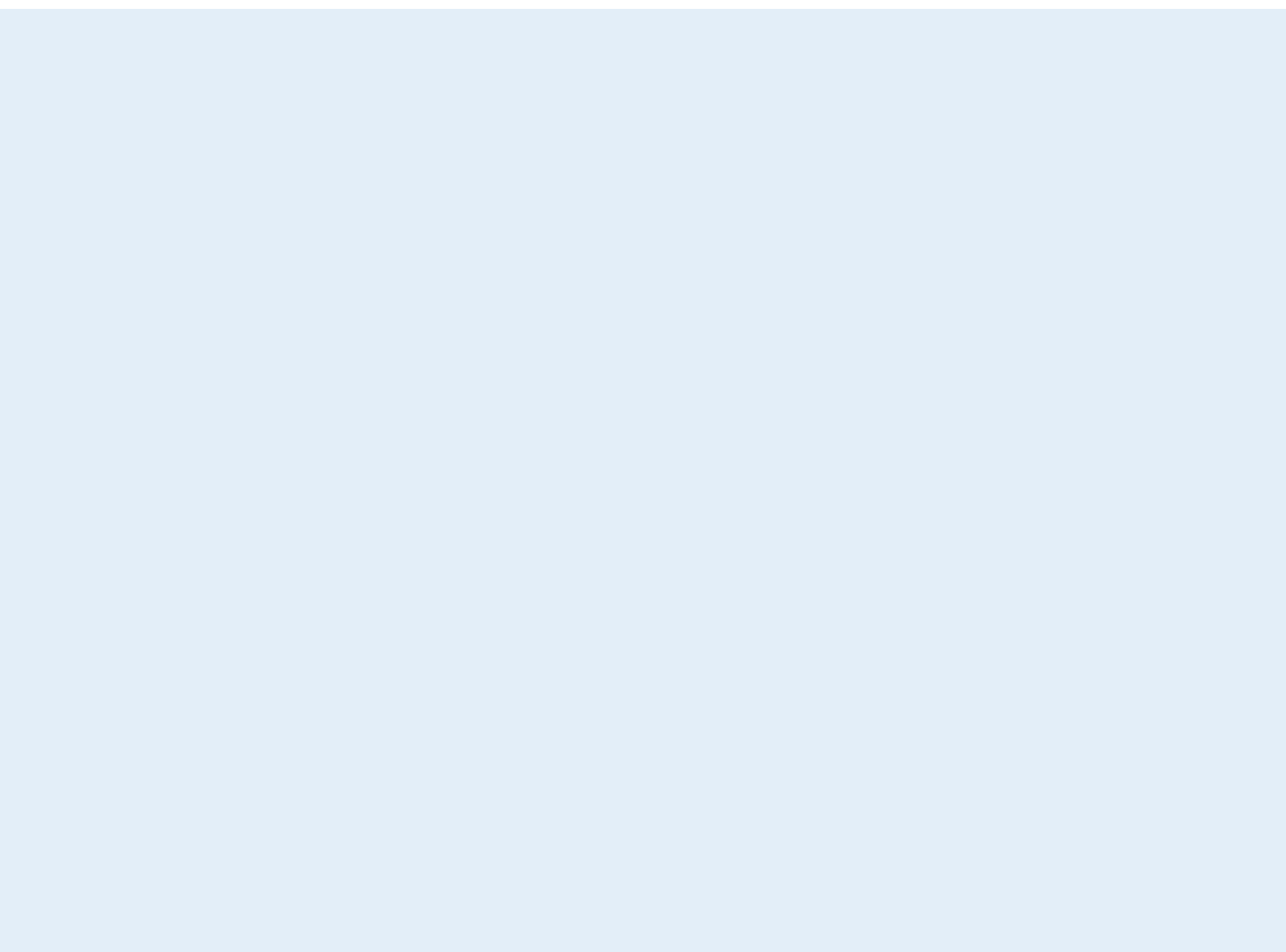


**AUSTRALASIA AND PACIFIC
OMBUDSMAN REGION
INFORMATION MANUAL 2015**



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Foreword

This manual is the second edition, describing the role and functions of individual Ombudsman offices in the Australasia and Pacific region.

There are eight Australian Ombudsman offices and nine Asia and Pacific regional Ombudsman offices included in the manual.

Since the last edition of the manual, which was published in 2009, the role of the Ombudsman in the region has continued to grow. Most of the individual offices featured in the manual have expanded jurisdictions and have been given increasing oversight responsibilities aimed at promoting integrity, responsiveness and accountability in government and human rights.

Most of the individual Ombudsman offices featured in the manual are members of the Australasia and Pacific region chapter of the International Ombudsman Institute. The Ombudsman offices of the Cook Islands, Commonwealth, New South Wales, New Zealand, Papua New Guinea, Samoa, Solomon Islands, Tonga and Vanuatu are all members of the Pacific Ombudsman Alliance.

The descriptions were prepared by each Ombudsman office. The primary work of assembling and publishing the manual was undertaken by the Commonwealth Ombudsman's office on behalf of the Pacific Ombudsman Alliance, with Australian Aid funding.

The information in the hard copy form of the manual was accurate at May 2015. The manual will also be published electronically on the websites of the Pacific Ombudsman Alliance and the individual Ombudsman offices. It is intended that periodic updates to the manual will be made in future. Any comments should be forwarded to the Pacific Ombudsman Alliance secretariat via email to pacific@ombudsman.gov.au.

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COMMONWEALTH OMBUDSMAN

ESTABLISHMENT

The office of the Commonwealth Ombudsman was established by the *Ombudsman Act 1976*¹. The office commenced operation on 1 July 1977.

OMBUDSMAN

The Ombudsman is appointed by the Governor-General for a term of up to seven years (s 22) and may be reappointed. The practice has been to appoint the Ombudsman for a five-year term. The Ombudsman is subject to removal only following a vote of both Houses of Parliament.

There have been seven Commonwealth Ombudsmen:

- 1977 – Prof. Jack Richardson, AO
- 1986 – Geoffrey Kolts, QC
- 1988 – Prof. Dennis Pearce, AO
- 1991 – Alan Cameron, AM
- 1993 – Philippa Smith, AM
- 1998 – Ron McLeod, AM
- 2003 – Prof. John McMillan
- 2010 – Allan Asher
- 2012 to present – Colin Neave AM

Prior to his appointment, the current Ombudsman performed senior leadership roles in law, consumer affairs and government administration, including serving as Chief Ombudsman of the Financial Ombudsman Service and Banking Industry Ombudsman. Professors Richardson, Pearce and McMillan were legal academics at the Australian National University; Mr Kolts was First Parliamentary Counsel; Mr Cameron was the managing partner of a national law firm; Ms Smith held senior roles in the Australian Council of Social Services and the Australian Consumers' Association; and Mr McLeod had a wide ranging career in government, including Inspector-General of Intelligence and Security. Mr Asher was Deputy Chair of the Australian Competition and Consumer Commission.

The current Deputy Ombudsman is Richard Glenn, appointed in 2013.

RELATIONSHIP TO GOVERNMENT AND PARLIAMENT

The Ombudsman Act is administered by the Prime Minister and the office falls within the portfolio of the Department of Prime Minister and Cabinet. The present arrangement is for the Ombudsman to report to the Parliamentary Secretary to the Prime Minister, who is also located in that portfolio.

There is no parliamentary committee with a dedicated role in relation to the Ombudsman. Parliamentary review of the budget and annual reports of the Ombudsman is assigned primarily to the Senate Standing Committees on Finance and Public Administration.

The Ombudsman is required to annually brief the Parliamentary Joint Committee on Law Enforcement in relation to the Ombudsman's oversight of controlled operations (see *Parliamentary Joint Committee on Law Enforcement Act 2010*, s 10). The brief

¹ Unless otherwise noted, all reference to sections are to the *Ombudsman Act 1976*.

provides information to the Committee on the Australian Crime Commission and the Australian Federal Police's involvement in controlled operations under Part IAB of the *Crimes Act 1914*.

Additionally, the Ombudsman is required to annually brief the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity on the Australian Commission for Law Enforcement Integrity's involvement in controlled operations (see *Crimes Act 1914* s 15HO and *Law Enforcement Integrity Commissioner Act 2006*, s 218). As discussed below, the Ombudsman is also required to provide other reports to Ministers and Parliament on matters such as immigration detention, telephone interceptions, and the AFP's complaint handling.

JURISDICTION

The Commonwealth Ombudsman investigates complaints about the administrative actions of Australian (federal) Government agencies.

The Commonwealth Ombudsman is one of nine public sector Ombudsman offices in Australia, and has jurisdiction over federal government administration. State, Territory and local government administration falls within the jurisdiction of the Ombudsmen in the six States and each of the self-governing territories (the Northern Territory, the Australian Capital Territory and Norfolk Island). As discussed in more detail below, the Commonwealth Ombudsman is also the Ombudsman for the Australian Capital Territory and Norfolk Island. The Commonwealth Ombudsman has no jurisdiction over other State and Territory Ombudsman, or industry Ombudsman.

The Commonwealth Ombudsman is also one of a number of public sector integrity agencies at the federal level. These include the Australian Human Rights Commission, the Australian National Audit Office, the Australian Office of the Information Commissioner, the Australian Commission for Law Enforcement Integrity, the Inspector General of Intelligence and Security, the Inspector General of Taxation, and the Administrative Appeals Tribunal.

In addition to jurisdiction over Australian Government agencies, the Ombudsman also has jurisdiction to investigate services delivered by most private contractors for the Australian Government, including those responsible for the management of immigration detention centres. In addition, the Ombudsman has been given a number of specialist oversight functions and broad statutory responsibility for inspecting the records of law enforcement and other enforcement agencies in relation to the use of covert powers.

Significant changes to the Ombudsman's jurisdiction since its inception are detailed below:

1981	Complaints about the Australian Federal Police (AFP)
1982	Complaints about freedom of information
1983	Defence Force Ombudsman role
1988	Compliance auditing of the AFP and National Crime Authority (now Australian Crime Commission (ACC)) telecommunication intercept records)
1989	Commonwealth Ombudsman appointed as Australian Capital Territory Ombudsman
1993	Jurisdiction over complaints about Telecom, then a government instrumentality, removed following the creation of the Telecommunication Industry Ombudsman
1995	Taxation Ombudsman role
2001	Additional responsibility for monitoring controlled operations
2004	Additional responsibility for auditing of surveillance device records
2005	Immigration Ombudsman role
	Reporting on the detention of long term (two years or more) immigration detainees
	Complaints against non-government organisations that provide services to the public under a contract with an Australian government agency (s 3BA)

2006	Compliance auditing of access to stored communications by the AFP, ACC, Australian Commission for Law Enforcement Integrity (ACLEI) and other enforcement agencies, and the use of surveillance devices by state law enforcement agencies under Commonwealth legislation
	Law Enforcement Ombudsman role, with a specific responsibility to review the adequacy and comprehensiveness of the AFP complaint-handling system
	Postal Industry Ombudsman role
	Law Enforcement Ombudsman role
2011	Overseas Student Ombudsman role
2013	Oversight role under the <i>Public Interest Disclosure Act 2013</i>
	Commonwealth Ombudsman appointed as Norfolk Island Ombudsman
2015	Taxation Ombudsman role moved to the Inspector General of Taxation
	Private Health Insurance Ombudsman role

Areas excluded from the jurisdiction of the Ombudsman include:

- » action taken by a minister (s 5(2)(a)) – however the office can investigate the advice given to a minister and action taken to implement a minister’s decision (ss 5(3) and 3A), and a report of the Ombudsman can find that legislation or government policy has an unreasonable, unjust, oppressive or discriminatory result (s 15(1)(a)(iii));
- » public service employment (s 5(2)(d)) – however the office can investigate pre-employment issues (eg, unsuccessful application), post-employment issues (eg, superannuation) and the exercise by an employee of civic rights (eg, FOI request, public interest disclosure)
- » the actions of courts and tribunals headed by a judge (s 5(2)(b)-(c)) – however the office can investigate the actions of court and tribunal registries (see the Ombudsman report, Commonwealth Courts and Tribunals, Report No 12/2007)
- » the actions of the six intelligence agencies (s 5(3B)) – this jurisdiction belongs to the Inspector-General of Intelligence and Security (see *Inspector-General of Intelligence and Security Act 1986*).

FUNCTIONS

The Commonwealth Ombudsman has five major statutory functions.

Complaint investigations

The office investigates complaints about Australian Government officials, agencies and their contracted service providers upon receipt of complaints from individuals, groups or organisations (ss 5(1)(a) and 7). This includes investigating the actions of registered private providers of training for overseas students and registered private postal operators.

Own-motion investigations

The office also undertakes own-motion investigations into the administrative actions of Australian Government agencies (s 5(1)(b)). These often arise from insights gained through handling individual complaints and our other oversight responsibilities.

Oversight of covert, coercive and intrusive powers

The Ombudsman is required by law to inspect the records of certain Commonwealth, State and Territory enforcement agencies in relation to their use of covert and intrusive powers. Specifically this function applies to records relating to telephone interceptions and stored communications (*Telecommunications (Interception and Access) Act 1979*, ss 83 and 152); use of surveillance devices (*Surveillance Devices Act 2004*, s 55); and controlled operations (*Crimes Act 1914*, s 15HO). Additionally, under the *Fair Work (Building Industry) Act 2012* the office reviews and reports on the exercise of coercive information-gathering powers by the Director of Fair Work Building and Construction.

Immigration detention oversight

Under s 486O of the *Migration Act 1958*, the office reports to the Immigration Minister on the detention arrangements for people in immigration detention for two years or more (and on a six monthly basis thereafter). In addition, as Immigration Ombudsman the office also oversees immigration detention facilities through a programme of regular announced and unannounced visits to detention centres.

Commonwealth Public Interest Disclosure scheme

Under the *Public Interest Disclosure Act 2013* (PID Act) the Ombudsman has a role in monitoring the operation of the Act, promoting and raising awareness and understanding of the PID Act, and providing guidance, information and resources to agencies and public officials

Specialist roles

In addition, the Commonwealth Ombudsman also has six specialist roles as:

- » Defence Force Ombudsman, investigating complaints from current and former Australian Defence Force personnel, including in relation to employment matters (s 19). A separate office of Inspector-General of the Australian Defence Force provides oversight of the military discipline system, including investigating complaints from members (see *Defence Act 1903*, s 110B).
- » Immigration Ombudsman, receiving complaints and investigating action taken in relation to immigration administration. In addition, under this function the Ombudsman visits immigration detention centres (including unannounced visits), monitors immigration compliance activities, reports to Parliament on each person held in detention for more than two years and thereafter at six monthly intervals (*Migration Act 1958* s 486O), and (in addition to that statutory reporting function) reports to the Secretary on each person held in immigration detention for six months.
- » Law Enforcement Ombudsman, when performing functions in relation to the Australian Federal Police (AFP), the Ombudsman may also be called the Law Enforcement Ombudsman. The Ombudsman has a comprehensive oversight role of the AFP's inspections of its use of covert and intrusive powers, as well as:
 - investigating complaints about the AFP
 - receiving mandatory notifications from the AFP regarding complaints about serious misconduct involving AFP members under the *Australian Federal Police Act 1979* (AFP Act)
 - annual statutory reviews of the AFP's administration of Part V of the AFP Act, which deals with the management of complaints made about the conduct of AFP appointees and AFP practices issues.
- » Overseas Student Ombudsman, to investigate complaints from overseas students about private educators in Australia.
- » Postal Industry Ombudsman, to investigate complaints about Australia Post and private postal operators registered with the Postal Industry Ombudsman scheme (s 19L).
- » Private Health Insurance Ombudsman, from 1 July 2015, the Ombudsman will take on this role, to investigate complaints about private health insurance matters that impact upon the rights of consumers.

Australian Capital Territory (ACT) Ombudsman

Under an arrangement with the ACT Government, the Commonwealth Ombudsman is also the ACT Ombudsman, with jurisdiction to investigate complaints against ACT government agencies. The office of the ACT Ombudsman is established by an ACT statute, the *Ombudsman Act 1989*; and the exercise of this function by the Commonwealth Ombudsman is permitted under s 4(2).

The ACT Ombudsman is also required to monitor ACT Policing's compliance with Chapter 4 of the *Crimes (Child Sex Offenders) Act 2005* (ACT), which establishes the Child Sex Offenders Register. Similarly it monitors ACT Policing's compliance with the *Crimes (Controlled Operations) Act 2008* (ACT), the *Crimes (Assumed Identities) Act 2009* (ACT) and the *Crimes (Surveillance Devices) Act 2010* (ACT).

The ACT Ombudsman is designated by the *Public Interest Disclosure Act 1994* (ACT) as an agency that can receive and investigate disclosures under the Act, and can commence proceedings in the ACT Supreme Court to seek a remedy for a person who has suffered an unlawful reprisal (s 30).

Norfolk Island Ombudsman

The Commonwealth Ombudsman is also the Norfolk Island Ombudsman under an agreement with the Administrator of Norfolk Island. The Ombudsman receives and investigates complaints about public sector administration on the Island, and inspects the records of the Norfolk Island Complaints Officer.

Norfolk Island is a self-governing territory established under the *Norfolk Island Act 1979* (Cth) with a Legislative Assembly that has wide-ranging powers similar to the federal government. The Ombudsman was introduced following amendments to the Norfolk Island Act alongside other administrative law mechanisms such as freedom of information, privacy and the Administrative Appeals Tribunal.

POWERS

The powers of the Commonwealth Ombudsman follow the standard pattern for Ombudsman offices: at the conclusion of an investigation the Ombudsman can prepare a report that makes an adverse finding and that recommends remedial action (s 15); if the agency does not accept the recommendation the Ombudsman can report to the Prime Minister (s 16) or the Parliament (s 17); the Ombudsman must provide an opportunity to comment to any agency or person who is expressly or impliedly criticised in a report (s 8(5)); investigations are to be conducted in private and in such manner as the Ombudsman thinks fit (s 8(2)); in conducting an investigation the Ombudsman can require a person to provide information or documents (s 9(1)), can administer an oath (s 13), or enter premises (s 14); the Ombudsman is not compellable to provide evidence in response to a summons (s 35(8)); any person who complains to or provides information to the Ombudsman is protected against civil action (s 37); and the Ombudsman can delegate most functions to other officers (s 34).

Notable features of the Ombudsman Act that differ from the scheme applying to some other Ombudsman include:

- » Complaints can be received orally or in writing (s 7(1))
- » The Ombudsman may make a written arrangement with an agency for the notification of complaints (s 8(1A)) – this avoids the need for formal notification of each individual complaint.
- » The Ombudsman can release any information in the public interest (s 35A) – this enables the Ombudsman to publish an investigation report without having to present the report to the Parliament.
- » An agency that provides information to the Ombudsman in the good faith belief that it is relevant to an investigation is not in breach of privacy or secrecy laws (ss 2A–2E) – this amendment to the Act in 2005 overcame a growing tendency of agencies not to volunteer information to the Ombudsman arising from a concern that to do so would be in breach of the *Privacy Act 1988*.
- » The Commonwealth and a State Ombudsman may jointly conduct an investigation into an issue that arises within the jurisdiction of both (s 8A).
- » A recommendation by the Ombudsman that an agency pay administrative compensation to a person is recognised as a criterion for payment under the Scheme for Compensation for Detriment caused by Defective Administration: see Ombudsman report Putting things right: Compensation for defective administration, report No.11|2009.

INTERNAL STRUCTURE

The Ombudsman and Deputy Ombudsman are assisted by five Senior Assistant Ombudsmen; each is responsible for specific teams in the office:

- » Corporate Services
- » Justice, Finance and Territories
- » Social Services, Indigenous and Public Interest Disclosure
- » Immigration and Overseas Students
- » Operations.

WORKLOAD AND STATISTICS

Year	Enquiries and Complaints	Complaints (in jurisdiction)	Complaints investigated
2009-2010	37468	18313	4489
2010-2011	38919	19821	4468
2011-2012	40092	22991	4667
2012-2013	26474	18097	3185
2013-2014	23529	17577	2340

Different methods have been adopted over the years by the Commonwealth Ombudsman for recording enquiries and complaints. The current method is to record all non-corporate approaches to the office as an 'approach'; to record a complaint against an agency that is within jurisdiction as a 'complaint'; and to record a complaint that has resulted in contact with an agency as an 'investigation'.

In 2013-14 most of the in-jurisdiction complaints received by the office related to four agencies: the Department of Human Services, with responsibility for Centrelink and Child Support (36%); Australia Post (23%); the Department of Immigration and border Protection (8%) and the Australian Taxation Office (8%). A remedy was recommended or provided in 84% of investigated cases. The most common remedy for complainants was the provision of a better explanation of the circumstances by the Ombudsman's office (in 23% of cases where a remedy was identified). Other major types of remedy were: a better explanation by an agency of its decision or action (20%), an agency's action being expedited (10%), an apology being offered by an agency (8%), an agency decision reconsidered (7%) or an agency decision changed (4%).

Two major own motion investigations were concluded in 2014. The Ombudsman investigated the Department of Human Services Centrelink service delivery complaints (9,600 were received by the Ombudsman between January 2012 and September 2013), identifying 12 remedial recommendations to address the problems identified. In addition, the Ombudsman finalised an investigation into complaint management by Commonwealth and ACT government. It found that overall complaint management has improved across the public sector over the past 20 years, but there was a need for:

- » greater accessibility of complaint systems to vulnerable people within the community
- » greater focus on the remedy that the complainant is seeking, and
- » using complaint information more strategically to inform business improvement.

The Ombudsman's office plans to revise its Better Complaint Handling guide to reflect the investigation findings.

ACCESSIBILITY

A key objective of the Ombudsman's office is to make its complaint services more accessible to vulnerable people within the community. The Ombudsman's services are free and complaints may be made verbally or in written form. Increasingly over the past five years, complaints are made electronically (via electronic mail or using the office's online complaint form), although most complaints are received over the telephone. In 2013–14 complaints were received by telephone (56%), written (5%), in person (3%) and electronically (36%).

The office offers interpreter services to complainants from culturally and linguistically diverse (CALD) backgrounds, and Ombudsman staff are trained in effectively working with interpreters and working cross-culturally. The office has a range of multilingual brochures, in 37 languages, about the Ombudsman's role and how to make a complaint. They are available on the Ombudsman's website on the 'Publications & Media' page.

The office has responsibilities under the Commonwealth Multicultural Access and Equity policy, *Respecting Diversity*, and under its own Agency Multicultural Plan 2013-15. To meet its responsibilities, the office has reviewed and updated its information for staff and complainants about the use of interpreters, enhanced staff training, and better targeted its outreach activities to raise awareness of the Ombudsman's services.

The office also has a strategic Indigenous team with a focus on improving awareness and access to Ombudsman services to Aboriginal and Torres Strait Islander Australians through an ongoing program of outreach, using culturally appropriate and accessible awareness-raising materials. On outreach visits, the Ombudsman works closely with intermediaries within the community, and often partners with other oversight and advocacy agencies to gain better penetration and engagement with communities. Wherever possible, the Ombudsman's office aims to resolve complaints in the community.

PUBLICATIONS

Commonwealth Ombudsman publications that are available at www.ombudsman.gov.au include:

- » Annual report
- » Special reports – for example, annual reports on the Ombudsman law enforcement record inspection functions and the operation of the public interest disclosure scheme
- » Investigation reports – between 1995 and 2015 nearly 150 reports have been published online covering social support issues, taxation, military justice, police watch houses, immigration detention, visa processing, agency complaint handling and Australia Post processes and procedures, administrative compensation, child support and executive schemes
- » Immigration detention review reports – on people detained in immigration detention for more than two years, including a report by the Ombudsman analysing the Ombudsman's internal processes in producing these reports and the experiences of those people claiming asylum
- » Better Practice guides – on Unreasonable Complainant Conduct, Automated Assistance in Administrative Decision-Making and Complaint Handling. See also, the Administrative Review Council Best Practice Guides to Good Decision Making (five guides covering administrative law, natural justice, evidence and fact finding, reasons and accountability—available at ag.gov.au/arc)
- » Fact sheets – Ombudsman Investigations; Providing Remedies; Use of Interpreters; Ten Principles for Good Administration; Complaint Handling – Outsourcing; Complaint Handling – Multiple Agencies; Unreasonable complainant conduct; and Compensation for detriment caused by defective administration.
- » Speeches and presentations – covering a range of topics, including recent speeches on Reflections on the Role of the Ombudsman to the Pacific Ombudsman Alliance and Access to Justice – where do ombudsman fit in?
- » Brochures – covering issues such as the Ombudsman role, making a complaint to the Ombudsman, and responding to Ombudsman investigations (for agencies).

LITIGATION

Ombudsman office decisions can be reviewed by the Federal Circuit Court or the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977*. Decisions made by the Ombudsman under the *Freedom of Information Act 1982* (FOI) are reviewable by the Australian Information Commissioner and the Administrative Appeals Tribunal. Noteworthy cases include:

- » *Aboriginal and Torres Strait Islander Commission v Commonwealth Ombudsman* (1995) 134 ALR 248. In this case a government statutory authority sought an order restraining the completion and publication of a draft Ombudsman report that was critical of the agency. The action succeeded in part. The Court held that an Ombudsman report could not contain a prima facie finding of criminal guilt. Otherwise the action failed.
- » *Kavvadias v Commonwealth Ombudsman* (1984) 1 FCR 80. This involved a challenge to a denial of access to documents by the Commonwealth Ombudsman under freedom of information legislation.

Section 35 of the Ombudsman Act provides that the office is not compellable to provide, to a court or tribunal, information or documents obtained by the office in discharging its functions. We customarily rely on that statutory non-compellability when required by subpoena or discovery to produce information for the purposes of a legal proceeding to which we are not a party. The office may provide evidence in a matter about a serious and credible threat against life or public safety.

SPECIAL PROJECTS

The Commonwealth Ombudsman hosts the Secretariat for the Pacific Ombudsman Alliance and is the Chair of the Board of the Alliance. The office is also a member of the Australian and New Zealand Ombudsman Association (ANZOA).

OFFICES AND CONTACT DETAILS

Enquiries/complaints	1300 362 072
Fax	+612 6276 0123
Postal	GPO Box 442, Canberra ACT 2601
Email	ombudsman@ombudsman.gov.au
Web	www.ombudsman.gov.au

We also have offices in Adelaide, Brisbane, Melbourne, Perth and Sydney.

THE CONTROL YUAN

ESTABLISHMENT

The Control Yuan of the Republic of China (Taiwan) was established according to the Constitution of the Republic of China (ROC) and the Additional Articles of the Constitution. The first mandate of the constitutional Control Yuan commenced operation on 5 June 1948. It was functioned as an upper house of the parliament by members elected by provincial, municipal, Tibetan and Mongolian representative councils and Overseas Chinese communities.

The Additional Articles of the Constitution were approved in May 1992. In accordance with this amendment, members of the Control Yuan were no longer elected by representative councils, and members of the second and third mandate of the Control Yuan were nominated and appointed by the President of the ROC with the consent of the National Assembly in 1993 and 1999 respectively. According to the amendment of the Constitution in April 2000, the power of consent of Control Yuan members transferred to the Legislative Yuan (Parliament), and the fourth and fifth mandate of members of the Control Yuan were nominated and appointed by the President of the ROC with the consent of the Legislative Yuan in 2008 and 2014.

OMBUDSMAN

There are a total of 29 members of the Control Yuan (National Ombudsman), including a president and a vice president. Each member is nominated and appointed by the President of the ROC and confirmed by the Legislative Yuan for a term of six years. There is no limit on the number of terms a member can serve. There are currently six rules governing the qualifications required for members. These require a broad range of professional backgrounds and governing abilities while also emphasizing the need to transcend partisan politics and exercise authority independently. The incumbent members of the Control Yuan were inaugurated on 1 August 2014. The following is a list of members:

President Dr. Chang Po-ya
(first female President among the five branches of the Central Government in Taiwan)

Vice President Mr. Sun Ta-chuan

Dr Bau Tzong-ho

Dr Chang Kuei-mei

Dr Chen Hsiao-hung

Dr Jane Y W Chiang

Dr Teresa J C Yin

Dr Tsai Pei-Tsun

Mr Chen Ching-tsai

Mr Chiang Ming-tsang

Mr Fang Wan-fu

Mr Lee Yueh-der

Mr Liu Te-Hsun

Ms Chang Jen-hsiang

Ms Gau Fehng-shian

Ms Lin Ya-feng

Ms Wang Mei-yu

Ms Yang Mei-ling

The latest list of incumbents could be seen at the following link: <http://www.cy.gov.tw/sp.asp?xdUrl=.%2Fdi%2Fmember%2Fmembers.asp&ctNode=1750>

RELATIONSHIP TO GOVERNMENT

The Control Yuan is the supreme supervision agency in the country, on equal footing with the Executive, Legislative, Judicial and Examination Yuans. Unity and consistency are the core principles of the ROC supervision system; consequently, the Control Yuan is the unique official government watchdog. Unlike most western countries, which set up a parliamentary ombudsman under the legislature, the Control power is an entirely separate branch of the ROC government. The system is designed this way to avoid the arbitrary exercise of legislative power.

Although members of the Control Yuan are confirmed by the Legislative Yuan, the Control Yuan is not required to report to the Legislature. It is therefore unlike other ombudsman systems in most countries where the ombudsman is required by law to submit an annual report to the parliament each year or provide a particular report on an ad hoc basis.

The Control Yuan has seven standing committees and eight special committees to deal with specific business activities equivalent to ministries or agencies in the Executive Yuan. It enjoys independent finance and can be fairly said to be equipped with adequate administrative and human resources. Based on reviews and resolutions by various committees, the Control Yuan is allowed to propose corrective measures and forward these to the Executive Yuan and its subordinate agencies for improvement.

JURISDICTION

The Control Yuan oversees government institutions at all levels, investigates cases of official misconduct, and has power to impeach, censure, correct and audit. Members of the Control Yuan have broad authority to monitor government and officials. The authority also extends to the judiciary, the police, the military and the general public services. The Control Yuan monitors both central and local public functionaries, including heads of cabinet ministers, judges, prosecutors, civil servants and employees of state-run businesses, but not including the President, Vice President, legislators or locally elected legislatures.

Furthermore, in accordance with the enforcement of the four Sunshine Laws,² the Control Yuan also reviews the assets disclosure of high-ranking public functionaries; accepts related cases of application, investigation and punishment to avoid conflict of interest; deals with permission, change and abrogation of political donation accounts by political parties, political groups and candidates; and monitors the registration, application, investigation and punishment of the government and legislative lobbying.

FUNCTIONS

The core function of the Control Yuan is to receive and investigate complaints from the people so as to supervise government ethics and to enhance integrity and efficiency of the public functionaries. The following is a brief account of the main functions of the Control Yuan.

Receipt of people's complaints

The core value of the Control Yuan has always been to redress grievances of the general public. All citizens can submit petitions to the Control Yuan free of charge. Most of the complaints are about malfeasance or violation of law by public functionaries and government agencies. When a petition is received, it is first reviewed by a member on duty or staff member to decide how it should be processed. It may be sent to a Control Yuan member for investigation, discussed by a standing committee, or sent on to a particular government agency. If the statute of limitations has run, or the Control Yuan has no jurisdiction over the complaint, it is answered and filed.

2 The four Sunshine Laws are: (1) the Act on Assets Report by Public Functionaries (1993; revised in 1994, 1995, 2007 and 2008); (2) the Act on Recusal of Public Functionaries Due to Conflict of Interest (2000); (3) the Political Donations Act (2004; revised in 2008); and (4) the Lobbying Act (2007).

Investigation

According to the expressed facts of a complaint and media reports, the Control Yuan may initiate an investigation if public functionaries or government agencies violate the law when carrying out duties. In addition, members of the Control Yuan can also investigate a case on their own motion. Once an investigation is complete, a written report is submitted, and the Control Yuan can then proceed to impeachment, censure or proposing corrective measures to rectify the situation with the relevant institution. If official conduct rises to the level of a criminal offence, the case is referred to the judicial authorities to consider taking legal action.

Impeachment

Impeachment is a vital weapon of the Control Yuan for ensuring an honest government and rectifying government ethics. The Control Yuan is empowered by the Constitution and the Control Act to impeach central and local government officials involved in dereliction of duty or violation of law, even including judges and prosecutors in the judiciary. An approved impeachment is forwarded to the Commission on the Disciplinary Sanctions of Functionaries of the Judicial Yuan or Court of Judiciary to decide the punishment. If the case involves criminal code or military law, it is referred to the competent judicial or military organisation for legal action.

Censure

The power of censure is used when the Control Yuan deems that a law-breaking or derelict public servant needs to be suspended from duty or be dealt with by other immediate measures. An approved censure is referred to the censured official's superior for action. Also, if the case involves the criminal code or military law, it is sent to the competent court or military court for action. If his or her official in charge or superior fails to act, or the action taken is improper, a case of impeachment may be initiated. If the censured official is impeached thereafter, his or her higher-up in charge or superior shall be responsible for the neglect of duty.

Corrective measures

The Control Yuan shall set up various committees according to different subordinate organs of the Executive Yuan to supervise if there is any violation of law or dereliction of duty. After investigating the work and measures of executive branches, the Control Yuan may propose corrective measures to the Executive Yuan and its subordinate agencies for improvement. The executive branches should immediately make appropriate improvement or take action, and should reply to the Control Yuan within two months. If the executive branch fails to reply in time about its improvement and action, the Control Yuan may question in writing or notify the responsible officials to come to the Control Yuan for questioning. And if an executive is found procrastinating with pretences and refuses to take appropriate action for improvement, the Control Yuan may initiate an impeachment against the head of the agency.

Circuit supervision and inspection

Members of the Control Yuan are empowered by law to conduct circuit supervision in different areas. The supervisor tour covers both central and local agencies. The central level includes the Executive Yuan, the Judicial Yuan, the Examination Yuan and their subordinate agencies. The agencies to be supervised and inspected at the local level are the provincial governments, municipality governments, the various county and city governments and their subordinate agencies. The supervisory tours of the central government are conducted by the Control Yuan members assigned by related committees in accordance with their necessities. The supervisory tours of local governments are divided into twelve zones of responsibility according to the administrative division. The supervision includes the implementation of administrative planning, the execution of budgets, corrective measures, government policies and regulations; the ethics of public functionaries; the livelihood of the people and social condition, and the handling of people's complaints.

Invigilation

This function is unique among Ombudsman offices in most countries. According to the Invigilation Act, members of the Control Yuan may serve or dispatch personnel as the invigilators to proctoring examinations when the Examination Yuan or other government branch holds examinations, except the qualification ones.

Acceptance of assets report by public functionaries

The following officials are requested by law to declare properties to the Control Yuan: President and Vice President of the ROC; presidents and vice presidents of the Executive, Legislative, Judicial, Examination and Control Yuan; political appointees; paid presidential advisors, national policy advisors and war strategy advisors of the Office of the President; elected officers on and above the level of township chief, and elected representatives on and above county and city level; chairpersons and vice chairpersons of the state-owned enterprises, and directors and supervisors representing the government or the state-owned shares in private juristic entities; principals of public junior colleges and above, and subsidiary institutions of such schools; chief officers at all levels above the rank of major general in the military; and judges and prosecutors at twelfth rank and above.

The Control Yuan should review the report files and put them into volumes for public examination and reference. In addition, the Control Yuan should make item-by-item checks based on the descriptions of the report. To punish those public functionaries who fail to report their assets in time or truthfully, the Control Yuan has the authority to impose a fine and publish their names in accordance with the Act on Assets Report by Public Functionaries. The assets report of the President and Vice President of the ROC, presidents and vice presidents of the five yuans, politically appointed officials, legislators, members of the Control Yuan, city mayors of the six municipalities directly controlled by central government, and councillors, magistrates and mayors of provincial cities should be published regularly in government gazettes and posted on the website.

Conflict of interest

In order to promote clean and competent politics, government ethics, and to avoid corruption and unjust profits gaining, a public functionary should recuse himself or herself as soon as he or she is aware of the conflict of interest. The term conflict of interest refers to interests obtained by a public functionary or his or her related persons directly or indirectly through any act or omission in the course of performing his or her duties. To those public functionaries in violation of the provisions stipulated in the Act on Recusal of Public Functionaries Due to Conflict of Interest, a penalty should be imposed in accordance with the Act. To comply with the Act, the Control Yuan has carried on receiving, reviewing, investigating and publishing regulations about related cases to avoid conflict of interest. The Control Yuan has also set up operation standards to address these cases.

Political donations

The Political Donations Act was enacted aiming at normalising and managing political contributions, promoting citizens' political participation, protecting fairness and justices of different political activities, and elevating the development of democratic politics. According to the Act, the Control Yuan is responsible for related matters as follows: to approve of opening, changing or closing political donation accounts of political parties, political groups and candidates; to handle candidates' disclosure of accounting reports and put into volumes and issue in the gazettes or post on the website; to accept candidates' accounting reports of the political donation accounts; to review accounting reports of political donations; to impose fines on violation of the Act; and to handle the affairs of demanding and returning payment to the treasury of the fined cases.

Lobbying

The Lobbying Act was put into effect in August 2008. People who lobby government officials for help will be required to register and publicise their activities. To date, Taiwan is the third country in the world to implement such a law, next to the US and Canada. Under the law, lobbying is defined as any direct contact with lobbied public officials, by verbal or written means, with the purpose of influencing the officials or their agency's attitude toward the formation, enactment, passage, alteration or annulment of bills, policies or initiatives. Lobbyists can be individuals, legal entities, or civic groups that solicit help on their own behalf or individuals or corporations that lobby on behalf of others. According to the Act, lobbying on matters related to national defence, foreign affairs, China policy, national security, civil servants' duties, or the activities of foreign governments or international non-governmental organisations in Taiwan are prohibited.

Meanwhile, the lobbied officials are elected or appointed public officials at national or local levels, including the president, vice president, elected representatives, heads of local governments and political appointees. Therefore, the president, vice president, members and secretary-general of the Control Yuan are all classified as the potential lobbied targets. The Department of Assets Report by Public Functionaries is designated to accept the lobbyists' registration. Within seven days after being approached, the officials should register with the Department to record the date, venue, method and content of the activity. Also, lobbyists are required to report lobbying expenditures to the Department by 31 May every year, and the Department should publicise financial reports quarterly.

Audit

According to the Constitution, the power of audit is part of the control powers. The Control Yuan has an auditor-general who is nominated and appointed by the President of the ROC with the consent of the Legislative Yuan for a term of six years. The National Audit Office is set up under the Control Yuan to exercise the power of audit over financial activities of government agencies, including supervising the execution of budgets of the government; examining and approving the financial receipts and payment orders; detecting irregular and dishonest behaviours on duty; and evaluating financial efficiency. In addition, the Control Yuan should directly scrutinise the annual financial statement of the government, request the President of the ROC to promulgate the finally audited annual financial report of the government, and handle the dishonest financial cases reported by the National Audit Office.

Human rights protection

Although the Control Yuan was established principally as a government monitor, its duties have since expanded to include the protection of human rights. This evolution was brought about by Taiwan's democratisation and the recent international emphasis on human rights. In May 2000, the Control Yuan set up a Human Rights Protection Committee to ensure that rights-related cases are handled properly and provide suggestions for improvement.

POWERS

The Control Act and related regulations provide that members of the Control Yuan have the following means of oversight at their disposal:

- » receiving oral and written complaints from the people inspecting central government ministries
- » inspecting offices of local governments and receiving complaints from the people there
- » questioning government officials
- » consulting with prominent government and civil figures
- » actively conducting investigations
- » making requests for official documents from government institutions, which are requested to comply
- » taking cases duly reported by government institutions.

Since Taiwan is a new democracy, the rule of law is not yet firmly established, and there are still many cases of government misusing or overstepping its authority. As a result, the Control Yuan deals with a large number of important cases; many of them are politically sensitive, such as the attentive case of misusing state affairs fund and money laundering scandal conducted by former President Chen Shui-bian and his family. This makes its job more difficult, and the Control Yuan tries hard to perform up to society's expectation in its job of fighting official misconduct, dereliction of duty, graft and corruption.

With the promotion of Sunshine Laws, the Control Yuan exercises its powers to effectively prevent money and power politics, curb inappropriate interests among public functionaries, and enhance integrity of civil servants. The power of audit has been strengthened to supervise the administrative branch in order to prevent budget abuse in the name of secrecy.

INTERNAL STRUCTURE

According to the Organic Law of the Control Yuan and the Organic Law of the Committees of the Control Yuan, promulgated on January 1998, the Control Yuan shall establish a department of supervisory operations, a department of supervisory investigation, a department of assets report by public functionaries, a secretariat, a general planning office, an information management office, an accounting office, a statistics office, a personnel office, an ethics office, and seven standing committees on internal and minority nationality affairs, foreign and overseas Chinese affairs, national defence and intelligence affairs, financial and economic affairs, educational and cultural affairs, communication and procurement affairs and judicial and prison administration affairs.

In keeping with related stipulations, the Control Yuan also set up eight special committees on statutory studies, consultation, complaints review, human rights protection, anti-corruption, discipline for Control Yuan members, budget planning and execution, and international affairs. The Control Yuan itself is quite large by standards in the ombudsman world. It has a staff of 400 and a budget of US\$21.5 million, including a department of supervisory investigation with up to 70 investigators or investigation officials.

According to the Organic Law of the National Audit Office and its general rules, the Control Yuan also sets up a National Audit Office (National Audit Office) including various audit departments and offices as subordinate agencies. The National Audit Office is subordinated to the Control Yuan with its staff and budget independently. The Auditor-General, who also serves a term of six years, is nominated and appointed by the President of ROC with the consent of the Legislative Yuan.

WORKLOAD AND STATISTICS

The information included in the table below is taken from the Control Yuan's Annual Reports, all of which are available at the Control Yuan website (<http://www.cy.gov.tw/lp.asp?ctNode=995&CtUnit=241&BaseDSD=7&mp=21>).

	2014	2013	2012	2011	2010
Complaints	14,675	17,926	19,758	20,849	25,409
Number of cases investigated	255	480	507	515	580
Number of corrective measures proposed	114	207	161	205	218
Number of impeachment cases proposed	18	21	31	30	20

PUBLICATIONS

The Control Yuan produces a varied range of publications every year that are available at the Control Yuan's website www.cy.gov.tw. Most of the publications are published only in Chinese version except the Brief Introduction of the Control Yuan and the Brief Report on the Work of the Control Yuan. The main publications of the Control Yuan include the following.

File collections on the constitutional Control Yuan

This collection is published in accordance with the tenure of Control Yuan members. The latest copy, volume seven, was published in 2006 covering the detailed work of the third mandate of the Control Yuan from February 1999 to January 2005.

Annual Reports

There are three reports produced by the Control Yuan every year:

- » The Control Yuan Report: this report is published annually to allow the Control Yuan to outline its detailed work from the preceding year.
- » Brief Report on the Work of the Control Yuan: this report is published twice a year to outline the brief work of the Control Yuan semi-annually.
- » Brief Report on the Work of the Control Yuan (English version): this report is published annually aiming at providing an annual summary of the work of the Control Yuan in English version. Since 2012, the Spanish version is also available.

Control Yuan Gazettes

- » The Control Yuan Gazette: a government gazette is published weekly to provide the most up-to-date information about exercising control powers. The gazettes published in the same year are also put into volume for readers' reference.
- » The Control Yuan Special Gazette on the Assets Report by Public Functionaries: a quarterly gazette to disclose the assets reports of public officials who are requested by law to declare properties to the Control Yuan.
- » The Control Yuan Special Gazette on the Accounting Report of Political Donations: a regular gazette to publicise the accounting reports of political donations disclosed by political parties, political groups and candidates.

General publications

The Control Yuan produces general publications with a broad range of subjects. Some of the most notable publications are:

- » International ombudsman institutions series: a series of translation publications to introduce ombudsman systems worldwide.
- » Guarding Taiwan and protecting human rights book series: a collection of noteworthy investigation reports was re-written by professional journalists or authors in a reader-friendly way. This collection is also aiming at keeping a valuable historical record for future reference.
- » Special investigation and research reports.
- » Collection reports of cases of impeachment, censure and proposing corrective measures.

E-bulletin

This electronic e-bulletin is published every month containing latest news and activities of the Control Yuan. The first issue started from April 2009.

Brochures

The Control Yuan produces brochures dealing with a broad range of subjects. They are a quick and easy resource for both the public and agencies, and are aimed at providing information around general issues, such as:

- » *The Control Yuan, Republic of China (in Chinese, English and Spanish version)*
- » *What can the Control Yuan do for you?*
- » *The Beauty of Historical Building of the Control Yuan*
- » *The Control Yuan Exhibition Area*

LITIGATION

The decisions of the Control Yuan can be first reviewed by the Committee on Administrative Appeal Review of the Control Yuan itself. Cases sent to the Committee cover complaint-handling and fines and punishments imposed on public officials in violation of assets reports, conflict of interest and political donations. Cases that involve the application for national compensation can be reviewed by an internal procedure.

If the complainants are not satisfied with decisions made by the Committee on Complaint Review of the Control Yuan, they can bring the case before the Taipei District Court, Taipei High Court and Supreme Court through legal proceedings in accordance with the provisions of Code of Criminal Procedure and Code of Civil Procedure. The complainants can also file administrative appeals to the Administrative Court under the Code of Administrative Procedure. In recent years, there was no noteworthy case involving the Control Yuan.

OFFICE ADDRESS AND CONTACT DETAILS

Mailing address: The Control Yuan of the Republic of China (Taiwan)
No.2, Zhongxiao E. Rd., Sec.1
Taipei City 10051, Taiwan (R.O.C.)

Web address: www.cy.gov.tw
Email address: cymail@ms.cy.gov.tw

General enquiries: +886-2-2341 3183
Facsimile: +886-2-2341 0324
Media enquiries: +886-2-2341-3183 ext.619
Publications enquiries: +886-2-2341-3183 ext. 137

OMBUDSMAN OF THE COOK ISLANDS

ESTABLISHMENT

The office of the Ombudsman of the Cook Islands was established after the Ombudsman Act was passed in 1984.

OMBUDSMAN

There have been five Cook Islands Ombudsmen. They are:

Tangata Simiona
Henry Brown
Andrew Turua
Janet Maki.

The current Ombudsman is Mr. Tearoa John Tini, a former Chief Inspector of the Cook Islands Police Department.

Under the provisions of the *Ombudsman Act 1984*, the Ombudsman is appointed by the Queen's Representative on advice of the Prime Minister. The Ombudsman is appointed for a period of three years.

RELATIONSHIP TO GOVERNMENT AND PARLIAMENT

The Ombudsman is an officer of, and responsible to, Parliament. While the annual reports are presented to Parliament, financial reports on the running of the office are made to the government.

JURISDICTION

There are four pieces of legislation that determine the jurisdiction of the Cook Islands Ombudsman. They are the *Ombudsman Act 1984* (Ombudsman Act), the *Official Information Act 2008* (OIA), the *Disability Act 2008* (Disability Act) and the *Police Act 2012*.

The Ombudsman Act sets out the Ombudsman's jurisdiction over the public sector in the Cook Islands. The various public sector agencies are named in a Schedule attached to the legislation. The Schedule was updated in 2007.

The OIA gives members of the public an avenue to complain to the Ombudsman if they do not receive a satisfactory response from a public sector agency following a freedom of information request.

The Disability Act allows a person, or a person acting on behalf of another, to complain to the Ombudsman if they experience unlawful discrimination on the basis of a disability, or about an act that is contrary to the legislation. This Act covers both the public and the private sector.

The Police Act empowers the Ombudsman to investigate complaints alleging misconduct or neglect of duty by any member of Police; or concerning any practice, policy, or procedure of the Police affecting the person or body of persons making the complaint in a personal capacity; and the complaint has not been investigated or the complaint has been investigated and the complainant is dissatisfied with the final result.

The Ombudsman may also investigate, where satisfied that there are reasonable grounds to carry out an investigation in the public interest, any incident involving death or serious bodily harm notified by the Commissioner under s 92 of the Police Act.

FUNCTIONS

Complaints

The Ombudsman of the Cook Islands takes complaints from members of the public about a range of issues. All complaints to the Ombudsman must be made in writing. Some are referred to more appropriate agencies, some are resolved without investigation and the remainder are investigated by the office. Every investigation conducted by the Ombudsman must be conducted in secret.

Own motions investigations

The office is conducting an own motion investigation into a number of government agencies involved in the monitoring of migrant workers. The decision to conduct an own motion investigation was made after several complaints were received about these issues.

Freedom of Information

The implementation of the OIA began in February 2009, but was staggered across the public sector to allow time to prepare for the new arrangements. The Ombudsman has received a small number of complaints from members of the public about freedom of information requests made under this new legislation.

Education and training

The Ombudsman's office was given responsibility for preparing government agencies for the implementation of OIA, as well as for raising the public awareness of the Act. This has provided the office with the opportunity of discussing record keeping and good records management practices with public sector agencies.

Other

As well as dealing with complaints from the public and own motion investigations, the office may also have matters referred to it by the Prime Minister or Parliamentary Committees.

POWERS

The Ombudsman may decide not to investigate matters that the complainant has had knowledge of for more than 12 months before approaching the Ombudsman. The Ombudsman can also decide not to investigate when the subject matter is trivial, the complaint may be considered frivolous, vexatious, vindictive or not made in good faith, or where the complainant has insufficient personal interest in the matter.

Should the Ombudsman decide to investigate a matter, the investigation is conducted in the manner determined by the Ombudsman. No person has the right to be heard by the Ombudsman in relation to an investigation.

The Ombudsman may examine on oath:

- » any officer from a department or organisation named in the Schedule to the Ombudsman Act;
- » any complainant; and
- » with the prior approval of the Minister of Justice, any other person who in the Ombudsman's opinion is able to give information of value to an investigation.

Following an investigation the Ombudsman can report his or her findings and make recommendations. If, in the Ombudsman's opinion, the department's or organisation's response to the recommendations is inadequate or inappropriate, the report and its recommendations may be made available to the Prime Minister, and then to Parliament. The Ombudsman may also require that a summary of the report is published and made public.

INTERNAL STRUCTURE

The office is headed by an Ombudsman, supported by an assistant ombudsman, two senior investigating officers and an office administrator.

SPECIAL PROJECTS

The office will be working in partnership with the Ministry of Internal Affairs, Youth and Sports to develop a Disability Strategy to assist the Office in its Education and Advocacy programs as well as setting up its Disability Complaints process. The office will also be working closely with the Ministry of Internal Affairs in developing a stocktake of human rights work in the Cook Islands in both the public and private sector including civil societies, with the view to establishing the role of the Ombudsman in a Human Rights Master Plan for the Cook Islands.

OFFICES ADDRESS AND CONTACT DETAILS

Street address:	Te Mato Akamoeau, Office of the Ombudsman of the Cook Islands 1st floor Iro House Nikao, Rarotonga, Cook Islands
Mailing address:	Ombudsman PO Box 748 Rarotonga
Telephone:	(682) 20602
Email:	complaint@ombudsman.gov.ck



THE OMBUDSMAN OF HONG KONG

ESTABLISHMENT

The Office of The Ombudsman of Hong Kong (known as the Office of the Commissioner for Administrative Complaints before December 1996), was established in 1989 under The Ombudsman Ordinance, Chapter 397 of the Laws of Hong Kong (“the Ordinance”), as the city’s independent watchdog of public administration.

OMBUDSMAN

Appointment to the post since 1989 has been as follows:

- 1989 – Mr Arthur Garcia
- 1994 – Mr Andrew So
- 1999 – Ms Alice Tai
- 2009 – Mr Alan Lai
- 2014 to present – Ms Connie Lau

The Ombudsman is appointed by the Chief Executive of the Hong Kong Special Administrative Region under The Ombudsman Ordinance for a term of five years and is eligible for re-appointment. The Ombudsman can be removed from office by the Chief Executive only with the approval by resolution of the Legislative Council on the ground of inability to discharge the functions of her office or misbehaviour.

RELATIONSHIP TO GOVERNMENT

Under The Ombudsman Ordinance, The Ombudsman is not a servant or agent of the Government of Hong Kong Special Administrative Region (“the Government”). The Ordinance, amended on 19 December 2001, established The Ombudsman as a corporation sole with full powers to formulate and implement independently policies and procedures for administrative, financial and operational activities. The Ombudsman was empowered to recruit staff on terms and conditions determined by her.

Meanwhile, The Ombudsman is subject to public scrutiny in the exercise of her powers. The Ordinance requires that The Ombudsman shall, within six months after the end of a financial year, submit a report on her activities and an audited statement of accounts to the Chief Executive for tabling in the Legislative Council. Conventionally, The Ombudsman will also meet annually with the Members of the Legislative Council regarding the work of her Office over the year.

VISION AND MISSION

The vision of The Ombudsman is to ensure that Hong Kong is served by a fair and efficient public administration which is committed to accountability, openness and quality of service.

Her mission is to redress grievances and address issues arising from maladministration in the public sector through independent, objective and impartial investigation and bring about improvement in the quality and standard of and promote fairness in public administration.

POLICY ON ACCESS TO INFORMATION

The Office of The Ombudsman recognises the need for the community to be well informed about the Office and the services it provides. Subject to the secrecy requirement under The Ombudsman Ordinance, the Office adopts a policy of openness and transparency. It has published a Policy on Access to Information which defines the scope of information that will be provided to the general public and sets out how the information will be made available in response to a request.

JURISDICTION AND FUNCTIONS

The Ombudsman's jurisdiction covers Government departments and public organisations listed in Schedule 1 to the Ordinance in respect of alleged acts of maladministration. The Office also has powers to handle complaints related to the non-compliance with the Government's Code on Access to Information.

Besides investigating complaints received, The Ombudsman may, in the absence of complaints, initiate direct investigation into official actions where The Ombudsman considers that any person may have sustained injustice as a consequence of maladministration in connection with that action. In practice, direct investigation targets systemic problems of the departments and public bodies or issues of significant public interest. Before deciding whether or not to launch a direct investigation against an organisation, an initial assessment ("Direct Investigation assessment") may be conducted.

The Ombudsman's jurisdiction now includes all Government departments and 24 public bodies in Schedule 1. Details can be found at Chapter 397 of the Laws of Hong Kong (www.legislation.gov.hk).

The Ombudsman is subject to certain restrictions and limitations in the exercise of her investigative powers under the Ordinance. Section 10 restricts The Ombudsman from investigating complaints under certain conditions (e.g. where a complaint is made anonymously or the complainant has a statutory right of appeal). Schedule 2 to the Ordinance also precludes The Ombudsman from investigating specified actions by Government departments and public organisations. These include actions for which legal proceedings have commenced; actions taken in relation to personnel matters; actions relating to contractual commitments and commercial transactions and decisions on land grants.

SECRECY

The Ombudsman and her staff are bound by law, under penalty of a fine and imprisonment, to maintain secrecy on all matters arising from any investigation or complaint and coming to their knowledge in the exercise of their functions.

POWERS

The Ombudsman has extensive investigative and administrative powers:

Investigative powers

- » determine whether a complaint is duly made under the Ordinance
- » determine whether to conduct an investigation
- » determine whether to continue an investigation despite withdrawal of a complaint by a complainant
- » obtain information, documents and things from any person, and make inquiries as she thinks fit
- » regulate investigation procedures
- » summon a complainant or any person to obtain information during an investigation
- » administer oath for taking evidence in the course of investigation
- » enter and inspect premises occupied, managed or controlled by an organisation
- » publish an anonymised investigation report in the public interest.

Any person who fails to cooperate with The Ombudsman commits an offence and is punishable by law.

Administrative powers

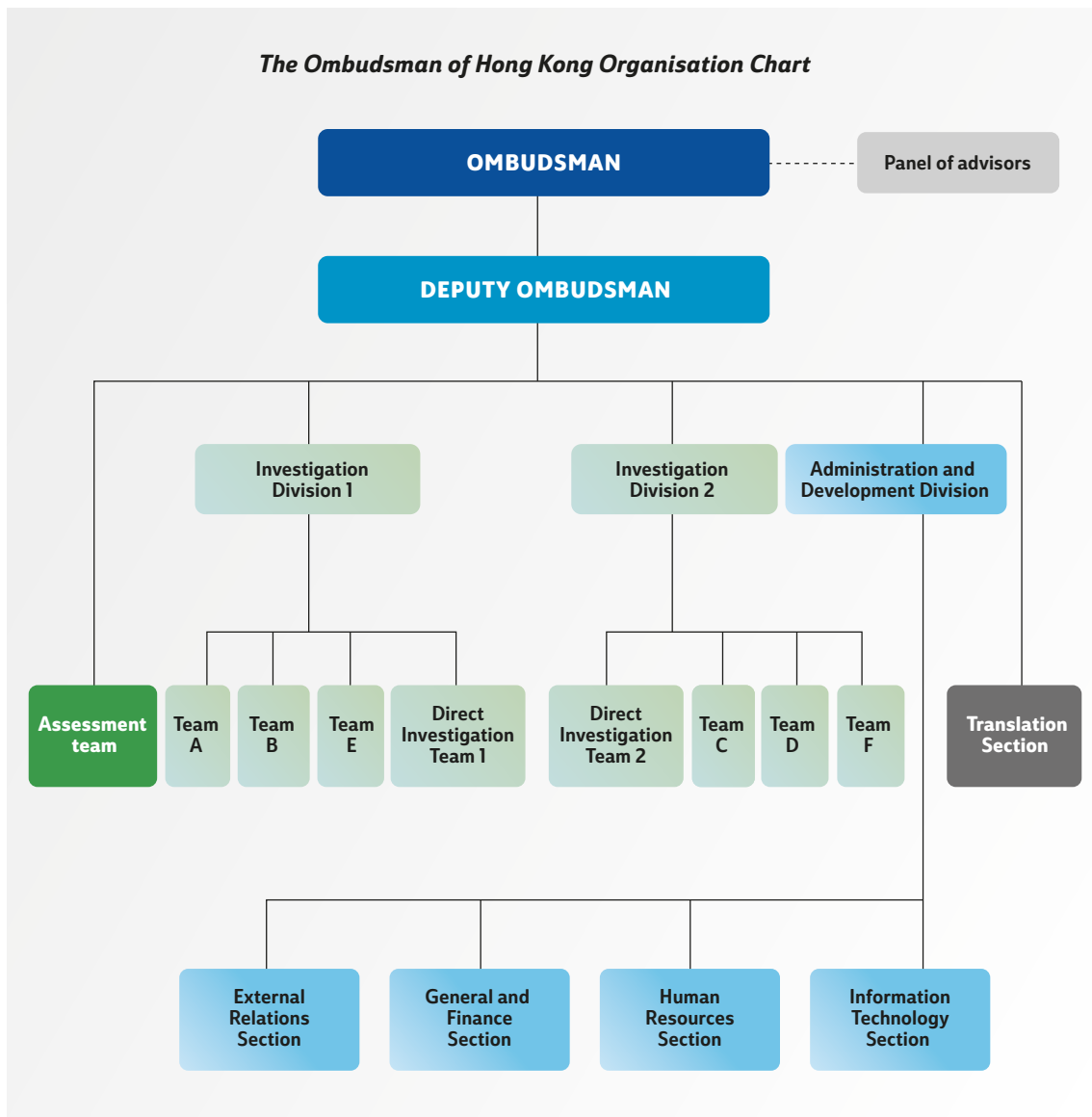
- » appoint staff and determine their terms and conditions of appointment
- » build up a reserve and to invest surplus funds
- » acquire and hold property
- » enter into, carry out, assign, vary or rescind any contract, agreement or obligation
- » do all such things as are necessary for, or incidental or conducive to, the better performance of her functions

INTERNAL STRUCTURE

The Ombudsman is assisted by a Deputy Ombudsman in overseeing the operation of her Office, organised as two Investigation Divisions, an Assessment Team, an Administration and Development Division and a Translation Section. As of December 2014, the Office has a work force of 113. The Ombudsman has also, in accordance with the Ordinance, exercised her right to appoint a Panel of Advisers in different professions to assist her in the performance of her statutory functions.

Each Investigation Division is headed by an Assistant Ombudsman responsible for supervising the investigation of alleged acts of maladministration and direct investigations. The Assessment Team screens all incoming enquiries and complaints to determine whether they are subject to The Ombudsman's jurisdiction. This team also maintains a Duty Officer roster to receive complainants who come to our Office personally.

The Administration and Development Division provides support services in resource management, accounting, information technology, external relations and general administration. The Chief Manager also processes complaints against the Office and staff. The Translation Section provides translation service and advice on the use of Chinese and English languages.



Staff complement

Breakdown of staff As at December 2014	Female	Male	Total
Directorate	1	3	4
Investigation	36	24	60
Administrative and Support	30	19	49
Total regular staff	67	46	113

ACCESSIBILITY

Mode of lodging complaints

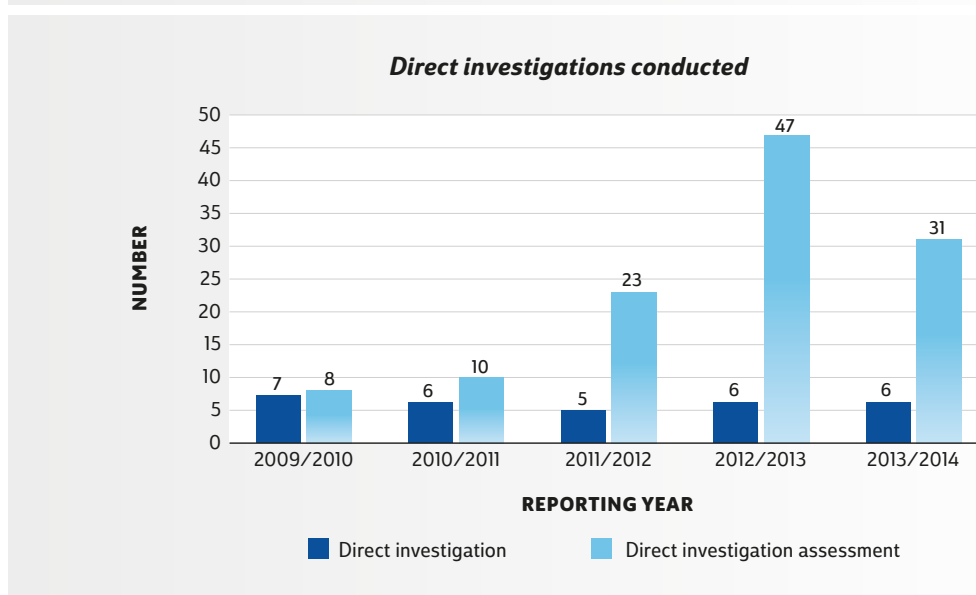
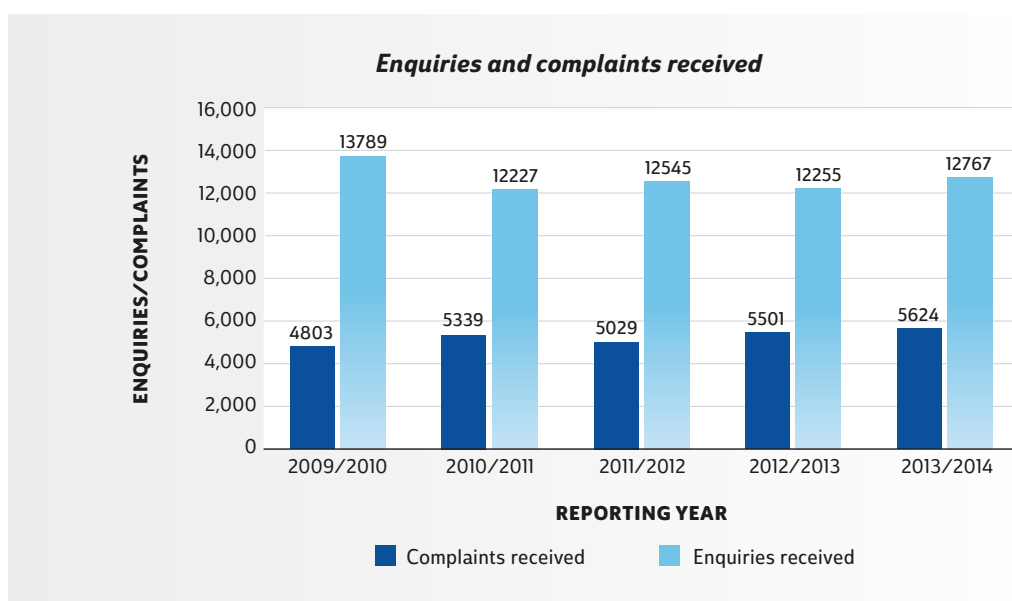
Complaints are lodged free of charge in writing, by post, fax, email or in person. The Office also accepts complaints lodged by telephone when the complaints are simple or when the complainants have difficulty to express themselves in writing. All complaints lodged with the Office are treated in the strictest confidence.

Education and publicity

The Office undertakes a wide variety of activities in educating the public on their rights to a responsible, fair, open and efficient public administration. These include:

- » organising press conferences and publishing regular newsletters, the OmbudsNews distributing publicity leaflets and posters
- » broadcasting publicity messages on local television, radio and local transport
- » producing publicity video on the purview, functions and powers of the Office
- » conducting visits, and talks to Government departments, major statutory organisations, universities, schools etc.
- » enlisting the assistance of the Advisers and Justices of the Peace to promote ombudsmanship
- » organising seminars on topical complaints
- » organising The Ombudsman's Awards to recognise professionalism in complaint handling and to foster a positive culture in public sector.

WORKLOAD AND STATISTICS



Further details about the Office's caseload and achievements are on its website (www.ombudsman.hk).

PUBLICATIONS

The office produces a variety of publications every year, which are also available at the above website. Examples include:

- » Annual Report
- » Investigation Reports
- » Direct Investigation Reports
- » OmbudsNews
- » Ombudsman Ordinance
- » Publicity Leaflet
- » Ombudsman's Awards Brochure.

AVENUE FOR REVIEW

The law stipulates that The Ombudsman's decision is final. Those not satisfied with her decision may request a review or seek judicial review by the Court.

There has been attempted of legal action including judicial reviews and civil claims against The Ombudsman. For instance, in the past five years, two complainants applied for judicial review and three for civil claims against The Ombudsman's decision but all their applications/claims were dismissed by the Court/Tribunal.

OFFICE ADDRESS AND CONTACT DETAILS

Website:	http://www.ombudsman.hk
Address:	30/F, China Merchants Tower, Shun Tak Centre, 168-200 Connaught Road Central, Hong Kong
Post Box:	GPO Box No. 3300, Hong Kong
Enquiry and Complaint Hotline:	(852) 2629 0555
Fax:	(852) 2882 8149
Complaint email address:	complaints@ombudsman.hk
Enquiry email address:	enquiry@ombudsman.hk

NEW SOUTH WALES OMBUDSMAN

ESTABLISHMENT

The New South Wales Ombudsman office was established by the *Ombudsman Act 1974* (NSW) (the Act).³ The office commenced operation in May 1975.

OMBUDSMAN

There have been five NSW Ombudsman appointed since the office started operating in 1975:

Mr Ken Smithers	April 1975 – June 1981
Mr George Masterman QC	June 1981 – September 1987
Mr David Landa	February 1988 – January 1995
Ms Irene Moss, AO	February 1995 – November 1999
Mr Bruce Barbour	June 2000 – present

RELATIONSHIP TO GOVERNMENT AND PARLIAMENT

The Ombudsman's office falls within the legislative portfolio of the Premier of New South Wales. This is to allow for the functional delineation of government responsibilities. It is important to note that this does not impact on the Ombudsman's independence and impartiality, as the Premier takes no direct role in relation to the Ombudsman's work.

The Ombudsman is appointed by the Governor of New South Wales on the recommendation of the Premier as the responsible Minister. The Ombudsman can be appointed for a term of up to seven years, and is eligible for re-appointment. The Ombudsman can only be removed from office by the Governor if asked to do so by both Houses of Parliament.

The work of the office is overseen by the Committee on the Office of the Ombudsman, the Police Integrity Commission and the Crime Commission (the PJC). As with other joint Parliamentary committees, the PJC is expected to be made up of representatives from a number of different parties (s 31C). The Committee has the following functions (s 31B):

- » to monitor and review the work of the Ombudsman
- » to report to both Houses of Parliament on any issue relating to the work of the Ombudsman that the PJC believes should be brought to the attention of the Parliament
- » to report to Parliament any changes it recommends to the functions, structures and procedures of the office of the Ombudsman
- » to inquire into any question in connection with the PJC's role which is referred to it by both Houses of Parliament and report its findings to Parliament.

While the PJC can review the work of the Ombudsman, it cannot reconsider a decision not to investigate or the findings, recommendations, determinations or other decisions of the Ombudsman.

The PJC meets with the Ombudsman, as well as the Deputy Ombudsman once a year for its Annual General Meeting. This provides the PJC members with an opportunity to ask the Ombudsman about the office's work.

³ Unless otherwise noted, all references to section numbers are to the *Ombudsman Act 1974* (NSW)

JURISDICTION

New South Wales is one of eight States and Territories that make up the Commonwealth of Australia, and has a population of 7.2 million.⁴ New South Wales has a two tiered political system, with both State and Local government. The office of the Ombudsman handles complaints relating to both tiers, as well as a number of private sector bodies providing public services. This means that the Ombudsman's jurisdiction is particularly broad.

The jurisdiction of the office has been extended on a number of occasions since it was first established. The following are some of the major additions:

1976	local government authorities
1978	limited oversight of police complaints
1984	limited powers to conduct direct investigation of police
1986	elected members of local government
1987	telecommunications interception inspection
1989	freedom of information
1993	direct investigation police complaints
1994	protected disclosures
1995	conciliation powers; witness protection appeals
1997	controlled operations inspection
1998	child protection
2002	community services
2011	public interest disclosures
2014	Deputy Ombudsman (Aboriginal Programs)
2014	reportable incidents in disability supported group accommodation.

The Ombudsman's jurisdiction now includes:

- » all NSW government departments and authorities
- » the NSW Police Force
- » local councils
- » both public and private community service providers
- » child care centres
- » both public and private schools
- » universities.

There are a number of areas that are excluded from the Ombudsman's jurisdiction. These include the conduct of, among others:

- » judges
- » members of a Tribunal
- » members of Parliament
- » both houses of Parliament, and
- » a public authority relating to matters of employment.

Schedule 1 of the Ombudsman Act lists all exempted bodies and conduct. A full copy of the Act can be found at <http://www.legislation.nsw.gov.au/scanview/inforce/s/1/?TITLE=%22Ombudsman%20Act%201974%20No%2068%22&nohits=y>.

FUNCTIONS

Complaint handling

The core of the office's work has always been to receive and deal with complaints by members of the public. Over time, the office has developed a number of other important functions.

Oversight

The Ombudsman has an oversight role in relation to the investigation of complaints about police (Part 8A of the *Police Act 1990*), matters relating to workplace child protection (Part 3A of the Ombudsman Act) and reportable incidents in disability supported accommodation (Part 3C of the Ombudsman Act).

For police complaints, the Ombudsman enters into an agreement with the Police Integrity Commission and the NSW Police Commissioner, known as a class or kind agreement, whereby police have to notify the Ombudsman and the Police Integrity Commissioner of certain types of complaints. Police then investigate the complaint, and provide the Ombudsman with an investigation report and all related documents.

If the Ombudsman is satisfied with the way in which the complaint was handled, the matter can be finalised. The Ombudsman can request additional information about the complaint and the investigation, as well as further investigation of the complaint. The Ombudsman is also able to directly investigate the complaint itself or the way in which it was dealt with by Police.

For workplace child protection, certain government and non-government agencies must notify the Ombudsman of certain allegations or convictions against an employee of their agency. They must outline any disciplinary action they intend to take and the reasons for that action, and they must provide any written submissions made regarding that disciplinary action (s 25C). As with Police complaints, the Ombudsman can exempt certain conduct from then notification requirements (s 25D). The Ombudsman can then monitor the progress of investigation, and the agency must provide the Ombudsman with any report that is prepared as part of the investigation, as well as information about any action taken regarding the allegation (s 25F). The Ombudsman is also able to directly investigate allegations (s 25G).

For reportable incidents in disability supported accommodation, the Department of Family and Community Services and funded service providers must report certain incidents to the Ombudsman. These can include employee to client incidents, client to client incidents, incidents involving a contravention of an apprehended violence order made for the protection of a person with disability, or an incident involving an unexplained serious injury to a person with disability. Section 25P of the Ombudsman Act outlines what constitutes a "reportable incident". For employee to client incidents, this includes:

- » any sexual offence committed against, with or in the presence of the person with disability
- » sexual misconduct committed against, with or in the presence of the person with disability, including grooming of the person for sexual activity
- » an assault of the person with disability, not including the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated under workplace employment procedures
- » an offence under Part 4AA of the *Crimes Act 1900* committed against the person with disability
- » ill-treatment or neglect of the person with disability.

As with employment-related child protection matters, the Ombudsman can exempt certain conduct from the reporting requirements (s 25S). The Ombudsman can then monitor the progress of investigation (s 25U), and the agency must provide the Ombudsman with any report that is prepared as part of the investigation, as well as information about any action taken regarding the allegation (s 25V). The Ombudsman is also able to directly investigate allegations (s 25W).

Reviewable deaths

In 2002, the office of the Community Services Commissioner was merged with the office of the Ombudsman. This led to a number of key changes to the functions of the Ombudsman. One of these was the introduction of a role in reviewing the deaths of people with a disability in care, as well as certain children and young people.

Audits

The Ombudsman is also responsible for keeping a number of different systems under scrutiny.

While Police are not required to notify the Ombudsman of less serious complaints, known as Local Management Issues, the office is required to review the way in which these are dealt with. This is part of the Ombudsman's broader responsibility to scrutinise the way in which police handle complaints (s 160 of the Police Act).

The Ombudsman has a similar function with workplace child protection complaints (s 25B).

Legislative reviews

This function is unique among Ombudsman offices. It has developed in response to community concerns regarding certain pieces of legislation that provide additional and often extraordinary police powers. The office reviews the implementation of the legislation, usually over a one or two year period, and provides a report to the relevant Minister. Some of the powers reviewed have included:

- » the offence of continuing to be intoxicated and disorderly in public
- » the power to collect DNA samples from suspects
- » the ability to search people in public places for knives
- » the use of sniffer dogs to search people in public places for drugs, firearms or explosives
- » giving people on-the-spot fines for certain criminal offences
- » holding people suspected of involvement in terrorist-related activities in preventative detention
- » emergency powers during riots to block roads and search people and cars.

Own motion investigations

While many of the investigations the Ombudsman conducts result from a specific complaint, the Ombudsman is also able to conduct own motion investigations. These often result from the office's other work which suggests a possible systemic failing. Recent examples include:

- » How are Taser weapons used by the NSW Police Force?
- » A level playing field? – HSC disability provisions
- » Managing use of force in prisons: the need for better policy and practice
- » Safe as houses? Management of asbestos in Police buildings
- » Kariong Juvenile Correctional Centre – Meeting the challenges
- » Responding to the asbestos problem – The need for significant reform in NSW
- » Removing nine words – Legal professional privilege and the NSW Ombudsman
- » Opening up government: Review of the *Freedom of Information Act 1989*
- » The use of Taser weapons by New South Wales Police Force
- » Domestic violence: improving police practice

Education and training

In addition to these broad functions, the Ombudsman also seeks to provide education and training to both public authorities and members of the public. The training covers a diverse range of issues, from handling complaints, dealing with unreasonable complainant conduct, through to the rights of members of the public receiving community services.

The breadth and number of training courses offered by the Ombudsman has grown in recent years. In 2013-2014, the office held 219 courses covering seven topics to 4,207 people.

POWERS

The Ombudsman Act provides the Ombudsman with the power to investigate or conciliate complaints made to the office regarding the conduct of a public authority.

If the Ombudsman decides that the conduct of a public authority falls into one or more of the categories listed below, the Ombudsman may choose to conduct an investigation (s 26):

- » contrary to law
- » unreasonable, unjust, oppressive or improperly discriminatory
- » in accordance with any law or established practice but the law or practice is, or may be, unreasonable, unjust, oppressive or improperly discriminatory
- » based wholly or partly on improper motives, irrelevant grounds or irrelevant consideration
- » based wholly or partly on mistake of law or fact
- » conduct for which reasons should be given but are not given
- » otherwise wrong.

In order to decide if certain conduct should be investigated, the Ombudsman will first make preliminary inquiries (s 13AA). These can be made to anyone, not just the public authority that is involved. While those asked for information cannot be compelled to respond, most public authorities provide the requested information, often removing the need for a more formal investigative process.

If preliminary inquiries fail to provide the information needed, or demonstrate the need for closer investigation, the Ombudsman can choose to issue a formal notice of investigation (s 16). Such an investigation must be conducted in private (s 17).

The Ombudsman may then require a public authority to provide a statement of information, to produce any document or thing, or provide a copy of any document (s 18).

The Ombudsman may also make or hold inquiries (s 19). For the purposes of such inquiries, the Ombudsman has the powers, authorities, protections and immunities conferred on a commissioner under the *Royal Commissioner Act 1923*.

The Act was amended in 2012 to provide the Ombudsman with the ability to issue a non-disclosure direction (s 19A); to prevent a person present at an inquiry from publishing, or allowing to be published, evidence given before an inquiry, and to prevent people required to produce a statement of information or issues with a summons from disclosing the details of the requirement or summons (s 19C).

The Ombudsman may also enter and inspect any premises and inspect any document or thing in or in the premises (s 20).

The Ombudsman may also make a special report to Parliament on any matter arising in connections with the discharge of his or her functions (s 31).

The Ombudsman also has a role under several other pieces of legislation. These are the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, the *Public Interest Disclosures Act 1994* and the *Police Act 1990*. The Ombudsman is able to use the powers provided by the Ombudsman Act in performing these functions.

INTERNAL STRUCTURE

The management of our office is overseen and driven by the senior officers group (SOG). The SOG is made up of the Ombudsman, four Deputy Ombudsman and the Directors of the corporate branch and strategic projects division.

The office is divided into four branches and a division.

- » **Public Administration Branch** – deals with complaints about a broad range of public authorities, as well as local councils. The custodial services unit is part of the branch, and is responsible for our work with correctional and juvenile justice centres. The public interest disclosures unit is also part of the branch, providing advice and assistance to public authorities and public officials.
- » **Police and Compliance Branch** – responsible for ensuring the NSW Police Force handles complaints about police fairly and correctly. The branch also reviews new police powers as requested by the NSW Parliament. The branch also includes the secure monitoring unit, which is responsible for handling appeals and complaints about the witness protection system, as well as inspecting the records of eligible authorities and law enforcement agencies to assess and report on their compliance with certain legislation relating to the use of surveillance devices, controlled operations and certain search warrants.
- » **Human Services Branch** – includes our community services and employment related child protection divisions. The community services division handles complaints about, and monitors and reviews and delivery of community services, as well as reviews provider's complaint handling systems. The employment-related child protection division oversees the investigation of certain agencies into allegations against their employees that involve inappropriate or abusive behaviour towards children. They also look at systems agencies have to prevent reportable conduct occurring in the workplace and to respond to allegation appropriately.
- » **Corporate branch** – includes personnel, finance, information technology, records management, office administration, executive support, policy review and development.
- » **Strategic projects division** – responsible for leading major projects and investigations, particularly those that cross the jurisdictions of the Ombudsman's various operational areas. The division has a focus on Aboriginal and youth issues, and includes our Aboriginal Unit and Youth Liaison Officers. The community education and training unit is also part of the division, coordinating and providing the office's broad range of training courses.

WORKLOAD AND STATISTICS

It is difficult for statistics to form part of a meaningful comparison between Ombudsman offices, as each will have its own method of recording its work. The information included in the table below is taken from the office's Annual Reports, all of which are available at the Ombudsman website.

The table refers to 'formal' and 'informal' resolution of matters. Informal resolution can include providing information or an explanation, referral to the relevant agency, or advising the complainant to put their complaint in writing. Formal matters can be varied, and the response of our office to these matters can vary from a clarifying phone call to a full-scale investigation over several months.

Year	Inquiries and complaints received	Matters finalised informally	Formal complaints and notifications received	Complaints and notifications finalised
2007-2008	34,021	24,701	9,320	9,544
2008-2009	32,994	24,252	8,742	8,903
2009-2010	32,509	23,797	8,712	8,781
2010-2011	33,064	24,147	8,917	9,485
2011-2012	33,353	23,849	9,504	9,326
2012-2013	36,765	28,041	8,724	8,555
2013-2014	35,456	25,951	9,505	9,107

PUBLICATIONS

The office produces a varied range of publications every year. These include annual reports, special reports to Parliament, guidelines, facts sheets and information brochures.

Annual Reports

The Ombudsman is required by various pieces of legislation to produce twelve annual, biannual and biennial reports. They deal with different topics, from the office's annual report which touches on all our work, to reports on discrete and often sensitive roles and responsibilities. All except our telecommunications interception reports are tabled in Parliament, either directly or through the relevant Minister. These reports provide significant detail about our work and performance, and are, with the exception of the telecommunications interception reports, available at our website.

Office-wide annual report

The Ombudsman's office, as with all departments and statutory bodies, is required to prepare an annual report of our operations for the preceding financial year. Under the *Annual Report (Departments) Act 1985* and the *Annual Report (Departments) Regulation 2010*, this report must include:

- » our charter
- » our aims and objectives
- » information about systems to allow for access to our services
- » our management and structure
- » a summary review of operations
- » financial statements, and
- » information about any relevant legal changes.

The annual report also meets a number of other statutory reporting obligations, including:

- » s 30 of the *Ombudsman Act* requires the Ombudsman to report each year on the office's work and activities
- » s 87O of the *Law Enforcement (Powers and Responsibilities) Act 2002* requires the Ombudsman to report each year on our work in keeping under scrutiny the exercise of powers conferred on police to prevent or control public disorder
- » the *Public Interest Disclosures Act 1994* requires all agencies to provide certain information about the public interest disclosures they receive and deal with each year
- » the *Government Information (Public Access) Act 2009* requires all agencies to report a range of information annually on the applications they receive and how they are dealt with
- » the *Disability Services Act 1993* requires all agencies to prepare and make publicly available a disability action plan.

Controlled operations

Under s 23(1) of the *Law Enforcement (Controlled Operations) Act 1997*, the Ombudsman is required to prepare and furnish to Parliament a report of work and activities under the Act for the twelve months preceding 30 June each year.

Surveillance devices

Section 49 of the *Surveillance Devices Act 2007* requires the Ombudsman to report to the Attorney General every six months on our inspections of surveillance devices records of law enforcement agencies. The Attorney General is then required to lay the report or cause the report to be laid before both Houses of Parliament within 15 days after receiving it.

The *Surveillance Devices Act* covers the installation, use and maintenance of listening, optical, tracking, and data surveillance devices and restricts the communication and publication of private conversations, surveillance activities, and information obtained from their use.

Telecommunications interceptions

The *Telecommunications (Interception and Access) (New South Wales) Act 1987* requires the Ombudsman to review the records of agencies relating to telephone intercepts. We ensure agency records document the issue of warrants and how the information gathered was used. We are required to report on the results of our inspections to the Attorney General at least twice a year.

Covert search warrants

Section 242 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA) requires the Ombudsman to inspect the records of the NSW Police Force, the New South Wales Crime Commission and the Police Integrity Commission in relation to covert search warrants every 12 months to ensure the requirements of the LEPRA are being complied with. The Ombudsman is also required to prepare a report of this work and provide it to the Attorney General and the Minister for Police. The Attorney General is required to lay (or cause to be laid) a copy of the report before both Houses of Parliament as soon as practicable after receiving it.

Criminal organisation search warrants

Section 242 of LEPRA also requires my office to inspect the records of the NSW Police Force in relation to criminal organisation search warrants every two years. These differ from search warrants as they operate for seven days instead of 72 hours and have a lower evidentiary threshold. The Ombudsman is required to prepare a report of this work every two years. The Attorney General is required to lay (or cause to be laid) a copy of the report before both Houses of Parliament as soon as practicable after receiving it.

Public interest disclosures

Under the *Public Interest Disclosures Act 1994* (PID Act), the Ombudsman is required to report to Parliament on the office's activities for the preceding 12 months, along with reports relating to our monitoring and auditing roles under the PID Act.

The Ombudsman is also the convenor of the public interest disclosures steering committee. The members of the steering committee are:

- » the Director-General of the Department of Premier and Cabinet
- » the Auditor-General
- » the Commissioner for the Independent Commission Against Corruption
- » the Commissioner for the Police Integrity Commission
- » the local government investigating authority
- » the Commissioner of Police
- » the Information Commissioner, and
- » the Public Services Commissioner.

Our office is responsible for preparing a report on behalf of the steering committee outlining its work for the preceding 12 months. This report is provided to the Premier, who is required to table it in each House of Parliament as soon as practicable after receiving it.

Official Community Visitors

Under s 10 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (CS (CRAM) Act), the Ombudsman is required to prepare and forward to the Minister for Community Services a report of the work and activities of the Official Community Visitors for the twelve months preceding 30 June each year. The Minister is then required to lay the report, or cause it to be laid, before both Houses of Parliament as soon as practicable after receiving it.

Official Community Visitors are independent statutory appointees of the Minister for Disability Services and the Minister for Community Services, under the CS (CRAM) Act. They visit a range of residential services for children and young people and adults with disabilities in NSW. The report provides information about the visits conducted, the issues raised by visitors and good results they are able to achieve.

Reviewable deaths

Part 6 of the CS (CRAM) Act provides the Ombudsman with responsibility for monitoring, reviewing and reporting to Parliament every two years on the deaths of:

- » children in care
- » children whose deaths are or may be due to abuse or neglect or that occurs in suspicious circumstances
- » children who, at the time of their death, are inmates of a children's detention centre, a correctional centre or a lock-up (or was temporarily absent from such a place)
- » people (whether or not children) who, at the time of their death, were living in, or were temporarily absent from, residential care provided by a service provider and authorised or funded under the *Disability Services Act 1993* or a residential centre for handicapped persons
- » people (other than children in care) who are in a target group within the meaning of the *Disability Services Act 1993* who receive assistance from a service provider to enable them to live independently in the community.

The Ombudsman has chosen to produce two reports to fulfil this statutory requirement, one dealing with the deaths of people with a disability and another with the deaths of certain children.

Child Death Review Team

The Ombudsman is responsible for providing administrative support to the Child Death Review Team (CDRT), of which the Ombudsman is also the convenor. This includes the preparation and tabling of the CDRT's annual report.

Special Reports to Parliament

In addition to annual reports, the Ombudsman may also make a special report to Parliament on any matter arising in connection with the discharge of the Ombudsman's functions. In the last five years, this has included the following reports:

2014	review of the NSW child protection system – are things improving?
2013	Ombudsman monitoring of the police investigation into the death of Roberto Laudisio-Curti
2013	A level playing field? HSC disability provisions
2012	How are Taser weapons used by the NSW Police Force?
2012	Denial of rights – the need to improve accommodation and support for people with psychiatric disability
2012	Managing the use of force in prisons the need for better policy and practice
2012	Safe as houses? Management of asbestos in Police buildings
2011	Addressing Aboriginal disadvantage – the need to do things differently
2011	Kariong Juvenile Correctional Centre – Meeting the challenges
2011	Keep Them Safe?
2010	Responding to the asbestos problem – The need for significant reform in NSW
2010	The need to better support children and young people in statutory care who have been victims of violent crime
2010	Inquiry into service provision to the Bourke and Brewarrina communities
2009	The death of Dean Shillingsworth – critical challenges in the context of reforms to the child protection
2009	The death of ebony – the need for an effective interagency response to children at risk
2009	Removing nine words – Legal professional privilege and the NSW Ombudsman
2009	Opening up government <i>Review of the Freedom of Information Act 1989</i>

Guidelines

The following are some of the guidelines produced by the office to help agencies provide a better service to the community:

- » Apologies – A practical guide
- » Reporting of progress and results of investigations
- » Guidelines for dealing with youth complaints
- » Unreasonable complainant conduct: interim practice manual
- » Complaint handling at universities: best practice guidelines
- » Good Conduct and Administrative Practice
- » Options for Redress
- » The Complaint Handler's Tool Kit
- » Child Protection in the Workplace Responding to allegations against employees
- » Effective complaint handling
- » Investigating Complaints – A manual for Investigators

Facts Sheets and Brochures

The office produces facts sheets and brochures dealing with a broad range of subjects. They are a quick and easy resource for both the public and agencies, and are aimed at providing advice around important issues, such as:

- » conflict of interests
- » difficult complainants
- » expectations and service provision
- » procedural fairness
- » good customer service
- » recordkeeping, and
- » apologies.

All of the publications listed above are available at the Ombudsman's website www.ombo.nsw.gov.au.

LITIGATION

***Botany Council v The Ombudsman* [1995] 37 NSWLR 357**

This case was heard by the Supreme Court of New South Wales Court of Appeal. The Council claimed the Ombudsman did not have the power to use its powers under the Ombudsman Act when dealing with an appeal under the *Freedom of Information Act 1989* (the FOI Act).

Justice Kirby, then the President of the Court of Appeal, held that the Ombudsman, when conducting an external review of a decision under the FOI Act, was able to use all of the powers and functions provided by the Ombudsman Act. He commented that:

Those powers, as the Ombudsman Act reveals, are, as they ought to be, extremely wide. They are not powers which this Court should read down. They are beneficial provisions designed in the public interest for the important object of improving public administration and increasing its accountability ... the experience of the past (and not only the past) has been of the occasional misuse and even oppressive use of administrative power. One modern remedy against such wrongs has been the creation by Parliaments in all jurisdictions of Australia of the office of Ombudsman. Whilst it may be expected that the Ombudsman will conform to the statute establishing his office, a large power is intended. The words of the Ombudsman Act should be given ample meaning.

A number of recent cases involving the Ombudsman have related to the Ombudsman's immunity from civil or criminal action provided by s 35A of the Ombudsman Act. Two of the most recent examples are *The Ombudsman v Koopman* [2003] NSWCA 277 and *The Ombudsman v Loughton* [2005] NSWCA 339.

The Ombudsman is also frequently before the New South Wales Administrative Decisions Tribunal in relation to freedom of information matters.

SPECIAL PROJECTS

The Ombudsman is currently undertaking the largest and most complex investigation in the office's history. Operation Prospect is a large scale investigation into allegations about the conduct of officers of the NSW Police Force, the NSW Crime Commission and the NSW Police Integrity Commission in relation to a number of investigations that were conducted between 1998 and 2002. The Ombudsman is also examining allegations that confidential information from the three agencies' computer systems was leaked. The investigation has involved detailed analysis and review of a vast amount of information, as well as over 100 hearings and interviews.

In December 2012, the Ombudsman provided the Minister for Aboriginal Affairs with his final report following a three year audit of the government's interagency plan to tackle child sexual assault in Aboriginal communities. The report was the third in a series of public reports resulting from the audit. Following the release of the report, the NSW government announced that the Ombudsman Act would be amended to create a Deputy Ombudsman (Aboriginal Programs). This position is responsible for reviewing the implementation of the prescribed programs. The first such program is the government's plan for Aboriginal affairs, OCHRE. The first Deputy Ombudsman (Aboriginal Programs) Mr Daniel Lester, started with the office on 7 October 2014.

OFFICE ADDRESS AND CONTACT DETAILS

Mailing address:	NSW Ombudsman Level 24 580 George Street Sydney NSW 2000
Web address:	www.ombo.nsw.gov.au
Email address:	nswombo@ombo.nsw.gov.au
General inquiries:	02 9286 1000
Toll Free (outside Sydney metro):	1800 451 524
Telephone Typewriter (TTY):	02 9264 8050
Media inquiries:	02 9286 1008
Publications inquiry:	02 9286 1072

NEW ZEALAND OMBUDSMAN

ESTABLISHMENT

The Office of the Ombudsmen was first established in New Zealand by the *Parliamentary Commissioner (Ombudsman) Act 1962*. The office commenced operation on 1 October 1962. In 1975, the legislation was reviewed and consolidated into the *Ombudsmen Act 1975* (OA).

OMBUDSMEN

There have been 14 Ombudsmen since the office started operating in 1962:

- 1962 to 1975 – Sir Guy Powles, Ombudsman
- 1975 to 1977 – Chief Ombudsman
- 1975 to 1977 – Mr George Laking, Ombudsman
- 1977 to 1984 – Chief Ombudsman
- 1976 to 1980 – Mr A. Eaton Hurley, Ombudsman
- 1977 to 1984 – Mr Lester Casle, Ombudsman
- 1984 to 1986 – Chief Ombudsman
- 1984 to 1986 – Sir John Robertson, Ombudsman
- 1986 to 1994 – Chief Ombudsman
- 1987 to 1992 – Mrs Nadja Tollemache, Ombudsman
- 1992 to 1992 – Mrs Susan Richards, Ombudsman
- August 1993 to November 1993
- 1992 to 1994 – Sir Brian Elwood, Ombudsman
- 1994 to 2003 – Chief Ombudsman
- 1995 to 2005 – Hon Anand Satyanand, Ombudsman
- 2001 to 2005 – Mr Mel Smith, Ombudsman
- 2006 to 2007 – Ombudsman
- 2003 to 2007 – Mr John Belgrave, Chief Ombudsman
- 2005 to 2008 – Dame Beverley A Wakem, Ombudsman
- 2008 to present – Chief Ombudsman
- 2007 to 2013 – Dr David McGee QC, Ombudsman.
- 2013 to present – Professor Ron Paterson, Ombudsman

Brief biographies of each Ombudsman appear on the Ombudsmen's website:
www.ombudsman.parliament.nz.

RELATIONSHIP TO GOVERNMENT AND PARLIAMENT

- » An Ombudsman is an Officer of Parliament (s 3 OA).⁵
- » Officers of Parliament are part of the legislative arm of government and are not subject to ministerial control.
- » An Ombudsman is appointed by the Governor-General on the recommendation of the House of Representatives.
- » An Ombudsman could be appointed on the recommendation of a simple majority of the House but, in practice, all appointments are made on unanimous recommendation of the House.
- » An Ombudsman is appointed for a term of five years (s 5(1) OA), can be reappointed (s 5(2) OA) but must retire by the age of 72 (s 5(3) OA). An Ombudsman's salary is determined by the Remuneration Authority (s 9 OA).
- » The Ombudsmen report directly to Parliament through the Speaker of the House. The Office of the Ombudsmen is financed by a separate vote, Vote Ombudsman, the amount of which is determined by the House of Representatives. The Office is accountable for its budget to the Officers of Parliament Select Committee (which is a multiparty committee chaired by the Speaker of the House and made up of representatives from most of the political parties in Parliament).
- » The Ombudsmen are required to report annually to Parliament on the exercise of their functions (s 29 OA). An Ombudsman can only be removed or suspended from office by the Governor-General upon an address from the House of Representatives for inability to perform the functions of the office, bankruptcy, neglect of duty or misconduct (s 6(1) OA).
- » At any time when Parliament is not in session, an Ombudsman may be suspended from office by the Governor-General in Council for any of the above reasons but the suspension shall not continue in force beyond two months after the beginning of the next Parliamentary session (s6(2) OA).

JURISDICTION

When the office of Ombudsman was first established, the jurisdiction was limited to investigating the actions of central government departments and organisations. The jurisdiction has been extended on a number of occasions since then. The following are some of the major additions:

1976	local government organisations
1983	Official Information Act 1982(OIA)
1988	<i>Local Government Official Information and Meetings Act 1987 (LGOIMA)</i>
2001	protected disclosures under the <i>Protected Disclosures Act 2000</i>
2005	all crown entities within the meaning of the <i>Crown Entities Act 2004</i> , (other than the Independent Police Conduct Authority)
2007	designated a National Preventive Mechanism under the <i>Crimes of Torture Act 1989 (COTA)</i> for certain places of detention in New Zealand.
2010	monitor and protect the implementation of the United Nations Convention on the Rights of Persons with Disabilities
2011	provide comment to the Ministry of Transport on applications for authorised access to personal information on the motor vehicle register under s 241 of the <i>Land Transport Act 1998</i> (Land Transport Act).

5 There are two other Officers of Parliament in New Zealand: the Parliamentary Commissioner for the Environment and the Controller and Auditor-General.

The agencies subject to the Ombudsmen's jurisdiction in New Zealand (under one or more of the named Acts) include:

- » central government departments and organisations
- » local government organisations, including district, city and regional councils
- » Ministers of the Crown (in respect of official information complaints only)
- » prisons
- » other places of detention when acting as a National Preventive Mechanism
- » the Police (in respect of official information complaints only)
- » publicly funded school boards of trustees, universities and polytechnics
- » District Health Boards
- » crown entity
- » the New Zealand Security Intelligence Service (in respect of official information complaints only – complaints about the propriety of the NZSIS's actions are investigated by the Inspector-General of Intelligence and Security).

There are a number of jurisdictional limitations under the empowering legislation. Under the OA, only the administrative actions of named or specified agencies can be investigated (s13(1)). This limitation automatically excludes members of parliament and Ministers of the Crown (although an Ombudsman does have the authority to investigate any advice given, or recommendations made, to a Minister of Crown by an officer or employee of one of the agencies subject to jurisdiction).

In addition, under the OA an Ombudsman cannot investigate the administrative acts or decisions of:

- » the New Zealand Police (s 13(7)(d) OA) – complaints about maladministration or misconduct on the part of the Police are investigated by the Independent Police Conduct Authority
- » any person in his capacity as a trustee within the meaning of the Trustee Act 1956 (s13(7)(b) OA)
- » any person acting as legal adviser to the Crown or as counsel for the Crown in relation to any proceedings (s 13(7)(c) OA)
- » any member of the New Zealand Naval Forces, the New Zealand Army, or the Royal New Zealand Air Force, so far as the matter relates to the terms and conditions of service or any order, command, decision, penalty, or punishment given to, or affecting him, in his capacity as such member (s 13(8) OA).

The agencies subject to an Ombudsman's jurisdiction are listed either in the schedules to the OA, OIA and LGOIMA or declared to be so subject to their own legislation. Copies of the relevant legislation can be found at www.legislation.govt.nz.

FUNCTIONS

There are six pieces of legislation that specify the functions of the Ombudsmen in New Zealand:

- » the OA
- » the OIA and LGOIMA
- » the *Protected Disclosures Act 2000* (PDA)
- » the COTA
- » the Land Transport Act.
- » Complaint handling

The Ombudsmen's core function has been to receive and investigate complaints from members of the public (s 13 OA, s 28 OIA and s 27 LGOIMA).

Under the OA, an Ombudsman investigates complaints about the administrative decisions, recommendations, acts and omissions of the central and local government departments, organisations and authorities subject to jurisdiction.

Under the OIA and LGOIMA, an Ombudsman investigates and reviews complaints about decisions made by Ministers of the Crown and central and local government departments, organisations and authorities on requests for access to official information.

Complaints may be made orally or in writing, but, if made orally, it must be put in writing as soon as practicable (s 16 OA, ss 28(3) and (3A) OIA, ss 27(3) and (3A) LGOIMA).

Own motion investigations

While most investigations begin with a specific complaint, an Ombudsman is also able to undertake own motion investigations (s 13(3) OA). Examples include:

- » Ombudsmen's own-motion investigation into prisoner transport, 2007
- » Ombudsmen's own-motion investigation of Department of Corrections in relation to the detention and treatment of prisoners, 2005
- » Report of the Ombudsman, Mel Smith upon the actions of the Department of Labour in regard to an Official Information Act complaint by Sarah Boyle, of Office of the Leader of the Opposition, 2004.

Investigation referrals

Any committee of the House of Representatives may, at any time, refer a petition, or any matter to which that petition relates, to an Ombudsman for investigation (s 13(4) OA). In addition, the Prime Minister may, with the consent of the Chief Ombudsman, refer to an Ombudsman for investigation any matter, other than a matter concerning a judicial proceeding, which the Prime Minister considers should be investigated by an Ombudsman (s 13(5) OA).

Such referrals are rare but, have included:

- » the Ombudsmen investigated two petitions referred by Select Committees
- » the Chief Ombudsman agreed to a request by the Prime Minister for an investigation by Ombudsman Mel Smith into issues involving the criminal justice sector. The report of that investigation can be found on the Ombudsmen's website.

Prisons

While prisoners may complain in the same manner as any other member of the public against agencies subject to the OA, (including prisons), Ombudsmen undertake some additional routine roles with regard to prisons.

For a number of years, it has been the practice for all deaths of prisoners in the Department of Corrections' custody to be investigated by the Inspectors of Corrections. The Ombudsmen have adopted a monitoring role in order to provide confirmation that the investigations were being properly conducted.

They do so under a Protocol between the Chief Ombudsman and the Chief Executive of the Department of Corrections.

This monitoring role normally involves an investigator attending the prison, examining relevant paperwork, and attending the Inspector's interviews of significant witnesses.

Ultimately, the Ombudsman is provided with a copy of the Inspector's report, and comments on it to the Chief Executive of the Department of Corrections.

The Ombudsmen do not directly investigate deaths in custody due to certain statutory requirements for secrecy that would conflict with the Coroner's requirement to be able to investigate without restriction.⁶

6 Death in custody for these purposes only means the death of prisoners in the custody of the Department of Corrections, and not deaths of prisoners in the custody of Police.

The Ombudsmen also undertake an enhanced role in prisons following a request from the Government. This primarily involves:

- » a more in-depth approach to the monitoring role of inspectorate
- » investigations of deaths in custody investigations of selected 'serious incidents' in prisons under an Ombudsman's own motion jurisdiction (there is no absolute definition of what may constitute a 'serious incident')
- » investigation of selected systemic issues under an Ombudsman's own motion jurisdiction.

Protected Disclosures

Under the PDA, the Ombudsmen are one of the 'appropriate authorities' to whom protected disclosures can be made and also have the function of providing information and guidance to any employee who has made, or is considering making, a protected disclosure. An Ombudsman has the same jurisdiction to investigate the subject matter of any such disclosure as the Ombudsman has under the OA.

National Preventive Mechanism

Under COTA, the Ombudsmen are formally designated a National Preventive Mechanism to give effect to OPCAT (the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment).

The Ombudsmen were formally designated a National Preventive Mechanism on 21 June 2007 in respect of prisons, places of detention approved under the *Immigration Act 1987*, health and disability, places of detention, youth justice and child care and protection residences. To date over 100 separate facilities have been identified as being covered by the Ombudsmen's designation.

Education and training

The Office of the Ombudsman has developed a training programme and is providing workshops, on request, to central and local government agencies on:

- » their statutory obligations under the OA, OIA and LGOIMA
- » how to develop good decision making and complaint handling processes
- » how to manage unreasonable complainant conduct
- » the role of the Ombudsman.

They also deliver presentations and training sessions to the public and media on:

- » the role of the Ombudsman
- » how to effectively utilise New Zealand's official information legislation to access information.

POWERS

The powers of the Ombudsmen under the OA include:

- » if, after investigating a matter under the OA, an Ombudsman forms an opinion in terms of s 22 of the OA, an Ombudsman shall report that opinion to the agency concerned, and may make such recommendations as he or she thinks fit
- » a copy of the opinion or recommendation must also be provided to the relevant Minister, Mayor or Chairperson of the agency concerned
- » if, within a reasonable time, the Ombudsman considers that no adequate or appropriate action has been taken, the Ombudsman may send a copy of his or her report and recommendations to the Prime Minister and may thereafter make a report to the House of Representatives (s 22(4))
- » an Ombudsman may require a local authority to make a summary of his or her report available for inspection by members of the public (s 23)
- » an Ombudsman may hear or obtain information from such persons as he or she thinks fit and make such inquiries as he or she thinks fit (s 18(3))

- » subject to the OA and any rules made for the guidance of Ombudsmen by the House of Representatives, an Ombudsman can regulate his or her procedure as he or she thinks fit (s 18(7))
- » in conducting an investigation, an Ombudsman can require a person to provide certain information or documents (s 19(1) OA) and can enter premises (s 27)
- » an Ombudsman can summon and examine on oath certain persons (s 19(2))
- » an Ombudsman can delegate most functions to other officers (s 28).

It is an offence to wilfully obstruct, mislead, or attempt to mislead an Ombudsman or to wilfully fail to comply with an Ombudsman's lawful requirements without justification or excuse (s 30).

The powers of the Ombudsmen under the OIA and LGOIMA include:

- » if, after investigating a complaint, an Ombudsman is of the opinion that the complaint can be sustained, report his or her opinion to the relevant agency, make any recommendations he or she thinks fit and give to the complainant a copy of his or her recommendations (s 30 OIA, s 30 LGOIMA)
- » where a recommendation is made under s 30, a public duty to observe that recommendation shall be imposed on the relevant agency from the 21st working day after the recommendation is made unless:
 - in the case of the OIA, the Governor-General, by Order in Council, otherwise directs (s 32 OIA), or
 - in the case of LGOIMA, the local authority, by resolution made at a meeting of that local authority, decides otherwise and records that decision in writing (s 32 LGOIMA)
- » where, during the course of an investigation, an Ombudsman requires an agency to provide any information or document, that agency shall, as soon as reasonably practicable, and in no case later than 20 working days after the request is received, comply with that requirement (s 29A OIA, s 29 LGOIMA)
- » most of the OA powers listed above also apply to OIA and LGOIMA investigations.

Other statutory requirements:

The Ombudsmen Act also contains the following requirements:

- » every investigation by an Ombudsman is to be conducted in private (s 18(2))
- » an Ombudsman shall not make any adverse comment about any person in a report unless the person has been given an opportunity to be heard (s 22(7))
- » it shall not be necessary for an Ombudsman to hold any hearing, and no person shall be entitled as of right to be heard by an Ombudsman provided that, if it appears that there may be sufficient grounds for making a report or recommendation that may adversely affect any agency or person, that agency or person shall be given an opportunity to be heard (s 18(3)).

Compliance with any requirement of an Ombudsman is not a breach of secrecy or non-disclosure laws (s 19(4)).

INTERNAL STRUCTURE

Under the OA, more than one Ombudsman can be appointed at any one time (s 3(1)). One Ombudsman is appointed as Chief Ombudsman and is responsible for the administration of the office and the coordination and allocation of work between the Ombudsmen (s 3(4)).

Responsibility for investigating complaints against the various agencies subject to jurisdiction is divided among the Ombudsmen with each Ombudsman having responsibility for certain agencies. Each Ombudsman is completely independent. The Chief Ombudsman does not have any oversight role over the investigations conducted by other Ombudsmen. At present, there is a Chief Ombudsman and an Ombudsman in New Zealand.

The Chief Ombudsman has the power to appoint staff (s 11(1)), pursuant to which all staff are appointed. These include:

- » a Deputy Ombudsman Investigations and Inspections
- » a Deputy Ombudsman Strategic Services
- » a Finance and Business Services Manager
- » a General Counsel
- » five Managers
- » a Chief Inspector
- » six Principal Advisors.

WORKLOAD AND STATISTICS

The information included in the table below is taken from the office's annual reports, all of which are available on the Ombudsmen's website.

Year	2011-2012	2012-2013	2013-2014
Enquiries and complaints received	10,636	13,684	11,044
Complaints disposed of during the year	10,250	13,358	11,505
Remedies obtained for the benefit of public administration	34	34	91
Inspected places of detention	70	45	37
Number of COTA recommendations accepted or partially accepted	33	35	65
Advised on legislation, policy and administrative proposals	31	26	27
Presentations, training and workshops	35	46	80

PUBLICATIONS

New Zealand Ombudsmen publications include:

- » annual reports to Parliament
- » special reports to Parliament (including reports of own-motion investigations)
- » opinions on investigations
- » pamphlets (Making complaints about government agencies, Making requests for official information, A guide to the Protected Disclosures Act, Making complaints about the prison service – A guide for prison inmates wanting to make a complaint to the Ombudsmen, Making complaints about tertiary education – available in English, Maori, Samoan, traditional and simple Mandarin)
- » guidelines (Practice Guidelines – Official Information, A guide for people who want information from central or local government, Checklist for processing official information requests)
- » Ombudsmen Quarterly Review
- » casenotes (casenotes provide summaries of the outcomes of particular complaints made to the Ombudsmen and the views that the Ombudsmen have formed on those complaints)
- » conference papers.

All of the Ombudsmen's publications are available at www.ombudsman.parliament.nz. Members of the public are able to search for particular documents of interest, such as case notes on a particular subject, using the website's 'search publications' facility.

LITIGATION

Under the OA, no proceedings or decision of an Ombudsman may be challenged, reviewed, quashed or called into question in a Court, except on the ground of lack of jurisdiction (s 25 OA). Except in relation to certain offences against the state or corruption offences under the *Crimes Act 1961*, no criminal or civil proceedings lie against Ombudsmen or their staff in respect of the exercise or intended exercise of their functions, unless bad faith is shown; nor are Ombudsmen or their staff compellable witnesses in relation to anything that comes to their knowledge in the exercise of their functions (s 26(1) OA). Anything said or provided to an Ombudsman in the course of an inquiry or proceeding is privileged in the same manner as in Court proceedings (s 26(3) OA).

Under the OIA and LGOIMA, if an Ombudsman forms the view that the information was correctly withheld, the requester may seek judicial review of both the initial decision to withhold and the Ombudsman's determination (ss 29(2) and 34 OIA and s 28(2) and 37 LGOIMA). If an Ombudsman makes a recommendation that information should be released then the agency may seek judicial review or a veto of the Ombudsman's recommendation. If the recommendation is not vetoed, the agency holding the information is subject to a public duty to release. If the agency does not comply with the public duty, it can be enforced by a Court. If an Ombudsman's recommendation is vetoed, a statutory review procedure is available to the requester (s 32B OIA and s 34 LGOIMA).

There have been three judicial review cases relating to an Ombudsman's recommendation that information should be released:

- » Commissioner of Police v Ombudsman [1988] 1 NZLR 385; Wyatt Co (NZ) Ltd v Queenstown – Lakes District Council [1991] 2 NZLR 180; and Television New Zealand Ltd v Ombudsman [1992] 1 NZLR 106.
- » In Wyatt, the Court observed that the Courts would only intervene and quash a decision of an Ombudsman if the decision was plainly and demonstrably wrong (Wyatt Co (NZ) Ltd v Queenstown – Lakes District Council [1991] 2 NZLR 180 at 191).

SPECIAL PROJECTS

For the last 12 years, the Ombudsmen have assisted in providing training at the annual program for new Ombudsmen, When Citizens Complain: The Role of the Ombudsman in Improving Public Service, which is held annually in London and is supported by the Commonwealth Secretariat.

The Ombudsmen have, over the years, provided training and development assistance, as required, to countries in the Pacific region. This has included providing support to the Cook Islands, Vanuatu, Papua New Guinea and Timor-Leste.

The Ombudsmen are also members of the Asia Pacific Ombudsmen Region (APOR) branch of the International Ombudsman Institute, Australian New Zealand Ombudsmen Association (ANZOA), and Pacific Ombudsman Alliance.

OFFICES AND CONTACT DETAILS

The Ombudsmen are based in Wellington but we also have offices in Auckland and Christchurch.

Wellington	Level 14, 70 The Terrace PO Box 10152 Wellington 6143 Phone: (04) 473-9533
Auckland	Level 10, 55–65 Shortland Street PO Box 1960 Auckland 1140 Phone: (09) 379 6102
Christchurch	Level 1, 545 Wairakei Road Harewood, Christchurch 8053 Phone: (03) 357 4555
New Zealand wide	freephone: 0800 802 602 Website: www.ombudsman.parliament.nz Email address: info@ombudsman.parliament.nz

NORTHERN TERRITORY OMBUDSMAN

ESTABLISHMENT

The office of Northern Territory Ombudsman was established in 1978. It is currently constituted under the *Ombudsman Act 2009* (NT).⁷

OMBUDSMAN

The Ombudsman is appointed by the Administrator for the Northern Territory (s 132(1)). An appointment may only be made after receiving a recommendation of the Parliament (s 132(2)). A person must not be appointed Ombudsman if they have been a member of Parliament or a local government council within the last 3 years (s 133).

The term of appointment is 7 years (s 134(1)). An appointee is not eligible for re-appointment (s 134(2)).

The Ombudsman can be removed from office by the Administrator if the Ombudsman is found guilty of an indictable offence, becomes bankrupt or engages in remunerative employment outside the duties of the office without the Chief Minister's approval (s 140). The Ombudsman may also be removed from office for misbehaviour/misconduct or physical/mental incapacity but only on a resolution of the Parliament passed by a two-thirds majority (s 141).

The following have served as NT Ombudsman:

- 1978 – Mr Harry Giese
- 1978 – Mr Russel Watts
- 1984 – Dr Kenneth Rhodes
- 1989 – Mr Robert Eddie
- 1991 – Mr Ian Knight
- 1995 – Mr Peter Boyce
- 2005 – Ms Carolyn Richards
- 2012 – Mr Peter Shoyer

The current Ombudsman, Peter Shoyer, has an extensive legal and public administration background in the Northern Territory and Queensland. He holds Bachelors and Masters degrees in Law and has been admitted as a solicitor for over 25 years. He also holds a Bachelor of Economics degree.

Peter has worked in private practice, as a lawyer for the University of Queensland and in the Office of the Queensland Information Commissioner. He moved to the Northern Territory in 2003 to take up the position of inaugural Information Commissioner, the independent officer overseeing the introduction of freedom of information and privacy laws. He then spent over five years as Public Trustee, Registrar-General, Registrar of Births, Deaths and Marriages and an Executive Director within the Department of Justice. During that period, he acted from time to time as Deputy Chief Executive and Chief Executive of the Department.

The current Deputy Ombudsman is Ms Julie Carlsen (appointed 2009).

⁷ Unless otherwise noted, all references to section numbers in this chapter are to the *Ombudsman Act 2009* (NT).

RELATIONSHIP TO GOVERNMENT AND PARLIAMENT

The Ombudsman is independent of Government in relation to complaints and investigations (s 12).

The Parliament or a committee of the Parliament may refer a matter to the Ombudsman for investigation. A report on such an investigation must be given to the Speaker for tabling in Parliament (ss 17, 155).

There is no parliamentary committee with a dedicated role in relation to the Ombudsman. Parliamentary review is undertaken annually before the Estimates Committee.

In addition to annual reporting requirements, the Ombudsman has the power to report to the Chief Minister generally on the performance of the Ombudsman's functions or relating to a particular case investigated by the Ombudsman (s 153). The Chief Minister must table a copy of such reports in the Parliament (s 154).

In his role as a chief executive officer of a public sector agency, the Ombudsman has responsibilities under personnel and financial management laws and, for those purposes, falls within the administrative responsibility of the Chief Minister.

JURISDICTION

The Northern Territory (NT) is a territory within the Commonwealth of Australia. The Ombudsman's jurisdiction extends to both Northern Territory Government and local government council functions. The Ombudsman does not have a role in relation to Commonwealth Government activities.

The Ombudsman can investigate:

- » administrative actions of public authorities, and
- » conduct of police officers.

This includes functions of all NT government departments and authorities, correctional services, NT Police, tertiary educational institutions, government-owned electricity and water providers and local government councils.

The Ombudsman can investigate administrative action despite a provision in any Act to the effect that the action is final or cannot be appealed against, challenged, reviewed, quashed or called into question (s 14(2)).

There are limits on the Ombudsman's jurisdiction in the following areas:

- » Executive Council, Cabinet and ministerial functions
- » activities of Members of Parliament
- » judicial, tribunal and legal functions
- » management of public sector personnel
- » matters that fall within the jurisdiction of some other complaints entities.

A number of other complaints entities have jurisdiction that overlaps with or borders on the jurisdiction of the Ombudsman, including:

- » Commissioner for Information and Public Interest Disclosures
- » Anti-Discrimination Commissioner
- » Children's Commissioner
- » Health and Community Services Complaints Commissioner.

FUNCTIONS

The Ombudsman's core functions are to:

- » investigate, and deal with complaints about, administrative actions of public authorities
- » consider the administrative practices and procedures of public authorities whose actions are being investigated, or dealt with on complaint, and to make recommendations to authorities about appropriate ways of addressing the effects of inappropriate administrative actions, or for the improvement of their practices and procedures
- » consider the administrative practices and procedures of public authorities generally and to make recommendations or provide information or other help to the authorities for the improvement of their practices and procedures;
- » investigate and deal with complaints about the conduct of NT police officers, consider and prepare reports on investigations of the conduct of NT police officers and to make recommendations about action that should be taken in relation to them (s 10).

Agency quality improvement

The Ombudsman's mission is achieved firstly by providing an effective and efficient system for handling complaints from persons throughout the whole of the Territory about the administrative practices of Territory public sector bodies and about the administrative actions and conduct of members of the NT Police Force.

However, an equally important strategy in improving the quality of public administration is identifying the causes of problems that are brought to the Ombudsman's attention and making recommendations for changes to procedures, practices, policies or legislation which will prevent similar problems occurring. That is, the Ombudsman acts as an agent for systemic change.

Providing an efficient and effective complaint handling system does not involve formally investigating every complaint that is made to the Ombudsman. In most cases it is preferable to resolve complaints close to the source of the problem with a minimum of paperwork for the complainant, the agency complained about and the Ombudsman's Office. Generally, in-depth investigations will only be conducted where there is a significant public interest involved.

Agencies are encouraged by the Ombudsman to introduce their own internal complaint handling systems as a necessary component in achieving good public administration. Well-functioning internal complaint systems are of significant benefit to agencies because they provide:

- » valuable feedback about agency activities
- » prompt resolution of grievances, and
- » an opportunity for remedial action to be taken before parties become entrenched in their positions.

An important function of the Ombudsman is therefore to provide materials, training and assistance to agencies to help them to develop and enhance their own procedures for complaint handling and investigation.

Other functions

The Ombudsman has statutory audit and inspection functions in relation to the following law enforcement activities:

- » telecommunications interception
- » surveillance devices
- » controlled operations.

The Ombudsman is also a member of the Northern Territory Law Reform Committee.

POWERS

Power to investigate / decline

An Ombudsman investigation can be initiated on a complaint by an aggrieved person or third party (ss 14, 21), on the Ombudsman's own initiative (s 14), or on a reference from the Speaker of the Legislative Assembly (s 17) or another complaints entity (s 18).

The Ombudsman has power to make preliminary inquiries to establish whether the Ombudsman is authorised to investigate and should investigate an administrative action (s 28).

The Ombudsman may decline a complaint for a variety of reasons, for example, if:

- » the complainant has not made a complaint to the public authority or has made a complaint that is still being addressed by the public authority (ss 33, 35)
- » there is an alternative right of review under the law (s 16(2))
- » another complaints entity is better placed to deal with the complaint, has already investigated it or will investigate it (ss 32, 34)
- » the complainant does not have a sufficient interest in the complaint (ss 21, 22);
- » the complainant became aware of the action or conduct more than 1 year ago (s 25)
- » the complaint is trivial, frivolous, vexatious, or not made in good faith (s 33), or
- » investigation or further investigation is considered unnecessary or unjustified (s 33).

Assessing priority

The Ombudsman receives a large number of inquiries and complaints each year. The Office assesses complaints as promptly as possible. Many complaints can be dealt with quickly.

However, the Office must act within the resources available to it and accordingly must make decisions on the priority given and resources allocated to its various statutory functions, including investigation of more complex complaints.

The overall guide to allocation of resources and priority within the Office is what best serves the public interest. This assessment is conducted in the context of the objects of the Ombudsman Act which are:

- » To give people a timely, effective, efficient, independent, impartial and fair way of investigating, and dealing with complaints about, administrative actions of public authorities and conduct of police officers.
- » To improve the quality of decision-making and administrative practices in public authorities.

With regard to decisions on allocation of resources and priority given to preliminary inquiries about and investigation of particular complaints, the factors that may be taken into account are broad ranging but include:

Potential harm involved

- » Death of a person
- » Physical harm to a person
- » loss of liberty
- » loss, dislocation or disruption of residence
- » financial or asset damage or loss
- » loss of a benefit or financial hardship
- » mental stress or harm
- » harm to animals or the environment
- » denial of human or statutory rights, unfair treatment
- » damage to reputation
- » annoyance, inconvenience, disruption
- » harm to the public generally or a community or community group.

Other factors

- » extent of potential harm – how much harm
- » number of people impacted or likely to be impacted
- » potential for ongoing future impact – is this a one off issue or will it continue in the future
- » number of similar complaints
- » unreasonable delay or disruption
- » potential corruption / criminal conduct
- » urgency
 - statutory time limit for action
 - potential for harm is imminent
- » serious / systemic issues
- » existence of prior investigations on similar issues – has the issue already been dealt with
- » availability of other suitable avenues for review, investigations / actions already in progress
- » the extent of prior interaction by the complainant with agency – has the agency had a reasonable opportunity to deal with the issue
- » steps already taken by the agency to redress the issues.

Any decision on resource allocation and priority is ultimately one for the Ombudsman acting on the information provided by complainants and agencies and the advice of Ombudsman staff.

Powers of investigation

The Ombudsman must conduct investigations in private but may conduct an investigation in the way the Ombudsman considers appropriate (s 49(1)). The Ombudsman is not bound by the rules of evidence but must comply with natural justice (s 49(2)). The Ombudsman may proceed by formal hearing but is not required to (s 49(2)).

On an investigation, the Ombudsman has the power to:

- » require a person to attend at a specified time and place
- » require a person to produce books, documents, or writings in his custody or control
- » require a person to continue in attendance until released, and
- » examine a person under oath or affirmation.

Failure to comply is an offence punishable by a substantial fine.

Secrecy provisions of an agency being investigated by the Ombudsman do not apply to the disclosure of information for the purposes of the Ombudsman investigation (s 117(1)). Further, an agency is unable to refuse to provide documents on the basis of legal professional privilege or any other privilege which would otherwise be available in a court (s 117(2)).

This removal of privilege applies only to agencies and not to individuals. Individuals providing evidence are able to rely on the privileges that would be available to a witness in a court proceeding, for example, the privilege against self-incrimination (s 117(4)).

The Ombudsman, or a person authorised by the Ombudsman, can enter any premises used by an agency and inspect those premises (s 54). Officers can take extracts or copies of documents located at the premises. Officers of the agency must provide reasonable assistance. The power of entry does not extend to premises used as a residence. Entry must be at a reasonable time during normal hours of operation.

If the Ombudsman is satisfied that continuation of administrative action is likely to prejudice an investigation or affect a recommendation likely to be made, the Ombudsman may give written notice to an agency to stop the administrative action (for no longer than 45 days). If an agency determines it cannot comply with the direction it must provide its reasons in writing to the Ombudsman (s 55).

At the conclusion of an investigation, the Ombudsman has power to make a report, including recommendations, to the responsible Minister. If the Ombudsman is not satisfied with compliance with those recommendations, the Ombudsman may provide a further report to the responsible Minister for tabling in Parliament (s 63).

The Ombudsman also has a general power to make a report to the Chief Minister for tabling in Parliament on a particular case or on the performance of the Ombudsman's functions (s 153).

The Ombudsman has no power to order or direct an agency to change its processes or provide a particular outcome to a complainant. The Ombudsman is limited to making recommendations.

INTERNAL STRUCTURE

The Office of the Ombudsman has a Senior Management Group comprising the Ombudsman, the Deputy Ombudsman (ECO2), the Assistant Ombudsman (SAO2) and the Business Manager (SAO1).

Other investigative staff are Senior Investigation Officers (AO7), Investigation Officers (AO5) and Resolution Officers (AO4).

The Business Manager is assisted by a Business Support Officer (AO4) with some additional support from Resolution Officers.

The bulk of initial intake is conducted by Resolution Officers under the supervision of senior staff.

At December 2014, the Office had 12 staff, with 2 males and 10 females.

ACCESSIBILITY

Demographics

The relatively small population of the Northern Territory (approximately 240,000 in 2013) are spread over an area of 1.35 million km.² This is considerably more than the total land mass of New South Wales, Victoria and Tasmania combined.

Indigenous people make up over 30% of Territorians, with 72% of them living on indigenous land outside major centres. The Territory has over 600 discrete indigenous communities, including:

- » 9 towns of 1,000–2,000 people
- » 50 communities with populations ranging from 200–999 people, and
- » 570 communities with populations of less than 200 people.

Over the past two decades the indigenous population in remote communities has grown by approximately 40%, with 38% of indigenous Territorians being under 15.

Nearly 30% of the Territory population speak a language other than English at home.

There are therefore many challenges of distance, diversity and language for complainants and the Office to meet.

Methods of access and engagement

Complainants and enquirers can access the Office by a variety of methods, including:

- » by phone
- » by letter
- » by fax
- » through the online complaint form
- » in person at the Darwin office
- » through complaint clinics held from time to time at other centres,
- » through dedicated phones at correctional centres.

The Office engages with stakeholders and the broader community in a variety of ways, including:

- » maintenance of the Ombudsman NT website which hosts a variety of resources and links relevant to public administration, and an online complaint service – a review of the website is under way to make it easier for enquirers to find the best avenue to pursue their issue and to increase the emphasis on mobile accessibility, including greater usability for iPad and Android devices
- » meetings with non-government stakeholders, for example, indigenous, women's and general legal aid agencies
- » presentations to community groups
- » promotion of, and participation in, joint public authority / stakeholder working groups
- » running information stalls at relevant events, and
- » conference presentations.

WORKLOAD AND STATISTICS

Approaches received include all enquiries and complaints.

	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15*
Approaches received	1,941	2,145	1,958	2,520	2,243	1,992	2,600

* Figure for 2014-15 projected.

PUBLICATIONS

The office produces a range of publications, the bulk of which are available through its website, <http://www.ombudsman.nt.gov.au/publications>. Publications include:

- » annual reports
- » special reports
- » brochures and similar materials for members of the public
- » guidelines and other materials for agencies.

Recent special reports include:

- » ***Report of Investigation into Department of Lands, Planning and the Environment, Building Advisory Services***
This is a report into complaints of inaction and delay on the part of the Building and Advisory Services division of the Department for Lands, Planning and the Environment in responding to complaints by residential building consumers.
- » ***Report of Investigation into the Approval for Development and Subdivision of Land for Residential Purposes at Beddington Road and Pelly Road Herbert***
This report is the result of an investigation into a number of complaints that recently subdivided land in the rural area of Darwin was subject to substantial levels of inundation.
- » ***Investigation Report into Morgue Management on remote communities in the Northern Territory***
This report deals with who should be responsible for the management of morgues in remote areas of the Northern Territory.

LITIGATION

There has been no recent litigation of substance.

SPECIAL PROJECTS

The Office has established the following ongoing initiatives aimed at continuing quality improvement of public authority operations:

- » Formal training for a wide range of investigators across Government by means of a nationally accredited, ten day, intensive *Certificate IV in Government (Investigations)* course.
- » A whole-of-government *Complaints, Accountability, Integrity, Network*, a diverse contact group for sharing of information about relevant local, national and international developments.
- » A whole-of-government *Investigators Group*, aimed at sharing knowledge and enhancing the professional development of public sector investigators.

In 2015-16, the Office proposes to conduct special projects focussing on:

- » How agencies respond to customers, clients and stakeholders in financial hardship.
- » Improving agency internal complaint handling processes.
- » Dealing with being under investigation – improving how investigative bodies deal with agencies and individuals under investigation and how agencies deal with being under investigation.

OFFICE ADDRESS AND CONTACT DETAILS

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Fax:	08 8999 1828
Toll free (in NT):	1800 806 380

PALAU OMBUDSMAN

ESTABLISHMENT

The Palau Ombudsman's Office was created by an Executive Order No. 116 on December 5, 1994 by then President Kuniwo Nakamura.

OMBUDSMAN

The Ombudsman is appointed by the President of the Republic for a four year term. The appointment does not require the consent of the congress. The Ombudsman serves at the will of the President and may be reappointed.

The position is not a classified position and currently has no documented formal qualification requirements, although previous ombudsmen appear to have been college educated and had prior service in the Palau National Government.

There have been five Ombudsman:

Mary Wenty
 1/17/2000 to 1/05/2009 – Isaias Ngiralemesang
 1/19/2009 to 1/13/2010 – Moses Uludong
 2/28/2010 to 1/17/2013 – Lucio Ngiraiwet
 3/2013 to present – Francis Llecholch

RELATIONSHIP TO GOVERNMENT AND PARLIAMENT

Palau is a democratic republic with sixteen states. Executive power is exercised by the Executive Branch of government and legislative power is vested in government and the Palau National Congress. The congress consists of two houses; a House of Delegates and a Senate.

The Ombudsman works under the office of the President and does not report to the Congress like most other ombudsman offices. However, the Ombudsman does provide reports with recommendations to the President regarding improvements of government services, programs and activities.

JURISDICTION AND FUNCTIONS

As the Ombudsman was created by an Executive Order and is not a statutory position, its roles and functions are restricted to those prescribed in the Executive Order No. 116.

The Office of the Ombudsman assists individuals with their grievances regarding services, programs, or activities of the Government. The Ombudsman has no decision making authority, but is empowered with inquiry and mediation functions. Because the position is not a statutory position, but created by an Executive Order, it resides under the Office of the President. Thus the Office of the Ombudsman serves as an advisory office and deals mostly with administrative matters of the Executive Branch. Its jurisdiction does not extend to the judiciary, the national legislature, state governments or other quasi-government bodies.

The Ombudsman has limited jurisdiction, primarily within the confines of the Executive Branch of government. The Government of the Republic of Palau is oversighted by other integrity bodies such as the Ethics Commission and the Office of the Public Auditor, but the Ombudsman has no formal relationship with these bodies nor with the legislative or judicial branches of the national government.

POWERS

Because the Ombudsman's inquiry and mediation functions are provided for in an Executive Order, its investigative powers are extremely limited. To make up for the lack of statutory power and authority, the Ombudsman uses the Open Government Act and at times an authorization form signed by the aggrieved party to get information the Ombudsman needs.

The Palau Open Government Act essentially provides, with few exceptions, that any member of public has a right of access to any government or public records. In practice, the Ombudsman has yet to be denied access to the information that has been required, and requested from government bodies.

As stated above, the Ombudsman periodically provides reports to the President with recommendations regarding improvements to government services. Recommendations relating to individual grievances, however, are provided to the Minister of the particular ministry where an employee is or was employed.

INTERNAL STRUCTURE

Unfortunately, the Ombudsman's Office through the years has not had a permanent office and staff. It currently has no staff other than the Ombudsman himself.

ACCESSIBILITY

Currently the Ombudsman can only be reached via telephone/cell phone or walk-in.

Due to lack of funding, independence, permanent staff and continuity, each Ombudsman has to start anew when assuming the position. Because the current Ombudsman works alone and also was appointed as Palau's Focal Point for the United Nations Convention against Corruption (UNCAC) there has been little opportunity or means for conducting outreach or education to the public regarding the role and functions of the Office. The only outreach or education to the public by the Ombudsman took place at a press conference with the President of the Republic.

WORKLOAD AND STATISTICS

The majority of complaints are administrative in nature and come from the employees of the government, civil service and other related bodies.

Records reflecting the workload of the previous Ombudsman were compiled using case files and a log book accounting for the period 2010 to present.

Total intake from March 29, 2010 to December 04, 2014	133
Total resolved cases	94
Total unresolved cases	13
Total cases referred to proper agencies or private attorney	26

PUBLICATIONS

None.

LITIGATION

Based on the current authority (Executive Order No. 116) under which the Ombudsman operates, when matters are not able to be resolved by the Ombudsman he may refer the aggrieved party to seek the assistance of an attorney to pursue their case in court. The Ombudsman does not engage in litigation.

SPECIAL PROJECTS

The Ombudsman with assistance of the Pacific Ombudsman Alliance is currently working on proposed legislation to make the Palau Ombudsman a statutory body.

OFFICES AND CONTACT DETAILS

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OMBUDSMAN COMMISSION OF PAPUA NEW GUINEA

ESTABLISHMENT

The Ombudsman Commission of Papua New Guinea was established by s 217 of the Constitution of the Independent State of Papua New Guinea on independence in 1975.

OMBUDSMAN

The Ombudsman Commission consists of a Chief Ombudsman and two Ombudsmen. There have been six Chief Ombudsmen and 14 Ombudsmen since 1975.

- 1975 to 1985 – Sir Ignatius Kilage CBE, Chief Ombudsman
- 1975 to 1978 – Frank Hedges, Ombudsman
- 1975 to 1982 – Andrew Opu Maino OBE, Ombudsman
- 1978 to 1979 – Sunny Cherian, Ombudsman
- 1980 to 1984 – Keith E Anderson, Ombudsman
- 1982 to 1986 – Jean L Kekedo OBE, Ombudsman
- 1985 to 1994 – Sir Charles Maino KBE, Chief Ombudsman
- 1986 to 1992 – Ango Wangatau, Ombudsman
- 1986 to 1992 – Jim Ridges, Ombudsman
- 1992 to 1998 – Joe N Waugla, Ombudsman
- 1993 to 1999 – Ninchib Tetang, Ombudsman
- 1995 to 2000 – Simon Pentanu, Chief Ombudsman
- 1999 to 2005 – Raho Hitolo MBE, Ombudsman
- 1998 to 2001 – Ila Geno OBE QPM, Ombudsman
- 2001 to 2008 – Ila Geno, Chief Ombudsman
- 2001 to 2007 – Peter Masi, Ombudsman
- 2005 to 2014 – John Nero Ombudsman
- 2007 to present – Phoebe Sangetari, Ombudsman
- 2008 to 2012 – Chronox Manek OL, Chief Ombudsman
- 20 June 2013 to present – Rigo A Lua OBE, Chief Ombudsman

The Members of the Commission (MOC) is comprised of the Chief Ombudsman and two Ombudsmen, an accounting ombudsman and administrative ombudsman. There are currently two MOC with one vacancy.

Chief Ombudsman Rigo A Lua OBE

Chief Ombudsman Lua was appointed on 20 June 2013 by the Ombudsman Appointments Committee. He took over from Ombudsman Phoebe Sangetari who was acting on the position for more than 12 months following the passing of the late Chief Ombudsman Chronox Manek in 2012.

Chief Ombudsman Lua comes from Kapari village in the Abau District of Central Province. He holds a Bachelor of Laws Degree from the University of Papua New Guinea which he attained in 1983 and was admitted to the bar the following year after graduating from the Legal Training Institute.

He began work as a lawyer with Warner Shand Lawyers in 1985 and in 1987 took up a teaching post at the Institute of Public Administration (ADCOL). In 1991, he joined the Public Services Commission's Investigation Branch and worked his way up to be the Director of the branch and later became Secretary of the Commission before becoming a Commissioner in 2004 and Chairman in 2006. Mr Lua's appointment as Chairman of the Public Service Commission expired on 10 October 2012 and was appointed to act until his appointment as Chief Ombudsman in June 2013.

Mr Lua is a Christian who has his own ministry called Agape Full Gospel Ministry.

Ombudsman Phoebe Sangetari LLB, LLM

Ombudsman Phoebe Sangetari comes from Samba Village in Sohe District, Oro Province. She holds a Bachelor of Laws Degree from the University of Papua New Guinea and a Master of Law Degree from the Australian National University (ANU) in Australia.

Prior to her appointment as an Ombudsman, Ms Sangetari served as Senior Legal Officer with the Ombudsman Commission, Legal Officer with the Department of Environment & Conservation, Deputy Registrar with the Department of Mining, Assistant Secretary – Legal & Contracts with Department of Personnel Management, Director Senior Executive Services with Department of Personnel Management, and Deputy State Solicitor (International Law & Human Rights) with Department of Justice & Attorney General.

Ombudsman Sangetari was appointed as Ombudsman on 15 November 2007 for six year term. She was appointed Acting Chief Ombudsman in June 2012 for an initial three months and reappointed in September 2012 until the appointment of a new Chief Ombudsman due to illness and subsequent demise of Chief Ombudsman Chronox Manek. She was reappointed as Ombudsman on 11 November 2013 for another three years. Ombudsman Sangetari is the second female Ombudsman after Ms Jean Kekedo and the first female Acting Chief Ombudsman in the history of the Ombudsman Commission.

RELATIONSHIP TO GOVERNMENT AND PARLIAMENT

The Ombudsman Commission was established as an independent body under s 217 of the Constitution. The purposes of the Commission are set out in s 218 as:

- (a) To ensure that all governmental bodies are responsive to the needs and aspirations of the people
- (b) To help in the improvement of the work of governmental bodies and the elimination of unfairness and discrimination by them
- (c) To help in the elimination of unfair or otherwise defective legislation and practices affecting or administered by governmental bodies
- (d) To supervise the enforcement of Division III.2 (Leadership Code).

The Chief Ombudsman and the two Ombudsmen are appointed by the Governor-General, acting on the advice of the Ombudsman Appointments Committee. The Committee is established by s 217(2) of the Constitution, and consists of:

- » the Prime Minister as Chairman
- » the Chief Justice
- » the Leader of the Opposition
- » the Chairman of the Permanent Parliamentary Committee on Appointments
- » the Chairman of the Public Services Commission.

An Ombudsman can be removed from office by the Appointments Committee on advice of a Tribunal established under the Organic Law on the Guarantee of Rights and Independence of Constitutional Office Holders.

An Ombudsman can only be removed for:

- » inability to perform their functions
- » misbehaviour
- » misconduct, as defined by the Leadership Code, or
- » breach of any Organic Law that sets out their employment conditions.

The Ombudsman Commission is required to report to the Parliament on the operation of the Commission every 12 months.

JURISDICTION

The jurisdiction of the Ombudsman Commission is set out in s 219 of the Constitution. It allows the Commission to investigate administrative conduct by:

- » national and provincial level State Services such as the National Public Service, the Police Force, the Defence Force and Parliamentary Services, or a member of such as service
- » national, provincial and local level governmental bodies or an officer or employee of such as service
- » any body set up by statute that is either wholly or mainly funded by the government, or where the National Executive appoints a majority of the Board
- » a member of the personal staff of the Governor-General, a Minister or the Leader or Deputy Leader of the Opposition.

Apart from investigating administrative conduct the Commission is also able to investigate discriminatory conduct as set out in discrimination legislation. While the discrimination legislation covers more than the government sector, the procedures in the Organic Law on the Ombudsman Commission effectively limit the Commission's jurisdiction to the government sector.

Section 219 also provides that the Ombudsman Commission has jurisdiction to investigate the conduct of leaders, under the Leadership Code, which is set out in ss 26–31 of the Constitution. All elected officials, constitutional office holders, heads of government departments and state services, senior diplomatic staff, the public trustee, executive officers of registered political parties, and the personal staff of the Governor-General, Prime Minister and Leader of the Opposition are covered by the Leadership Code.

Section 219 also sets out a number of matters that are excluded from this broad jurisdiction. The Commission cannot inquire into:

- » the justifiability of a policy of the National Government or a Minister or a provincial government or a member of the provincial executive except insofar as it may be contrary to law or certain Constitutional provisions that set out the National Goals and Directive Principles, the Basic Rights or the Basic Social Obligations
- » the exercise of a rule-making power by a local government body
- » a decision of a court, except insofar as the decision may show an apparent defect in law or administrative practice.

FUNCTIONS

Complaint handling

The Commission deals with complaints from members of the public about the administrative conduct of state services and government bodies that falls within its jurisdiction.

Own initiative investigations

The Commission also conducts investigations on its own initiative into administrative conduct that may be of concern. These investigations often arise from trend analysis of complaints that identify particular areas of concern, or when the Commission becomes aware of an administrative issue by means other than by a complaint. The focus is usually on systemic problems, such as the agencies' procedures or the defects in legislation.

Investigate breaches of the Leadership Code

The Ombudsman Commission is responsible for enforcing the provisions of the Leadership Code. The principal obligations of leaders are set out in s 27 of the Constitution:

- (1) A person to whom this Division applies has a duty to conduct himself in such a way, both in his public or official life and his private life, and in his associations with other persons, as not –
 - (a) to place himself in a position in which he has or could have a conflict of interests or might be compromised when discharging his public or official duties; or
 - (b) to demean his office or position; or
 - (c) to allow his public or official integrity, or his personal integrity, to be called into question
 - (d) to endanger or diminish respect for and confidence in the integrity of the government of Papua New Guinea.
- (2) In particular, a person to whom this Division applies shall not use his office for personal gain or enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether he is carrying out or has carried out the duty imposed by subsection (1).

EDUCATION AND TRAINING

The Ombudsman Commission also operates extensive education and training programs.

Community education of the roles of the Commission is conducted through the External Relations Program, while education for governmental bodies is conducted through the Government Bodies Liaison Program.

A recent innovation for the Commission has been the creation of the Internal Complaints Handling Mechanism program. This program is designed to encourage government bodies to develop their own internal complaints handling mechanisms, and to provide advice and expertise to agencies that undertake this task.

POWERS

The powers available to the Commission are largely set out in the Organic Law on the Ombudsman Commission (OLOC) and the Organic Law on the Duties and Responsibilities of Leaders (OLDRL) although some exceptional powers are set out in the Constitution.

The Commission has discretion not to investigate, or to discontinue an investigation into an administrative complaint where it falls into one of the discretions in s 16(3) of the OLOC:

- (a) The complaint is trivial, frivolous, vexatious or not made in good faith
- (b) It is not within the jurisdiction of the Commission
- (c) The complainant has available to him another remedy or channel of complaint that he could reasonably be expected to use
- (d) The complainant has not sufficient interest in the subject of the complaint
- (e) The complaint has been too long delayed to justify an investigation
- (f) It has before it matters more worthy of its attention
- (g) Its resources are insufficient for adequate investigation.

The Commission is given a more limited discretion in relation to complaints made under the OLDRL, where only discretions (a), (e), (f) and (g) apply. The Commission has the power to require any person who is able to give information relating to a matter being investigated to furnish to the Commission the information, documents, papers or things that are within his or her control (s 18(1) of the OLOC and s21(1) of the OLDRL).

The Commission may summon any person who in its opinion is able to provide information on a matter being investigated to attend the Commission to provide that information (s 18(3) of the OLOC and s 21(3) of the OLDRL).

The Commission can issue an oath or affirmation to a person appearing as a witness before the Commission (s 18(4) of the OLOC and s 21(4) of the OLDRL). Where, after completing an administrative investigation, the Commission makes recommendations for change, the Commission can require the relevant agency to advise what steps, if any, it intends to take to implement the recommendations.

The Ombudsman can publish the results of any investigation by forwarding it to the list of government officials and constitutional office holders found in s 20 of the OLOC. The Ombudsman can also require the results of an investigation to be tabled in the Parliament by providing a copy to the Speaker (s 20(1)(d)).

Under the OLDRL the Commission may refer a leader to the Public Prosecutor if satisfied that a leader is guilty of misconduct in office.

The constitutional powers include the power to give a direction, either generally or in a particular case, to ensure:

- » the attainment of the Leadership Code (s 27(4))
- » the power to take a special reference to the Supreme Court on a matter of interpretation of a Constitutional Law or the validity of a law or proposed law (s 19(3)).

INTERNAL STRUCTURE

The Ombudsman Commission is constituted by a Chief Ombudsman and two Ombudsmen. The OLOC also provides that there will be a Secretary to the

Commission, and a Counsel to the Commission. Officers of the Commission are not public servants but are employed in the Service of the Commission.

The Commission total staff establishment is 146, which comprise of 119 positions in the Head Office and 27 positions in the five Regional Offices. The administrative and operational setup comprise of five Divisions: the Office of Secretary, Office of Counsel, Leadership Division, Complaints and Administrative Division and Regions and External Relations Division.

ACCESSIBILITY

The general public accesses the Ombudsman Commission services through emails, telephone calls, letters and visits to the Ombudsman Commission offices at Headquarters and the three Regional offices. The Ombudsman Commission undertakes Public Education Programs and collects complaints.

WORKLOAD AND STATISTICS

The following statistics are taken from the Commission's annual reports. They relate only to complaints received or investigated under the Commission's administrative complaints jurisdiction. Statistics on investigations undertaken in relation to breaches of the Leadership Code are not published.

Year	Complaints received	Investigations commenced	Investigations completed
2008	2713	245	199
2009	2579	270	321
2010	2491	180	172
2011	1968	178	176
2012	1186	180	146
2013	1125	210	196

PUBLICATIONS

- » Annual Reports – the Commission publishes annual reports. The most recent published was for the 2012 financial year. The 2013 annual report will be published shortly
- » Organic Law on Ombudsman Commission (OLOC) Investigation Reports – The Commission publishes Final Investigation Reports
- » Bi-monthly newsletter – the Commission publishes a bi-monthly newsletter, *Wasdok Nius*, which reports current news within the Commission. It is also distributed electronically
- » Brochures – The Commission publishes four brochures – Making a Complaint (English/TokPisin), How to make a complaint (English) Duties and Responsibilities of Leadership (English/TokPisin), Roles & Functions of the Ombudsman Commission (English), Anti-discrimination & Human Rights (English)
- » Booklet – Organic Law on the Duties and Responsibilities of Leadership
- » Productions:
 - 60 seconds Anti-corruption video
 - 60 seconds radio infomercials for the Ombudsman Commission Local Level Government election awareness

LITIGATION

The Organic Law on the Ombudsman Commission mandates the position of Counsel to the Commission. He is currently supported by the Director of Legal Services and three lawyers.

The Commission is regularly in court due to its role in enforcing the Leadership Code, power to issue directions and special references to the Supreme Court.

The Commission has no role in prosecuting breaches of the Leadership Code, which is the role of the Public Prosecutor. However, Commission decisions to refer leaders to the Public Prosecutor are regularly subject to judicial review actions. These cases often relate to questions of procedural fairness.

Commission directions to leaders under s 27(4) of the Constitution also often result in judicial review actions being taken by the leaders involved. The Commission has also taken a number of special references to the Supreme Court in relation to Constitutional interpretation or the validity of laws; examples are given in the section on 'Function'.

The number of cases in which the Commission is involved makes it impossible to report all the matters here. However, all of the cases are reported in summary form in the Commission's Annual Reports.

SPECIAL PROJECTS

The Commission is undertaking a number of special projects. The development of the Internal Complaint Handling Mechanism project has been discussed above. The aim of this project is to improve the ability of agencies to handle public complaints by helping agencies develop their own internal processes for dealing with complaints. The Commission has identified several agencies to pilot the project, and scoping work is progressing well.

The other major project that is being undertaken is a joint review of complaint handling within the Royal Papua New Guinea constabulary.

The project arose out of a 2004 Police Review which recommended that a new accountability and review mechanism be established.

The project commenced in 2006 when work started on a Memorandum of Agreement between the Commission and the Police to improve cooperation between the two agencies in relation to complaint handling. The Agreement covers improved information sharing and joint investigations into serious allegations. The MOA was signed in 2007 and renewed in 2008.

The Commission has signed MOA with the Police and Defence to oversight complaints in these two agencies. These projects were developed with assistance of the Commonwealth Ombudsman through the twinning program funded by the Department of Foreign Affairs and Trade.

OFFICE ADDRESS AND CONTACT DETAILS

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QUEENSLAND OMBUDSMAN

ESTABLISHMENT

The Office of the Queensland Ombudsman was established by the *Parliamentary Commissioner Act 1974* and commenced operation on 8 October 1974. It currently operates under the *Ombudsman Act 2001*.

OMBUDSMAN

There have been six Queensland Ombudsmen:

- 1974 – Sir David Longland
- 1979 – Sir David Muir
- 1981 – Mr Cedric Johnson
- 1991 – Mr Fred Albietz
- 2001 – Mr David Bevan
- 2011 – Mr Phil Clarke

The Queensland Ombudsman is appointed by the Governor in Council under the Ombudsman Act. National press advertisements calling for applications and consultation with the relevant parliamentary committee must occur. A person appointed as Ombudsman must not have been a member of any Australian parliament or council within the previous three years. The Ombudsman can be appointed for a term of up to five years and is eligible for re-appointment but the total of the terms of appointment must not exceed 10 years. The Ombudsman is not permitted to engage in any remunerative employment outside the duties of the Office during this time. The Ombudsman can be removed from office by the Governor, on the address of the parliament moved by the Premier, provided the Premier has consulted with the parliamentary committee about the motion.

RELATIONSHIP TO GOVERNMENT AND PARLIAMENT

The performance of the Office is monitored and reviewed by a parliamentary committee. The committee also:

- » reports to the parliament on any matter concerning the Ombudsman's activities and functions
- » examines each annual report tabled in parliament and comments as appropriate
- » reports to parliament any changes that could improve the functions, structures and procedures of the Office.

The parliamentary committee cannot review individual investigations conducted by the Ombudsman. The Ombudsman and senior officers meet with the parliamentary committee twice a year; as part of the budget process and after the annual report is tabled. Prior to the meetings, the Ombudsman provides a written response to questions on notice from the committee, and these and other issues are discussed at the meeting.

JURISDICTION

Queensland has a two-tiered political system with state government and local government jurisdictions. The Queensland Ombudsman may investigate the administrative actions of state government departments and public authorities, local councils and public universities. The Ombudsman can investigate an administrative action despite a provision in any Act to the effect that the action is final.

The Ombudsman may not investigate:

- » decisions made by Ministers or Cabinet
- » a decision the Ombudsman is satisfied has been taken for implementing a decision made by Cabinet.

The Ombudsman may also not investigate an action taken by:

- » a tribunal or tribunal member relating to the tribunal's deliberations
- » a person acting as legal advisers to the State or counsel for the State in legal proceedings
- » a member of the police service if the action is operational
- » the Auditor-General
- » a mediator at a mediation session under the *Dispute Resolution Centres Act 1990*
- » a conciliator operating under the *Health Rights Commission Act 1991* or the *Health Ombudsman Act 2013*
- » a government-owned corporation in most circumstances.

If there is a question about the Ombudsman's jurisdiction during the course of an investigation, the Ombudsman may apply to the Supreme Court to decide the question in a closed court.

In addition, the Ombudsman is the oversight body for public interest disclosures (PIDs). The *Public Interest Disclosure Act 2010* (PID Act) encourages disclosure, in the public interest, about wrongdoing in the public sector. Oversight functions include:

- » monitoring the management of PIDs
- » reviewing the way public sector agencies deal with PIDs
- » performing an education and advisory role about PIDs
- » reporting to parliament on the operation of the PID Act.

FUNCTIONS

The Queensland Ombudsman has four key objectives that underpin its operations.

1. Fair and reasonable treatment of people's complaints

The Queensland Ombudsman plays a key role in ensuring Queensland's public sector agencies act lawfully and fairly in their dealings with the community and are accountable for their actions. The Office provides an independent, fair and effective complaints assessment and investigation service.

Office policies require complainants to utilise agency complaints management processes prior to submitting their complaint to the Ombudsman for consideration. This ensures that agencies have the opportunity to rectify poor decisions prior to Ombudsman involvement and maximises the efficiency of the Office.

Initial assessment of complaints is typically completed within two weeks and most investigations of complaints are completed within three months of lodgement.

2. Unfair or unjust public agency decisions are rectified

The Queensland Ombudsman's functions include investigating the administrative actions of agencies:

- » on reference from parliament or a committee of parliament
- » on complaint
- » on the Ombudsman's own initiative.

The Queensland Ombudsman considers the administrative practices and procedures of agencies being investigated and makes recommendations to them:

- » about ways of addressing the effects of inappropriate administrative actions
- » for the improvement of their practices and procedures.

3. Public sector agencies improve their decision-making

The main strategies for assisting agencies to improve their practices and procedures are:

- » to encourage and assist agencies to develop effective internal complaints management systems
- » to carry out systemic reviews, on the Ombudsman's own initiative, with particular reference to agencies with regulatory responsibilities, often by auditing a sample of the agency's files for compliance with legislation, the agency's own procedures, and recognised standards
- » to report to parliament on significant cases; a recent example was the own initiative investigation *The Liquor Report: An investigation into the regulation of licensed premises by the Office of Liquor and Gaming Regulation*
- » to provide training to agencies on good decision-making and complaints management. In the 2013-14 financial year, 137 training sessions were delivered throughout Queensland.

4. The Office is a capable and accountable organisation

The Ombudsman Act provides for a strategic review of the Office at least every five years. The most recent review was completed in 2012 and its recommendations have been implemented where applicable. Workforce capability strategies are in place to align staff core competencies with Office needs.

Regular surveys are used to monitor and improve the Office's service levels.

POWERS

The Ombudsman Act empowers the Ombudsman to investigate the actions of state government agencies, local councils and public universities. The Act also empowers the Ombudsman to make reasonably necessary inquiries to decide whether a complaint should be investigated.

The Ombudsman may require a person to provide a statement of relevant information, copies of documents or a document containing information reasonably required for an investigation.

The Ombudsman may also:

- » enter and inspect a place occupied by an agency
- » take into the place the persons, equipment and materials the Ombudsman reasonably requires for the investigation
- » take extracts from, or copy in any way, documents located at the place
- » require an officer of the agency at the place to give the Ombudsman reasonable help in exercising their powers.

Before exercising any of these powers, the Ombudsman must notify the principal officer of the agency concerned of the subject matter of the investigation and the powers the Ombudsman may exercise during the investigation.

The Ombudsman can make a report to an agency if it is considered that administrative action was:

- » contrary to law
- » unreasonable, unjust, oppressive, or improperly discriminatory
- » in accordance with a rule of law or a provision of an Act or a practice that is unreasonable, unjust, oppressive, or improperly discriminatory in the circumstances
- » taken for an improper purpose or on irrelevant grounds
- » an action for which reasons should have been given, but were not
- » based wholly or partly on a mistake of law or fact
- » wrong.

The Ombudsman's report may include recommendations to rectify the effect of the maladministration identified or to improve the agency's administrative practice.

INTERNAL STRUCTURE

The Office consists of four main units:

- » Corporate Services Unit leads and manages the administrative, financial, human resource, information technology, records, planning, facilities, performance, reporting, research, and communication services.
- » Intake and Engagement Unit is the first point of contact for people making enquiries or complaints, delivers training to public sector officers and reviews agencies' complaint management systems, and engages with the community to increase awareness and provide equitable access to services.
- » Investigation and Resolution Unit investigates complaints and undertakes own initiative investigations.
- » Executive Unit provides support to the Ombudsman and includes general counsel, the public interest disclosure function, and the head of internal audit.

An organisational chart is included in Annexure 1.

The Office employs 63 full-time equivalent staff, of which 66% are female.

ACCESSIBILITY

The Office conducts a wide range of activities to provide access to and promote its services. The **Diversity Action Plan 2014-19** guides engagement with Indigenous communities, culturally and linguistically diverse communities, refugees, prisoners, people with disabilities, and the homeless. Activities include regular visits with stakeholders in regional Queensland, attending community events, targeted communication material and working with other independent integrity agencies to promote awareness throughout all sections of the community.

The Regional Services Program (RSP) is designed to improve awareness of the Office and access to its services for communities in regional and remote areas. In 2013-14, the Office visited 57 regional centres and conducted training sessions, visited correctional centres, gave presentations and attended community meetings.

Access to the Office's service is provided in a number of ways, including an online complaint form, email, freecall phone number, in writing or in person. In addition, the Office has access to translators and a phone service for people with hearing or speech impairments. The Office also provides a dedicated free phone line for prisoners to make confidential complaints.

Mechanisms are also in place to monitor how complaints are made and which areas of the community are making them. The information is then used to develop tailored internal and external programs to improve access to the Office.

WORKLOAD AND STATISTICS

Since 2011, a number of significant changes have taken effect within the Office:

- » the formation of a Registration and Preliminary Assessment Team and one Investigation and Resolution Unit, all managed by the Deputy Ombudsman, and changes to the Corporate Services Unit resulting from an internal review
- » new policies and procedures emphasise timeliness and communication with clients
- » the data reported internally and externally has been changed to better reflect out of jurisdiction (OOJ) matters
- » increased community engagement with the RSP.

Complaints

COMPLAINTS	2008-09	2009-10	2010-11	2011-12	2012-13*	2013-14
Received	7,460	8,717	8,354	8,466	6,363	6,308
Finalised	7,448	8,708	8,278	8,648	6,406	6,293
% of agreed actions or recommendations accepted by agencies	98	100	99	96	99	96

* From 2012-13, OOJ contacts received in writing were no longer recorded as complaints.

Complaints for agency types

AGENCY TYPE	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
State government	4,370	5,099	4,587	5,195	4,217	4,169
Local council	1,979	2,275	2,126	1,967	1,708	1,778
Public universities	182	262	270	333	367	338

Training

TRAINING	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
Sessions delivered	106	120	144	162	82	137
Officers trained	1,798	2,056	2,443	2,800	1,530	2,202
Number held in regional Qld	Not recorded	Not recorded	Not recorded	41	28	81

PUBLICATIONS

The Queensland Ombudsman produces a range of publications and reports each year, which are available on the website <http://www.ombudsman.qld.gov.au/>. These include investigative reports, brochures, annual reports, casebooks, newsletters, guidebooks and manuals.

Investigative reports

A number of investigative reports have been published in recent years on the website under 'Media and reports'. These reports bring systemic issues to the attention of the parliament, government agencies and the wider public. Three reports were published in 2013-14:

- » *The Liquor Report: An investigation into the regulation of licensed premises by the Office of Liquor and Gaming Regulation*
- » *The Ownership Transfer Fee: An investigation into the Brisbane City Council's fee for recording a change of property ownership in its land record*
- » *The Water Licences Report: An investigation into the administration of water licence decision-making under Chapter 2, Part 6 of the Water Act 2000.*

Brochures

The Queensland Ombudsman has a range of brochures available for the broader community, Aboriginal people and Torres Strait Islander people, prisoners and prisoner support groups, and culturally and linguistically diverse communities. These are also available on the office's website under 'Community' and 'Brochures'.

Annual reports

Annual reports highlight the activities undertaken by the Queensland Ombudsman during the financial year, including investigations, reports, community engagement activities and financial information. Annual reports are available on the office's website under 'Media and reports'.

Newsletters

The *Perspectives* range of newsletters are tailored to provide news and advice for decision-makers and frontline officers working in state government agencies, local councils, corrective services staff, lawyers who provide advice to government departments, and to community groups. Each newsletter is published twice a year, and are published on the website under 'Public Agencies' and 'Resources'.

Ombudsman Advisories are short bulletins that share broader, systemic lessons learnt from recent unpublished investigations. They are published on an ad-hoc basis.

Guidebooks and manuals

A number of guidebooks have been devised to assist state government agencies and local councils. These are:

- » *The Good Decision-Making Guide* helps decision-makers make consistent, fair and transparent decisions
- » *Handling an Ombudsman Investigation* provides information and principles to assist agencies involved in an investigation by the Office
- » *Managing Unreasonable Complainant Conduct Manual* aims to assist officers to better manage unreasonable complainant behaviour and provide a more effective complaints service for the community
- » *Tips and Traps for Regulators* explains the principles of good regulatory practice and provides recommendations for improving agency practices and procedures.

The guidebooks are published online

<http://www.ombudsman.qld.gov.au/Publicagencies/Resources/tabid/496/Default.aspx>.

LITIGATION

Certain decisions made by the Ombudsman under the Ombudsman Act may be subject to review by the Supreme Court under the *Judicial Review Act 1991* (Qld).

One case has been before the Supreme Court; *Douglas Shire Council v Queensland Ombudsman* [2005] QSC 207.

The Supreme Court agreed with the findings from the Ombudsman's investigation that the local council did not have the legal authority to increase a ferry fare by way of a conservation levy.

SPECIAL PROJECTS

The Queensland Ombudsman regularly conducts major and own initiative investigations. They are made available to the public through the website.

OFFICE AND CONTACT DETAILS

Postal address: Queensland Ombudsman
GPO Box 3314
Brisbane QLD 4001

Office address: Level 17
53 Albert Street
Brisbane QLD 4000

Website: www.ombudsman.qld.gov.au

Email: ombudsman@ombudsman.qld.gov.au

General inquiries: (07) 3005 7000

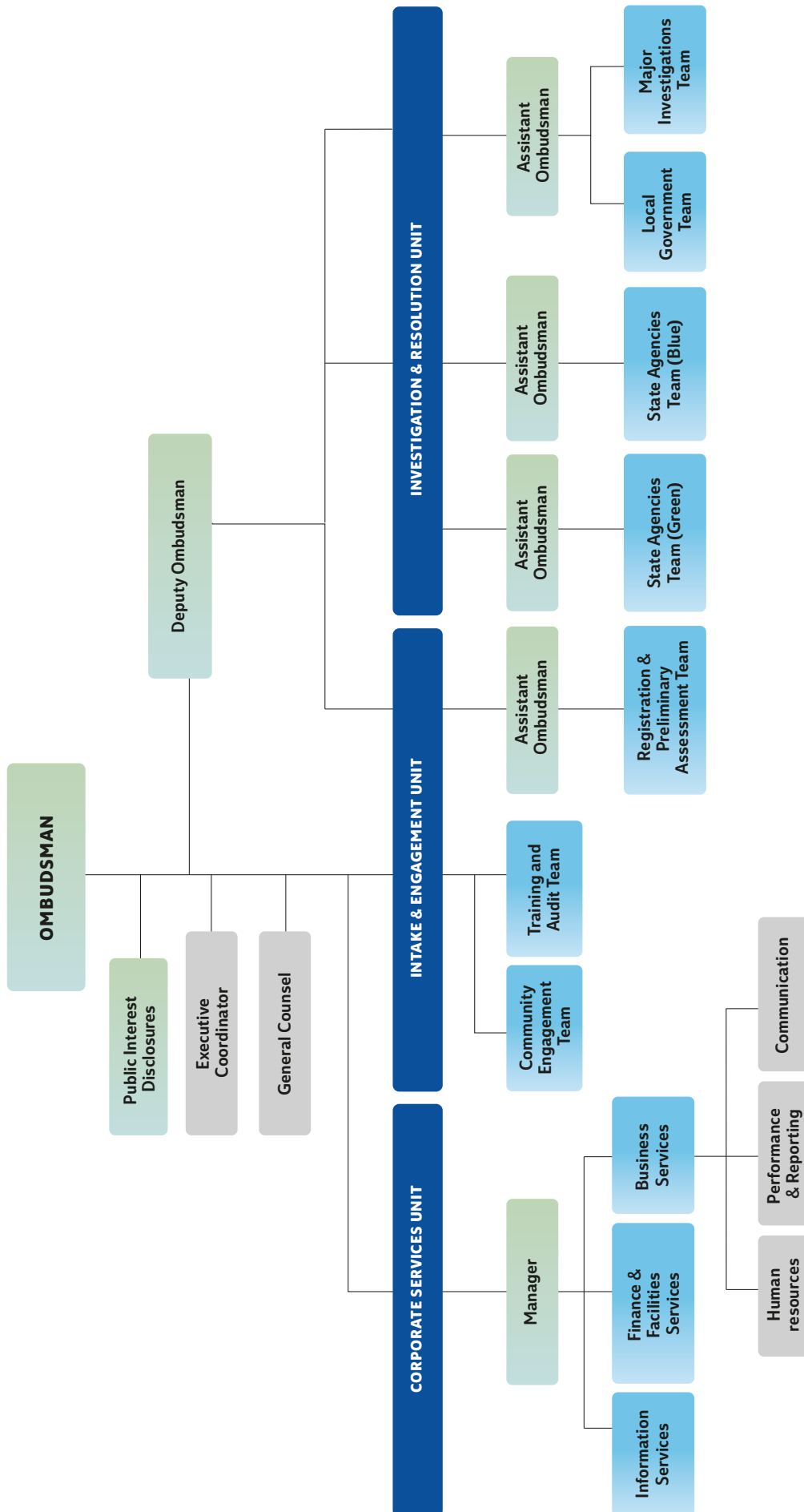
Freecall: 1800 068 908 (within Queensland)

If you need a translator: 131 450

If you are hearing or speech impaired: 133 677

Media or publication inquiries: (07) 3005 7049

ANNEXURE A – Queensland Ombudsman organisational structure



OFFICE OF THE OMBUDSMAN SAMOA

ESTABLISHMENT

The Office of the Ombudsman (Komesina o Sulufaiga) in Samoa was established under the *Komesina o Sulufaiga (Ombudsman) Act 1988*. It came into operation on 15 March 1989 and became effective with the appointment of the first Ombudsman on 29 October 1990.

The *Ombudsman (Komesina O Sulufaiga) Act 2013* was enacted in 2013, broadening the Ombudsman's mandate from a traditional Ombudsman function to include the National Human Rights Institution of Samoa (NHRI) and an expanded oversight and investigative role (a Special Investigations Unit) in relation to police and other designated disciplined forces.

OMBUDSMAN

The Ombudsman is an independent officer of Parliament, appointed by the Head of State on the recommendation of Parliament for a term of six years. The Ombudsman is eligible for reappointment, and on the expiry of their term, may continue in office until reappointed or a successor is appointed. The Ombudsman is selected and appointed pursuant to the selection processes and criteria set out in Schedule 3 of the Ombudsman Act.

The Ombudsman must not become a Member of Parliament while in Office or without the approval of the Speaker in each particular case, or hold any other office or employment or engage in any activity or practice that may in any way conflict with the Ombudsman's actual or perceived independence or impartiality. The Ombudsman may, in writing to the Head of State, resign from Office.

There have been three Ombudsmen since the Office was established:

- 1990 to 1992 – Professor Jack Richardson
- 1993 – Vaovasamanaia Reginald Phillips (passed away in office)
- 1994 to present Maiava Iulai Toma.

The three Ombudsmen appointees have had very distinguished careers in public life. Prof. Richardson was the first Australian Commonwealth Ombudsman; Vaovasamanaia Phillips was a former Chief Justice and former member of Parliament (Cabinet Minister); Maiava Iulai Toma has held senior government and diplomatic positions including Secretary to Government and Samoa's Ambassador to the United Nations and the United States of America.

RELATIONSHIP TO GOVERNMENT AND PARLIAMENT

The Ombudsman is an Officer of Parliament and is independent of the Executive government. The Ombudsman must carry out the functions, duties and powers independently under the Act and is not subject to a direction or influence of any person, office holder or authority.

Without affecting other reporting provisions in this Act, the Ombudsman must in each year, prepare an Annual Report setting out the operations and financial matters of the Ombudsman for the preceding year. The Ombudsman must send the Annual Report to the Speaker for tabling in parliament under its Standing Orders.

JURISDICTION

Good Governance

The Ombudsman is a good governance mechanism created to put at the disposal of the people the special powers entrusted to the Ombudsman to scrutinize, from a position of independence and neutrality, the workings of the Executive Government in light of legitimate concerns of members of the public who may be affected in their personal capacities by the activities of Government. The Ombudsman's objective is to form an opinion on the reasonableness of official action or inaction brought to his attention and to recommend remedial action where appropriate.

In proper perspective and on the assumption that it is the Executive's intention in the first place to implement its various agendas fairly and justly, the Ombudsman is not a foe to be circumvented but a neutral observer who would look independently at "questionable" situations that arise, for fair and reasonable resolution.

National Human Rights Institution

The Office of the Ombudsman also functions as the National Human Rights Institution of Samoa. Thus, the Office of the Ombudsman is working towards a State underpinned by integrity and fairness in governance and built on a foundation of human rights, reflected in every law passed, every case heard and every administrative decision made at every level.

The NHRI has a responsibility to monitor Samoa's performance in meeting its international human rights commitments. We provide advice and recommendations so that these standards are reflected in our national laws, as well as policies and programs developed by government.

Special Investigation Unit

Under the Act, the Ombudsman may establish within the Office a special investigation unit for the purposes of:

- (a) receiving, investigating and determining any complaints about a police officer, prison officer or officer of other prescribed disciplined force; and
- (b) carrying out any other functions, duties or powers under any other Act or as are prescribed by regulations.

FUNCTIONS

The objectives of the office are to:

- » promote good governance, transparency, accountability and integrity in the administration and decision making of Ministries and Organisations; and
- » to promote and protect the dignity of humankind enshrined in the Constitution, international human rights law, as the foundation of a fair, just and peaceful society and its governance.

The Ombudsman does not get involved in issues he takes up for his own personal or institutional gratification. The functions and powers of the Ombudsman are given to him to be exercised in the right of the citizen who otherwise would be relatively powerless against a governmental agency with which that citizen may take issue on matters of importance to him.

The Ombudsman is not an advocate for a complainant but a neutral entity which endeavours to form opinions, after the investigation of complaints, based on criteria of reasonableness and fairness. Where the agency is considered to be right in any matter the Ombudsman must be equally forthright in declaring it as he would were the opposite to be the case.

Greater understanding will emerge only slowly as long as the Office of the Ombudsman is perceived as it tends to be viewed by almost everyone in authority as just another government department competing with others for resources and in the exercise of power. The Ombudsman is not interested in any power games, either with the agencies of Government or with regard to the general public. Unlike these agencies, the Ombudsman does not exercise any executive power or have any part to play in the formulation and implementation of the Executive Government's programme of activities that may dispense or withhold benefits etc. from the citizenry. It is not mandated like other agencies to carry out a particular service for which the Executive Government has a responsibility to provide.

Public sector agencies are protective of turf and status and tend thereby to be confrontational in their relations with each other. The Ombudsman is sometimes conscious of difficulties of this nature in dealings with public agencies.

Complaint handling

The principal function of the Ombudsman is to conduct independent investigations into complaints against administrative actions (including any recommendation made to a Cabinet Minister of government agencies).

Own Motion investigation

The Ombudsman may conduct own motion investigation that suggests possible systemic concerns (s 18).

Oversight

The Samoa Police Service Professional Standards Unit (PSU) is charged with the responsibility for investigating complaints about the Police. Complainants are encouraged to approach the Ombudsman's Office if they are not satisfied with the handling of their concerns by the PSU.

POWERS

The Ombudsman has a broad range of powers. Simply put, he receives and investigates complaints from members of the public about administrative actions and non-actions of all government Ministries and agencies, and helps resolve decisions that are wrong, unjust, unlawful, discriminatory or unfair.

The Ombudsman is unique among state functionaries in that he exerts no power, makes no laws, dispenses no public benefits, determines no policy and exercises no discretion over the affairs of people. He has extensive investigative powers, which are accompanied not by directive or coercive powers but by a function only to recommend.

Without coercive powers to impose his determinations on government agencies, the Ombudsman function can only be important and useful when there is a general will to make it so. The lead that the Executive gives in this regard is crucial.

Apart from being a good governance mechanism, the Ombudsman under the additional mandate (Part IV of the Act) is obligated to promote and protect human rights in Samoa as well as conducting special investigations (Part V of the Act) of coercive powers of the state vested in police and other disciplined forces.

The Act provides the Ombudsman with the power to investigate complaints made to the Office that are within jurisdiction. The Ombudsman may in his jurisdiction refuse to investigate or further investigate a complaint if it appears that: -

- » there is adequate remedy or right of appeal for the complainant
- » the complaint is trivial, frivolous, vexatious, or is not made in good faith
- » the complainant has no sufficient personal interest in the complaint.
- » the complaint is more than 12 months old
- » the complaint is outside jurisdiction.

INTERNAL STRUCTURE

In addition to the Ombudsman, the Office is staffed by the following:

- » Assistant Ombudsman
- » Good Governance and Human Rights Manager
- » Office Manager/Secretary
- » Communications and Educations Officer
- » Good Governance and Human Rights Legal Officer
- » Principal Investigations Officer
- » Good Governance and Human Rights Support Officer
- » Senior Accounting Officer
- » Clerical Officer/Receptionist

ACCESSIBILITY

Complaints can be made to the Office in person, in writing or by email or telephone. Interestingly enough, a majority of the complainants registered were Public Servants.

Through its outreach activities, the Office has been able to raise its profile within the community and reach out to a greater number of potential complainants. A successful advertising campaign about the role of the Office was run in the local media in 2012-13, and again in 2013-14 to promote the office's new NHRI role, resulting in raised awareness of the Office among members of the public and an increased number of approaches to the Office by complainants.

The Office also raises awareness about its role in training courses conducted in schools, government Ministries, the National University of Samoa and other non-government organisations.

WORKLOAD AND STATISTICS

We received a total of 209 complaints and requests for assistance in 2013 and 187 during 2014.

Year	Complaints subject to enquiry	Complaints subject to jurisdiction	Complaints not investigated due to an alternative remedy and other reasons	Incomplete approaches not followed up by complainant
2009	118	49	34	22
2010	120	57	46	17
2011	102	48	35	20
2012	150	159	75	31
2013	209	149	62	40
2014	187	80	53	23

The above statistics are taken from the office's Annual Reports. The Table refers to enquiries that range from providing information or an explanation, referral to a relevant agency to a full-scale investigation over a number of months and within jurisdiction. Also included are complaints not considered due to alternative remedies and approaches not followed up by complainants.

PUBLICATIONS

Annual reports

- » PACLII www.paclii.org –Ombudsman reports
- » Ombudsman website www.ombudsman.gov.ws – no entries at this stage.
- » The Ombudsman is required to produce Annual Reports to Parliament (s 57). The Ombudsman is also required to submit a report on the Status of Human Rights in Samoa by 30 June of each year (s 40). The most recent Annual Report covered the years 2012 and 2014.
- » The office has also updated its pamphlets in 2009/10 through the kind assistance and support of the Commonwealth Ombudsman of Australia

LITIGATION

There are no reported cases involving the Ombudsman.

SPECIAL PROJECTS

With technical assistance from Asia Pacific Forum, the Ombudsman Office was able to secure a Handbook on Monitoring Places of Detention in 2014. This is a useful tool to guide the Office in the discharge of its functions as NHRI for Samoa to inspect and monitor places of detention.

The Handbook seeks to prescribe standards and responsibilities that will allow the Office to function as a national Preventative Mechanism for Samoa under the optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or punishment, should Samoa sign and ratify the Convention and its Optional protocol.

A workshop was held on Monitoring Places of Detention from 6-9 January 2015 followed by an inspection that took place from 13–21 January 2015. This is part of a three year project entitled "*Strengthening the capacity of National human Rights Institutions (NHRIs) in the Asia and Pacific to prevent torture and ill treatment*".

The objectives of the workshop specific were to:-

- » Build knowledge and skills on the methodology of monitoring places of detention , including the preparation , conduct and follow up visits
- » Produce a plan for follow up visits and conduct background research
- » Develop an action plan for follow up and future visits.

OFFICES AND CONTACT DETAILS

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Fax:	(685) 21862
Email:	info@ombudsman.gov.ws

SOLOMON ISLANDS OMBUDSMAN

ESTABLISHMENT

The Office of the Ombudsman of Solomon Islands (OOSI) was established under s 96(1) of the Solomon Islands Independence Order (the Constitution) of 1978. The OOSI first commenced operation on 1 July 1981.

OMBUDSMAN

There have been six Ombudsmen since the OOSI's inception:

- 1981 – Mr Daniel Maeke
- 1986 – Mr Isaac Qoloni
- 1990 – Mr Frank Pororara
- 1996 – Sir Peter Kenilorea
- 2000 – John Smith Pitabelama
- 2006 to present – Joe Poraiwai.

The Ombudsman is appointed for a term of five years under s 96(5) of the Constitution. The current Ombudsman, Mr Joe Poraiwai has been with the Office since 1 March 1990. His appointment was subject of a legal challenge and was delayed from November 2006 until July 2008 (see Litigation section below).

RELATIONSHIP TO GOVERNMENT AND PARLIAMENT

The OOSI was established as an independent oversight body by s 98(1) of the Constitution, which provides that the Ombudsman may not be subject to the direction or control of any other person or body.

However, s 98(3) of the Constitution requires the Ombudsman to submit an annual report to Parliament, and provides that the Ombudsman may make additional reports to Parliament as he thinks appropriate in relation to the discharge of his functions and any administrative or legal defects he has indentified. There is no parliamentary committee with a dedicated role in relation to the Ombudsman.

The OOSI has additional powers and roles, as provided for by the Ombudsman (Further Provisions) Act 1980 (the Ombudsman Act). The Ombudsman Act is administered by the Prime Minister, and the OOSI comes within the portfolio of the Department of Prime Minister and Cabinet. Other independent oversight agencies located in this portfolio include the Office of the Auditor-General (OAG) and the Leadership Code Commission (LCC).

JURISDICTION

The OOSI investigates written complaints about the administrative actions of members of the Solomon Islands public service, police force, the prisons service, the government of Honiara city, provincial governments, and such other offices, commissions, corporate bodies or public agencies as may be prescribed by Parliament.

The Ombudsman may investigate any action taken by any officer or authority in the exercise of the administrative functions of that officer or authority in any case in which:

- » a complaint alleges that a person or body of persons has suffered injustice in consequence of that action
- » the Ombudsman is invited to do so by any Minister or any member of Parliament
- » the Ombudsman considers it desirable to do so of his own motion.

The OOSI has no jurisdiction in respect of the Governor-General or his personal staff or the Director of Public Prosecutions or any person acting in accordance with his instructions. Nor has the Ombudsman the power to question or review any decision of any judge, magistrate or registrar in the exercise of his judicial functions.

The Ombudsman cannot investigate complaints:

- » about any decision of any commissions or committee established under the Constitution or an Act of Parliament
- » where there is still another way of settling a complaint such as appealing to the Minister or by going to court
- » about private persons, companies or organisations
- » where the Ombudsman is given notice by the Prime Minister that action taken by a Minister was in the exercise of his own deliberate judgement
- » where the Secretary to the Cabinet with the approval of the Prime Minister issues a certificate prohibiting the release of any information relating to the proceedings of the Cabinet or any of its committees
- » where the Attorney General gives notice to the Ombudsman that the disclosure of any specific information or document would be in the public interest in relation to defence, internal security or external relations
- » where he is given notice by the Prime Minister that the investigation of that matter would not be in the interests of the security of Solomon Islands
- » the person aggrieved is not a resident of Solomon Islands (or, if he is dead,
- » was a resident at the time of his death)
- » the person aggrieved has a right of appeal, reference or review to or before a tribunal constituted by or under any law in force in Solomon Islands or has or had a remedy by way of proceedings in any court of law, unless the Ombudsman is satisfied that in the particular circumstances it is not reasonable to expect that person to avail himself or to have availed himself of the right or remedy
- » where the complaint is merely frivolous or vexatious
- » where the subject-matter of the complaint is trivial
- » where the person aggrieved has no sufficient interest in the subject matter of the complaint
- » where the making of the complaint has, without reasonable cause, been delayed for more than 12 months.

FUNCTIONS

The functions of the Ombudsman are provided for by s 97 of the Constitution and include:

- » enquiring into the conduct of a person in the exercise of his office or authority
- » improving the practices and procedures of public bodies
- » ensuring the elimination of arbitrary and unfair decisions.

Thus, the OOSI safeguards the interest of the Solomon Island community in its dealings with government by independently:

- » assisting people to resolve complaints about government administration
- » investigating and reporting on the actions and practices of government
- » fostering accountable, lawful fair, transparent and responsive administration.

While Parliament may confer additional functions on the Ombudsman, none has yet been conferred to date.

The OOSI undertakes an extensive education and training program, particularly in relation to community education on the role of the OOSI in regional and provincial areas.

POWERS

Under s 5 of the Ombudsman Act, the Ombudsman may decide to investigate a complaint against:

- » any officer, ministry or department of the Solomon Islands Government
- » any office or any Provincial Government or Honiara City Council
- » any statutory corporation incorporated by an Act of Parliament
- » any officer of a statutory corporation
- » any authority or officer empowered to sign any contract or class of contract on behalf of the government.

Before investigating a complaint or commencing an own motion investigation, under s 9 the Ombudsman must notify of his intention to investigate.

In pursuit of an investigation, the Ombudsman may:

- » summon any person whom the Ombudsman thinks is able to furnish any information (s 11)
- » compel the provision of any documents considered relevant to an investigation (s 12)
- » enter premises at any time in order to carry out an investigation after giving 24 hours notice (s 14).

Where the Ombudsman makes critical comments in a report, s 10 requires the Ombudsman to provide an opportunity to comment to any person, officer or authority who or which may be adversely affected by any report or recommendation.

Under s 16, where after an investigation the Ombudsman is of the opinion that an action was contrary to the law, based wholly or partly on the mistake of law or fact, unreasonably delayed or otherwise unjust or manifestly unreasonable, the Ombudsman may make any of the following remedial recommendations:

- » the matter should be given further consideration
- » the omission should be rectified
- » the decision should be cancelled or reversed
- » any practice on which the act, omission or recommendation was based should be abolished
- » any law on which the act, omission, decision or recommendation was based should be reconsidered
- » reasons should have been given for the decision, or
- » any other steps should be taken.

If the Ombudsman considers that remedial action is needed, the Ombudsman must:

- » report his opinion and reasons to the officer, the department or authority concerned, make such recommendations as he thinks fit and send a copy of his report and recommendations to the Prime Minister and to any Minister concerned, and
- » inform the person who has made a complaint of the result of his investigations, if the investigation relates to an open complaint.

When reporting his opinion to an officer of the department or authority concerned, the Ombudsman may request such officer to notify him within a specified time of the steps (if any) that it proposes to take to give effect to the recommendations of the Ombudsman.

If within a reasonable time after a report has been made no action is taken which the Ombudsman considers to be adequate and appropriate, the Ombudsman may after considering any comments made by or behalf of any department, authority, body or person affected, make a further report on the matter to Parliament.

INTERNAL STRUCTURE

The Ombudsman is supported by:

- » Director Investigations
- » Principal Investigation Officer in charge of the Receipt and Preliminary Assessment Team
- » Principal Investigation Officer in charge of the Complaint Investigation Team
- » Senior investigation Officer in charge of the Special Ombudsman Response Team

General staff meetings and Management Team meetings are held monthly. File Review and Allocation Committee meetings are held twice weekly. Investigation Team leaders meet monthly, as do Investigation Teams.

ACCESSIBILITY

Complaints may be made to the office via written complaint, telephone and walk-in.

WORKLOAD AND STATISTICS

Statistics for the period 2000 to 2008 are included below. No recent statistics were available.

Year	Complaints received	Investigations completed	Investigations unresolved
2000 ¹	270	270	Nil
2001 ²	166	166	Nil
2002 ³	669	632	37
2003	87	57	30
2004	237	207	30
2005	199	96	103
2006	305	138	167
2007	328	110	218
2008 ⁴	117	17	100

1 This covers the period 1 July 1999 to 30 June 2000.

2 This covers the period 1 July 2000 to 30 June 2001.

3 This covers the period 1 July 2001 to 30 June 2002.

4 This relates to the period 1 January 2008 to 30 June 2008.

PUBLICATIONS

Annual reports

The OOSI is required under the Constitution to make an annual report to Parliament. However, in the past some annual reports have not been completed.

Special reports

The Ombudsman can make any special reports to Parliament as he sees fit. The current Ombudsman has completed three special reports since his appointment. They include:

- » Special Report for the period 1 September 2006 to 31 July 2008
- » Special Report No. 1/08 – Report on Ombudsman Educational Awareness and Publicity Programme
- » Special Report No. 2/08 – First 100 Days Programme.

Newsletter

In March 2009 the OOSI began publishing a regular newsletter – The Ombudsman – that reports current news within the OOSI. The newsletter is distributed electronically and in hard copy to various government and non-government stakeholders.

Brochure

The OOSI publishes and distributes an educational brochure as part of its community education and outreach program. The brochure explains the role and functions of the OOSI and how a Solomon Islands resident can complain to the OOSI.

LITIGATION

Joe Poraiwai and Sir Peter Kenilorea v Acting Attorney-General
(HCSI Civil Case Nos. 20 and 30 of 2007) 12 August 2007

Acting Attorney-General v Joe Poraiwai
(SICOA Civil Case No. 78 of 2007) 17 October 2007

These cases dealt with the legal challenges to the Ombudsman's selection, recommendation and appointment as Ombudsman.

In the first matter, Brown J of the High Court of Solomon Islands declared that the current Ombudsman, Joe Poraiwai, was lawfully and constitutionally entitled to be appointed to the Office of the Ombudsman by the Governor-General in accordance with the advice of the selection Committee dated 9 November 2006 pursuant to s 96(2) of the Constitution.

This litigation was necessary when the then Governor-General declined to follow the selection Committee's recommendation after the Acting Attorney-General suggested that the Committee's selection process allegedly involved unfairness, bias, undue process and irregularities. The committee comprised the Speaker of the House, Sir Peter Kenilorea, the Chairman of the Judicial and Legal Service commission, the Chief Justice Sir Albert Palmer, and the Chairman of the Public Service Commission, Mr Edmund Andresen.

Brown J held that the allegations were 'wholly unsubstantiated' and a 'farrago of falsity' that were 'tantamount to slander'. He concluded that the Governor-General had no discretion to refuse to ignore the recommendation of the Committee, and that Mr Poraiwai should be appointed.

In the second matter, their Honours Williams JA, Goldsborough JA and Adams JA dismissed the appeal by the Acting Attorney-General. Their Honours found that the Committee had a proper basis for concluding that Mr Poraiwai had the necessary qualifications to be appointed Ombudsman and that there was no valid reason for the Governor-General to refuse to act on the Committee's advice. The Court concluded that under the terms of the Solomon Islands Constitution, the Governor-General was obliged to appoint Mr Poraiwai to the position, and that Mr Poraiwai was entitled to be appointed.

SPECIAL PROJECTS

In 2009 the Ombudsman formalised a tripartite Memorandum of Understanding (MOU) with the Office of the Auditor-General and the Leadership Code Commission. Currently the OOSI has a bilateral MOU with the Leadership Code Commission that provides for information sharing between the agencies. However, to further strengthen its institutional linkages with fellow accountability and integrity agencies in Solomon Islands, it is considered prudent to extend this to a tripartite agreement.

OFFICES AND CONTACT DETAILS

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SOUTH AUSTRALIAN OMBUDSMAN

ESTABLISHMENT

The Office of the South Australian Ombudsman was established by the *Ombudsman Act 1972*.⁸ The Act commenced operation on 14 December 1972.

OMBUDSMAN

There have been six South Australian Ombudsmen appointed since the office started operating in 1972.

- 1972 – Mr Gordon Coombe
- 1980 – Mr Robert Bakewell
- 1985 – Ms Mary Beasley
- 1986 – Mr Eugene Biganovsky
- 2009 – 2014 Mr Richard Bingham
- 2014 to present – Mr Wayne Lines

There have been five acting appointments, including Mr Ken McPherson from September 2007 to May 2009, and Ms Megan Philpot from July 2014 to December 2014.

RELATIONSHIP TO GOVERNMENT AND PARLIAMENT

Appointment is for a term ending when the Ombudsman reaches 65 years of age or resigns. The Ombudsman may only be removed from Office by the Governor on addresses from both Houses of Parliament.

The Ombudsman reports to the Parliament on an annual basis, and on other occasions as necessary. In addition, the Statutory Officers Committee of the Parliament recommends the appointment of the Ombudsman and may report to the Parliament on the functions of the office of the Ombudsman at its discretion. The Crime and Public Integrity Policy Committee of the Parliament has the oversight role of the performance and functions and exercise of powers by the Ombudsman.

JURISDICTION

South Australia is one of the less populous States of Australia, with a population of approximately 1,700,000 but it covers a large geographical area. The State has a two-tiered political system, with both State and local government.

The South Australian Ombudsman handles complaints relating to each of these tiers.

The jurisdiction with respect to the State government extends to a wide range of governmental entities. It includes:

- » statutory office-holders
- » administrative units established under the *Public Sector Act 2009*
- » development Assessment Panels established under the *Development Act 1993* (to deal with planning and development matters)

⁸ Unless otherwise noted, all references to section numbers in this chapter are to the *Ombudsman Act 1972* (SA).

- » incorporated or unincorporated bodies which are established by or under an Act for public purposes, or which are subject to control or direction by any part of the Executive
- » bodies declared by the regulations to be subject to the Act.

There is also a power to exclude individual bodies from the Ombudsman's jurisdiction by regulation. No regulations relevant to these powers are currently in operation.

The Ombudsman Act did not initially provide the Ombudsman with jurisdiction in respect of local government councils, but these were brought within jurisdiction in 1975.

The Ombudsman Act precludes the Ombudsman from investigating a complaint if it arises from the employment relationship between the complainant and respondent. There is also the usual discretion to refuse to investigate a complaint if it is trivial or vexatious, if the complainant does not have a sufficient personal interest in the subject matter of the complaint, or if the continuation of the investigation is otherwise unnecessary or unjustifiable.

FUNCTIONS

Whilst the Ombudsman commenced with only one Act of Parliament providing guidance, the addition of several other areas of jurisdiction to the Ombudsman's work now sees five separate Acts giving the Ombudsman particular roles.

Ombudsman Act 1972

The core work of the Ombudsman under this Act involves the handling of complaints from members of the public about administrative action taken by or on behalf of public authorities. The Ombudsman also has power under the Act to carry out investigations into such action on his or her own motion, or on receipt of a reference from either House of Parliament, from a committee of either House, or from a joint committee of both Houses.

Own motion investigations under this Act have in the past been relatively infrequent.

Since 2002, the Ombudsman has had the power to conduct administrative audits of agencies to which the Act applies.

Freedom of Information Act 1991

In 1992 the proclamation of the *Freedom of Information Act* (the FOI Act) and the *Local Government (Freedom of Information) Amendment Act* gave the Ombudsman the role of external reviewer of determinations regarding access to information in all agencies except South Australia police (for which the Police Complaints Authority has responsibility). The local government FOI provisions have now been incorporated directly into the FOI Act and removed from the Local Government Amendment Act.

The Ombudsman fulfils a review function under the FOI Act. A person whose request for information from an agency under the Act has been refused may apply to the Ombudsman for a review of that decision. A person may also ask the Ombudsman to review the following types of decision:

- » a determination to charge for the provision of information (in relation to the amount of the charge)
- » a determination to provide information relating to the person's personal or business affairs to another person
- » a determination not to amend personal information in respect of the person.

The Ombudsman may confirm, vary or reverse an agency's determination under the FOI Act, and there is a right of appeal to the District Court against an Ombudsman decision.

The Ombudsman provides occasional training on the role and functions of the office, and on the application of the FOI Act. There is a provision requiring the Minister administering that Act to consult with the Ombudsman in relation to training for agencies about their obligations under the Act.

Whistleblowers Protection Act 1993

The main function of the Ombudsman under this Act is to receive and investigate ‘public interest information’ as described under the Act, where the information relates to public officers (other than police officers or members of the judiciary).

Local Government Act 1993

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. In 2012 the *Independent Commissioner Against Corruption Act* (the ICAC Act) amended the Local Government Act to expand the role of the Ombudsman. These amendments, inter alia, refer to a new mandatory Code of Conduct for council members, and to new Ombudsman powers to recommend sanctions for breaches of council member obligations

Independent Commissioner Against Corruption Act 2012

The ICAC Act establishes the Independent Commissioner Against Corruption (‘the Commissioner’) and the Office for Public Integrity (OPI). The Commissioner’s function is to identify investigate and refer for prosecution corruption in public administration and as well to assist inquiry agencies and public authorities to identify and deal with misconduct and maladministration in public administration. To that end, the Commissioner must give directions and guidelines to inquiry agencies, public authorities and public officers in regard to reporting those issues. The Ombudsman is identified as an inquiry agency in the ICAC Act.

There is a requirement for the Ombudsman to advise OPI and/or ICAC about action the Ombudsman has taken in relation to a matter that has also been referred to him.

POWERS

For the most part, the powers available to the South Australian Ombudsman are comparable to those available to the offices in other jurisdictions.

In carrying out an investigation, the Ombudsman assesses administrative action against the requirements of s 25(1) of the Act. This section requires the Ombudsman to take action if the Ombudsman is of the opinion that the relevant administrative action was:

- » contrary to law
- » unreasonable, unjust, oppressive, or improperly discriminatory
- » in accordance with a rule of law or a provision of an enactment or a practice which is or may be unreasonable, unjust, oppressive, or improperly discriminatory
- » done in the exercise of a power or discretion, and was so done for an improper purpose or on irrelevant grounds or on the basis of irrelevant considerations
- » done in the exercise of a power or discretion, and the reasons for the decision were not, but should have been, given
- » based wholly or partly on a mistake of law or fact
- » wrong.

The Ombudsman may attempt at any time to deal with a matter by conciliation, and there is a power to direct an agency to refrain from performing any actions whilst an investigation is underway.

In carrying out an investigation, the Ombudsman may exercise the powers given to a Royal Commission under the *Royal Commissions Act 1917* (SA). These include the power to hold public or private hearings, to control publication of proceedings, to summon witnesses to give evidence and produce documents, and to examine them on oath.

There is a specific power of entry and inspection conferred by the Ombudsman Act, and that Act also makes it an offence to obstruct an Ombudsman’s investigation. If an investigation uncovers evidence of any breach of duty or misconduct by an agency staff member, the Ombudsman must report it to the principal officer of the relevant agency.

As in most jurisdictions, there are a number of options at the conclusion of an investigation. These range from informal resolution of the matter with the agency, through to the laying of a formal report before both Houses of Parliament.

There is an obligation imposed by s 22 of the Ombudsman Act for secrecy to be maintained throughout an investigation, and it is an offence to breach this requirement. Once an investigation is completed, there is an obligation to inform a complainant of the result (s 27). Further, if the Ombudsman considers it to be in the public interest or the interests of an agency, a report on the completed investigation may be published in such manner as the Ombudsman thinks fit (s 26).

Return to Work Act 2014 responsibilities

Under the *Return to Work Act 2014* the Ombudsman will, from 1 July 2015, be able to receive and investigate complaints about the administration of workers compensation claims. The complaints may relate to breaches of the Statement of service standards outlined in the legislation and to worker right of access to claims files.

INTERNAL STRUCTURE AND FUNCTIONS

The Ombudsman is assisted by a Deputy Ombudsman and the office is divided into three main teams – Administration, General Investigations and Freedom of Information, plus the additional functions of Administrative Improvement and Information Sharing Guidelines. As at April 2015, there are eighteen full time positions in the office. Thirteen of the employees are females. Five are males.

Administrative Improvement

In 2013 Ombudsman SA created the full time position of Manager Administrative Improvement. The Manager's responsibilities formally bring together previous ad hoc arrangements to conduct administrative audits under section 14A of the Ombudsman Act. The position also has responsibility for post investigation and audit follow-up of progress and completion of recommendation actions by agencies.

Recent Ombudsman SA audits, and recommendations implementation reports, involving various teams within Ombudsman SA, have included:

- » *Valuing Complaints* – an audit of complaint handling in SA councils – November 2011
- » An audit of prisoner complaint handling in the SA Department for Correctional Services – June 2012
- » *In the Public Eye* – an audit of the use of meeting confidentiality provisions of the LGA 1999 in SA councils – November 2012
- » *Putting It Right* – a report on implementation of the Ombudsman's recommendations by agencies for the period 1 July 2009 to 31 March 2013 – June 2013
- » Recommendations Implementation Report – *In the Public Eye* – April 2014
- » An audit of state government departments' implementation of the *Freedom of Information Act 1991* (SA)
- » An audit of state government agencies' complaint handling – November 2014

Administrative Improvement (Education)

In 2014 Ombudsman SA received funding from government for the purposes of responding to public concerns about the way some complaints from parents were being managed in the Department for Education and Children's Services (DECD).

The full time position of Manager Administrative Improvement (Education) was created to lead, coordinate and manage all education matters within the Ombudsman's jurisdiction relating to DECD and other agencies. The Manager conducts complex investigations, conciliations and audits and contributes to systems for complaint handling and resolution capacity across DECD and related agencies.

Information Sharing Guidelines (ISG)

In 2013 the South Australian Cabinet directed that the scope of the *Information Sharing Guidelines for promoting the safety and wellbeing of children, young people and their families* should be broadened to include information sharing for all vulnerable population groups, including all adults, irrespective of their status as parents or caregivers, where there are threats to safety and wellbeing.

It was also decided to relocate responsibility for the ISG to Ombudsman SA. A full time Principal Advisor position manages the ISG within Ombudsman SA. This decision enables service providers to apply the expanded guidelines, the *Information sharing guidelines for promoting safety and wellbeing*, to *all* clients with whom they work and aligns information sharing practice across both adult and child services. To comply with this directive it has been necessary to update the ISG. That work is now completed.

The role of the SA Principal Advisor Information Sharing is to lead the state wide promotion and implementation of the ISG across state government agencies and non-government organisations, to provide advice about appropriate information sharing policy and practice, and to report on systemic issues arising from application of the ISG.

ACCESSIBILITY

Complaints can be made to Ombudsman SA in writing, by phone, or by using the online complaints form. There is a quick link on the website to allow people to check whether their matter may be within the Ombudsman's jurisdiction. This provides advice to the public under 28 'prompt' categories to check likely jurisdiction and refer people to other bodies such as the Commissioner for Consumer Affairs or the Training Advocate.

The Ombudsman SA website provides a wealth of information to the public about the Ombudsman's services, including advice on the Ombudsman's powers, the complaint process, whistleblower protection and Ombudsman SA operational policies.

Ombudsman SA promotes service principles. If a complaint falls within the Ombudsman's jurisdiction we will, in normal circumstances:

- » provide an accessible and timely service, with equal regard for all people with respect for their background and circumstances
- » provide impartial and relevant advice and clear information about what we can and cannot do
- » provide timely, impartial and fair investigation of complaints
- » keep people informed throughout the investigation of a complaint
- » provide concise and accurate information about any decisions or recommendations made and provide reasons wherever possible.

There is no comprehensive data available to accurately describe the complaint population accessing Ombudsman SA services. One cohort, prisoners in SA jails, accounted for 16.5% of all complaints in 2013-2014. Another visible cohort is complaints by local government council members against other council members, on matters such as conflict of interest or code of conduct allegations. These may approach approximately 15% of total complaints received. A third visible cohort is public housing tenants, who made up approximately 10% of all complainants to Ombudsman SA in 2013-2014.

WORKLOAD AND STATISTICS

Ombudsman SA workload, 2011-2014

	2011-12	2012-13	2013-14
Approaches	9,690	11,909	10,995
Complaints to Ombudsman	3,457	3,278	3,090
Freedom of Information reviews	203	139	116
Total matters (i.e. Ombudsman complaints and FOI reviews)	3,660	3,417	3,206

PUBLICATIONS

The Ombudsman annually publishes a report to Parliament (the Annual Report) and periodically publishes papers of speeches. In addition there are several brochures distributed which give basic information about the Ombudsman.

The Ombudsman publishes all reports from audits conducted under s 14A of the Ombudsman Act. In addition, major investigations, including 'own initiative' investigation reports, and reports of recommendations implementation are published, and many are tabled in the South Australian Parliament.

Details of these publications are available on the website www.ombudsman.sa.gov.au.

LITIGATION

City of Salisbury v Biganovsky (1990) 54 SASR 117

In this case it was held that the word 'practice' in s 25(2)(c) of the Act is not synonymous with 'policy', and that therefore the Ombudsman has no jurisdiction to investigate matters of policy.

Smith v The State of South Australia [2001] SASC 356 (30 October 2001).

A complainant sought to take legal action alleging (inter alia) that the Ombudsman had breached s 18 of the Ombudsman Act by denying him natural justice. He was unsuccessful in attempting to persuade the Supreme Court to permit amendment of his statement of claim.

Rana v State Ombudsman of South Australia [2004] HCA Trans 480 (19 November 2004)

This case concerned an application for the issue of subpoenas against the South Australian Ombudsman in connection with a dispute between the applicant and the Flinders University of South Australia. The subpoenas had been set aside because the Ombudsman Act, ss 22 and 30(2), respectively directed the Ombudsman not to produce the subpoenaed documents, and stated that evidence in the principal proceedings could not be required. The applicant unsuccessfully sought leave to argue before the High Court that these provisions of the Ombudsman Act are inconsistent with federal law.

Petrovski v Dolling [2013] SADC 27 (5 March 2013)

This case concerned an alleged failure by an elected member of the District Council of Barunga West to declare a conflict of interest in relation to an item of business before the council pursuant to the *Local Government Act 1999*. The Court found that the Act is not about 'conflicts of interest at large'. The disclosure requirement is confined to disclosure of the type of interest in a matter described in Act.

Petrovski v Pain [2013] SADC 6

This case concerned an alleged failure by an elected member of the Wakefield Regional Council to declare a conflict of interest in relation to two matters before the council. These failures were found to be contrary to the *Local Government Act 1999*. The Court reprimanded the defendant and emphasised the importance of the role of elected members and their responsibility to properly discharge their public duties in relation to conflict of interest.

City of Port Adelaide v Bingham [2014] SASC 36

The complaint and Ombudsman investigation concerned the licencing of a company to transfer and dispose of tyres. A judicial review of the Ombudsman's report concluded that the finding, that the relevant administrative act was wrong within the meaning of section 25(1)(g) of the Ombudsman Act, was tainted by Wednesbury unreasonableness. The Ombudsman's finding that there had been a breach of the council's procurement policy was overturned.

SPECIAL PROJECTS

Currently the Office is not undertaking any special projects.

OFFICE ADDRESS AND CONTACT DETAILS

Street address: State Ombudsman
Level 9, 55 Currie Street
Adelaide South Australia 5000

Mailing address: State Ombudsman
PO Box 3651
Rundle Mall South Australia 5000

Web address: www.ombudsman.sa.gov.au
Email address: ombudsman@ombudsman.sa.gov.au

General enquiries: (08) 8226 8699
Toll free: 1800 182 150 (outside metropolitan area)

TASMANIAN OMBUDSMAN

ESTABLISHMENT

The Office of the Tasmanian Ombudsman was established by the *Ombudsman Act 1978*.⁹ The Office commenced operation in September 1979.

OMBUDSMAN

There have been nine Tasmanian Ombudsmen appointed since the Office started operating in 1979:

- 1979 – Mr Charles Richard (Dick) Woodhouse
- 1985 – Mr Roger C Willee
- 1989 – Mr Neil CL Batt
- 1991 – Mr Ronald FX Green
- 1996 – Mr Damon C Thomas
- 2001 – Mrs Janine G O’Grady
- 2005 – Mr Simon N Allston
- 2012 – Mr Leon Atkinson-MacEwen
- 2014 to present – Mr Richard Connock

RELATIONSHIP TO GOVERNMENT AND PARLIAMENT

Since July 2007 the Office of the Ombudsman has been treated as a separate agency within the Tasmanian State government, to reinforce its independence. Prior to that time, it was an operational unit within the Department of Justice.

The Ombudsman is appointed by the Governor, on the recommendation of the Attorney-General, who is the Minister who carries responsibility for the administration of the Ombudsman Act. Appointment is for a period of no more than five years, and is renewable. The Ombudsman may only be removed from office by the Governor on addresses from both Houses of Parliament.

The Ombudsman reports to the Parliament on an annual basis, and as occasion may require. Since the commencement of the *Integrity Commission Act 2009* on 1 October 2010, there has been a Joint Standing Committee on Integrity which was established by that Act. The Committee can, *inter alia*, monitor and review the performance of the functions of an integrity entity and report to both Houses of Parliament. The Ombudsman is an integrity entity as defined by the Integrity Commission Act. The Ombudsman also appears before Estimates Committees of the Parliament each year and addresses questions about the work and performance of the Office in that setting.

⁹ Unless otherwise noted, are all references to section numbers in this chapter are to the *Ombudsman Act 1978*.

JURISDICTION

Tasmania is the smallest State in Australia, with a population of approximately 500,000. The State has a two-tiered political system, with both State and local government. The Office of the Ombudsman handles complaints relating to each of these tiers. The jurisdiction with respect to the State government extends to a wide range of governmental entities, including State-owned companies and the University of Tasmania.

The Ombudsman has a wide range of functions under legislation other than the Ombudsman Act, as detailed under the next heading. Since the commencement of the *Health Complaints Act 1995*, which occurred in 1997, the person who has held the role of Ombudsman has also been the Health Complaints Commissioner for the State.

The Ombudsman's jurisdiction extends to the following public authorities:

- » government departments
- » Tasmania Police
- » local councils
- » any body or authority that is constituted or established by or under an Act for a public purpose
- » any body or authority whose members or a majority of whose members are
- » appointed by the Governor or a Minister
- » any person appointed to an office by the Governor or a Minister under an Act
- » government business enterprises
- » State-owned companies
- » University of Tasmania.

The Ombudsman has jurisdiction over TasWater which is the corporation responsible for water and sewerage services throughout the State.

The Ombudsman's jurisdiction does not extend to:

- » judges
- » magistrates
- » the Director of Public Prosecutions
- » the Solicitor-General
- » the Auditor-General
- » action taken by a tribunal in the performance of its decision-making or
- » determination-making functions.

A full copy of the Ombudsman Act can be found at <http://www.thelaw.tas.gov.au/>.

The ambit of the Ombudsman's jurisdiction can principally be determined from sections 4 and 12 of the Act and Schedule 2.

FUNCTIONS

The functions of the Ombudsman arise under a number of statutes, and are best described by dealing with each of these in turn.

Ombudsman Act 1997

The core work of the Ombudsman under this Act involves the handling of complaints from members of the public about administrative action taken by or on behalf of public authorities. The Ombudsman also has power under the Act to carry out investigations into such action on his or her own motion, or on receipt of a reference from the Governor, from either House of Parliament, from a committee of either House, or from a joint committee of both Houses.

Own motion investigations have been relatively infrequent in the past. A major investigation into the State's prison system and prison hospital was undertaken in 2000-2001 and another major investigation into the Tamar Unit and behavioural management program at Risdon Prison was completed in 2010. There have been several other more minor own motion investigations conducted in recent years.

Energy Ombudsman Act 1998

Under this legislation, the Ombudsman receives complaints relating to the sale and supply of gas or electricity by entities licensed for this purpose under the *Electricity Supply Industry Act 1995* or the *Gas Act 2000*. A complaint may also be made about services provided by such entities. The Act also gives the Ombudsman the function of assisting energy entities to develop procedures to resolve complaints. A distinct feature of the jurisdiction given to the Ombudsman under this Act is the power to make an award which is binding on the energy entity concerned.

Right to Information Act 2009

As of July 1 2010, the *Right to Information Act 2009* (RTI Act) replaced the *Freedom of Information Act 1991* (the FOI Act) [repealed].

The RTI Act gives any person a legally enforceable right to be provided with information in the possession of a public authority or a Minister, provided that it is not exempt information (s 7). The RTI Act promotes the proactive release of information by public authorities and Ministers, and refers to four types of disclosure

- » required disclosures, which are disclosures required by law such as annual reports
- » routine disclosures, which are those made by a public authority in relation to information it decides may be of public interest
- » active disclosures, which are disclosures in response to a request made other than under the RTI Act, such as an informal request for information by telephone
- » assessed disclosures, which are disclosures made in response to a formal request under the RTI Act for information in the possession of a public authority or Minister that is not otherwise available.

The responsibilities of the Ombudsman under the Act include issuing and maintaining Guidelines, and a Manual for users. The Ombudsman can also provide oral or written advice on the operation of the Act to a public authority or Minister, either on the Ombudsman's own motion or on the request of a Minister or the principal officer of the authority.

The Ombudsman is the review authority under the RTI Act. Reviews relate to applications for assessed disclosure. Mostly they occur at the request of the applicant for assessed disclosure, but review rights are also given by the Act to third parties who do not want information released.

The Act gives various grounds for seeking review, but one important ground is the failure of the public authority or Minister to notify the applicant for assessed disclosure of the outcome of the application within the time required by the Act. There are various grounds upon which review by the Ombudsman can be sought and these are set out in Part 4 of the RTI Act.

If a decision on the application for assessed disclosure was made by a delegated officer in a public authority, an applicant needs to make an application for internal review to the principal officer of the authority before asking the Ombudsman to carry out a review.

The Act gives the Ombudsman wide powers in relation to the conduct of reviews, including the power to give directions to the parties, and to promote settlement of a review application. The Ombudsman is obliged to use these powers to resolve an application for review as soon as practicable after its receipt. Where the application cannot be resolved, the Ombudsman must ensure that a decision on the review is made as soon as practicable. The Ombudsman will normally only proceed to make a formal decision on an application for review when it is clear that there is no other way of resolving the issues between the parties.

Public Interest Disclosures Act 2002

This is the State's 'whistleblower' legislation. The main functions of the Ombudsman under this Act are:

- » publishing guidelines to assist public bodies in interpreting and complying with the Act
- » reviewing written procedures established by public bodies
- » determining whether a disclosure received by the Ombudsman warrants investigation
- » investigating disclosures
- » monitoring investigations which have been initiated by public bodies or which have been referred to public bodies
- » collating and publishing statistics about disclosures handled by the Ombudsman.

Personal Information Protection Act 2004

This is the State's privacy legislation. A complaint may be made to the Ombudsman under this Act in relation to an alleged breach by a personal information custodian of a personal information protection principle arising under the Act. The Act commenced in 2005 but the Office has received very few complaints under this legislation, for example in the 2012-13 reporting year we had five complaints and in 2013-14 complaint numbers were again in single figures.

Legislation relating to Police Functions

The Ombudsman has audit functions under the *Telecommunications (Interception) Tasmania Act 1999*, the *Police Powers (Surveillance Devices) Act 2006*, and the *Police Powers (Controlled Operations) Act 2006*. Under each of these Acts, as implemented, the Ombudsman is required to audit compliance by Tasmania Police with recordkeeping requirements in the Act.

Health Complaints Act 1995

Since 1997 the Ombudsman has held a parallel appointment as Health Complaints Commissioner. The principal role under that Act is to investigate complaints about health service providers (registered and unregistered) in both the public and private sectors. The Commissioner may also act on his or her own motion under the Act, investigating any matter relating to the provision of health services in the State.

Official Visitors

The Prison Official Visitors Scheme and Mental Health Official Visitors Scheme are both administered from the Ombudsman's Office with the support of a part-time manager and a part-time administration officer.

The Prison Official Visitors monitor and report on the treatment and conditions of prisoners and detainees in the State's prisons. They also assist prisoners to raise and resolve concerns and complaints. The Ombudsman is currently the Coordinator of the Official Visitors Scheme under the *Corrections Act 1997*.

The *Mental Health Act 2013* commenced on 17 February 2014 and maintains the role of official visitors as in the previous legislation and established the position of Principal Official Visitor, which is held by the Ombudsman. Official visitors visit approved facilities, including the secure mental health unit adjoining Risdon prison, at least once a month. In addition they may visit premises from which patients are provided with services and monitor the adequacy and quality of approved facilities. Official visitors refer complaints and suspected contraventions of the Act to the Principal Official Visitor.

Education and Training

The Ombudsman has provided occasional training in the past on the application of the *Right to Information Act 2009* and its predecessor (the FOI Act), however, constraints on resources have limited the Office's ability to fulfill training functions.

POWERS

The Ombudsman Act empowers the Ombudsman to investigate or conciliate complaints about administrative action taken by or on behalf of a public authority. The Ombudsman may also investigate such administrative action on his or her own motion, in response to a reference from the Governor or a reference emanating from the Parliament.

In carrying out an investigation, the Ombudsman assesses administrative action against the requirements of s 28(1) of the Ombudsman Act. This section requires the Ombudsman to take action if the Ombudsman is of the opinion that the relevant administrative action was:

- » contrary to law
- » unreasonable, unjust, oppressive, or improperly discriminatory
- » in accordance with a rule of law or a provision of an enactment or a practice which is or may be unreasonable, unjust, oppressive, or improperly discriminatory
- » taken in the exercise of a power or discretion, and was so taken for an improper purpose or on irrelevant grounds or on the basis of irrelevant considerations
- » a decision that was made in the exercise of a power or discretion, and the reasons for the decision were not, but should have been, given
- » based wholly or partly on a mistake of law or fact
- » wrong.

The Ombudsman has a number of options at the conclusion of the investigation. These range from informal resolution of the matter with the principal officer of the agency through to the laying of a formal report before both Houses of Parliament. The Ombudsman has a general power under s 30 of the Ombudsman Act to lay a report before each House of Parliament on any matter arising from the performance of the Ombudsman's functions.

Most complaints made to the Ombudsman under the Ombudsman Act are resolved through preliminary inquiries under s 20A, with experience being that formal investigation is rarely necessary.

In carrying out an investigation, the Ombudsman may exercise the powers given to a Commission of Inquiry under s 8 and Part 3 of the *Commissions of Inquiry Act 1995*. These include the power to hold public hearings, to control public reporting, to summon witnesses to give evidence and produce documents, to apply for a warrant from a magistrate to enter and search premises, vehicles and vessels, to take possession of evidence, and to examine witnesses on oath.

INTERNAL STRUCTURE

The Ombudsman is also the Health Complaints Commissioner and the office is divided into teams as follows:

- » Ombudsman
- » Right to Information
- » Health complaints
- » Energy complaints
- » Administrative/corporate.

Staffing levels are currently in a state of flux due to efficiencies required by government. Across all teams there are 21 staff, 8 of those being full-time and the rest part-time. There are six males and fifteen females.

WORKLOAD AND STATISTICS

The following data has largely been taken from the office's annual reports which can be seen on the three websites, details of which are given in our contact details. Prior to 2008/2009 no distinction between enquiries and complaints were noted in the records of FOI and energy cases. Post 2008/2009 FOI Act and RTI Act enquiries were recorded in the Ombudsman data.

Complaint data (finalised cases, by jurisdiction)

Year	Ombudsman	FOI/RTI	Health	Energy	Total
2005/06	575	57	290	255	1177
2006/07	370	79	238	262	949
2007/08	420	63	260	292	1035
2008/09	520	59	244	328	1151
2009/10	592	77	216	422	1307
2010/11	664	51	275	454	1444
2011/12	916	47	294	515	1772
2012/13	862	47	360	469	1738
2013/14	766	32	342	474	1614

Case data (finalised cases and enquiries, by jurisdiction)

Year	Ombudsman	FOI/RTI	Health	Energy	Total
2005/06	1000	57	587	255	1899
2006/07	882	79	536	262	1759
2007/08	1048	63	735	292	2138
2008/09	2248		410	155	2813
2009/10	3510		484	262	4256
2010/11	2953		418	203	3574
2011/12	2286		426	265	2977
2012/13	1757		469	260	2486
2013/14	1968		397	260	2625

Note:

From 2008/09 a distinction between enquiries and complaints was recorded in the Energy jurisdiction.

From 2008/09 FOI Act/RTI Act enquiries were recorded in the Ombudsman enquiries.

Case data includes Arunta (prison) pranks calls and out of jurisdiction enquiries.

PUBLICATIONS

The publications produced by the office can be seen on its three websites, details of which are at the end of this chapter. The Office does not have the resources to produce extensive educational and advisory documents of the kind produced by Ombudsman offices elsewhere.

The principal publications from the Office each year are the annual reports, being the Health Complaints Annual Report and the Ombudsman Annual Report which incorporates a section on the operations of the Energy Ombudsman jurisdiction. The websites have case summaries and reports of investigations, enquiries and decisions made. There are also Guidelines issued pursuant to the RTI Act and the PID Act as well as some general guidelines.

LITIGATION

There have been only two judicial decisions in Tasmania in relation to the jurisdiction of the Ombudsman. The first is *Anti-Discrimination Commissioner v Acting Ombudsman* [2002] TASSC 24. The appeal against this decision was a case of the same name, numbered [2003] TASSC 34, reported at (2003) 11 Tas R 343.

The case involved a challenge by the Anti-Discrimination Commissioner to investigation by the Ombudsman into a complaint made against her by the Director of Public Prosecutions. The principal submission made was that the Ombudsman was confined to investigating maladministration. This submission was rejected.

There was also a matter of judicial review by the Supreme Court in 2010 in relation to a decision made by the Ombudsman under the *Freedom of Information Act 1991*, reported as *Forestry Tasmania v Ombudsman* [2010] TASSC 39. The Hon Kim Booth MHA had applied to Forestry Tasmania for information relating to commercial arrangements between it and Southern Cross Television ("TNT") relating to the "Going Bush" television program. Certain information was released with some material deleted. This was claimed to be exempt on the basis that it fell within ss 31 and 32 of the FOI Act, being information of a business, commercial or financial nature that would be likely to expose TNT or the agency to competitive disadvantage. Mr Booth requested an internal review of that decision which was upheld. In May 2009, Mr Booth applied to the Ombudsman for a review. On 10 March 2010, the Ombudsman concluded that none of the information at issue was exempt from release and that it should be released to Mr Booth in response to his request. The Supreme Court granted the application for review, set aside the Ombudsman's determination, and remitted the matter for further consideration. A second decision by the Court dealt with costs.

SPECIAL PROJECTS

Current resourcing does not permit any particular projects.

OFFICE ADDRESS AND CONTACT DETAILS

Street address:	Tasmanian Ombudsman Ground floor, 99 Bathurst Street Hobart Tasmania 7000
Mailing address:	Tasmanian Ombudsman GPO Box 960 Hobart Tasmania 7001
Web address:	www.ombudsman.tas.gov.au www.healthcomplaints.tas.gov.au www.energyombudsman.tas.gov.au
Email address:	ombudsman@ombudsman.tas.gov.au
General enquiries:	(03) 6166 4566
Toll free:	1800 001 170



COMMISSIONER FOR PUBLIC RELATIONS OF THE KINGDOM OF TONGA

ESTABLISHMENT

The Office of the Commissioner for Public Relations was established with the passage of the *Commissioner for Public Relations Act 2001* (hereinafter referred to as “the Act”) on 9 August 2001.

The office commenced operation in August 2001. The Office is the equivalent of Ombudsman offices elsewhere. Work has been carried out to amend the current Act and this includes amending the name of the Act to be renamed as the Ombudsman Act.

OMBUDSMAN

The Commissioner is appointed by Cabinet for a term of five years but may be reappointed. There are no prescribed eligibility requirements for the Commissioner but the Commissioner is required by law to resign from office upon attaining the age of 72 years.

There have been three Commissioners to date:

2001 – Mr Siaosi Taimani ‘Aho

2005 – Mr Penisimani T Fonua

2014 – ‘Aisea Havea Taumoepeau SC

Commissioner Taumoepeau, brings to the Office 30 plus years of experience and knowledge of Government. He is a former Cabinet Minister, former Minister for Justice & Attorney-General, and a former Solicitor-General. After leaving Government some 10 years ago, he became a Private Legal Practitioner both in Tonga and New Zealand.

RELATIONSHIP TO GOVERNMENT AND PARLIAMENT

The Commissioner is accountable to Cabinet which is the body that appoints him, and he reports to Cabinet through the Prime Minister.

The officers and employees who are necessary to enable the Commissioner to perform his duties within the office of the Commissioner for Public Relations are employed by the Tonga Civil Service.

A Chief Executive Officer, Linda S. Folaumoetui, was appointed by the Public Service Commission on 5 March 2015. One of her functions is to deal with the administration of the office of the Commissioner for Public Relations.

JURISDICTION

The Commissioner is empowered to investigate any decision, recommendation or any action carried out or omitted by any department or organization or any of its officers or employees. This includes a Minister of the Crown or Governor.

This means the Commissioner can investigate complaints laid by any person or upon his own motion the following bodies:

- » Any government ministry
- » Department or Organisations (listed below):
 - Tonga Broadcasting Commission
 - Tonga Communications Corporation
 - Tonga Electricity Power Board
 - Tonga Water Board
 - National Reserve Bank of Tonga
 - Tonga Development Bank
 - Frisco Hardware Limited
 - Home Gas Limited
 - International Dateline Hotel Company Limited
 - Leiola Duty Free Limited
 - Primary Products Export Limited
 - Royal Tongan Airlines Limited
 - Shipping Corporation of Polynesia Limited
 - Tongan Corporation
 - Tonga Investment Limited
 - Tonga Timber Limited
 - Retirement Fund Board
 - Ports Authority
 - Talamahu Market Authority.

It must be noted that this list is from a 2001 Schedule under the Act and includes organisations that no longer exist. There has been a Bill passed in Parliament in 2014 with amendments to the Act which includes amendments to the Schedule.

Upon the Bill receiving royal assent the new Schedule provides that the organizations to which the Act applies are:

- » Tonga Communications Corporation
- » Tonga Post Limited
- » Tonga Forest Products Limited
- » Tonga Export Quality Management Limited
- » Friendly Islands Shipping Agency
- » Tonga Development Bank
- » Waste Authority Limited
- » Tonga Broadcasting Commission
- » Tonga Water Board
- » Tongatapu Market Limited
- » Tonga Assets Managers & Associates Limited
- » Tonga Power Limited
- » Ports Authority Tonga
- » Tonga Airports Limited
- » Tonga Cable Limited
- » National Reserve Bank of Tonga
- » National Retirement Benefits Fund
- » Retirement Fund Board
- » Tonga Tourism Authority

- » Tonga Investment
- » Sea Star Limited
- » International Dateline Hotel Company Limited
- » A Community Water Supply Committee under the Public Health Act or Regulations under that Act
- » A credit union under the Credit Union Act
- » A Co-operative Society under the Co-operative Society Act.

Areas that are excluded from the Ombudsman's jurisdiction are decisions, recommendations, acts or omissions of:

- » Cabinet
- » Privy Council
- » Legislative Assembly
- » Judiciary/Judicial Proceedings
- » Person in a trustee capacity
- » Person acting as a legal adviser
- » Person who is a member of the Tonga Defence Services or relating to the Tonga Defence Services.

The Prime Minister may also, with the consent of the Commissioner, refer to the Commissioner for investigation and report any matter, other than a matter concerning a judicial proceeding, which the Prime Minister considers should be investigated by the Commissioner.

If a question arises whether the Commissioner has jurisdiction to investigate any case or class of case under the Act, the Commissioner may apply to the Supreme Court for a declaratory order to determine the matter.

The Act also specifies that a letter appearing to be written to the Commissioner by a person in custody or by any patient of any hospital within the meaning of the *Mental Health Act 2001*, must be forwarded immediately, unopened, to the Commissioner.

FUNCTIONS

The core functions of the Commissioner under the Act include the power –

- » to investigate any person's complaint against a decision, recommendation made or any act done or omitted in relation to a matter of administration in a department or organisation as listed in the Schedule;
- » examine complaints that have been made to him and determine whether the complaint should be investigated or not;
- » carry out investigation hearings which are deemed to be judicial proceedings;
- » make a report with recommendations to the relevant Department or organisation as to how the matter complained of may be addressed or resolved;
- » make a report annually to the Prime Minister on his functions and this report shall be tabled in the Legislative Assembly.

The Commissioner does not play any additional roles or functions under any other legislation.

POWERS

The powers of the Commissioner follow the standard pattern for Ombudsman offices in the region.

Prior to initiating any investigation, the Commissioner has a legal obligation to inform the chief executive of the Department or organisation of his intention to make an investigation.

All investigations carried out by the Commissioner shall be carried out privately.

The Commissioner has the discretion to determine whether information is to be obtained from any person the Commissioner thinks is appropriate or whether an inquiry is required or not.

The Commissioner may require any person to give any information relating to any matter that is being investigated by the Commissioner or to produce any documents or papers or things which relate to any such matter which may be in the possession or under the control of that person. This applies whether or not the person is an officer, employee, or member of any department or organisation, and whether or not such documents, papers, or things are in the custody or under the control of any department or organisation.

The Commissioner can also summon and examine on oath:

- » any person who is an officer or employee or member of any department or organisation to which this Act applies
- » any complainant, or
- » with the prior approval of the Attorney-General in each case, any other person who in the Commissioner's opinion is able to give relevant information.

The Commissioner is required, if, during or after any investigation there is sufficient evidence of any significant breach of duty or misconduct on the part of any officer or employee of any department or organisation, to refer the matter to the appropriate authority.

At the conclusion of an investigation the Commissioner must report their opinion and reasons to the appropriate department or organisation, and may make such recommendations as they think fit if the Commissioner is of the opinion:

- » that the matter should be referred to the appropriate authority for further consideration
- » that the omission should be rectified
- » that the decision should be cancelled or varied
- » that any practice on which the decision, recommendation, act, or omission was based should be altered
- » that any law on which the decision, recommendation, act, or omission was based should be reconsidered
- » that reasons should have been given for the decision, or
- » that any other steps should be taken.

In such cases the Commissioner may request the department or organisation to notify them, within a specified time, of the steps that department or organisation proposes to take to give effect to the recommendations. In such cases the Commissioner must also send a copy of their report or recommendations to the Minister, Governor or Chairman concerned.

If within a reasonable time after the report is made no action is taken which is adequate or appropriate, the Commissioner may send a copy of the report and recommendations to the Prime Minister who is required to table the matter in the Cabinet.

INTERNAL STRUCTURE

The current structure of the Office of the Commissioner for Public Relations is as follows. The Commissioner is assisted by the following staff:

- » newly appointed CEO, and a former Solicitor-General of Tonga, Mrs Linda S. Folaumoetu'i Acting Deputy Secretary
- » Senior Investigations Officer (who is currently holding the position of Acting Deputy Secretary, leading investigations and assisting with administration work)
- » Investigation Officer
- » Assistant Secretary as Personal Assistant to the Commissioner/Ombudsman
- » Office Administrator
- » Computer Assistant
- » Daily Labourer
- » Driver and
- » Cleaner.

NB: Recruitment of new investigation and administration staff is under way. However, the Commissioner has been given the green-light to make submissions to Cabinet for approval to regularise its own administrative processes.

There are 9 employees in the Commissioner's Office in which there are 5 females and 4 males.

ACCESSIBILITY

How to Access the Office

Complaints can be lodged in writing to the Office at its physical address: Office of the Commissioner for Public Relations, Lavinia Road, NUKU'ALOFA or by mail to P.O. Box 847, Nuku'alofa, Tonga

Access can be through telephone to (676) 26 980; fax: (676) 26 982.

The Office will soon set up an electronic address whereby the public can access our service via emails.

Education/Awareness

The Office uses radio and television programs, and will undertake introductory rounds with Government Ministries and agencies. Work is under way to print handouts as educational materials.

Demography

Tongatapu hold the largest population of about 70,000 people, Vava'u at 20,000, Ha'apai at 8,000; 'Eua with 4,000 and the northernmost Niuaas at 2,000. So far the office has received complaints from every major island groups, the most complaints being from Tongatapu.

WORKLOAD AND STATISTICS

Year	Inquiries and complaints	Complaints (in jurisdiction)	Complaints investigated
2004–2005	112	41	22
2006–2007	121	19	12
2007–2008	141	93	8
2008–2009	132	38	7
2009–2010	88	32	9
2010–2011	44	16	8
2011–2012	56	19	3
2012–2013	10	3	3
2013–2014	173	48	18

During 2004–2013, the Commission finalised 72 complaints against Government agencies, the majority of which were finalised by way of preliminary enquiries and investigations.

In 2014 alone 13 cases were successfully finalised, all were subject of a full investigation – a first major achievement for the office.

The most common reason for not deciding to investigate a complaint was that the person had not first tried to resolve their problem with the relevant agency. A number of other complaints fell outside the jurisdiction of the Commission (such as complaints about employment conditions or discipline of Government employees) and were referred to other review agencies that had jurisdiction over these matters.

In most of the complaints investigated the Commission was able to resolve the issues quickly and informally. The Commission has a target of finalising 90% of complaints within three months. This target was achieved for the 2006–07 financial year, and again in 2014.

Over the last year the Commission noted that more agencies responded in a timely and positive manner than compared with previous years. There was an increased willingness to respond to Commission findings and recommendations for remedy.

The most common remedies included an explanation to the complainant of the decision, expediting the matter in question, an apology, a review of the decision or recommending changes in administrative policies and procedures.

A recent analysis of the nature of complaints revealed that approximately 75% of the complaints received by the Commission were matters that the agencies concerned should have resolved internally.

The agencies about which the Commission received the most complaints were Police and Education.

PUBLICATIONS

Commissioner for Public Relations publications include:

- » Annual reports for 2002, 2003, 2004, 2005, 2006 and 2007.

LITIGATION

The Commission for Public Relations does not undertake litigation and to date has not been involved in any court cases. The Act excludes the Commission from sharing any information collected in any of its investigation or files for the purpose of court proceedings.

OFFICES AND CONTACT DETAILS

Enquiries/complaints:	Mrs Linda S. Folaumoetu'i, CEO, Office of the Commissioner for Public Relations Mr Pilimisolo L. Tamo'ua Senior Investigation Officer, Office of the Commissioner for Public Relations.
Fax:	(676) 26 982
Postal:	Commission for Public Relations Lavinia Road NUKU'ALOFA TONGA
Phone:	00 (676) 26980 or (676) 26 981
Email:	ptamoua@cpr.gov.to

TUVALU OMBUDSMAN COMMISSION

ESTABLISHMENT

The Ombudsman Commission of Tuvalu was created by the *Leadership Code Act 2008*, however the first Chief Ombudsman was not appointed until 2014.

OMBUDSMAN

The Ombudsman Commission is established under the Leadership Code Act. The Act states that the Ombudsman Commission consists of a Chief Ombudsman, who is the head of the Commission, and two other Ombudsman Commissioners (s 37).

The Chief Ombudsman and Ombudsman Commissioners have different appointment procedures. The Chief Ombudsman is appointed for a five year period by the Head of State, acting on advice from a committee which is chaired by the Prime Minister, and includes the Speaker, Chief Justice, Chairman of the Public Service Commission and the President of the Ekalesia Kelisiano o Tuvalu (Tuvalu Christian Church) (s 40).

Once appointed, the Chief Ombudsman can only be removed by the Head of State acting on advice from this committee, if he or she breaches the Leadership Code or demonstrates misbehavior or an inability to perform properly the functions of his other office or position (s 43). The committee must agree to the recommendation of an independent assessment of the Chief Ombudsman's suitability to continue in his or her position (s 43(c)).

The Ombudsman Commissioners are appointed on a part time basis for up to three years. The appointment is made by the Head of State, acting on the advice of the Public Service Commissioner in consultation with the Chief Ombudsman. The period of appointment and responsibilities are to be specified in the instrument of appointment (s 41).

There are no formal qualifications required of Ombudsman, however they must be of high standing in the community, knowledgeable and appreciative of Tuvalu culture and values, and of demonstrable integrity, competence and ability to discharge their functions without fear or favour (s 42(1)).

A member of Parliament or person holding public office cannot also be appointed Ombudsman, nor can persons who have been declared bankrupt, convicted of a dishonesty offence, or sentenced to a period of 12 months or fined under any other Act during the last five years (s 42(2)).

The current Chief Ombudsman, Sa'aga Teafa, was appointed in August 2014. He is the first Chief Ombudsman appointed under the Leadership Code.

RELATIONSHIP TO GOVERNMENT AND PARLIAMENT

The Chief Ombudsman is an independent statutory appointment, and is not subject to direction or control by any other person or authority (s 47).¹⁰

The Chief Ombudsman is required to produce for Parliament, as soon as reasonably practicable at the end of the financial year, a written report on the performance of the Ombudsman's functions during the financial year. The report must contain the names of Leaders who sought the Ombudsman's clearance or advice, although the information reported must be in general terms and not breach the confidentiality of the leaders (s 58).

¹⁰ However the Ombudsman is not exempt from the directions under the Leadership Code.

JURISDICTION

Under the Leadership Code Act (s 38), the Ombudsman may:

- » enquire into any complaints or allegations of misconduct on the part of any Leader
- » enquire into any defects of administrative practice appearing from any matter being enquired into
- » enquire into any case of alleged or suspected discriminatory practice by a Leader
- » give prior advice on potential breaches of the Leadership Code, and
- » investigate and report on any complaints of any alleged breaches of the Leadership Code.

The Leadership Code is set out in Part 3 of the Leadership Code Act. It includes the values and principles of good leadership and general obligations of leadership. It also includes specific obligations including in relation to:

- » maintaining the traditional and customary roles and practices, insofar as they do not conflict with the Leadership Code
- » declaring gifts received over \$100 and not accepting any loans (financial or otherwise)
- » applying undue influence over another Leader or person holding public office for improper, illegal or other wrongful purpose
- » holding multiple public offices
- » offering, seeking out and accepting a bribe
- » misuse of public assets and funds, and abuse of ex gratia payments
- » disclosing and avoiding conflicts of interest
- » filing annual statements of assets and liabilities.

Leaders are defined in the Leadership Code Act (s 1(42)), and include persons who hold the following positions:

- » Head of State
- » Head of Government
- » Ministers
- » Members of Parliament
- » Judicial officers
- » Members of Kuapule (a body established by the Falekaupule Act)
- » Civil services employed to give political or policy advice to a Minister
- » Statutory office holders
- » Director of Corporations, appointed by the Head of State, Cabinet, Head of Government, Ministers, Parliament a Kuapule or other offices or bodies of Government
- » Traditional leaders who have ex officio legal powers, functions or recognition
- » Any other public service, or officer of a Government or quasi-Government agency, that legislation may declare to be a Leader for the purpose of the Leadership Code
- » Any acting or temporary replacements for, or of permanent deputy to, a Leader
- » Any person holding office of the Ombudsman.

FUNCTIONS

Complaint and own-motion investigations

Under the Leadership Code Act (s 59), the Ombudsman must investigate complaints received about:

- » breaches of the Leadership Code, and
- » by a resident of Tuvalu, against the unfairness of a decision or action made by a public office.

The Ombudsman may also decide to investigate on his own initiative (s 59).

The Ombudsman may only decide not to investigate on the grounds set out in s 63:

- » because the complaint is trivial, frivolous, vexatious or not made in good faith,
- » the complaint has been too long delayed to justify an investigation, or
- » the subject matter of the complaint is outside of the jurisdiction of the Ombudsman or the Commissioner of Police.

The Ombudsman is responsible for conducting the investigation (s 60(3)), unless he decides the alleged breach of the Leadership Code relates to the Ombudsman or his/her associates, then the investigation must be carried out by another body (s 60(2)).

At the conclusion of the investigation, the Ombudsman must provide a report to the Commissioner of Police, where it involves criminal misconduct. Leaders (and any others concerned) must be given an opportunity to provide a response, before the report is provided to the Commissioner of Police (s 60(4)).

If the investigation relates to a complaint about a decision or action of a public office, the Ombudsman is required to give a copy of his report to the Office concerned and to the complainant, after taking their views or comments into consideration (s 65).

The Ombudsman can request the Commissioner of Police investigate a complaint, and in that case, the Police must investigate and conclude that investigation within 60 days, referring the matter to the Public Prosecutor for prosecution or alternatively, advising the Ombudsman if there is insufficient evidence to support a prosecution and the reasons (s 60(4)(b)).

Where the Ombudsman determines that the leader has breached the Leadership Code, he must refer the matter to the Director of Public Prosecutions who is responsible for prosecuting the leader in the Leadership Tribunal (s 66).

The Director of Public Prosecutions must prosecute where there are sufficient grounds or evidence to support the prosecution, unless there is insufficient grounds or evidence to support a prosecution or where the complaint is vexatious, frivolous or trivial (s 68).

Breaches of the Leadership Code are decided by a Leadership Tribunal. The Tribunal also decides appeals made against the Ombudsman's decision (s 49). The Tribunal is made up of a judge and two good standing members of the community, appointed by the Head of State acting on the advice of the Public Service Commission in consultation with the Chief Justice (s 48).

Advice and clearance – breaches of the Leadership Code

The Ombudsman must provide advice, upon request from a Leader, on possible breaches of the Leadership Code (s 51). The Ombudsman is also empowered to provide 'clearance' declaring that in his opinion the Leader would not be breaching the Leadership Code in relation to proposed conduct. Clearance can only be given by the Chief Ombudsman or Acting Chief Ombudsman in writing, and can only relate to conduct that has not yet occurred or commenced.

In providing clearance, the Ombudsman must have regard for:

- » the difficulty of explaining to the average person that giving a clearance would be justified
- » whether the extra benefit, if any, for the Leader would be trivial
- » whether a refusal to grant a clearance would amount in practice to rewarding other Leaders for dishonesty or manipulation of the rules

- » where the clearance requested involves a possible conflict of interest, the difficulty and cost of finding a replacement decision-maker who does not face the same conflict of interest, and
- » the closeness of the relationship between the decision-maker and the associate concerned.

The Ombudsman may also have regard to any other ethical, integrity or Leadership Codes, legislation or standards as he considers appropriate.

A clearance can be revoked by the Ombudsman if in his opinion it is invalid, or valid but mistaken. If the clearance is revoked, a Leader cannot be held to be in breach of the Leadership Code by reason of any conduct he or she engaged in before the clearance was revoked (s 55).

Rulings

The Ombudsman may on his own initiative or at the request of a resident of Tuvalu publish rulings to clarify the meaning or effect of any of the values, principles and obligations of Leadership set out in the Leadership Code (s 50).

Annual statements

Each year, Leaders are required to report to the Ombudsman an annual statement for the preceding year which sets out details of their assets and liabilities, and that of their spouse, dependent children and any trusts – in Tuvalu and abroad (s 33). The details that are to be set out in the annual statements include:

- » land and other property (not including the family home or any liabilities in respect of that home)
- » vehicles
- » income
- » shares and any directorships in companies
- » financial liabilities
- » any assets or liabilities acquired or disposed/discharged during the reporting period.

In addition to receiving these annual statements from leaders, the Ombudsman is required to provide confidential advice and assistance to Leaders as to which matters should be declared in the annual statement (s 34).

The Ombudsman can advise that the Leader disclose certain interests, or detach themselves of that interest, and the Leader must abide by that advice. The Ombudsman can provide advice on request from the Leader, or on their own initiative.

The Ombudsman can investigate and refer for prosecution any Leader who fails to submit their annual report for breaching the Leadership Code. Similarly the Ombudsman may investigate and refer for prosecution those Leader provides false or misleading information in their annual report (s 36).

The Ombudsman is responsible for publishing annually in the official gazette the names and positions of all Leaders and whether or not they have filed their annual report (s 35).

Conflicts of interest

The Ombudsman also receives notifications, from Leaders, who know or suspect they face a possible conflict of interest in relation to some matter (s 29).

The Ombudsman must, as soon as practicable after receiving such a notification, certify that in his judgment, the conflict is not material, or alternatively that is serious and that the Leader should declare that interest and abstain from any decision making in relation to that matter (ss 29, 30). Any certification that a conflict is not material may be revoked by the Ombudsman in writing (s 29(4)).

POWERS

The Ombudsman has the power to require that any person having possession or control of any minutes, records, contracts, documents, books, accounts and other material of Government agencies and quasi-Government agencies that relates and is relevant to an investigation, provide that material to the Ombudsman (s 62).

The Ombudsman may require a person in possession of these materials to deliver that material to the Ombudsman (or the Police or any body that has been allocated an investigation) at a reasonable time and place specified by the Ombudsman (s 62). Where the person fails to comply, the Ombudsman or the Police may request the court to make an order compelling that person to comply (s 62(2)).

INTERNAL STRUCTURE

Currently the Chief Ombudsman is the only member of his office.

ACCESSIBILITY

Complaints about the unfairness of a decision or action made by public office may only be made by residents of Tuvalu (s 59(b)). Complaints about breaches of the Leadership Code may be made by any person (s 60(1)(a)).

A complainant may request, in writing that his or her name not be published (s 61). In this case, their identity can only be disclosed to the Commissioner of Police, Director of Public Prosecution or as permitted by a court order (s 61).

WORKLOAD AND STATISTICS

No statistics were available.

PUBLICATIONS

No publications were available.

LITIGATION

The Ombudsman's rulings on the meaning and effect of the Leadership Code can be subject to judicial challenge to determine whether that ruling was valid, partly, or conditionally invalid or completely invalid (s 50(4)).


The standard of proof in relation to breaches of the Leadership Code, and any valid ruling published by the Ombudsman before the alleged breach occurred or commenced, is a criminal standard (beyond reasonable doubt).

Where the Ombudsman provides clearance to Leader in relation to the Leadership Code, that clearance can be used as a defence to any prosecution for breach of the code. However, the Leader is not immune from other liability in relation to breaches of other laws.

Under the Act, the Ombudsman have immunity from civil, criminal and administrative liability for acts or omissions done in good faith, and without malice or negligence, for the purpose of Leadership Code Act.

OFFICE AND CONTACT DETAILS

Postal	C/O Government of Tuvalu Private Mail Bag Vaiaku Funafuti, Tuvalu
Email	saagatalu@gmail.com



REPUBLIC OF VANUATU OFFICE OF THE OMBUDSMAN BUREAU DU MEDIATEUR OFIS BLONG OMBUDSMAN

ESTABLISHMENT

At independence, Vanuatu adopted the parliamentary system of representative government based on universal suffrage. It has one legislative house. The legal system derived its origin from the English and French legal systems, the country having been a former Anglo-French colonial area of “joint influence” from 1906 to 1980. The legal system is now based on the English legal system.

The court system is made up of the customary institutions at the bottom, Island Courts, the Magistrates Court, Supreme Court and the Court of Appeal, which is the highest appellate court in the country. The Custom Land Management Act No. 33 of 2013 provides for the determination of custom owners and the resolution of disputes over ownership of custom land by customary institutions and for related purposes.

The Island Courts¹¹ are, among other things, specifically empowered to administer the customary law prevailing within their territorial jurisdiction (civil and criminal matters) so far as it is not in conflict with any written law and is not contrary to justice, morality and good order.

The *Constitution of Vanuatu*, in force since 1980, states that an Ombudsman shall be appointed for five years by the President of the Republic, after consultation with the Prime Minister, the Speaker of Parliament, the leaders of political parties represented in Parliament, the chairman of the National Council of Chiefs, the chairman of the Local Government Councils and the chairman of the Public Service Commission and the Judicial Service Commission. The first Ombudsman, Marie-Noelle Ferrieux-Patterson, was appointed 14 years later, on 15 July 1994, almost a year before the first *Ombudsman Act 1995* was enacted. This Act was repealed by the government and Parliament in 1998 and replaced some months later by the Ombudsman Act 1998 [Cap.252] the Act currently in force.

OMBUDSMAN

The qualities sought in the person who takes on the position of Ombudsman have been set out in the Constitution and the Ombudsman Act 1998. The Ombudsman must have a knowledge, understanding and appreciation of the culture, traditions and values of Ni-Vanuatu people; be of high integrity and competence; have appropriate qualifications and experience; be politically independent and capable of discharging the duties without fear or favour; and be of high standing in the community.

There have been five Vanuatu Ombudsman and two Acting Ombudsman.

- 1994 – Marie –Noelle Ferrieux Paterson
- 1999 – Hannington G Alatoa
- 2004 – Iolu Abbil (Acting Ombudsman)
- 2005 – Peter Taurakoto
- 2010 – Pasa Tosusu
- 2012 – Alain Molgos (Acting Ombudsman)
- 2012 to present- Kalkot Mataskelekele

¹¹ For more information on the court system in Vanuatu see Don Paterson, *Introduction to South Pacific Law* (Cavendish Publishing Ltd, London, 1999) 323–328.

RELATIONSHIP TO GOVERNMENT AND PARLIAMENT

The Ombudsman is required by the Constitution and the Ombudsman Act to submit an annual report on its functions and also a special report on the observance of Multilingualism to Parliament every year. The Ombudsman may also submit additional reports regarding its functions or any other issues regarding defects in the administration of government.

Section 38 of the Ombudsman Act provides that the spokesman for the Ombudsman be the Prime Minister. As spokesman, the Head of Government is responsible for answering questions about the work of the Ombudsman in Parliament and in the Council of Ministers. The Prime Minister is also required to make submissions regarding the Ombudsman to the Council of Ministers. Should there be any relevant legislation to introduce on behalf of the Ombudsman, it is the Prime Minister's duty to see to this. The Prime Minister may delegate all or any of his or her responsibilities to any other government Minister.

If there have been any actions to give effect to any findings or recommendations made by the Ombudsman following an enquiry into the conduct of a leader or government agency, the Prime Minister is required under s 39 of the Ombudsman Act to report this to Parliament as soon as he or she can.

There is no legal impetus for Government or Parliament to implement the Ombudsman's recommendations stemming from enquiries. Further, there is also no legal requirement for the Prime Minister to table the Ombudsman's yearly reports within a certain time frame.

JURISDICTION

The Constitution allows the Ombudsman to enquire into the conduct of public servants, public authorities and ministerial departments, with the exception of the

President of the Republic, the Judicial Service, the Supreme Court and other Judicial bodies. This enquiry may follow a complaint from a member of the public, at the request of a Minister, Member of Parliament, the National Council of Chiefs or Local Government Council or at the Ombudsman's own initiative.

The Ombudsman Act 1998 forbids the Ombudsman from enquiring into certain matters: a matter that has previously been the subject of an enquiry by the Ombudsman; the reasons a recommendation of the Ombudsman has not been followed; and the action taken by a leader or person in charge of a government agency to give effect to a recommendation of the Ombudsman.

The Constitution includes a Leadership Code. The Leadership Code Act 1998 [Cap.240] states that:

... the Ombudsman must investigate and report on the conduct of a leader (other than the President) if the Ombudsman receives a complaint from a person that a leader has breached this Code, or the Ombudsman has formed the view on reasonable grounds that a leader may have breached this Code.

Section 64 of the Constitution enshrines the right of a citizen of Vanuatu to obtain government services in the official language that he or she uses. Vanuatu has three official languages, Bislama, French and English. A citizen may make a complaint to the Ombudsman if he or she feels that this right has not been fulfilled.

FUNCTIONS

The Vanuatu Ombudsman may enquire into any conduct on the part of any government agency; any defects in any law or administrative practice; or any case of an alleged or suspected discriminatory practice by a government agency. The Ombudsman may also make enquiries in respect of the conduct of a leader. The Ombudsman has also been given the authority to undertake mediation between the complainant, the person in charge of the government agency complained about and any other person directly affected by the enquiry. If the complaint relates to the conduct of a leader, the Ombudsman may also mediate between that leader and the complainant.

Following an investigation, if the Ombudsman is satisfied that the conduct was contrary to law, based on error of law or of fact, delayed for unjustified reasons, or unjust or blatantly unreasonable and that, consequently, any decision taken should be annulled or changed or that any practice followed should be revised, he or she is required by Article 63(2) of the Constitution and s 29 (1) and (2) of the Ombudsman Act to forward his findings to the Prime Minister, if the Prime Minister is the head of the agency, and in any other case, to the Prime Minister and the head of the public authority or department directly concerned.

Section 29(4) of the Ombudsman Act provides that in the event that the Ombudsman concludes that a complaint is unfounded or does not give rise to any findings, he or she must give a written copy of his or her conclusions to the complainant (if any) and any person notified of the enquiry. The Ombudsman must do this as soon as reasonably practicable after making his or her conclusions.

In the case of inquiries into the conduct of leaders, s 30 of the Ombudsman Act states that if the Ombudsman is satisfied that the leader has failed to carry out any of the duties or responsibilities of office imposed on him or her under Article 66 (1) or (2) of the Constitution, or he or she has breached any of those duties or responsibilities, or he or she has breached the Leadership Code Act, the Ombudsman must forward a copy of his or her findings with appropriate recommendations to the President, the Prime Minister and the leader concerned if that leader is a government member. If the leader is a member of the Opposition in Parliament, the Ombudsman must forward a copy of his or her findings with appropriate recommendations to the President, the Prime Minister, and the Leader of the Opposition. In the case of any other leader, the Ombudsman must forward a copy of his or her findings with appropriate recommendations to the President, the Prime Minister, the leader concerned and the person or body by whom the leader was appointed, or reports to.

If the complaint is unfounded or does not give rise to any findings, as with other complaints, the Ombudsman must in writing inform the complainant and any other person notified of the inquiry on his or her conclusions as soon as is reasonably practicable for him or her.

POWERS

The powers of the Ombudsman to investigate into a complaint against any person or body or any leader are contained in Articles 62 and 63 of the Constitution and s 34 of the Leadership Code Act. The latter section further specifies that the Ombudsman must give a copy of the report to the Public Prosecutor and another copy to the Police Commissioner if the complaint involves criminal misconduct.

The 1995 Act enlarged upon the general provisions of the Constitution. The Act gave the Ombudsman the power to summons witnesses, and compel the production of documents. The Ombudsman was given the power to publish reports following enquiries and in certain circumstances, was obliged to forward the report to the relevant authority, which was, in turn obliged to notify the Ombudsman of what steps were proposed to deal with the findings of the Ombudsman. A lack of response could trigger a court application by the Ombudsman to enforce the recommendations contained in the report.

The *Ombudsman Act 1998* contains several significant differences. The staff of the Ombudsman's office are now regulated in the same manner as the other members of the Public Service. Under the 1995 Act staff were directly employed by the Ombudsman. The 1998 Act prohibits allegations of criminal wrong-doing without stating the alleged offence and providing evidence to support the allegation. A further significant change is the absence in the 1998 Act of any mechanism by which the Ombudsman can enforce recommendations where a relevant person does not respond to the Ombudsman's recommendations with a decision and an indication of what steps are to be taken to deal with the recommendations. Making recommendations is now the most potent action that the Ombudsman can take after an enquiry.

The Ombudsman's access to 'restricted or prohibited information' is outlined under s 27 of the 1998 Act. This is defined in the Act to include "information that is prohibited or restricted under or by any recognised duty of professional confidentiality or privilege." Although the scope of this restriction remains to be judicially determined, it appears to narrow the jurisdiction of the Ombudsman to compel disclosure in the course of an investigation.

Another significant way in which the 1998 Ombudsman Act differs from the 1995 Act is its inclusion of provisions enabling the use of mediation in the resolution of disputes arising from complaints to the Ombudsman.

Section 35 of the Leadership Code Act empowers the Public Prosecutor to consider the Ombudsman's report and if he or she decides not to prosecute due to insufficient evidence he/she must follow the procedure as set out in s 37(3).

The Leadership Code Act expands upon the Leadership Code in the Constitution by providing specifics of the obligations of leaders, defining terms such as 'interest', 'conflict of interest' and 'benefit' and imposing upon leaders duties including duties of disclosure of personal interests and assets. See for example the case: Failure of some leaders to file annual returns to the Clerk of Parliament—February 29, 2000. The Leadership Code Act also creates offences for breaches of the Leadership Code.

INTERNAL STRUCTURE

The Office of the Ombudsman is comprised of the Ombudsman, the Director of General Investigations, the Director of Leadership Code Investigations, Legal Counsel and other Investigation, Legal and Administrative staff. Most staff work in the office which is based in Port Vila, Efate. A small regional branch Office in Luganville Santo is structured to cater for a Principal Investigator (who is also the officer-in-charge) as well as an Investigator who is also responsible as support staff.

The Government is obliged under the Ombudsman Act to provide sufficient budgeting and staff for the Ombudsman to carry out his or her functions.

ACCESSIBILITY

Members of the public are able to access services from the Ombudsman by making complaints to the Office of the Ombudsman via letter, email, telephone call, personal visit to the office (openly or in confidence) and or by filling in a complaint form in one of the three official languages (Bislama, English, French) available at the office front desk.

An awareness programme covering the government, private and non-government sectors, schools and prisons has been undertaken successfully but on a restricted basis due to resource limitation.

The 2012 Annual Report showed that more maladministration complaints were made (39) than Leadership Code complaints (18), while no Language Rights complaint was received.

The Annual Report also showed that complaints by personal visits to the office was the highest (25) followed by own initiative investigations (12) and complaints by letters (11), with telephone complaints (8) coming next and email complaints the lowest (1).

The report showed government employees (23) to be the largest complainants followed by private persons (19) but no complaints were received from private business, Ministers of government, Members of Parliament or Members of Provincial government councils.

WORKLOAD AND STATISTICS

The following statistics are given by the Vanuatu Ombudsman Office. As can be noted the number of complaints received over the years declined more rapidly in the period of September 1999 to August 2000 compared to other years. Overall it has decreased by over 70 percent between 1998 and 2005 and over 90 percent from 1998 to 2013. This may indicate a general expected trend as leaders and members of the public service become more aware of the investigative possibilities into their actions and decisions. Investigations concluded as a percentage of complaints received varied from 87% in 1998, to 96% in 2005 to 77% in 2013. That variation is due to the varying complexity of issues complained of, to the fact that complaints lodged in one year may be completed in another year and to the overall gradual decrease in staff strength from 36 in 1998 to 10 at the beginning of 2013.

Year	Complaints received in the period	Investigations opened in the period	Investigations concluded and closed within this period	No. of Public Reports issued
Sept 1998 – Aug 1999	618	542	538	19
Sept 1999 – Aug 2000	224	195	279	11
Sept 2000 – Aug 2001	256	233	68	8
Sept 2001 – Aug 2002	157	151	69	12
2003	155	156	181	26
2004	113	114	90	7
2005	180	176	173	9
2006	174	181	158	3
2007	99	99	125	5
2008	87	81	103	5
2009	53	54	79	2
2010	63	64	96	4
2011	65	63	69	3
2012	55	58	41	1
2013	44	40	34	3

PUBLICATIONS

Many of the investigations conducted by the Ombudsman have been published as public reports. Hard copies of the public reports are available at the Ombudsman Office in Port Vila. Electronic copies of the Ombudsman's reports dating from 1996 to 2013 can be accessed at www.paclii.org/vu/ombudsman/. The Digest of Public Reports can also be accessed there.

LITIGATION

Leymang v Ombudsman [1997] VUCA 10; Civil Appeal Case 03 of 1997 (21 October 1997)

Mr Leymang had been guilty of contempt in the face of the Court by refusing on 21, 22 and 29 July 1997 to disclose information in the course of an examination under oath pursuant to an order of the Supreme Court dated 21 July 1997. The order had been made in proceedings brought by the Ombudsman pursuant to s 17(7) of the Ombudsman Act No. 14 of 1995.

The Supreme Court ordered that Mr Leymang (1) "stands committed to a prison... for a period of 6 months" for contempt, (2) "pay a fine of Vt.100,000 immediately" and (3) "pay to the Ombudsman's office costs in the amount of Vt.100,000 immediately". The Court gave Mr Leymang 21 days to purge the contempt and/or to appeal. Mr Leymang's appeal was dismissed by the Court of Appeal, however he avoided going to prison by purging his contempt, although he still had to pay the Ombudsman's costs.

Ombudsman v Kalsakau [1997] VUSC 30; Civil Case 072 of 1997 (25 August 1997)

Order 37 of the Western Pacific High Court (Civil Procedure) Rules 1964 states, "I. SPECIAL CASE. Special case by consent. R.S.C. O.34,4.1.1. The parties to any cause or matter may concur in stating the questions of law arising therein in the form of a special case for the opinion of the Court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby. Upon the argument of such case the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial."

The question before the Supreme Court was: Was the Service of the Writ of Summons issued by the plaintiff/ Ombudsman in compliance with Order 37 of the Western Pacific High Court (Civil Procedures) Rules of 1964, the Blue Book? The Court (Chief Justice Vincent Lunabek) answered 'No', but added: "I, furthermore (if I may) make the following recommendation [without enforceable effect]: Common sense, cheap and quick procedure recommend strongly that both parties find a flexible way acceptable to both to sort out this question of interpretation [which is simple indeed]. This can be done under proper procedure as set out in RR 1, 3 & 6 of Order 37 of the High Court Rules 1964. Otherwise, the Defendant will be subjected to Ombudsman's Summons under the Ombudsman's Act No. 14 of 1995."

Virelala (and other Members of the Board of Directors of Air Vanuatu (Operations) Limited v Ombudsman [1997] VUSC 35; Civil Case 004 of 1997 (22 September 1997)

The Plaintiffs who were all members of the Board of Directors of Air Vanuatu, a statutory company owned by the government, denied the jurisdiction of the Ombudsman and sought confirmation from the Ombudsman that she cease her enquiry. The Ombudsman refused to terminate her enquiry and the airline board took legal action to challenge the constitutionality of the Ombudsman legislation. The Supreme Court (Lunabek CJ) decided that:

"On the basis of these information and considerations, I accept the Defendant's submissions that the Ombudsman acted *intra vires* her jurisdiction and reject the Plaintiffs' submissions in total.

In this instant case, the Plaintiffs are persons in terms of Article 62(3) of the Constitution, that is persons likely to assist him/her, to furnish him/her with information and documents needed for the Ombudsman's enquiry.

Equally, I accept also that the Plaintiffs as "leaders" in terms of Art. 67 of the Constitution and Section 14(2)(h) of the Ombudsman Act No. 14 of 1995 are subject of the Ombudsman's jurisdiction under the Leadership enquiry."

Ombudsman v Kombe [1998] VUSC 2; Civil Case 180 of 1997 (10 March 1998)

The Ombudsman applied to the Supreme Court (March 1998) pursuant to section 17(7) of the Ombudsman Act No. 14 of 1995 to require the attendance of Mr Kombe, Secretary to the Council of Ministers, to attend Court and furnish information relating to the Santo International Airport Project. Mr Kombe previously refused to give information to the Ombudsman's enquiry on the basis that the information requested was restricted under the Official Secrets Act. The Court (Judge Oliver Saksak) ordered Mr Kombe to produce the information sought by the Ombudsman because –

"Firstly I saw no evidence that Mr Kombe has subscribed to the Declaration as required by section 3(1) of the Official Secrets Act. Secondly I saw no evidence that the documents requested by the Ombudsman are classified materials. The onus of proof was on the Respondent and he failed to discharge that duty. Therefore he could not claim that he was privileged by the provisions of the Official Secrets Act.

"...The Court considered and applied the decision of the Court of Appeal in *Leymang -v- Ombudsman*, Appeal Case No. 3 of 1997 as regards confidentiality. "

Ombudsman v Batick; Ombudsman v Jimmy [2001] VUSC 45; Constitutional Case 085 of 1997 (4 May 2001)

Two matters arose in this case. First, the Ombudsman sought an order giving effect to the recommendations contained in the Public Report on Illegal Ex Gratia Payment to 23 Former MPs pursuant to s 30(3) of the Ombudsman Act No. 14 of 1995. Second, the Ombudsman sought an order giving effect to the recommendations contained in the Public Report on the Payment of Compensation to Hon Maxime Carlot Korman, Hon Willie Jimmy, Hon Barak Sope in Breach of the Leadership Code and Compensation Act 1994 pursuant to s.30(3) of the Ombudsman Act No 14 of 1995. In the particulars of the claim, the plaintiff stated that in that report, the Ombudsman recommended, apart from other things, that the defendants return their respective payments of VT5,000,000 to the Republic of Vanuatu together with interest at the rate of 5% per annum for the period that the money was out of the public revenue.

The Defendants challenged the Constitutionality of the Ombudsman Act No.14 of 1995 and its provisions. The Supreme Court (Lunabek CJ) decided amongst other things that the Ombudsman Act No. 14 of 1995 was “constitutional as found by this Court in Virelala and Others v Ombudsman in September 1997”. The Court also said “Section 30 of the Act gives the Ombudsman standing to apply directly to the Court for an order “giving effect to a recommendation” in certain circumstances.”

SPECIAL PROJECTS

The Office of the Ombudsman in Port Vila successfully relocated from leased premises to state owned office premises in December of 2013 with the assistance of the government of Vanuatu. The new premises were refurbished with funding by the Vanuatu Law and Justice Programme, an Australia aid programme. It is proposed to expand the new premises in the long term to create more office space.

In 2014 the Office of the Ombudsman presented a proposal initiated in 2001 and finalized in 2012 to the Vanuatu Law Commission to undertake a review of the Ombudsman governing legislation, namely the Constitution chapter 9 part II, the Ombudsman Act 1998 and the Leadership Code Act 1998 with the purpose of strengthening the authority of the Ombudsman.

In 2015 the Office of the Ombudsman accepted a proposal from the POA Secretariat to assist in the upgrading of its office file management system including the digitisation of its investigative and reporting archival records.

OFFICES AND CONTACT DETAILS

Port –Vila Office

Street Address	Office of the Ombudsman Ombudsman Haus Rue Pasteur Port Vila
Mailing Address	Office of the Ombudsman Private Mail Bag 9081 Port-Vila Vanuatu
Telephone	+(678) 27200
Email	ombud.vt@vanuatu.com.vu

Luganville Office

Street Address	Office of the Ombudsman Sanma Provincial Government HQ Compound, Luganville, Santo Vanuatu
Mail Address	Office of the Ombudsman Luganville Office PO Box 378 Santo Vanuatu
Telephone	+(678)36364
Email	ombudluganville@vanuatu.com.vu

VICTORIAN OMBUDSMAN

ESTABLISHMENT

The Victorian Ombudsman is an independent officer of the Victorian Parliament. The office was established on 30 October 1973 under the *Ombudsman Act 1973*.¹²

OMBUDSMAN

The Victorian Ombudsman is appointed by the Governor in Council, a council of the Governor of the State of Victoria and the Executive Committee, for a ten year term and may not be re-appointed at the conclusion of the term. The Ombudsman may not be a Member of the Parliament of Victoria, the Commonwealth, or any other State.

The current Ombudsman, Ms Deborah Glass OBE, was appointed in March 2014. She has extensive experience in public integrity, including senior executive positions at the Independent Police Complaints Commission of England and Wales, the United Kingdom's Investment Management Regulatory Organisation, and the Hong Kong Securities and Futures Commission.

The previous appointments were:

- 1973 – Mr John Vincent Dillon
- 1980 – Mr Charles Norman Geschke
- 1995 – Dr Barry Perry
- 2003 – Mr Robert Seamer (Acting Ombudsman)
- 2004 – Mr George Brouwer
- 2014 – Ms Deborah Glass OBE

RELATIONSHIP TO GOVERNMENT AND PARLIAMENT

Reports to Parliament

Under s 23, at the completion of a formal investigation, reports are provided to the relevant Minister and the Secretary of the relevant department or principal officer of the relevant agency. The outcome of an investigation is also provided to complainants in order to inform them of the results of investigations.

Under s 25, the Ombudsman may make a report to Parliament at any time on any matter arising in connection with the performance of their functions. The Ombudsman is also required to present an annual report to Parliament on the performance of their functions.

Parliamentary referrals

Under s 16, the Ombudsman must investigate any matter referred by Parliament, other than a matter concerning judicial proceedings, even when the subject matter would usually be outside the Ombudsman's jurisdiction. A referral may be made by either House of Parliament or a Committee of Parliament.

¹² Unless otherwise noted, all references to section numbers in this chapter are to the *Ombudsman Act 1973*.

JURISDICTION

The Victorian Ombudsman forms one of the three pillars of Victoria's integrity landscape along with the Independent Broad-based Anti-corruption Commission (IBAC) and the Victorian Auditor-General's Office (VAGO). The Office of the Victorian Inspectorate has oversight over all three offices.



The Ombudsman can enquire into or investigate administrative actions taken by Victorian government departments, most statutory authorities, local governments, and some private agencies such as the privately run prisons.

The Ombudsman may consider the broader issues arising from an investigation and is not limited to considering the procedural or legal correctness of an administrative action. The Ombudsman may also enquire into whether an individual complaint indicates a broader systemic failure, including consideration of fairness. Action can be taken when it is considered that the administrative action is:

- » contrary to law
- » unreasonable, unjust, oppressive, or improperly discriminatory
- » taken for an improper purpose or on irrelevant grounds
- » based wholly or partly on a mistake of law or fact, or
- » wrong.

The Ombudsman's jurisdiction excludes:

- » government ministers
- » courts of law, judges or magistrates, tribunals, commissions or other body presided over by such a person as required by statute
- » legal advisers or counsel to the Crown in any proceedings
- » the Director of Public Prosecutions
- » the Auditor-General, and
- » Victoria Police.

FUNCTIONS

In addition to the enquiries and investigations into the administrative actions taken by Victorian government departments, statutory authorities and local government, the Ombudsman has statutory functions as described below.

Human rights

Under the s 13 of the Ombudsman has the power to enquire into or investigate whether any administrative action is incompatible with a human right set out in the Victorian *Charter of Human Rights and Responsibilities Act 2006*.

Protected disclosures

The *Protected Disclosure Act 2012* established a system for the investigation of disclosures of improper conduct by public officers and public bodies, and also encourages and facilitates the reporting of such conduct. The *Protected Disclosure Act 2012* followed the repeal of the *Whistleblowers Protection Act 2001*.

While IBAC has overall responsibility for the administration of the Act and is the body responsible for determining whether a disclosure is a protected disclosure complaint, the Victorian Ombudsman maintains a role in receiving complaints and disclosures. After determining that a complaint is an assessable disclosure, the Ombudsman must notify IBAC with 28 days in order to enable IBAC make a determination.

IBAC may subsequently refer a protected disclosure matter back to the Victorian Ombudsman for investigation.

AUDIT

The Ombudsman undertakes statutory auditing and oversight functions assigned to the office, including the Royal Society for the Prevention of Cruelty to Animals (RSPCA) and domestic and feral animal legislation.

Victoria Police

Until 2012, the Ombudsman was responsible for receiving and enquiring into or investigating complaints about Victoria Police. The *Independent Broad-based Anti-corruption Commission Act 2011 (Vic)* shifted this responsibility to IBAC.

Under the *Terrorism (Community Protection) Act 2003*, Victoria Police must notify the Ombudsman of any decision to issue a preventative detention order or a prohibited contact order, and must also notify the Ombudsman if the order is executed. The Ombudsman may make representations to Victoria Police regarding an order and the treatment of a person detained under it.

POWERS

Informal enquiries

The majority of complaints received are dealt with informally under s 13A. This allows for enquiries to be made by telephone, email, fax, or letter, and may also involve site inspections, review of files, and informal interviews. Under this section, the respondent's principal officer must assist the Ombudsman in the inquiries.

Formal investigations

The Ombudsman's formal powers under s 14 include the following:

- » the Ombudsman can conduct an investigation into a manner deemed fit, and there is no obligation to hold a hearing
- » sections 17, 18, 19, 20 and 20A of the *Evidence Act 2008* apply to formal investigations as if the Ombudsman 'were the sole Commissioner issued with a commission by the Governor in Council'

- » the Ombudsman may summon witnesses, request production of documents, and take evidence under oath or affirmation
- » officers of the Ombudsman may enter the premises of an authority to inspect the premises or anything in the premises
- » certain privileges which protect disclosures of information are not available to the Crown for the purposes of an investigation.

Examples of investigation reports are available on the Victorian Ombudsman website <https://www.ombudsman.vic.gov.au/Publications>.

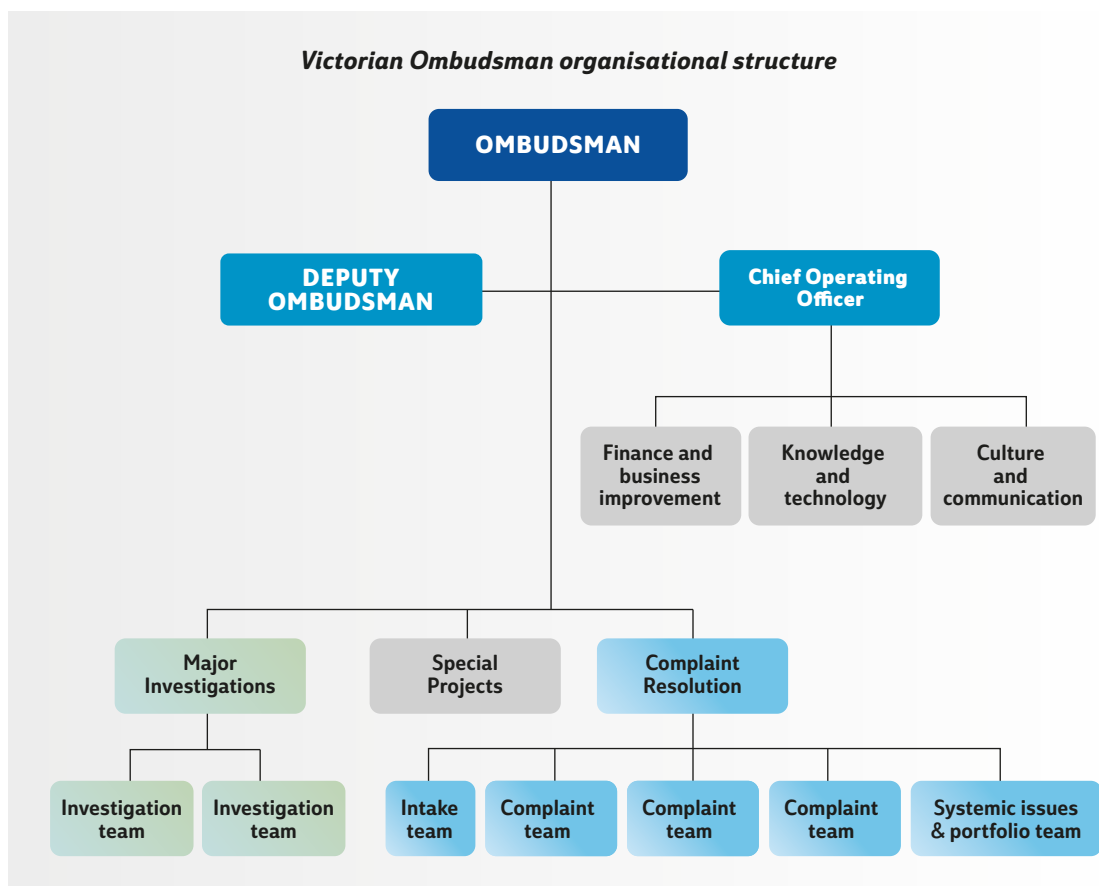
Own motion powers

The Ombudsman may make enquiries or undertake an investigation into a matter or systemic issue without receiving a specific complaint. Such proceedings are carried out under the Ombudsman’s own motion powers. This power is particularly relevant to systemic issues and the protection of vulnerable persons.

INTERNAL STRUCTURE

The Victorian Ombudsman employs 72 fulltime staff, 73 per cent of whom are under the age of 44. Upon inception in 1973, the majority of investigation staff were lawyers and male, however two-thirds of current staff are female, and qualification fields cover a wide range of humanities, legal, and business disciplines.

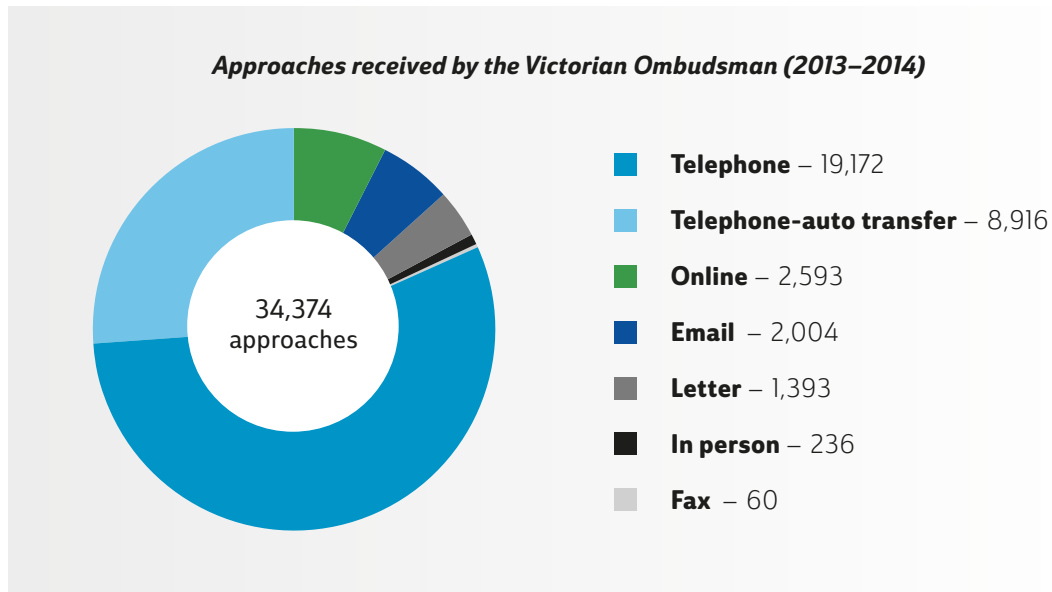
The internal structure is currently under review. The structure as at 19 December 2014 is as below.



ACCESSIBILITY

Members of the public can access the Victorian Ombudsman's office via telephone, postal mail, email, or by visiting the office. Although the Act requires complaints to be received in writing (postal or email), the Ombudsman may use own-motion and discretionary powers where a person has literacy or language difficulties, when a matter is time-sensitive, or when a discretionary decision is made.

Complaints via the Victorian Ombudsman's online complaints form, accessed on the website, constitute the largest portion of written complaints. This form provides referral to relevant complaints handling bodies in most instances where the Ombudsman does not have jurisdiction. An automated redirection also functions on the telephone line.



Information regarding the Ombudsman's jurisdiction and tips for making complaints are available on the Victorian Ombudsman website <https://www.ombudsman.vic.gov.au/Fact-Sheets>.

Tips are also provided to assist the public making complaints to bodies under the Ombudsman's jurisdiction prior to making a complaint to the Ombudsman.

Outreach

The Victorian Ombudsman conducts a variety of outreach activities aimed at increasing the public's understanding of the Ombudsman's role. Such activities are often conducted in conjunction with other integrity and community service organisations.

Educational services are also conducted with public sector organisations. These aim to promote good administration within the Victorian Public Service and its agencies.

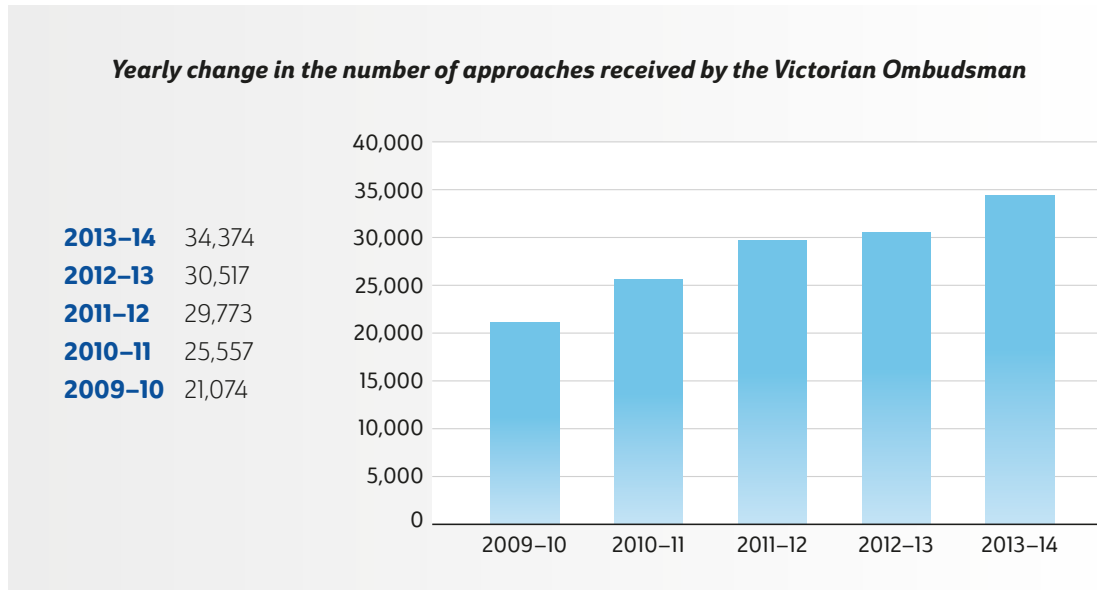
Outreach activities to both the community and the public sector may include information sessions, regional visits, and publications. The ability to communicate with vulnerable or marginalized groups through the use of both traditional media and social media is an area of focus, and for this purpose the Victorian Ombudsman joined Twitter in 2014.

During 2013–14, the Victorian Ombudsman:

- » delivered four complaint handling workshops for Victorian public sector employees;
- » hosted four regional information days in key regional centres;
- » produced a best practice guide for complaint handlers at universities, and held a forum for staff who deal with student complaints and appeals; and
- » hosted a forum with prison and corrections stakeholders, providing the opportunity to discuss concerns, identify strategies, and agree on proposals.

WORKLOADS AND STATISTICS

Since 2009, there has been a consistent increase in complaints made to the Ombudsman, typically between 13 -21 per cent each year accumulative. In 2013–14, a total of 34,374 approaches were received, 52 per cent of which were within the Ombudsman’s jurisdiction.



In 2013–14:

- » 85 per cent of all approaches, and 74 per cent of jurisdictional approaches, were closed within seven days.
- » 96 per cent of all approaches, and 92 per cent of all jurisdictional approaches, were closed within 30 days.

In 2013–14, the Victorian Ombudsman completed:

- » 2672 informal enquiries,
- » 70 formal investigations, and
- » 12 parliamentary reports.

PUBLICATIONS

The Ombudsman’s publications are available on the Victorian Ombudsman website <https://www.ombudsman.vic.gov.au/Publications>. These publications include:

- » annual reports
- » investigation reports
- » discussion papers
- » conference papers
- » best-practice guides and manuals
 - fact sheets providing information about The Ombudsman and the Ombudsman’s powers
 - Investigations and enquiries, for both complainants and respondents
 - The *Victorian Charter of Human Rights and Responsibilities Act 2006*
- » presentations and speeches delivered by the Ombudsman and officers of the office.

LITIGATION

There have been no litigated challenges to the Victorian Ombudsman's jurisdictions between 2009–2014.

Special Projects

- » Significant current own-motion investigations:
 - *Own-motion investigation into reporting and investigation of abuse in the disability sector*
 - *Own-motion investigation into inadequate oversight of a Supported Residential Service*
 - *Own-motion investigation into the rehabilitation and reintegration of offenders in Victoria*

- » Significant Own motion investigations since May 2009:
 - *Own-motion investigation into unenforced warrants (August 2013)*
 - *Own-motion investigation into the governance and administration of the Victorian Building Commission (December 2012)*
 - *Own-motion investigation into Child Protection – out of home care (May 2010)*
 - *Own-motion investigation into the Department of Human Services – Child Protection Program (November 2009)*
 - *Own-motion investigation into the tendering and contracting of information and technology services within Victoria Police (November 2009)*

OFFICES AND CONTACT DETAILS

Mail	Level 1, North Tower, 459 Collins Street, Melbourne VIC 3000
Phone	+61 (0) 3 9613 6222
Fax	+61 (0) 3 9614 0246
Web	www.ombudsman.vic.gov.au
Email	ombudvic@ombudsman.vic.gov.au

WESTERN AUSTRALIAN OMBUDSMAN

ESTABLISHMENT

The Western Australian Ombudsman was established by the *Parliamentary Commissioner Act 1971*.¹³ The formal title of the Western Australian Ombudsman is Parliamentary Commissioner for Administrative Investigations. The office commenced operation in April 1972. Western Australia was the first State in Australia to establish the office of the Ombudsman.

OMBUDSMAN

The Ombudsman is appointed for a term of five years by the Governor of Western Australia and is eligible for reappointment. The Ombudsman can only be removed from office by the Governor on resolutions of both houses of Parliament.

There have been seven Western Australian Ombudsmen appointed since the office began operation in 1972:

- 1972 – Mr Oliver Dixon ISO
- 1980 – Mr Ivor Evans (deceased)
- 1982 – Mr Eric Freeman
- 1990 – Mr Robert Eadie
- 1996 – Mr Murray Allen
- 2002 – Ms Deirdre O'Donnell PSM
- 2007 to present – Mr Chris Field.

RELATIONSHIP TO GOVERNMENT AND PARLIAMENT

The Ombudsman is an independent officer of the Western Australian (WA) Parliament. The Ombudsman is responsible to the Parliament rather than to the government of the day or a particular Minister. This allows the Ombudsman to be completely independent in undertaking the Ombudsman's functions.

There is no Parliamentary Committee or Parliamentary Inspector with a dedicated role in relation to the Ombudsman. The Ombudsman relates to Parliament through the following:

- » liaison with the Speaker of the Legislative Assembly and President of the Legislative Council
- » the Parliament, or any of its committees, may refer to the Ombudsman any matter for investigation and report
- » appearing before the Standing Committee on Public Administration and a range of other Parliamentary committees as required
- » appearing before the Legislative Assembly Estimates Committee (the budget appropriation process)
- » annual reports
- » reports on investigations when agencies refuse to accept recommendations, and
- » special reports to Parliament on the Ombudsman's own motion investigations.

¹³ Unless otherwise noted, all references to section numbers are to the *Parliamentary Commissioner Act 1971*.

JURISDICTION

The principal legislation for the Ombudsman's office is the *Parliamentary Commissioner Act 1971* (PC Act) which provides the basis for the existence of the office. Under the PC Act, the Ombudsman investigates complaints and undertakes own motion investigations about the administrative actions of WA state government departments and authorities, local government, and public universities, and makes recommendations for administrative improvements. The Ombudsman also undertakes reviews of certain child deaths and family and domestic violence fatalities, and operates as the Energy and Water Ombudsman.

The jurisdiction of the office has changed on a number of occasions since it was first established. The following are some of the major jurisdictional amendments:

1985	Jurisdiction to investigate the conduct of police officers added
1996	Jurisdiction extended to all government departments and authorities other than those expressly excluded
1996	Jurisdiction extended to include inspection of telecommunications intercept records (as a result of telecommunications interception legislation)
2003	Jurisdiction to investigate the conduct of police officers removed (with the creation of the Corruption and Crime Commission)
2003	Jurisdiction to operate as the Energy Ombudsman under the Energy Ombudsman Scheme added
2009	Jurisdiction to undertake reviews of certain child deaths added
2014	Jurisdiction to operate as the Energy and Water Ombudsman extended, as the Energy Ombudsman Scheme was expanded to become the Energy and Water Ombudsman Scheme

Areas excluded from the Ombudsman's jurisdiction include:

- » decisions made by Cabinet or by a Minister of the Crown (s 14(3))
- » actions taken by a person acting as legal advisor or counsel (s 14(6))
- » either House of Parliament, any committee or member of either of those Houses (s 13(2))
- » any court of law, judges, commissioners of any court, and stipendiary magistrates (s 13(2))
- » the Coroner (s 13(2))
- » the Governor (s 13(2)), and
- » entities specifically excluded in Schedule 1 of the *Parliamentary Commissioner Act*.

The Ombudsman also has a range of additional functions as set out in legislation (see Functions).

FUNCTIONS

The Office has four principal functions derived from its governing legislation, the *Parliamentary Commissioner Act 1971* and other legislation, codes or service delivery arrangements. These are to:

- » receive, investigate and resolve complaints about State Government agencies, local governments and universities
- » review certain child deaths and family and domestic violence fatalities
- » improve public administration for the benefit of all Western Australians through own motion investigations and education and liaison programs with public authorities, and
- » undertake a range of additional functions, as set out in legislation, that fit within the broad category of integrity oversight.

Complaint Resolution

The office receives, investigates and resolves complaints about the administrative decision making and practices of the public sector, local government and universities. Central to this is whether public authorities' actions and decisions have been fair and reasonable, and within the law. Complaints must be received in writing to enable the Ombudsman to commence an investigation. However, the office also handles thousands of telephone enquiries each year from people seeking general information or advice on how to make a complaint. Complainants look to the Ombudsman to achieve a remedy to their complaint, and complaint resolution also results in improved public administration, including changes to policy and procedures, changes to business systems or practices and staff development.

Reviews of Certain Child Deaths and Family and Domestic Violence Fatalities

The Ombudsman reviews certain child deaths and family and domestic violence fatalities. This involves:

- » reviewing the circumstances in which and why child deaths and family and domestic violence fatalities occur
- » identifying patterns and trends that arise from reviews of child deaths and family and domestic violence fatalities, and
- » making recommendations to public authorities about ways to prevent or reduce child deaths and family and domestic violence fatalities.

Improved Public Administration

One of the ways that the Office endeavours to improve public administration is to undertake investigations of systemic and thematic patterns and trends arising from complaints made to the Ombudsman and from child death and family and domestic violence fatality reviews. These investigations are referred to as own motion investigations. Own motion investigations are intended to result in improvements to public administration that are evidence-based, proportionate, practical and where the benefits of the improvements outweigh the costs of their implementation.

In addition to complaint handling and own motion investigations, the office provides publications, workshops, assistance and advice to public authorities regarding their decision making and administrative practices and their complaint handling systems. This educative function assists with building the capacity of public authorities and subsequently improving the standard of administration.

Other Functions of the Ombudsman

Other functions of the Ombudsman include:

» *Inspection of Telecommunications Interception records*

The Ombudsman inspects the records of the Western Australia Police and the Corruption and Crime Commission to ascertain the extent of compliance with relevant telecommunications interception legislation.

Relevant legislation and other instruments are

- *Telecommunications (Interception and Access) Act 1979* (Commonwealth)
- *Telecommunications (Interception and Access) Western Australia Act 1996*

» *Complaints and appeals by overseas students*

Under the relevant national code, the Ombudsman can receive complaints or appeals by overseas students.

Relevant legislation and other instruments are:

- *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007*

» **Public Interest Disclosures**

The Ombudsman can receive disclosures of public interest information relating to matters of administration, and public officers.

Relevant legislation is:

- *Public Interest Disclosure Act 2003*

» **Complaints from residents of the Indian Ocean Territories**

Under a service delivery arrangement between the Ombudsman and the Australian Government, the Ombudsman can investigate complaints from residents of the Indian Ocean Territories (Christmas and Cocos (Keeling) Islands) about public authorities in the Ombudsman's jurisdiction.

Relevant legislation and other instruments are:

- *Indian Ocean Territories (Administration of Laws) Act 1992*
- *Christmas Island Act 1958*
- *Cocos (Keeling) Islands Act 1955*

» **Independent scrutiny**

Under relevant legislation, the Ombudsman scrutinises and reports on certain powers exercised by the Western Australia Police.

Relevant legislation and other instruments are:

- *Criminal Organisations Control Act 2012*
- *Criminal Code Amendment (Infringement Notices) Act 2011*
(creates Chapter LXXIII of the *Criminal Code*)

» **Complaints from persons detained under terrorism legislation**

Persons detained under relevant terrorism legislation can make a complaint to the Ombudsman.

Relevant legislation is:

- *Terrorism (Preventative Detention) Act 2006*

» **Energy and Water Ombudsman**

The Ombudsman also undertakes the role of the Energy and Water Ombudsman Western Australia and resolves complaints about electricity, gas and water services providers. The costs of the Energy and Water Ombudsman are met by industry members.

Relevant legislation and other instruments are:

- *Parliamentary Commissioner Act 1971 (s 34)*
- *Economic Regulation Authority Act 2003*
- *Electricity Industry Act 2004*
- *Energy Coordination Act 1994*
- *Water Services Act 2012*

POWERS

The Ombudsman may commence an investigation:

- » in response to a written complaint from any person or organisation personally affected by an administrative act or omission of a public authority covered by the Ombudsman's jurisdiction (s 16)
- » on referral by either House of Parliament, a committee of either House, or a joint committee of both Houses (s 15), or
- » on the Ombudsman's own motion (s 16).

The *Parliamentary Commissioner Act 1971* sets out the powers of the Ombudsman, including:

- » at any time, tabling in Parliament a report on any matter arising in connection with the exercise of the Ombudsman's functions (s 27)
- » wide investigative powers, including those of a Royal Commission (s 20)
- » discretion whether to commence or continue an investigation (s 18)
- » releasing information in the public interest (s 23(1b))
- » recommending to an agency that redress be given to a complainant and that practices, procedures or legislation be reviewed to prevent recurrence (s 25(2)), and
- » providing the Premier and Parliament with a report where an agency does not accept the Ombudsman's recommendations within a reasonable timeframe (s 25(5), s 25(6)).

The *Parliamentary Commissioner Act 1971* also identifies limits on the Ombudsman's powers. The Ombudsman cannot:

- » investigate the decisions of courts, Cabinet or ministers of the Crown, but may investigate recommendations made to ministers (s 13(2))
- » make adverse comments in a report about any person unless that person is given a prior opportunity to respond (s 25(7))
- » disclose information or make a statement about an investigation except in accordance with the provisions of the Act (s 23), or
- » make a determination on a matter.

At the conclusion of an investigation, the Ombudsman may make formal recommendations (s 25(2)), including to:

- » refer the matter to another agency
- » rectify administrative actions
- » vary administrative practice
- » reconsider the law which underpins administrative action, or
- » give reasons for a decision.

The Ombudsman places a strong emphasis on making practical recommendations about materially significant matters. The Ombudsman does not make recommendations unless it is considered that they will be beneficial to the public. In addition to this, however, the Ombudsman also considers whether recommendations made as a result of an investigation will have costs for public authorities, both direct costs, including implementation and compliance costs, as well as opportunity costs. Where the Ombudsman is not sufficiently clear about the cost and benefit of a given recommendation, the Ombudsman will seek the advice of the public authority and possible external advice.

INTERNAL STRUCTURE

In addition to the Ombudsman, the office has one Deputy Ombudsman, one Principal Assistant Ombudsman Investigations and Legal Services, and four Assistant Ombudsmen who manage a range of separate divisions within the office. These are:

- » Assistant Ombudsman Administrative Improvements
- » Assistant Ombudsman Complaint Resolution
- » Assistant Ombudsman Reviews, and
- » Assistant Ombudsman Monitoring.

As at 30 June 2014 there were 66 staff (62.5 full time equivalent) undertaking the work of the office.

As at 30 June 2014 the office was composed of the following teams:

- » the Complaint Resolution Team includes the Intake Team and the Early Resolution Team and has responsibility for handling enquiries, receiving and assessing complaints, and undertaking the early resolution of complaints, where appropriate, through informal investigations
- » the Administrative Improvement Team undertakes own motion investigations and other strategies aimed at improving public administration, and the Monitoring Team scrutinises and reports on certain powers exercised by Western Australia Police under relevant legislation
- » the Reviews Team reviews certain child deaths and family and domestic violence fatalities, identifies patterns and trends arising from these reviews and makes recommendations to relevant public authorities to prevent or reduce deaths
- » the Investigations Team handles the investigation of complaints, the Inspections Team undertakes telecommunications interception inspections and the Legal Services Team provides legal services across the office
- » the Energy and Water Team has responsibility for handling enquiries and receiving, investigating and resolving complaints about electricity, gas and water services providers, and
- » the Executive Services, Corporate Services and Information Technology Services Teams support the office in strengthening its strategic focus, corporate communications, governance and business services.

ACCESSIBILITY

The office implements a number of strategies to ensure its complaint services are accessible to all Western Australians. These include access through online facilities as well as more traditional approaches by letter and through visits to the office. The office also holds complaints clinics and delivers presentations to community groups, particularly through the Regional Awareness and Accessibility Program. Initiatives to make services accessible include:

- » access to the office through a toll free number for country callers
- » access to the office through email and online services
- » information on how to make a complaint to the Ombudsman is available in 15 languages and features on the homepage of the Ombudsman's website. People may also contact the office with the assistance of an interpreter by using the Translating and Interpreting Service
- » the office's accommodation, building and facilities provide access for people with disabilities, including lifts that accommodate wheelchairs and feature braille on the access buttons and people with hearing and speech impairments can contact the office using the National Relay Service
- » the office's Regional Awareness and Accessibility Program targets awareness and accessibility for regional and Aboriginal Western Australians
- » the office attends events to raise community awareness of, and access to, its service, and
- » the office's visits to adult prisons and juvenile custodial facilities provide an opportunity for people detained in custody to meet with representatives of the office and lodge complaints in person.

Complainant population

To help improve services and continue to ensure that the Ombudsman is accessible to all Western Australians, the Ombudsman collects demographic information from people who contact the office, including information relating to:

- » aboriginal and Torres Strait Islander people
- » people from a regional/remote place of residence
- » people born overseas and people born in a non-main English-speaking country, and
- » people with a disability.

For these groups, in 2013-14 the demographics of complainants show a representation that is similar to, or higher than, representation in the Western Australian population.

WORKLOAD AND STATISTICS

The information included in the table below is taken from the office's Annual Reports, all of which are available at the Ombudsman website http://www.ombudsman.wa.gov.au/Publications/Annual_Reports.htm. The table refers to complaints finalised at the initial assessment (without investigation) and finalised after investigation.

Complaints may be finalised at the assessment stage by providing information or an explanation, by referral back to the public authority to provide it with an opportunity to resolve the matter before investigation by the Ombudsman, or by referring the complaint to a more appropriate body to handle the complaint.

Matters finalised after an investigation may be resolved through the Office's early resolution approach. Early resolution investigations involve Ombudsman staff contacting the public authority to progress a timely resolution of complaints that appear to be able to be resolved quickly and easily. Other investigations may involve requesting and considering a report from the agency complained about and where it appears the Ombudsman's findings may affect or concern an agency, providing a preliminary view to the agency as part of the procedural fairness process. These investigations may take several months to finalise.

Year	Enquiries received	Complaints received	Complaints finalised at assessment	Complaints finalised after investigation	Total complaints finalised
2009-10	6,127	2,027	1,404	444	1,848
2010-11	6,225	1,978	1,335	552	1,949
2011-12	9,267	2,429	1,606	589	2,252
2012-13	9,445	2,276	1,775	855	2,675
2013-14	9,263	1,882	1,356	513	1,910

NOTE: Withdrawn complaints are counted in the "total complaints finalised", but not in "complaints finalised at assessment" or "complaints finalised after investigation".

The seven areas against which most complaints were received in 2013-14 were Corrective Services (19%), local governments (18%), Police (9%), Public Housing (9%), Transport (6%), Child Protection (5%), and Education (4%).

The office also conducts reviews of certain child deaths (commencing from 30 June 2009) and family and domestic violence fatalities (commencing from 1 July 2012).

Year	Child death notifications received	Reviewable family and domestic violence fatalities received
2009-10	76	
2010-11	118	
2011-12	83	
2012-13	106	20
2013-14	70	15

PUBLICATIONS

The office produces a varied range of publications every year that are available on the Ombudsman's website www.ombudsman.wa.gov.au/publicatoins. This includes:

- » **Annual reports**
- » **Own motion investigation reports.** Recent reports include:
 - Investigation into ways that State Government departments and authorities can prevent or reduce suicide by young people
 - Investigation into ways that State Government departments can prevent or reduce sleep-related infant deaths
 - Planning for children in care: An Ombudsman's own motion investigation into the administration *of the care planning provisions of the Children and Community Services Act 2004* (2011)
 - The Management of Personal Information – good practice and opportunities for improvement (2011), and
 - 2009-10 Survey of Complaint Handling Practices in the Western Australian State and Local Government Sectors (2010).
- » **Newsletters**
- » **Information sheets for complainants** including brochures, posters, complaint forms and information sheets on making a complaint to the office, making a complaint to a State Government agency and how the office handles complaints)
- » **Information sheets and guidelines for agencies including:**
 - Overview of the complaint resolution process – Information for public authorities
 - Information for boards and tribunals
 - Guidelines on Decision Making
 - Guidelines on Effective Complaint Handling
 - Guidelines on Conducting Investigations, and
 - Guidelines on the Management of Personal Information.
- » The office also publishes a number of publications under its role as Energy and Water Ombudsman Western Australia (website <http://www.ombudsman.wa.gov.au/ewowa/>). These include:
 - Annual reports
 - Information sheets, and
 - Complaint forms.

LITIGATION

There has been only one challenge to the Ombudsman's jurisdiction in Western Australia. *R v Dixon: ex parte Prince and Oliver* [1979] WAR 116. This was a case heard by the Full Court of the Supreme Court of Western Australia where a Writ of Prohibition was sought prohibiting the Ombudsman from further investigating a complaint and publishing any report about it. The applicants in this matter, who were witnesses called before the Ombudsman, alleged that the conduct of the inquiry and the performance of the Ombudsman's statutory duties was unfair. The Court held that the applicant's allegations were without substance and that they also had no standing to obtain a Writ of Prohibition.

One other matter (not involving the Ombudsman as a party to the proceedings) dealt with the privilege attaching to documents. The Supreme Court of Western Australia Court of Appeal in *Director of Public Prosecutions Reference Under Section 693A of the Criminal Code and Ors v Y and Ors* [1998] WASCA 38 considered section 23A of the *Parliamentary Commissioner Act 1971*, which provides that documents prepared for the purposes of an investigation and sent to or by the Ombudsman, are privileged and not admissible in any proceedings. The Court held that the section, in effect, creates a statutory privilege akin to public interest immunity and that the privilege conferred by it cannot be waived by any person.

SPECIAL PROJECTS

Major own motion investigations currently underway include:

- » Issues associated with Violence Restraining Orders and their relationship with family and domestic violence fatalities
- » Local government collection of outstanding rates and
- » The implementation and effectiveness of Ombudsman recommendations.

In addition, the office undertakes a range of collaborative activities and projects with other agencies. Some of these are outlined below.

The Integrity Coordinating Group (ICG)

The Ombudsman is a member of the ICG which has been formed to promote and strengthen integrity in Western Australian public bodies. The other members of the ICG are the Auditor General, the Corruption and Crime Commissioner and the Commissioner for Public Sector Standards.

International Ombudsman Institute (IOI)

The IOI, established in 1978, is the only global organisation for the cooperation of more than 150 Ombudsman institutions. The Office is a member of the IOI. The Ombudsman was elected to the position of IOI Treasurer and as a member of the Executive Committee of the Board of Directors of the IOI in March 2014. The Ombudsman previously served as the President of the Australasian and Pacific Ombudsman Region (APOR) of the IOI from November 2012 until March 2014. APOR is comprised of Australia, China/Hong Kong, Cook Islands, New Zealand, Papua New Guinea, Samoa, Solomon Islands, Taiwan, Tonga and Vanuatu.

Indonesian Australian Ombudsman Linkages and Strengthening Program

The Ombudsman partnered with the Commonwealth and New South Wales Ombudsman in the AusAID funded program (now incorporated into the Department of Foreign Affairs and Trade) to strengthen the capacity of Ombudsman services in Indonesia.

Australian and New Zealand Ombudsman Association (ANZOA)

The office is a member of ANZOA. The office periodically provides general updates on its activities and also has nominated representatives who participate in interest groups in the areas of public relations, first contact teams, business improvement and communications.

OFFICE ADDRESS AND CONTACT DETAILS

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