWRO, the Fair Work Ombudsman (FWO) and other referral agencies have informed the structure of this report as follows:

- Chapter 2 addresses Term of Reference 1 by outlining the achievements of the Ombudsman and QWRO;
- Chapter 3 addresses Term of Reference 3 by applying the PIM to stakeholder consultations; and
- Chapter 4 addresses Term of Reference 2 by making recommendations on the future of the functions of the Ombudsman and QWRO.

Chapter 2 – Achievements of the Ombudsman and QWRO

33. The roles of the Ombudsman and QWRO were established in 2007 to ensure fair treatment of Queensland workers subject to Work Choices. The Office has two strategic objectives:
 - workplace rights are upheld and protected; and
 - productivity is enhanced through fairer and safer workplaces.
34. The legislation in the IR Act provides the Ombudsman with broad functions to achieve these objectives.
35. The Office has developed a range of services which can be categorised as follows:
 - Information and education
 - Advice and referral
 - Investigations
 - Industry reviews; and
 - Cross sectoral reviews, such as sham contracting and workplace bullying.
36. Of importance is the capacity of the Ombudsman to focus on issues of unfairness, even in cases where there may not be breaches of industrial law. In his submission to this review (Appendix 4), the Ombudsman stated “The QWRO has the almost unique legislative function to ‘publicise’ unfair, inappropriate, or unlawful activities.” He also submitted that “...QWRO can focus attention on unfairness in a way that assists both employer and employee with a minimum of formality which often helps the parties to avoid the costly process of litigation.”

Information and education

37. The Ombudsman and QWRO have established a profile for the issues of workplace rights and fair treatment. In part this has occurred through the reputation and individual efforts of the Ombudsman to raise awareness of issues of unfair workplace practice. In doing so he has often attracted positive media attention to these issues. The most recent example was the Courier Mail article of Saturday 2 October 2010, where the Ombudsman received extensive coverage about his views on workplace bullying.
38. The Ombudsman and QWRO have developed Codes of Practice to assist employers and industries to act fairly in the treatment of workers. Examples include: termination of employment, general employment issues and industry specific codes for the contract cleaning, retail, aged and community care and hospitality industries. The Codes are published on the QWRO website, which received 14, 751 visits (12,864 unique visitors) in the June 2010 quarter.
39. QWRO operates a Hotline (1300 737 841) staffed by two information officers. The most frequent workplace issues raised relate to termination of employment, redundancy and other wages entitlements. In the June Quarterly Report, the Ombudsman highlighted workplace harassment as a consistent issue for callers. QWRO statistics indicate 5.64% of calls in the June quarter 2010 related to workplace bullying and harassment. Termination, redundancy and notice calls (28.11%) rated as the most significant issue.

Advice and referral

40. The Hotline continues to be the major vehicle for QWRO to provide advice and link callers to other services. QWRO believes the drop in caller numbers (down from 4380 in the March 2010 quarter) to 3127 in the June 2010 quarter was attributable largely to the closure of Wageline. The Ombudsman reported anecdotally that the number of referrals from Wageline were greater than those currently being received from the Fair Work Infoline (131 394). QWRO aims to install a telephone call traffic reporting system on the Workplace Rights Hotline to improve reporting capability. That notwithstanding, call numbers for the September 2010 quarter appear to have increased to 3466 calls for the quarter to 24 September. Call traffic consistently exceeds 1000 calls per month, well above the original estimate of 1,500 calls per quarter.
41. According to QWRO, the Hotline fields around 15% of calls from employers and 20-30% from public sector workers, the remainder representing workers seeking information or advice on issues of unfairness. Fifty per cent of calls in the June 2010 quarter were from regional areas, and 26% from callers under 25 years of age. Typically around 50% of callers are female. The Ombudsman submitted that many of these callers are vulnerable and unrepresented – either as union or industry association members, or by virtue of industrial coverage or employment relationship. Consequently, they have nowhere else to go. Stakeholders consulted in the course of this review believed this to be an issue. Some believed there were existing services, however that sourcing these services could prove difficult, particularly for young or low skilled workers.
42. QWRO provides a one-stop shop service for advice on the following matters: termination and redundancy; wages, entitlements and superannuation; workplace harassment; performance management and disciplinary actions; worker's compensation and workplace health and safety; apprenticeships and traineeships; employment and sub-contract arrangements; and the national industrial relations system.
43. Where relevant, QWRO acts as a referral point, linking callers to services provided by other agencies. Some examples include: The Fair Work Ombudsman; the Queensland Government Rapid Response Team for Displaced Workers; Queensland Working Women's Service (QWWS); Young Workers Advisory Service (YWAS); Workplace Health and Safety Queensland (WHSQ); WorkCover; QCOMP; the Anti-Discrimination Commission or Australian Human Rights Commission; the Queensland Industrial Relations Commission or Fair Work Australia; the Australian Taxation Office; the Department of Education and Training; and the Magistrates Court.

Investigations

44. Around 2.3% of all inquiries fielded by the QWRO have led to further investigation. The Office has three investigators who finalised 56 cases in the June 2010 quarter. The Ombudsman is required to report on the details of investigations undertaken by the QWRO. In summary, investigations in the June 2010 quarter fell into the following broad categories: recovery of underpayments, either wages or entitlements; unfair treatment, including forced transfers and varying hours of work; and worker health and safety, including bullying.

45. 2009-2010 data taken from the case management system reports 268 investigations, each taking an average of 33.32 days to complete. The majority of cases originated from the hospitality, retail, transport and agriculture and contract cleaning industries. Fifty-eight per cent of cases fell within the Federal jurisdiction, and nearly 25% of cases involved complaints by women. Wages and conditions accounted for around 48% of cases.
46. The Ombudsman has no coercive powers with respect to investigations where an allegation of unfairness is substantiated. However, the Ombudsman does have the function to publish examples of unfair practice, and to refer and report unfair practice.
47. Section 339D (1) (d) of the IR Act provides the Ombudsman with the function “to investigate and publicise unlawful, unfair, or inappropriate industrial relations and other work-related matters in Queensland.” The Ombudsman believes it is the capacity to exercise this function to ‘name and shame’ which enables the quick resolution of a case, even where the complaint goes to an issue of unfair versus unlawful practice.
48. In the June quarter 2010, of 51 cases, 91% had elements of unfairness, and of those, 39% were resolved by QWRO and 37% were at least partly referred to other agencies for resolution. The remaining cases were not taken further for various reasons (e.g. information and education had a mitigating effect).

Industry Reviews

49. Section 339D (1) (h) of the IR Act requires the Ombudsman “to investigate and report to the Minister on the impact of any aspect of industrial relations and other work-related matters in Queensland”. This provides the Ombudsman with the head of power to undertake investigations into industrial practices across industries.
50. The Ombudsman has undertaken reviews into the following industries: Contract cleaning; security; recreational diving; fruit and vegetable harvesting; contract traffic control; and taxi services. He is considering reviews of the sex worker and skydiving industries.
51. Industry reviews have enabled the Ombudsman to put the spotlight on unfair or unlawful industrial practices across a range of industries. Workers in these industries have typically been low-paid, unrepresented, and therefore vulnerable.
52. The Ombudsman has demonstrated an ability to get industry stakeholders around the table to examine issues of unfairness and to promote changes to industrial practices.
53. The catalyst for an industry review stems from calls taken by the QWRO Hotline. The Ombudsman’s 2008-2009 Annual Report confirms “Decisions to conduct industry investigations have in each case followed a period where the number and nature of calls involving a particular vocation warrant closer investigation particularly where an unfair practice or set of circumstances appears to be widespread“(p27).
54. The Ombudsman does not have the power to compel a response to his recommendations on review of an industry. He commented on this lack of powers in the 2010 June quarterly report: “...people see the Ombudsman as instrumental in the attempts at improvement, (but) they aren’t aware that the Ombudsman lacks the powers to issue orders against offenders or prosecute them” .

55. However, responses to a number of reviews have seen changes to industry practice. For example, following a 2007 review of the fruit and vegetable harvesting industry in Bundaberg, the Ombudsman returned to the region in 2010 to meet with stakeholders and government agencies in an attempt to rekindle improvements made three years earlier.
56. The outcome was an agreed protocol to share information and refer issues to the appropriate agency for resolution. The Ombudsman reports fewer complaints from workers in this industry in the 2010 June quarterly report.
57. Likewise, in 2008-2009 the Ombudsman's review of the contract traffic control industry led to improved safety conditions and industrial outcomes for workers contracted as traffic controllers.
58. The Ombudsman has just completed a review of the taxi industry which is currently subject to government consideration, including consultation with stakeholders, towards the formulation of a response to his recommendations.

Cross-sectoral reviews

59. The Ombudsman has undertaken a review of sham contracting with a view to exposing the practice and educating workers and sub-contractors as to their industrial rights.
60. The Ombudsman has investigated cases where employers used sham contracting or conditions in employment contracts to shift costs to workers. Some examples included the deduction of costs for recruitment, training, excesses on vehicle accident insurance.
61. The June 2010 quarterly report states "Bullying and harassment callers to the QWRO Hotline continue to be at a level warranting focussed attention of the Office and the Ombudsman". The Ombudsman has consulted a range of industrial relations' stakeholders who have indicated support for a review of harassment and bullying, providing it led to concrete outcomes.

Chapter 3 – Stakeholder consultation outcomes

62. The third term of reference for the review requires the application of the methodology set out in the report of the Independent Review of Government Boards, Committees and Statutory Authorities (IRGB), which is intended to identify those government bodies that are necessary and working efficiently and those that could be abolished.
63. The methodology used by the IRGB involved the application of the PIM as the analytical framework to review the need to delegate authority to an independent body, where “A portfolio department is the organisational form of first choice for government.”
64. The three questions posed by the PIM provided the framework for the consultation strategy and will be used to summarise the outcomes of consultation.

Does the activity need to be done?

65. The IRGB recommended that all government bodies should be subject to either a sunset clause or periodic review. The independent reviewers note that non-department bodies “may have completed their original mission or have evolved their activities to achieve purposes other than those for which they were originally established (and in some cases funded)” (Webbe and Weller, 2009. p29). During the consultation period, there was general consensus amongst stakeholders that the Office of the Ombudsman was established to act as a watchdog during the era of Work Choices. Given the demise of Work Choices, a number of stakeholders submitted that the office had lost its mandate.
66. The second reading speech delivered by the then Minister for Industrial Relations, the Honourable John Mickel MP, confirmed the watchdog role of the Ombudsman with respect to Work Choices: “The Queensland Government remains committed to facilitating and encouraging the fair treatment of all workers in Queensland. ...the Queensland Workplace Rights Office will be a one-stop shop. ...Importantly one of the duties of the Ombudsman will be to provide advice to the Queensland Government on strategies to mitigate the negative effects of Work Choices.”
67. The Ombudsman’s submission to this review (Appendix 4) states that the Office was established to protect the rights of Queensland workers subject to Federal jurisdiction, and that given this is still the case, the Office continues to have a role.
68. The Northern Territory and Victorian Governments, which had established similar offices following the introduction of Work Choices decided to close these offices due to the election of the Rudd Labor Government and the development and introduction of the Fair Work legislation.
69. However some stakeholders believed that the Ombudsman’s advisory services for vulnerable, unrepresented parties, together with the independent function of industry review, constituted sufficient argument to retain the Office.
70. Stakeholders acknowledged the demand for QWRO Hotline information/advisory services. There are currently over 1000 calls per month to the QWRO Hotline, indicating a demand for the service which exceeded original expectations of 1500 per

71. A number of stakeholder organisations strongly supported the rights-based functions of the Ombudsman with respect to vulnerable workers. As an example, the Queensland Working Women's Service reported 178 referrals to the Ombudsman in 2008-2009 and 88 referrals in 2009-2010. The Ombudsman estimates that around 80% of callers are vulnerable and unrepresented (for example, low-paid workers, sub-contractors) and have nowhere else to go for advice. However it is difficult to profile callers (versus call types) using quantitative evidence because of inconsistencies in QWRO data capture.
72. QWRO case management files provide a better insight into the nature of investigations, particularly the profile of workers and their complaints. Case studies are regularly provided to the Minister in the Ombudsman's quarterly reports. Typically but not exclusively, these cases involve complaints about termination and redundancy provisions, hours of work, pay and entitlements.
73. The Ombudsman's capacity to investigate complaints of unfairness, versus unlawful practice was supported by the majority of stakeholders. There was some division, however, on the broad ranging nature of the function, with a number of stakeholders stating investigations should afford natural justice and follow the processes of procedural fairness. Others believed that the capacity of QWRO staff to 'get on the phone' and invoke the authority of an independent Ombudsman was a strength resulting in matters being resolved quickly.
74. Stakeholders were divided on the issue of the Ombudsman's lack of powers, given the function is limited to the right refer, report or publicise examples of unfairness. Some stakeholders thought the 'name and shame' function would have limited success with smaller businesses, while others thought there should be clearer boundaries to inform a decision to exercise this function. Some raised concerns about the legal liability issues associated with decisions to publicise cases of unfairness.
75. There was general agreement amongst stakeholders about the value of industry reviews; however there were divergent views about the Ombudsman's lack of coercive powers. Some stakeholders thought 'shining the light on', or exposing the industrial practices of some industries was sufficient catalyst for change, while others thought the Ombudsman's lack of coercive powers meant the role was a 'toothless tiger'.
76. There was general support for the Ombudsman's proposed cross-sector review of workplace harassment and bullying, providing it was focused on better outcomes for those subjected to bullying. Stakeholder support was qualified further by a shared view that any such review needed to advance the evidence base for the prevention of bullying.
77. In summary, the Ombudsman's advisory and industry review functions were considered to be important by the majority of stakeholders. However, stakeholders were more divided in their views on the complaints investigation function, given the Ombudsman's lack of coercive powers.

Should the Queensland Government undertake the proposed activity?

78. Given the referral of State industrial relations powers to the Federal jurisdiction,

79. Most industrial associations – unions and employer representatives - believed they were best placed to provide information and advice services to their members, but acknowledged there was a service gap for unrepresented parties. Other stakeholders questioned whether there was a gap in information services, or whether the real issue was the need to improve referral mechanisms.
80. QWRO statistics indicate the majority of caller inquiries relate to termination of employment, redundancy, pay rates and other entitlements. A number of stakeholders said where these calls were private sector industrial matters; they should be directed to the Federal jurisdiction. Provisions of the *Fair Work Act 2009* (FW Act) are wide-ranging and include: terms and conditions of employment; general protections, including workplace rights; right of entry; unprotected industrial action; employee records and pay slip obligations. The FW Act operates in conjunction with the *Independent Contractors Act 2006* to protect contractor rights and entitlements.
81. Stakeholders submitted that the FWO has the responsibility and statutory independence necessary to ensure compliance with the law. Some stakeholders submitted that the FWO was still in a transition phase, however that the FWO's functions and powers exceeded those of QWRO. Examples include the following:
- The FWO has a role to educate and advise parties on Commonwealth workplace laws; promote and monitor compliance, investigate breaches, commence proceedings/make applications; and represent employees in legal proceedings.
 - The FWO operates an information Hotline (131394). Queensland calls constitute 22% of the 237,000 calls taken nationally during last financial year.
 - The FWO has contracted an inspectorate from the States which has the power to investigate and enforce compliance. This includes a power to conduct targeted education campaigns in industries and regions, and to investigate and provide assistance to resolve a range of workplace complaints. There are 115 Fair Work Inspectors in Queensland.
82. The Ombudsman has submitted that "...it would be virtually impossible without the involvement of an independent ombudsman to control priorities in investigations and determine the subjective, in some cases almost abstract, questions of fairness." However, matters of unfair practice frequently involve breaches of law, particularly industrial rights. The FWO has the jurisdiction and the statutory obligation to investigate matters where there may be a breach of industrial rights. Examples of rights protected under the FW Act include the right to be protected from unlawful discrimination, adverse action, coercion, misrepresentations and undue pressure in relation to agreements and earnings.
83. The Ombudsman has expressed some concern that the FWO has adopted a policy which will preclude matters of less than \$5000 being pursued through litigation. The FWO litigation policy does list public interest factors which influence a decision to commence proceedings - one of which is where contraventions lead to significant underpayments (upwards of \$5000 in total (not per employee). However the policy does recognise special circumstances, where underpayments of less than \$5000 would proceed to

84. On the question as to whether the Queensland government should continue to undertake industry audits, a majority of stakeholders supported the function, but identified that the Queensland Industrial Relations Commission (QIRC) had existing power to undertake industry reviews. Others submitted industry reviews should be tripartite and be led by government departments responsible for regulating the industry under review.
85. Some stakeholders saw these reviews as the responsibility of the Commonwealth. The FWO undertakes national audits of industry, which commence with an education campaign, and conclude with audits of employers to ensure compliance with the FW Act and the provisions of Modern Awards and relevant industrial agreements. In addition, the focus of Queensland based audits can be negotiated between the FWO and the Department of Justice and Attorney-General under the service level agreement. Processes and procedures are followed as prescribed by FWO.
86. A number of stakeholders submitted that the referral of private sector IR powers has left the public sector as the sole remaining jurisdiction for the Ombudsman. QWRO estimated that 20 - 30% of callers to the QWRO Hotline were public sector workers. Most stakeholders were of the view that, with the possible exception of employees of smaller councils, public sector workers were already well served by existing human resource management systems, including advisory, complaints and dispute resolution services.
87. In summary, in terms of the functions of the Ombudsman there was a majority view that the Queensland Government should not vacate the space completely. Stakeholders believed that the new Federal system was a fair system and could not be compared with Work Choices. However, some stakeholders submitted that the new Federal system was still in transition and that the FWO was still consolidating its services. Stakeholders expressed some levels of support for continuing a Queensland referral function for vulnerable workers, and for retaining the capacity for industry and cross-sector reviews.

Is there a compelling reason why a department (or other existing body) cannot, or should not, undertake the activity?

88. The Public Interest Map requires the development of a Public Interest Case to determine whether it is in the public interest to establish or maintain a body independent of Government to undertake functions which serve a public purpose.
89. The threshold test requires at least one of four threshold criteria to satisfy a compelling case to override the presumption that a department is the organisational form of first choice. The criteria in summary are as follows:
1. Organisational capability – it is not possible or feasible for a department (or another existing body) to undertake the activity.
 2. Independence – the nature of independence required is beyond that which can be achieved within a department.
 3. Public interest risk – there would be an unacceptable risk to the State if the activity was to be undertaken by a department or other entity.
 4. Essential public participation and consultation – could access to government and

90. Clearly a government department and other existing statutory bodies (e.g. QIRC and Legal Aid Queensland) and community organisations (e.g. QWWS, Caxton Legal Service) have the capability and resources to undertake the functions, indeed with respect to IR advisory services and industry reviews, they have done so in the past. A service matrix outlining current providers of the activities covered by QWRO is at Appendix 5. The matrix, while not exhaustive, demonstrates the breadth of advisory services and the potential for confusion and overlap.
91. The issues of risk and public participation are not considerations, as departments have long demonstrated a capacity to manage regulatory functions and facilitate community engagement.
92. Of the four threshold factors, the only issue at question is whether the functions of the Ombudsman need to be performed by an independent umpire. Stakeholders were divided on the issue of independence.
93. There was a majority view that there should be scope for the industry review function to be performed by an independent body. In the Federal jurisdiction, the FWO has a responsibility which it acquits through the National and State Audit program. Currently the FWO is conducting a number of national campaigns and audits, including the National Retail Industry Campaign, Insulation Installers Audit Program and the Horticulture Industry Shared Compliance program, as well as a number of state and territory based campaigns and audits
94. Stakeholders believed there was merit in, and capacity for the QIRC to continue to undertake industry and cross-sector reviews. Under section 265(3) of the IR Act the QIRC may hold an inquiry into or about an industrial matter on application by an interested person or of its own initiative and must hold an inquiry if the Minister under section 265(3) of the IR Act directs it to do so.
95. There was acknowledgement that Queensland Government departments have undertaken cross-sector reviews and industry reviews in the past, similar to those conducted by the Ombudsman. These include the 2001 *Review of Taxi Driver Remuneration and Conditions of Employment* by the former departments of Industrial Relations, Transport and Main Roads and the extensive work undertaken in 2001-2002 by the Queensland Government Workplace Bullying Taskforce.
96. There was similarly an acceptance by stakeholders that the advisory/referral services could be undertaken by a department. A number of stakeholders cited the now defunct Wageline as an example. Wageline was the precursor to the QWRO Hotline and ceased to exist from 1 January 2010 when the Fair Work Hotline commenced operations.
97. The Ombudsman has gained significant respect from industrial relations stakeholders for the way in which he has discharged the independence of his Office. As an independent officer, the Ombudsman cannot be directed about the conduct of his functions or the priority given to investigations. However, the role is distinguished from those of other independent statutory officers, like the State Ombudsman and the FWO, because it lacks powers. As examples, both the State Ombudsman and the FWO have

98. A number of stakeholders expressed a view that the function to publish should only be exercised on the basis of procedural fairness, otherwise there was risk associated with its use. There is a question about the legal liability which may arise as a consequence.
99. The Ombudsman confirmed that he has used this function sparingly. He has not used the function more recently, following advice that his role did not have the inherent legal protections he had been afforded as a Commissioner.
100. The exercise of a function which may carry an underlying legal risk gives rise to a question about the wisdom of retaining that function. That said, the Ombudsman believes the implied sanction motivates employers to quickly address matters of unfairness in situations where there may or may not be a breach of industrial law.
101. However, there would be greater risk than benefit in seeking to vest the function elsewhere, for example in a department; particularly given the capacity to refer matters to the FWO and the industrial inspectorate for investigation and prosecution, as necessary.
102. It is noted that Parliament intended for the Ombudsman and the QWRO to be part of Queensland's industrial relations institutional framework. However, it must also be noted that the industrial relations landscape has changed considerably since 2007. The Federal Government has established the independent Office of the Fair Work Ombudsman to oversight the new industrial relations system. The national system has jurisdiction over the majority of workers.
103. On balance, there is not a compelling reason to maintain the independent Office and functions of the Ombudsman at this time. The State has referred jurisdiction for private sector industrial relations, and should allow the independent Federal bodies – the FWO, FWA and the Fair Work Divisions of the Federal Court and the Federal Magistrates Court - to assume full responsibility for the system. However, as the national system transitions, there is value in providing some capacity within a department to continue information, advice and referral services for vulnerable workers; and in retaining the existing functions of the QIRC to undertake independent industry and cross-sector reviews.

Chapter 4 - Recommendations

104. The second term of reference for the review requires the inquiry into and making of recommendations to the Minister about the future of the Ombudsman and the QWRO, as a result of the change of government at the federal level, the introduction of the *Fair Work Act 2009* (FW Act) and the referral of Queensland's private sector industrial relations powers to the Commonwealth.
105. The question of jurisdiction has been addressed in Chapter 3 of this report. In summary, the Queensland Workplace Rights Ombudsman was established to protect the fair treatment of Queensland workers subject to the Work Choices regime. The Ombudsman's submission to this review (Appendix 4) states he has a responsibility to protect the interests of Queensland workers subject to the federal jurisdiction, therefore, notwithstanding the referral, nothing has changed. In a technical sense, given the scope of his functions, the Ombudsman is correct. However, the Queensland State Government has willingly referred powers to the Commonwealth. This clearly distinguishes the circumstance and provisions of the FW Act from Work Choices.
106. Given the referral of private sector IR to the Federal jurisdiction, many stakeholders contended that the public sector is the sole jurisdiction for the Ombudsman. This sector is well served in terms of advisory, complaints and dispute management services. Public servants have access to in-house human resource management services, the resources of the Public Service Commission, Public Sector Industrial and Employee Relations (PSIER), WHSQ, and the QIRC, for advice and dispute resolution. Public servants also have access to the services of the State Ombudsman, CMC, and the Anti-Discrimination Commission, subject to the nature of the complaint and the jurisdiction of each body.
107. The Ombudsman's industry and cross sector review functions can be undertaken by the QIRC or by government departments with regulatory and/or policy responsibilities, as appropriate. In addition, the FWO undertakes National and State audits by industry type.
108. With the possible exception of the provision of referral and advisory services for vulnerable workers, the establishment of the Office of Fair Work Ombudsman has superseded the need for a State function. A number of stakeholders submitted that the continuation of the role of the Workplace Rights Ombudsman has the potential to create confusion and duplication in the federal system.
109. There is scope to continue the important work commenced by the Ombudsman on workplace bullying, given the seriousness of the issue, and the support from stakeholders. WHSQ has the statutory mandate and resources to lead this work, in partnership with other government agencies and industrial relations stakeholders.
110. The application of the PIM in Chapter 3 of this report demonstrated that there is no compelling case for the Queensland government to maintain the Ombudsman and the QWRO.

Recommendations

On the basis of the consultations and data analysis conducted as part of the review, it is recommended:

Recommendation 1

That the Office of the Workplace Rights Ombudsman (QWRO) ceases operation as soon as practicable.

Recommendation 2

That the Office of Fair and Safe Work Queensland (OFSWQ) prepare advice to the Minister on the need to amend the provisions of *the Industrial Relations Act 1999* (IR Act), to enable the retention of the Ombudsman and the QWRO but allow it to be filled at the discretion of the Queensland Government.

Recommendation 3

That the current Ombudsman ceases in his position as at 31 December 2010, and resumes his position as a Commissioner of the QIRC on 1 January 2011.

Recommendation 4

That a person will be appointed to act as Ombudsman from 1 January 2011 until the amendments to the IR Act have been adopted.

Recommendation 5

That QWRO staff return to the OFSWQ on closure of the Office.

Recommendation 6

That QWRO staff be deployed to positions commensurate with their current classifications.

Recommendation 7

That the OFSWQ investigate ways to directly appoint QWRO officers to these positions.

Recommendation 8

That the OFSWQ continue a transitional hotline referral service for vulnerable workers and that the 'workplace rights' brand be retained.

Recommendation 9

That the OFSWQ refine and applies the service matrix at Appendix 5 to ensure a comprehensive referral service which avoids duplication.

Recommendation 10

That the OFSWQ applies the service matrix to a review of the Fair and Safe Work Queensland website to better enable web navigation and links to services.

Recommendation 11

That the OFSWQ consult with other hotline services, such as Legal Aid, QWWS/YWAS, Workplace Health and Safety Infoline, Information Services Unit and Smart Services Queensland, to determine the best interim location for the service.

Recommendation 12

That the OFSWQ, through the service level agreement, negotiates with the FWO to improve access to federal services for vulnerable workers.

Recommendation 13

That the OFSWQ undertakes these negotiations with a view to transitioning responsibility for the referral service to the FWO, if and when appropriate.

Recommendation 14

That the QIRC retains responsibility for industry reviews consistent with the provisions of the IR Act.

Recommendation 15

That the OFSWQ develop a rolling quarterly forward program for strategic state industry audits in negotiation with the Fair Work Ombudsman.

Recommendation 16

That the OFSWQ use the research commissioned by WHSQ to develop a 'zero tolerance' campaign against workplace harassment and bullying.

Recommendation 17

That WHSQ and PSIER initiate discussions with the Public Service Commission and unions to review complaints management in relation to workplace harassment and bullying in the public sector.

Public Interest Map

for Queensland Government Bodies

Figure A.1

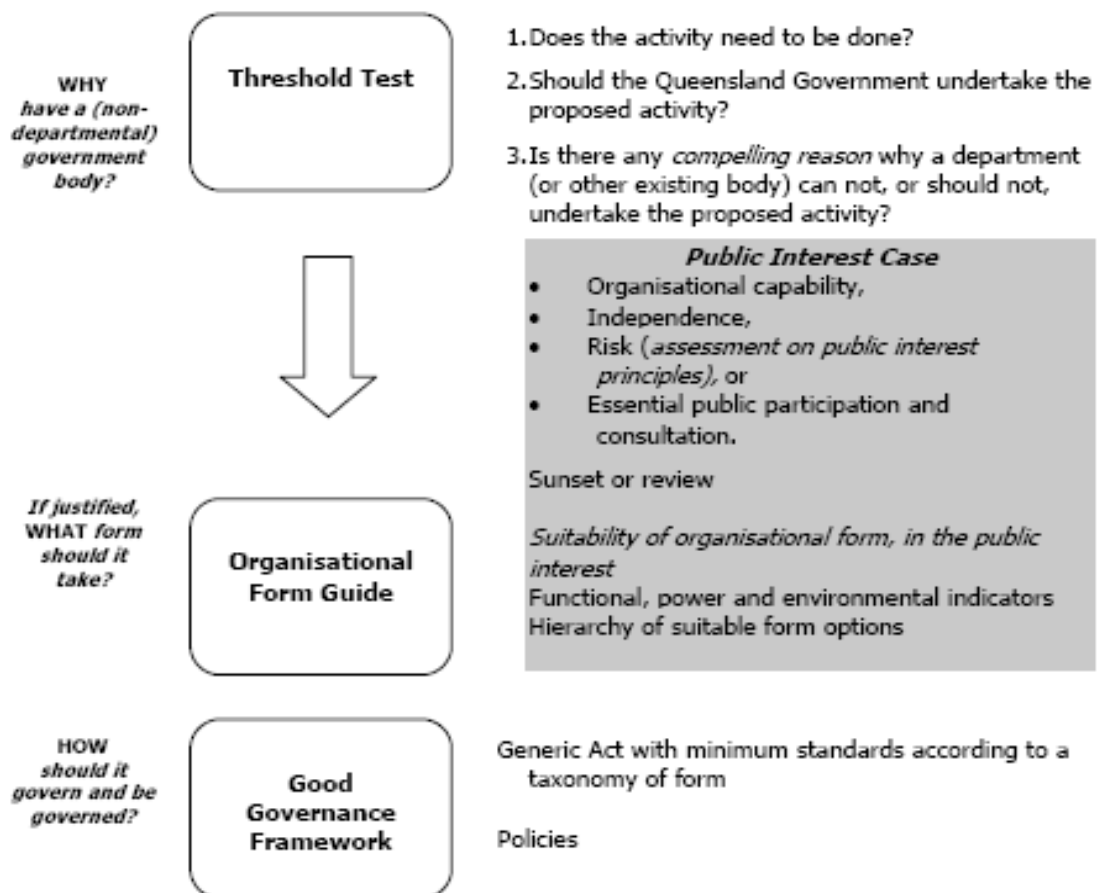
Summary Form

Core Premises:

Government Ministers are responsible to Parliament, and ultimately to the electorate, for the operation of all departmental and non-departmental bodies within their portfolio.

A portfolio department is the organisational form of first choice for government.

Delegation, or devolution of public power should be unambiguous, transparent, granted and exercised in the public interest, accountable, and subject to review.



Consultation Strategy

Review of the Queensland Workplace Rights Ombudsman (Ombudsman) and Queensland Workplace Rights Office (QWRO) to determine the future of the Ombudsman and the QWRO and to ensure that the State's resources are being used in the most productive and efficient manner.

Terms of Reference

The review is to:

1. Inquire into the achievements of the Queensland Workplace Rights Ombudsman (Ombudsman) and the Queensland Workplace Rights Office (QWRO).
2. Inquire into and make recommendations to the Minister about the future of the Ombudsman and the QWRO, as a result of the change of government at the federal level, the introduction of the Fair Work Act 2009 and the referral of Queensland's private sector industrial relations powers to the Commonwealth.
3. Apply the methodology set out in the report of the Independent Review of Government Boards, Committees and Statutory Authorities, which is intended to identify those government bodies that are necessary and working efficiently and those that can be abolished.

Stakeholders – list for consultation

- Minister for Industrial Relations
- Ombudsman
- QWRO
- QIRC commissioners
- Fair Work Ombudsman
- OFSWQ
- Unions
- Employer groups
- Other government agencies
- Non-government organisations

Questions for consultation: Based on the Public Interest Map

(developed by the Independent Review of Government Boards, Committees and Statutory Authorities 2008/9).

The Ombudsman function and QWRO were established in 2007 to promote the fair treatment of workers in Queensland and to advise government on ways to deal with the negative effects of Work Choices.

1. Does the activity need to be done? (see list of current activities)

- Are you aware of the functions of the QWRO and the work they have undertaken since its establishment in 2007?
- What do you consider to be the major achievements of the Workplace Rights Ombudsman and the QWRO?
- What functions of the Ombudsman do you value most/least?
- How often do you access information/services from the Ombudsman/QWRO?
- Who do you consider to be the main clients of the Ombudsman/QWRO?
- What would happen if the function of Ombudsman/QWRO ceased?

2. Should the Queensland Government undertake the activity?

- Given the establishment of a national workplace relations system for the private sector, is there an ongoing need for the function?
- What current functions/activities do you perceive as still relevant for the QWRO to undertake given Queensland's IR referral to the Commonwealth?
- Are there any functions/activities the QWRO does not currently undertake that would be useful in the current IR context? (provided that no one else provides such a service)
- If so, should the Queensland government undertake it? (this question should follow each of the three questions above)

3. Is there a compelling reason why a department (or other existing body) can not, or should not, undertake the activity?

- What role, does/should the Federal government play in the provision of these activities/services?
- What role does/should the OFSWQ play?
- What role does/should your organization play?
- In the absence of the Ombudsman and QWRO, where would unrepresented parties go for advice?
- How would enquiries which currently go to the QWRO be handled?
- How should cross occupation/industry issues such as workplace bullying be addressed in the absence of the Ombudsman/QWRO?

Current Activities

The focus the activities of the QWRO has shifted from the provision of advice and information to the public with regard to the unfair Work Choices regime towards the more general investigation of systemic unfairness at work identified by the Ombudsman regardless of the direct relationship to the industrial jurisdiction. Examples are the reviews conducted in 2009 and 2010 into the contract traffic controller's industry, fruit and vegetable industry and the taxi industry.

- The QWRO continues to receive telephone calls about: termination of employment, redundancy and termination notice requirements;
- wages and other conditions of employment including occupational superannuation;
- non payment of an entitlement including the difficulties being experienced resolving the issue with their employer;
- workplace harassment, including bullying, and other workplace health and safety issues;
- disciplinary procedures such as warnings and performance appraisal;

- national industrial relations system and the impact upon entitlements, including long service leave;
- employment and sub-contractual arrangements including sham contracting allegations;
- workers' compensation and work injury matters;
- apprenticeship and traineeship matters; and
- child employment.

There were 4,380 telephone inquiries in the period 1 January 2010 to 31 March 2010, which is the lowest number since the first quarter after the QWRO was established in July 2007 (4,226). Of these calls 45 per cent were from regional Queensland, 27 per cent from young workers and 33 per cent were about dismissals. Approximately 370 calls were about bullying and harassment. There were 13,956 hits on the website during the same period.

Stakeholder Consultations

The following organisations/individuals were consulted as part of the review:

1. Minister for Industrial Relations
2. Queensland Workplace Right Ombudsman
3. Queensland Workplace Rights Office
4. Fair Work Ombudsman – Brisbane Office
5. Queensland Industrial Relations Commission
6. Australian Services Union
7. Australian Worker’s Union
8. Queensland Council of Unions
9. Queensland Public Sector Union
10. Shop, Distributive and Allied Employee’s Association
11. Australian Industry Group
12. Bundaberg Fruit & Vegetable Growers
13. Chamber of Commerce and Industry Queensland
14. Master Builders Australia
15. National Retailers Association
16. Legal Aid Queensland
17. Queensland Working Women’s Service
18. Department of Transport and Main Roads
19. Departmental Liaison Officer – Department of Justice and Attorney-General
20. Justice Services - Department of Justice and Attorney-General
21. Private Sector Industrial Relations – OFSWQ
22. Public Sector Industrial and Employee Relations – OFSWQ
23. Workplace Health and Safety Queensland - OFSWQ

REVIEW OF QUEENSLAND WORKPLACE RIGHTS OFFICE OMBUDSMAN'S SUBMISSION

Both the Queensland Workplace Rights Office (QWRO) and Queensland Workplace Rights Ombudsman (Ombudsman) have been in existence since July 2007 and, over the 3 years to 30 June 2010, have dealt with 59,311 enquiries, completed 1,346 investigations and recorded 111,761 unique visitors to the QWRO website.

The functions of the Queensland Workplace Rights Ombudsman are set out in s.339D of the *Industrial Relations Act 1999*. However it is fair to say that the vast bulk of the work of the Queensland Workplace Rights Office (QWRO) falls within the areas of the provision of information to employers and employees and the investigation of allegations of unfairness in the workplace.

Investigations generally follow two formats, the first being the investigation of individual allegations. The second format is the broader investigation of industry practices. This occurs when the Ombudsman is satisfied that concerns of unfair, inappropriate or unlawful practices are widespread in the industry and further satisfied that the allegations are serious.

Broader investigations of industries completed recently included the Queensland Taxi Industry and the Fruit and Vegetable Harvesting Industry (Bundaberg and Childers region). Both reports are appended to the June 2010 Quarterly Report.

For Queensland employers and employees there is a significant advantage arising from the functions of the Ombudsman, that is the QWRO and Ombudsman have the legislative ability to quickly intervene to provide information and guidance on work related matters. That is to say the Queensland Workplace Rights Office (QWRO) can focus attention on unfairness in a way that assists both employer and employee with a minimum of formality which quite often helps the parties to avoid the costly process of litigation.

The QWRO also has the almost unique legislative function to “publicise” unfair, inappropriate or unlawful activities. This is a tool that is rarely used as its effectiveness is drawn from a willingness of parties to rectify unfair situations once they have been given appropriate information and especially once they realise that failure to correct unfairness could see their actions placed under the public spotlight.

This function has proven to be particularly helpful where the processes of other government agencies and departments would take some considerable time to bring matters to a head.

One recent example which demonstrates the benefits of quick intervention involved a worker's dire financial circumstances flowing from unfair workplace treatment and non-payment of wages in the private sector.

The QWRO's quick intervention resolved the majority of the differences between the worker and the employer with the result that this worker got his entitlements in time to meet his financial obligations including rent, because and only because the QWRO's continued

operation provides ongoing monitoring of fairness for Queensland workers. No other body has a process enabling them to act as the QWRO did in this case particularly with respect to promptness and the underlying prospect of publication.

The alternative for this employee was to lodge a claim with the Fair Work Ombudsman (FWO) and await the outcome. The time to resolution in such cases is likely to be measured in many months not weeks or days and this is aside from the policy of the FWO (absent some broader public interest) not to prosecute where the amount owing is less than \$5,000.

Also, many private sector workers with general workplace fairness problems do not have a right to a conciliation or dispute conference in Fair Work Australia as such conferences can only be held with the consent of the employer.

The second example relates to bullying and harassment.

QWRO information officers provide appropriate information to the many callers seeking advice on this subject. However the agencies to which these callers are often referred are bound by legislation and reasonably and understandably rigid processes that do not allow for the sort of flexibility and rapid response that is within the power of the Queensland Workplace Rights Ombudsman.

The Ombudsman can make (and has made) immediate phone contact with the management of businesses against whom bullying and/or harassment allegations have been made in order to advise them of the allegations and the desire of the QWRO to investigate the truthfulness of the claims. The effect of this is to alert the management and the alleged bully to the fact that there is a pair of official eyes monitoring the situation. It is not surprising the change in behaviour that usually ensues where such a change is appropriate and required.

The point to be made is that quick, less formal intervention by the QWRO, almost always improves a situation. The added benefit is that the working relationship has a better chance of survival. Quick intervention also lessens the likelihood of psychological injury so often the product of such treatment especially where it is allowed to continue. In many cases quick intervention also helps the parties to avoid the costly exercise of having to appear before tribunals.

Bullied and/or harassed callers to the QWRO hotline are often distressed with some even indicating that they were considering self harm.

In such cases, empathy and quick action is warranted. Moreover QWRO information officers have implemented a system of follow up which involves, where appropriate, bullied and harassed callers being contacted 4 to 6 weeks after their initial call to enquire as to the progress of their matter and their well being. The officers provide more information if appropriate.

Information provided by Workplace Health and Safety Queensland in their leaflet entitled “the Role of WH&SQ in Workplace Harassment Complaints” includes:

“Workplace Health and Safety Queensland responds to workplace harassment complaints only in certain situations that fall within the scope of the Workplace Health and Safety Act:

- *The complaint must (on the face of it) fall within the definition of workplace harassment.*
- *The complaint must be in writing. The complainant will be sent an information package, including a checklist which must be attached to the complaint.*
- *The complaint should have been raised at the workplace and an attempt made to resolve the complaint internally. Information regarding the outcome of this step should be included in the written complaint.*

Workplace Health and Safety Queensland will not provide mediation, counselling or victim support”.

This approach by WHSQ is absolutely necessary in that formal prosecution is always a possibility in their investigations. The reproduction of this passage is in no way meant as criticism and is solely included to demonstrate the difference in approaches which are, by and large, dictated by, or in the case of the QWRO permitted by, legislation.

Again, it is the continuance of the QWRO that provides this rapid response safety net for Queensland workers.

JURISDICTION

The Queensland Government, through the establishment of the Queensland Workplace Rights Office and Ombudsman, has ensured that workers and employers drawn into the federal system have had ongoing support. The Queensland Workplace Rights Ombudsman is able to, and has since inception, performed the legislative functions across all industries regardless of which jurisdiction the parties operate in industrially. It is important for the reader to be aware that the activities of the QWRO have never been confined to work places solely regulated by the State industrial jurisdiction. In fact, the initial establishment (July 2007) was specifically targeted at ensuring fairness and access to information for corporations and employees drawn into the federal system in March 2006. It follows that the role of the QWRO has in no way diminished by the handover of the remaining private sector to the federal system and any suggestion along these lines would be a demonstration of missing this important point.

The QWRO also handles enquiries from and conducts investigations regarding the complaints of State or Local Government employees and again it is important to know that there is no legislative barrier to the QWRO investigating work related allegations of these employees or indeed assisting the employers.

To date, the departments have co-operated with investigations.

The data contained in the March and June Quarterly Reports of the QWRO indicate a drop in the number of callers from 4,868 in the December quarter to 4,380 in the March quarter and 3,127 in the June quarter.

While to the casual observer this might appear as a drop in the relevance of the QWRO to Queensland workers and employers, these figures should be examined with the knowledge that:

1. both the March and June 2010 quarter figures are over twice the number of calls that the office was originally established to cope with (i.e. 1,500 quarterly);
2. the Wageline call centre, a major source of referrals to the QWRO closed on 1 January 2010. Shortly after, the Wageline website was closed. The QWRO occupied a prominent position on the Wageline website;
3. No prominent position had been allocated to the QWRO on the JAG website up to 30 June 2010. Therefore, referrals from this site did not register at all in the web traffic sources overview yet the number of QWRO website visits has an increasing trend (126% increase since 2007-2008). Traffic from referring sites has dropped by 20% while the traffic source from search engines has increased by 20%.
4. No money has been spent on advertising since the initial nominal establishment outlay in July 2007;
5. No proactive media officer support has been provided since the Department of Employment and Industrial Relations became part of the Department of Justice and Attorney-General (over 18 months ago).
6. Attachment A, a brochure produced by DJAG and related to community education, is indicative of the consideration given to the work of the QWRO by JAG.

Note: (A) No phone number at all given for industrial relations;
 (B) QWRO not mentioned; and
 (C) Private Sector employees directed to “Federal Fair Work Infoline” regardless of the issue.

The number of callers to the QWRO hotline increased noticeably after the election of the Rudd Government in November 2007 and peaked in March 2009 (2,090 calls for 1 month).

In any event, the office is still handling well over twice the 6,000 calls per annum originally estimated and seen at the time as warranting the establishment of the QWRO. The original staff establishment of 6 increased to 7 in September 2007 and has not increased since (outside of two short term secondments for specific purposes). The actual compliment stands at 6 with one unfilled vacancy.

The demand for the services of QWRO remains high. Importantly, approximately 1 in 5 calls to the hotline have been from employers, 45.4% of all enquiries were from regional Queensland, 49.3% are women and 29% were young workers.

The QWRO remains relevant to Queensland employers and employees in regional and rural Queensland as well as the more densely populated areas of the south-east and the QWRO performs in a way that could not be replicated without the independence which accompanies the position of Ombudsman.

OPERATING COSTS Vs SAVINGS

Very little money in real terms would be saved in the event of the closure of the QWRO.

To explain, the Ombudsman is a Commissioner in the State Industrial Relations Commission appointed until 2023. The Ombudsman would return to the Commission in the event of the closure of the QWRO. The QWRO administration officer was formerly the Commissioner's Associate and would be again in the event of a return to the Commission.

Neither the Ombudsman nor the associate would gain or lose income so the obligation to the State is unchanged.

There are now 5 other staff of the QWRO, who are permanent and acting in positions marginally higher than their substantive positions. One position is vacant (A04). The State would make a marginal saving by returning these employees to the pay level of their substantive position.

The Ombudsman is provided with a motor vehicle. That would not change if the Ombudsman returned to the Commission. The manager is also provided with a motor vehicle which is not provided to his substantive position.

The office space occupied by the QWRO is leased until 30 June 2012. The lease was not established for QWRO but is the balance of a lease held by another Government entity that vacated the space. The lease payments for the balance of the term would need to be met in any event.

To summarise, the discontinuance of the QWRO would deliver little in the way of tangible savings to the Government.

Tangible savings would be:

- A. One A04 salary;
- B. The difference between the substantive salaries and the acting salaries of five (5) staff members; and
- C. One small car.

In determining whether to continue the QWRO, the possible savings would need to be weighed against the benefits provided to Queensland employers and employees through the QWRO by the Queensland Government.

The functions of the QWRO cannot be performed with the same effectiveness elsewhere. If there is another State Government agency or department with the ability to perform the work of the QWRO, they haven't done so to date, moreover, if there were to be some department with a will to do the sorts of things done by the QWRO, it would be virtually impossible without the involvement of an independent ombudsman to control priorities in investigations and determine the subjective, in come cases almost abstract, questions of fairness.

Evidence of this (other agencies not performing QWRO functions) is to be found in the source of referrals of individuals and matters to the QWRO.

The ATO who are currently 18months – 2 years behind in investigating unpaid occupational superannuation claims, refer people to the QWRO.

WorkCover refer people to the QWRO.

Workplace Health & Safety Queensland refer people to the QWRO.

The Federal Fair Work Ombudsman refers people to the QWRO.

Unions, the Queensland Working Women's Service and Young Worker's Advisory Service refer people and issues to the QWRO.

Employer groups have referred matters to the QWRO.

Parliamentarians of literally all persuasions, including the Minister responsible for Industrial Relations, have, at various times, referred matters to the QWRO.

The independence to act free of interference and free of the usual cautious and defensive reservations of Government Departments is one of the strengths of the QWRO which, quite simply, could not be replicated without a statutory independence at least the equivalent of the office of Queensland Workplace Rights Ombudsman.

I submit that the future of the QWRO must be determined on the straight forward grounds of whether the Government wishes to continue QWRO services to Queenslanders or not. For without the QWRO other agencies cannot deliver what we deliver and if it is argued that they can, as I have stated earlier clearly to date, they have not.

COMMISSIONER DON BROWN
Queensland Workplace Rights Ombudsman