Submission No. 2

OFFICE OF THE SPEAKER

PARLIAMENT HOUSE
NORTH TERRACE
ADELAIDE 5000
SOUTH AUSTRALIA
Tel: (61+8) 8237 9425
Fax: (61+8) 8237 9115
speaker@parliament.sa.gov.au

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Secretary,
Standing Committee on Administration and Procedure
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Dear Secretary

I am writing in response to your request for a submission to the Standing Committee on Administration and Procedure inquiry into the feasibility of establishing the position of Officer of the Parliament.

South Australian context

In South Australia, as with all Australian parliamentary jurisdictions, the Auditor-General and the Ombudsman are key offices in the provision of oversight of executive and local government functions.

Auditor-General

The Auditor-General in South Australia is typical of the offices of many jurisdictions. Its functions and duties are governed by the Public Finance and Audit Act 1987 (the "Act") that provides a mandate for the Auditor-General to conduct three different types of audit. These are financial and compliance audits - subsection 31(1); efficiency and economy audits - subsection 31(2); examinations of publicly funded bodies - section 32.

The Act also establishes the independence of the Auditor-General from the Executive Government and provides that the primary relationship of the Auditor-General is to the Parliament. Provisions contained in subsection 24(6) of the Act state that the Auditor-General is not subject to the direction of any person as to the manner in which he carries out the functions or exercises powers under the Act is designed to reinforce that independence.

The mechanism for the Auditor-General to report to Parliament in South Australia is governed largely by Section 38 of the Public Finance and Audit Act 1987 which simply places an obligation for the Auditor-General to table his annual report on government spending. This report is then considered by Parliament through a dedicated Committee of the Whole process for each responsible Minister, usually for 30 minute periods. This is usually uncontroversial and does not attract any media attention.

There is no obligation in South Australia for the Auditor-General to work with parliamentary committees, the committees do not instigate inquiries and the Auditor-General is not subject to direction by Parliament, nor do the committees work in conjunction with the Auditor-General in ensuring that recommendations of his office are acted upon. In spite of the minimal contact between the two bodies the Auditor-General's says that "An effective

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PARLIAMENT HOUSE
NORTH TERRACE
ADELAIDE 5000
SOUTH AUSTRALIA
Tel (61-8) 8237 9100
Fax: (61-8) 8237 9482

working relationship exists between the Economic and Finance Committee and the Auditor-General's Department".

Ombudsman

The workload of the Ombudsman in South Australia and the scope of his inquiries seems to be evolving. In the latest Annual Report the Ombudsman cites a number of references to issues that arose in a number of local authorities and recommended either procedural or legislative changes to remedy them. This is clearly a move away from an incident-based approach to an institution-focussed and performance-based approach to investigation.

The office of the South Australian Ombudsman came in to being with the passage of the Ombudsman Act 1972. While this was originally the only governing legislation for the office, there are now four pieces of legislation that outline its duties and spheres of responsibility. In 1992 the proclamation of the Freedom of Information Act and the Local Government (Freedom of Information) Amendment Act gave the Ombudsman the role of external reviewer of decisions regarding access to information. The local government FOI provisions have now been incorporated directly into the FOI Act. The Whistleblowers Protection Act 1993 gave the Ombudsman the role of receiving "public interest information" as described under that Act. Finally amendments to the Local Government Act in 1996 gave the Ombudsman the specific role of reviewing and reporting on decisions by Councils to preclude the public from meetings or to refuse access to minutes of meetings. The Ombudsman's Office has also more than doubled its staff to cope with a trebling of its workload from 726 in its first full year of operation to 2120 complaints and 167 contacts under FOI legislation in 2008/09.

The Ombudsman in South Australia does not have any formal relationship with Parliament or any of its committees, and does not routinely table any other reports than its Annual Report.

Scope for change

There is currently no momentum for the status of either the Auditor-General or the Ombudsman to be amended in South Australia. While there may be some critique that these statutory officers are taking on roles which some may believe should be the purview of parliamentary committees, there has been no calls for a review of their functions, or a move to bring them within the boundaries of parliament as Officers of the Parliament. Both the Auditor-General and the Ombudsman currently enjoy good working relations with parliamentary committees, where their independence from both the executive arm of government and the institution of parliament is recognised and respected.

Yours sincerely

Hon Lyn Breuer MP
Speaker of the House of Assembly