



Australasia & Pacific

Ombudsman Region Information Manual 2021





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Foreword

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

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

The role of the Ombudsman in the region continues to grow. Individual offices have expanded jurisdictions and have been given increasing oversight responsibilities aimed at promoting integrity, responsiveness and accountability in government and human rights.

The individual Ombudsman offices featured in the manual comprise of the Australasia and Pacific region members of the International Ombudsman Institute (IOI).

Descriptions have been prepared by each Ombudsman office. The primary work of assembling and publishing the manual was undertaken by the New Zealand Office of the Ombudsman.

The information within this third edition manual was accurate at November 2020. The manual will be published electronically on the International Ombudsman Institute website and the individual APOR member Ombudsman office websites at their discretion. It is intended that periodic updates to the manual will be made in the future. Any comments should be forwarded to the New Zealand Office of the Ombudsman International Development and Engagement team via email

International@ombudsman.parliament.nz





Ombudsman Offices

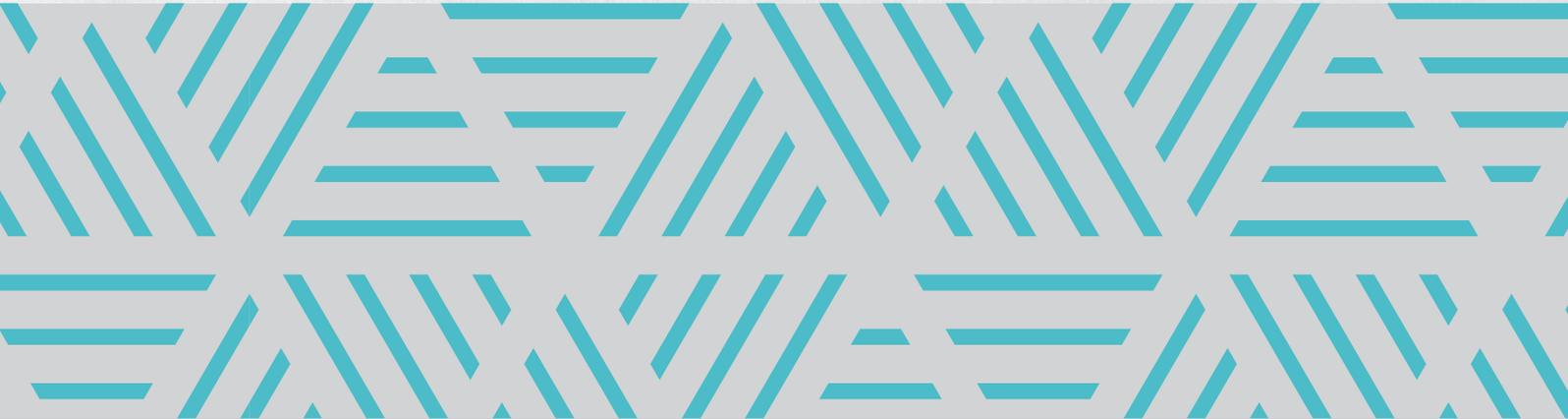
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Palau appeared in the 2015 edition of this document, but it is no longer a member of APOR.



Commonwealth Ombudsman





Establishment

The Office of the Commonwealth Ombudsman was established by the *Ombudsman Act 1976* (Ombudsman Act).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 of the Ombudsman Act) 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 ten 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	Colin Neave AM
2017 to present	Michael Manthorpe PSM

Prior to his appointment, the current Ombudsman Mr Manthorpe PSM worked for various governments on a variety of public policy and program issues. Most recently, he held Deputy Secretary level positions at the then Department of Immigration and Border Protection, where he was responsible for the global delivery of Australia's visa, citizenship and refugee programs. For 25 years he worked in the Education, Employment and Workplace Relations portfolios.

Mr Manthorpe PSM was a recipient of the Public Service Medal in 2010 for leading work arising from the corporate collapse of Australia's then largest childcare provider (ABC Learning). He was awarded a Wolfensohn Scholarship in 2016 to extend his public policy and leadership skills at the Harvard Kennedy School in the United States. Mr Manthorpe PSM is a member of the Executive Committee of the Australia New Zealand Ombudsman Association (ANZOA) and is a Deputy President and councillor of the ACT Branch of the Institute of Public Administration Australia.

The Ombudsman is supported by a Deputy Ombudsman, currently Ms Penny McKay, appointed in 2020, and six Senior Assistant Ombudsmen.

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

Relationship to Government and Parliament

The Ombudsman Act is administered by the Attorney-General, therefore the Office falls within the portfolio of the Attorney-General's Department. For administrative purposes, the Ombudsman reports to the Attorney-General, but the Ombudsman is independent from government with respect to their operations.

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 Legal and Constitutional Affairs.

The Ombudsman regularly briefs a number of Parliamentary Joint Committees on his work in relation to the oversight of the use of covert and coercive powers by law enforcement agencies.

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 and the Australian Capital Territory). As discussed in more detail below, the Commonwealth Ombudsman is also the Ombudsman for the Australian Capital Territory. The Commonwealth Ombudsman has no jurisdiction over other State and Territory Ombudsmen or industry Ombudsmen.

The Commonwealth Ombudsman is 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 Office of the Australian Information Commissioner, the Australian Commission for Law Enforcement Integrity, the Inspector General of Intelligence and Security, and the Inspector General of Taxation.

In addition to jurisdiction over Australian Government agencies, the Ombudsman has jurisdiction to investigate services delivered by most private contractors on behalf of the Australian Government, including those responsible for the management of immigration detention facilities. 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 (ACT) 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 Students Ombudsman role
2013	Oversight role under the Public Interest Disclosure Act 2013
	Commonwealth Ombudsman appointed as Norfolk Island Ombudsman
2015	Taxation Ombudsman role moved to the Inspector General of Taxation
	Private Health Insurance Ombudsman role
	As a result of amendments to Norfolk Island governance arrangements, the Ombudsman was removed as the Norfolk Island Ombudsman
2016	On 1 December 2016 the Defence Force abuse reporting function (expanded Defence Force Ombudsman role)
2017	On 1 February 2017, the ACT Judicial Council was established with powers to receive, investigate, and report to heads of jurisdiction or to the Attorney-General about complaints against judicial officers, with support to the Council provided by the staff of the ACT Ombudsman
	On 1 July 2017 the Vocational Education and Training (VET) Student Loans Ombudsman function was established
	ACT Reportable Conduct Scheme (the scheme) commenced on 1 July 2017
	In December 2017 the Office was appointed by the government to undertake the coordination role for the National Preventive Mechanism (NPM) to prevent torture and mistreatment
	Defence Reparation Scheme established December 2017 (expected to end 30 June 2021)
2018	ACT Freedom of Information (FOI) scheme introduced on 1 January 2018
2019	As of 1 July 2019, the ACT Ombudsman is the Inspector of the ACT Integrity Commission.

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, decisions made by the delegate and action taken to implement a minister's decision (ss 5(3) and 5(3A)). The Ombudsman can also formally report to an agency where he finds 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 administrative actions of court and tribunal registries, including complaint handling (see the Ombudsman report, Commonwealth Courts and Tribunals, Report No 12/2007)
- the actions of the six intelligence agencies—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 students, private health insurers and registered private postal operators.

Own-motion investigations

The Office 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.

Inspections of certain covert and intrusive powers by law enforcement agencies

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, stored communications and telecommunications data (*Telecommunications (Interception and Access) Act 1979*), use of surveillance devices (*Surveillance Devices Act 2004*, s 55), industry assistance provided to assist accessing encrypted data (*Telecommunications Act 1997*), and controlled operations (*Crimes Act 1914*). The Office reviews and reports on the exercise of coercive information-gathering powers by the Fair Work Ombudsman and the Commissioner of Australian Building and Construction Commission, under the *Fair Work Act 2009* and the *Building and Construction Industry (Improving Productivity) Act 2016*.

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, the Office has oversight of immigration detention facilities through a programme of regular announced and unannounced visits to detention facilities. This role has taken on greater significance with the ratification of OPCAT and the designation of the Office as National Preventative Mechanism.

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, raising awareness and understanding of the PID Act, and to provide guidance, information and resources to agencies and public officials.

Specialist roles

In addition, the Commonwealth Ombudsman has the following separate titles that describe specific functions and powers:

- Defence Force Ombudsman (DFO)—investigates complaints from current and former Australian Defence Force members, 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). Since 1 December 2016, the DFO's functions were expanded to provide an independent mechanism to receive reports of serious abuse in Defence. This includes an enduring function to convene restorative engagement conferences for those who report serious abuse, so they can meet individually with a senior Defence

representative, have their account of abuse meaningfully heard and receive acknowledgement that what happened to them was wrong. In December 2017 the function was further expanded for the Ombudsman to recommend that Defence make a reparation payment of up to \$50,000 to a complainant, where the Ombudsman accepted they had experienced the most serious forms of abuse and/or sexual assault.

- Immigration Ombudsman—receives complaints and investigates action taken in relation to immigration administration. Under this function the Ombudsman:
 - visits immigration detention facilities (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)
 - (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. In addition to the Ombudsman's inspections of the AFP's use of covert and intrusive powers, the Ombudsman also undertakes the following oversight activities of the AFP:
 - investigating complaints (including conduct and practices issues) of the AFP and its members
 - 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 Students Ombudsman (OSO)—investigates complaints from overseas students about private education providers in Australia. The OSO gives private registered providers advice and training on best practice for handling complaints from overseas students.
- Postal Industry Ombudsman—investigates complaints about Australia Post and private postal operators registered with the Postal Industry Ombudsman scheme (s 19L).
- Private Health Insurance Ombudsman—investigates complaints about private health insurance matters that impact upon the rights of consumers, and provides unbiased and independent information for consumers to facilitate informed decisions about purchasing private health insurance.
- VET Student Loans Ombudsman—investigates complaints from students studying a diploma, advanced diploma, graduate certificate or graduate diploma course and who have accessed the VET FEE-HELP or the VET Student Loans programs to cover the cost of their studies in full or in part.

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) of the Ombudsman Act.

The role of the ACT Ombudsman is to influence systemic improvements in public administration in the ACT, as well as providing assurance that ACT government agencies and other designated entities that fall within our jurisdiction act with fairness and integrity. Our Office also works closely with agencies to ensure they provide accessible and effective complaint handling processes to the public.



We undertake this role through our traditional complaint handling activities, as well as our oversight of:

- the ACT Freedom of Information (FOI) framework
- the ACT Reportable Conduct Scheme
- ACT Policing
- the ACT Integrity Commission (as the Inspector).

We continue to play a support role for the Judicial Council, for which the Ombudsman is the Principal Officer. The Council is a separate entity established under the Judicial Commissions Act 1994 with powers to receive and examine complaints about the conduct or capacity of ACT judicial officers (judges and magistrates).

The ACT Ombudsman is designated by the Public Interest Disclosure Act 2012 (ACT) as an agency that can receive disclosures under the Act, investigate 'disclosable conduct' of the Head of Service of the ACT Public Service and investigate complaints about how a disclosure has been investigated or handled by an agency.

ACT FOI

The Office oversees the ACT Freedom of Information Act 2016 (the FOI Act) and promotes its objects by:

- conducting independent merit reviews of decisions on access applications
- publishing guidelines to assist FOI practitioners who make these decisions
- granting extensions of time to decide access applications
- investigating complaints about an agency's or Minister's actions under the FOI Act
- monitoring the compliance of agencies and Ministers with their open access obligations.

In reviewing a decision, the Ombudsman can confirm or vary the original decision, or set it aside and substitute it with a new decision. Ombudsman review decisions are binding and may be appealed to the ACT Civil and Administrative Tribunal (ACAT).

ACT Reportable Conduct Scheme

Organisations covered by the Reportable Conduct Scheme must report allegations, offences or convictions involving child related misconduct by an employee to the ACT Ombudsman.

The scheme does not replace or interfere with police investigations. We work with ACT Policing to make sure allegations of criminal conduct are dealt with appropriately.

The Office has had a central role in overseeing and promoting good practice in organisations' responses to allegations of abuse or misconduct by employees that involve children. The Reportable Conduct Scheme is set out in Division 2.2A of the *Ombudsman Act 1989*.

ACT Policing

The Office can investigate complaints about ACT Policing. This may include complaints about:

- inadequate investigation
- inappropriate action
- taking too long to act
- failure to record or report a matter
- discourtesy
- failure to return property
- providing inappropriate advice.

The ACT Ombudsman also monitors ACT Policing's compliance with Chapter 4 and Part 3.11 of the Crimes



(*Child Sex Offenders*) Act 2005 (ACT), the *Crimes (Controlled Operations) Act 2008* (ACT), the *Crimes (Assumed Identities) Act 2009* (ACT) and the *Crimes (Surveillance Devices) Act 2010* (ACT). Complaints involving ACT Policing members are also reviewed under the Commonwealth Ombudsman's activities under Part V of the AFP Act.

ACT Integrity Commission

The Commission is an independent body with the power to investigate corruption in the ACT Government, which began full operations on 1 December 2019.

To help improve public confidence, the Inspector was set up to ensure the Commission operates within its legislative powers. The Inspector can:

- investigate and assess complaints about the Commission and its staff
- make recommendations to the Commission
- assess and report on the Commission's compliance with the Integrity Commission Act 2018 (IC Act).

The Inspector must prepare a separate annual operational review and annual report under the IC Act.

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 verbally 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 disclose information or make a statement to the public or a person if it is considered to be in the public's interest to do so (s 35A)—this enables the Ombudsman to publish a report.

- If an agency or person gives information to the Ombudsman, they are not liable to any penalty under the provisions of any other enactment. Giving this information is also not a breach of the Privacy Act 1988—these amendments to the Ombudsman 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).

Workload And Statistics

Year	Contacts	Contacts (in jurisdiction)	Complaints investigated
2015–2016	37753	31191	3131
2016–2017	41301	34606	3764
2017–2018	46494	38026	3371
2018–2019	50237	37388	6194
2019–2020	50808	39233	5548

In 2019–20 our Office received 50,808 contacts from the public, which comprised included 39,233 contacts that were classified in jurisdiction. In jurisdiction contacts included 33,444 complaints, 4,174 general enquiries and 1,095 contacts about program specific matters that do not relate to complaints.

Parliamentary complaints (complaints about government agencies) comprised 49.8 per cent of our in jurisdiction complaints and 50.2 per cent were within our industry jurisdictions.

We received 11,575 contacts in 2019–20 that were out of our jurisdiction. These include complaints about State government or private sector matters not within our jurisdiction (for example, telecommunications or banking).

Our most recent statistic information is available from our annual reports, published on our website ombudsman.gov.au

Accessibility

We aim to make our 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 using the Office’s online complaint form, although most complaints are received over the telephone.

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’ page.

The Office has a Reconciliation Action Plan (RAP) and Multicultural Access and Equity Plan, and senior executive champions for Disability, the RAP, CALD and LGTB IQA+ issues.

Specific initiatives we have undertaken to promote accessibility include:

- launching our new website featuring improved layouts and content focused on ease of use for people accessing information on our services
- rolling out Disability Confident Managers and Recruit Training for our staff, which ensures that recruitment and selection teams are disability aware and confident, and that managers have the capabilities to supervise staff with disability
- distributing communications material to over 400 Aboriginal and Torres Strait Islander communities and organisations across Australia
- introducing face-to-face and online Cultural Awareness Training
- training relevant staff in the use of Aboriginal and Torres Strait Islander language interpreters
- refining our intake processes to collect information about the locations, volume and type of complaints from Aboriginal and Torres Strait Islander peoples.

Publications

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

- Annual reports
- Investigation reports and papers on strategic or systemic issues
- 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
- Inspection reports—on our reviews and inspections of agencies’ use of intrusive, covert and coercive powers
- Other periodic reports—for example, the annual State of the Health Funds report on private health insurance, the annual report on the operation of the public interest disclosure scheme; six-monthly reports of on our activities overseeing immigration detention
- Quarterly updates and bulletins
- Better Practice guides
- Fact sheets and brochures on our work
- Submissions to parliamentary and other inquiries
- Speeches and presentations.

Litigation

The Ombudsman’s 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 Act) are reviewable by the Australian Information Commissioner and the Administrative Appeals Tribunal.



Engagement with other Oversight Bodies

The Commonwealth Ombudsman is a member of the Australian and New Zealand Ombudsman Association (ANZOA). We also liaise regularly with:

- the Australian State and Territory Ombudsman and the New Zealand Ombudsman, at Ombudsman and Deputy Ombudsman level
- the Association of Information and Access Commissioners, in our ACT Ombudsman role overseeing the ACT FOI Act
- the other integrity and oversight bodies operating at the federal level identified above.

Offices and Contact Details

Online ombudsman.gov.au

By phone 1300 362 072

In writing GPO Box 442

Canberra ACT 2601

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



The Control Yuan





Establishment

The Control Yuan (CY) was established according to the Constitution of the Republic of China (Taiwan) on 5 June 1948.

Ombudsman

The CY has 29 members (National Ombudsman), including a president and a vice president. CY members are nominated and appointed by the President of the Republic of China (R.O.C.) with the consent of the Legislative Yuan (Parliament) for a term of six years and are eligible for reappointment. CY members must be at least 35 years old and meet one of the seven qualifications. They should be professionals with extensive experience and outstanding service reputation, capable of exercising authority independently.

As the nation's ombudsman, the CY shoulders the responsibility of protecting human rights. The National Human Rights Commission (NHRC) was established on 1 August 2020. The NHRC consists of 10 members, and the CY President serves concurrently as the Chair.

The incumbent sixth-term CY members were inaugurated on 1 August 2020 as follows:

President: Chu CHEN*	Chung-cheng PU
Vice President: (vacant)	Chin-jun CHEN
Yu-ling WANG*	Wen-dong KUO
Mei-yu WANG	Chu-fang CHANG*
Jung-chang WANG*	Ta-hua YEH*
Li-jen WANG	Yi-jin YEH
Chiu-chin LIU TIEN*	Yung-ching JAO
Wen-cheng LIN	Chung-yi TSAI
Yu-jung LIN	Chen-chang LAI
Kuo-ming LIN	Ting-ming LAI
Sheng-fong LIN	Tzu-yu HSIAO*
Hui-jung CHI*	Upay Radiw Kanasaw*
Sun-lu FAN	Li-chiung SU
Chin-fang SHIH	the 29th member: (vacant)
Yung-cheng KAO**	

* also serves as NHRC member

** NHRC Vice Chair

Relationship to Government and Parliament

Since the five-power (legislative, executive, judicial, control/supervisory and examination) system is adopted in Taiwan, the CY is on equal footing with the Executive, Legislative, Judicial and Examination Yuans (branches), as a constitutionally independent branch.

The CY has seven standing committees to look into the activities of the Executive Yuan, its ministries, and its commissions. Based on reviews and resolutions by the committees, the CY shall propose corrective measures to the Executive Yuan and its subordinate agencies for improvement.



The NHRC shall: assist government agencies in signing or ratifying international human rights instruments and their incorporation; propose necessary and feasible recommendations to amend the Constitution, legislation and laws based on international human rights standards; and provide independent opinions for state reports submitted by the government in accordance with the provisions of various international human rights treaties.

Budget

The CY shall make a budget proposal annually to the Directorate General of Budget, Accounting and Statistics of Executive Yuan. The proposal is then transferred to the Legislative Yuan for review and approval. Nevertheless, to keep effective functioning and independence, the CY has absolute autonomy as to how to allocate the budget it receives.

The CY's annual budget is about US\$25 million. With the establishment of National Human Rights Commission, the budget expenditure will increase to about US\$30 million in 2021.

Jurisdiction

According to Article 90 of the Constitution and Paragraph 1 of Article 7 of the Additional Articles of the Constitution, the CY shall be the highest control body of the State and shall exercise the powers of impeachment, censure and audit. Paragraph 1 of Article 97 of the Constitution also declares that in order to encourage improvement, the CY shall, on the basis of the investigations and resolutions of its committees, propose corrective measures to the Executive Yuan and its ministries and commissions.

Article 3 of the Control Act states that CY members shall conduct circuit supervision in different areas, and Article 4 of the same law stipulates that the CY and its members shall accept written complaints from the people.

Article 1 of the Examination Invigilation Act provides that except for qualification examinations, the Examination Yuan or examination organizations shall invite the CY or one of its regional offices to send personnel to supervise examinations.

Related legal resources of our jurisdiction:

- Constitution of the Republic of China (Taiwan)
- Additional Articles of the Constitution of the Republic of China
- Control Act
- Organic Act of the Control Yuan National Human Rights Commission
- Examination Invigilation Act
- Act on Property-Declaration by Public Servants
- Act on Recusal of Public Servants Due to Conflicts of Interest
- Political Donations Act
- Lobbying Act

Functions and Powers

The functions of the CY is to receive and investigate complaints from people so as to oversee government agencies and enhance integrity and efficiency of public servants. The following is a brief account of its main functions.

Receipt of people's complaints

The core value of the CY has always been to redress grievances of the public. All citizens as well as foreigners can lodge complaints to the CY. It is free to make a complaint. Most of the complaints are related to malfeasance or violation of law by public servants and government agencies. On a daily basis, an on-duty CY member, assigned in rotation, is in charge of receiving and handling people's complaints at the Complaint Receipt Centre. The complaints may be sent to CY members for investigation, discussed by standing committees, or sent on to particular government agencies. If the case does not fall under the jurisdiction of the CY, the complaint shall be rejected.

Investigation

Investigation is the basis for exercising the powers of impeachment, censure and corrective measures. According to the expressed facts of a complaint, the CY may initiate an investigation. In addition, CY members can also make own-motion investigations. Once an investigation is completed, the CY can then take several actions, such as impeachment, censure or proposing corrective measures. If the official conduct rises to the level of a criminal offence, the case is referred to the judicial authorities to consider taking legal action.

Impeachment

The CY is empowered by the Constitution and the Control Act to impeach government officials, judges and prosecutors involved in dereliction of duty or violation of law, with the exception of R.O.C. President, Vice President and Legislators. The examination committee of an impeachment case shall vote by open ballot. An approved case will be forwarded to the Disciplinary Court under the Judicial Yuan to make a final judgement. If the case involves criminal code or military law, it shall be referred to the competent judicial or military organisation for legal action.

Censure

The power of censure is used when the CY deems that a law-breaking or derelict public servant needs to be urgently suspended from duty or be dealt with by other immediate measures. Once a censure case is established, it shall be forwarded to the superior or the official in charge of the public servant. If the case involves violation of the criminal or military law, the CY shall turn it over to a law court or court-martial. If his or her official in charge or superior fails to act or takes improper action, an impeachment case may be initiated. If the censured official is impeached thereafter, his or her superior shall be held responsible for dereliction of duty.

Corrective measures

The CY shall set up standing committees according to different subordinate organs of the Executive Yuan to oversee if there is any violation of law or dereliction of duty. After investigating the work and measures of executive branches, the CY may propose corrective measures to the Executive Yuan and its subordinate agencies for improvement. The executive organs should immediately make improvement or take actions, and should reply to the CY within two months. If no improvement has been made and the CY does not receive any replies in time, the CY shall, through resolutions by its relevant committee meetings, question the organs in writing or summon the officials in charge for questioning.

Circuit supervision and inspection

CY members are empowered to conduct circuit supervision in different areas. The supervisory tour covers both central and local government agencies. The central agencies include the Executive Yuan, the Judicial Yuan, the Examination Yuan and their subordinate agencies. The local agencies are provincial governments, municipal governments, county and city governments and their subordinate agencies.

Circuit supervision of central government agencies by CY members shall be performed by the CY standing committees. Circuit supervision of local government agencies shall be conducted by teams according to administrative areas delimited by municipal or county (city) administrative divisions. The supervision covers the following tasks:

- Government general administration and the execution of budgets;
- Implementation of government policies and decrees;
- Violation of law or dereliction of duty by public servants;
- Administration of corrective measure cases;
- Livelihood of the people and social conditions;
- Handling of people's complaints and other related matters.

Invigilation

According to the Invigilation Act, CY members may dispatch personnel as invigilators to oversee examinations when the Examination Yuan (the highest authority to administrate all national examinations) or the agency charged with examination administration holds examinations. In the event of collusion, unauthorized exchange of answer sheets, or other acts of cheating discovered during an examination, the invigilators shall report such incidents to the CY for handling.

Audit

According to the Constitution, the power of audit is subject to the control powers. The CY has an Auditor General who shall be nominated and appointed by the President of the R.O.C. with the consent of the Legislative Yuan for a six-year term. The government auditing is exercised independently by the National Audit Office (NAO) under the CY.

Duties and functions of audit are enumerated as follows:

- To supervise the implementation of budget;
- To certify receipt and payment orders;
- To examine financial activities;
- To certify annual financial reports;
- To inspect irregularities and dereliction of duties concerning financial activities;
- To evaluate the performance of financial activities;
- To judge financial responsibilities;
- To perform other audit work stipulated by other laws.

The NAO and its subsidiaries conduct a variety of audit work. When auditors discover that government agencies or their staff conceal, refuse, postpone, discard their duties, act improperly, lack performances or violate laws, audit agencies should report to the CY for handling in accordance with the Audit Act or synthesize relevant information for the CY to exercise the power of control.

Human rights protection

To date, ombudsman offices have generally adopted a human rights approach to their work and taken the role of National Human Rights Institution. Under the independent powers conferred by the R.O.C. Constitution, the CY is by nature tasked with the mission of protecting human rights. In addition, to comply with the Paris Principles and to advocate for human rights and handle cases involving alleged human rights violations by government agencies or public servants, the CY members may conduct investigations under international human rights norms and standards.

The National Human Rights Commission (NHRC) was established on 1 August 2020, marking a milestone in Taiwan's human rights development. The core value of the NHRC is independent, diverse, and efficient. The NHRC shall ensure social fairness and justice, serve as a voice for disadvantaged groups, and monitor Taiwan's human rights in a systematic and comprehensive manner. It shall also provide consultation on human rights, conduct inspections, receive complaints, offer training, investigate discrimination and human rights infringements, promote human rights education, and develop indicators to assess whether government policies are in line with human rights standards.

The functions and powers of the NHRC are as follows: investigate incidents involving torture, human rights violations or various forms of discrimination; publish thematic reports on major human rights issues or submit an annual national human rights status report; assist government agencies in signing or ratifying international human rights instruments and their incorporation; provide independent opinions for state reports submitted by the government in accordance with the provisions of various international human rights conventions, etc.

With the newly established NHRC, the CY shall continue to actively address human rights concerns and deal decisively with cases of violations and abuses in order to build a more comprehensive human rights protection network in Taiwan.

Enforcement of the four acts of the Sunshine Law

The CY serves as the organization to enforce the four acts of the Sunshine Law: the Act on Property-Declaration by Public Servants, Act on Recusal of Public Servants Due to Conflicts of Interest, Political Donations Act and Lobbying Act. With the promotion of the Sunshine Law, the CY exercises its powers to effectively prevent corruption, curb inappropriate interests among public servants, and enhance integrity of civil servants.

Property-declaration by public servants

Public servants shall declare both domestic and overseas properties within three months after the inauguration and shall make annual property declarations. If a public servant fails to declare properties in time or truthfully, the CY shall impose fines and have his or her name published. The following persons shall report properties to the CY:

- R.O.C. President and Vice President
- Presidents and vice presidents of five Yuans
- Politically assigned officials
- Senior advisors, policy consultants, and strategy consultants of the Office of the President
- Chiefs of government agencies at all levels at 12th rank and above
- Principals of public junior colleges and above, and subsidiary institutions of such schools
- Legislators and councillors
- Chief officers at all levels above the rank of Major General in the military
- Governors at above village (town, city) level elected pursuant to the Public Officials Election and Recall Act
- Judges and prosecutors with the basic salary at 6th level and above



In addition, to enhance administrative efficiency, ensure the accuracy of personal information and facilitate the process of property declaration, public servants are encouraged to declare their properties online through E-declaration system established by the CY.

Conflicts of interest

In order to promote clean and competent politics, government ethics, and avoid corruption, a public servant should recuse himself or herself as soon as he or she is aware of the conflicts of interest. The term “conflicts of interest” refers to property and non-property interests obtained by a public servant or his or her related persons directly or indirectly through any act or omission in the course of performing his or her duties. Public servants in violation of the provisions stipulated in the Act on Recusal of Public Servants Due to Conflicts of Interest shall be imposed a penalty. When imposition of fines is confirmed, their names will be posted on the Internet, government periodicals or newspapers.

Political donations

The Political Donations Act is to ensure fair and just political campaigns. The CY is responsible for handling political donation disclosure. Only after receiving approval from the CY can political parties, political associations and the persons planning to participate in campaigns open political donation accounts. Those who fail to comply with the law shall be fined or be sentenced to one to five years in prison.

In order to facilitate public accountability and transparency, following amendment of the Political Donations Act in 2018, the CY has established an online system of political donation records. The general public can use the system to check the income and expenditures of political parties, groups and candidates online. The online system was activated on 14 August 2019. Users can type in key words or use the advanced search function to find the data on specific political parties, groups, candidates, donors, expenditure items, etc. They can also search by election and download the entire files for each of the election districts and candidates for a specific election for comparative research and analysis.

Lobbying

The so-called “lobbying” of the Lobbying Act refers to a lobbyist attempting to influence the lobbied party or its agency on the formulation, enactment, modification or annulment of laws, government policies or legislation by any oral or written communication, either directly to the lobbied party or to its designee. The CY is the disciplinary organ for the president, vice president, legislators or persons specified in paragraph 1 of Article 2 of the Political Appointees Pension Statues who violate the Lobbying Act.

Internal structure

The CY is composed of 29 members, National Human Rights Commission, 5 departments, 4 offices, 7 standing committees, 4 special committees and 3 task force groups. As of June 2020, the CY has a workforce of 480 (55 percent of current staff are female). The National Audit Office is subordinated to the CY with its own staff and independent budget.

Workload and statistics

	2019	2018	2017	2016	2015
Number of complaints received	14,425	16,419	15,128	13,666	13,730
Number of cases investigated	263	535	313	270	279
Number of corrective measures cases	116	100	99	82	86
Number of impeachment cases	21	20	30	63	15
Number of persons impeached	28	36	32	69	31

Publications

The CY's publications are available on its website www.cy.gov.tw. Most of them are published in Chinese. The publications include:

Control Yuan Gazettes Control Yuan Newsletter Reports

- Investigation Reports
- Special Investigation and Research Reports
- Control Yuan Annual Report (in Chinese, English and Spanish)
- Statistical Summary Report of Control Yuan (annual)

Collections

- Compilation of Corrective Measures Cases
- Compilation of Impeachment Cases
- Work Performance of the Control Yuan
- The Control Yuan Annual Anthology of Notable Human Rights-Related Cases

Brochures

- The Control Yuan, Republic of China (in Chinese, English, Spanish and Japanese)
- What can the Control Yuan do for you?

Other

- An Overview of Ombudsman Institutions Worldwide
- Chinese version of the IOIs publication "A Mission for Justice – The International Ombudsman Institute 1978-2018"



Litigation

There have been no challenging litigated cases to the CY in recent years.

Office address and contact details

Office address:	No.2, Section 1, Zhongxiao East Road, Taipei 100216, Taiwan, Republic of China
Website:	www.cy.gov.tw
Email:	iac@cy.gov.tw
General enquiries:	+886-2-2341-3183
Fax:	+886-2-2356-8588

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.

Tearoa John Tini

The current Ombudsman is Mr. Nooapii Tearea, a former Deputy/Registrar of the Courts, BDM and Companies & Incorporated Societies, a former Acting Secretary of Justice and a former Coroner of the Cook Islands.

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 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 Ombudsman Act empowers the Ombudsman to conduct his/her own motion investigation into a number of government ministries and agencies involved in matters of public importance and interest.

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 Investigation Lead, Compliance Lead, and a Corporate Service Lead. These are senior officers directly responsible to the Ombudsman.

Special Projects

The office is 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 is also working closely with the Ministry of Internal Affairs and Crown Law Office with the view to establishing a Human Rights mechanism or institution for the Cook Islands.

Offices Address and Contact Details

Street address: Te Mato Akamoeau,

Office of the Ombudsman

1st floor TJ Browne Building

Taputapuata, Avarua, Rarotonga, Cook Islands

Mailing address: Ombudsman PO Box 748

Avarua, Rarotonga, Cook Islands

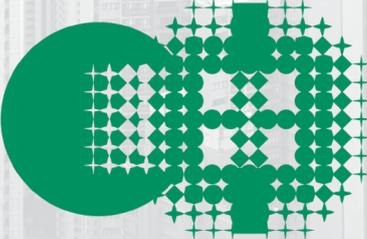
Telephone: (682) 20605

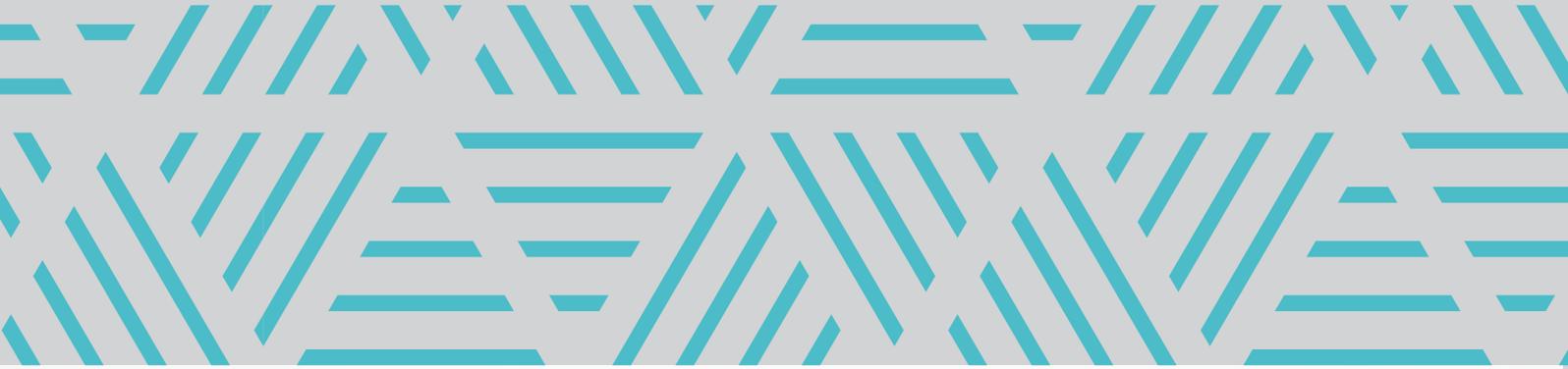
Email: ombudsman.complaints@cookislands.gov.ck





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”) (www.legislation.gov.hk), 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 – Ms Connie Lau

2019 to present – Ms Winnie Chiu

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 through independent, objective and impartial investigation, to redress grievances and address issues arising from maladministration in the public sector 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 except Police and 27 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, a preliminary inquiry may be conducted.

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

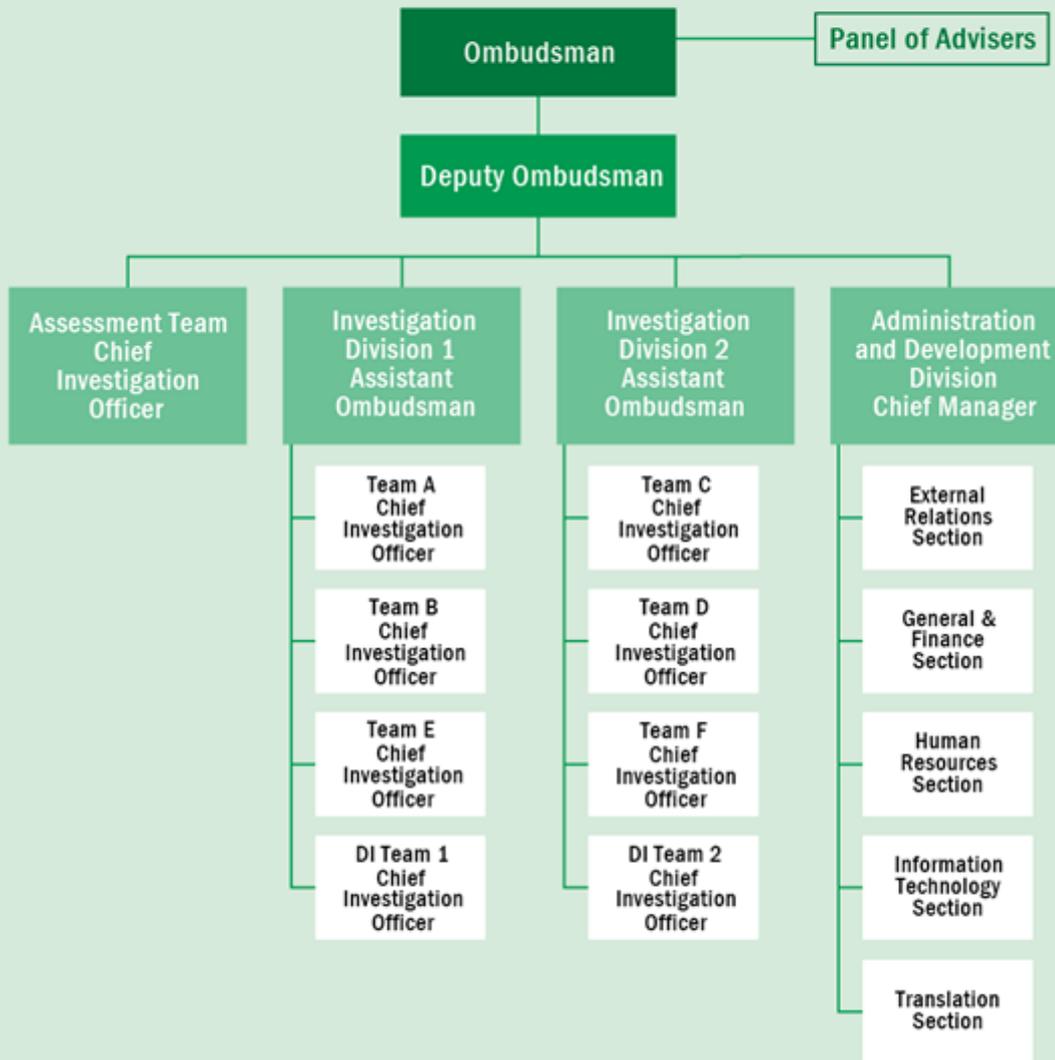
Internal Structure

The Ombudsman is assisted by a Deputy Ombudsman in overseeing the operation of her Office, organised as two Investigation Divisions, an Assessment Team and an Administration and Development Division. As of August 2020, the Office has a work force of 118. 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. Investigation officers will be on a roster, to take turns serving as Duty Officers 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, translation and general administration. The Chief Manager also processes complaints against the Office and staff.

The Ombudsman of Hong Kong Organisation Chart



Staff complement

Breakdown of staff as at August 2020	Female	Male	Total
Directorate	2	2	4
Investigation	44	21	65
Administrative and Support	35	14	49
Total regular staff	81	37	118

Accessibility

Mode of lodging complaints

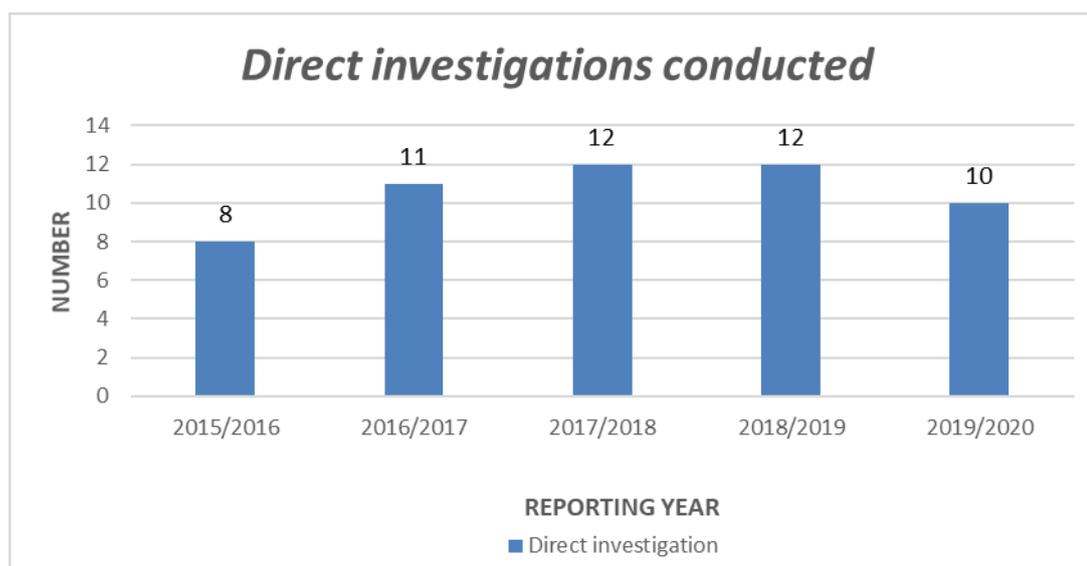
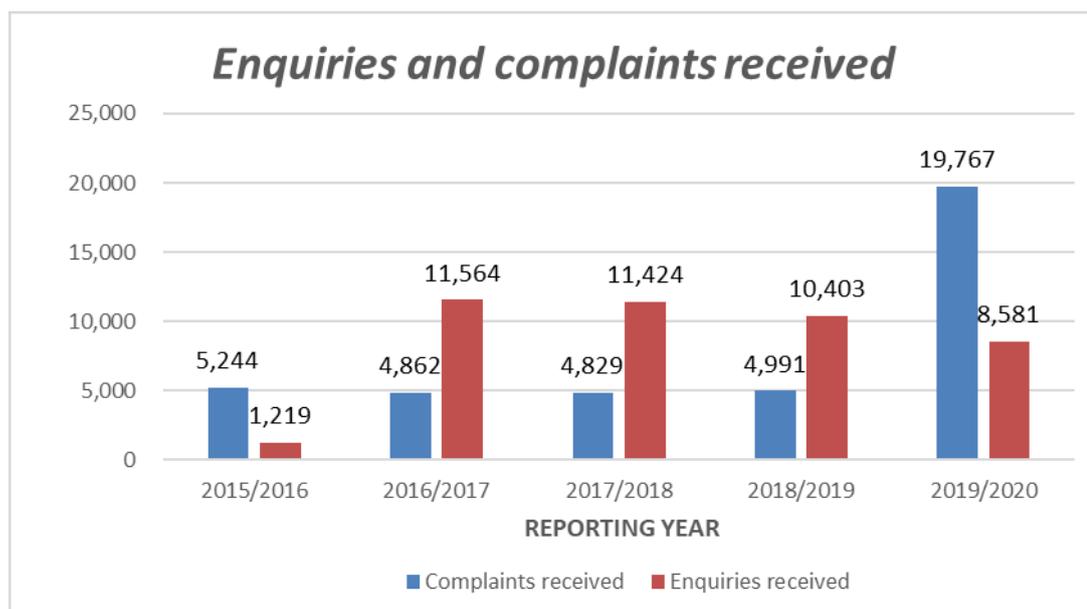
Complaints are lodged free of charge in writing, by post, fax, email or in person. The Office also accepts complaints lodged by telephone when the complaints are simple or when the complainants have difficulty to express themselves in writing. All complaints lodged with the Office are treated in the 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
- disseminating publicity messages through traditional and online media channels as well as social media platforms
- producing publicity videos on the purview, functions and powers of the Office
- receiving visits from the mainland and overseas participating in talks to share our mission, scope of work and our experience with staff of government departments and public organisations
- enlisting the assistance of the Advisers and Justices of the Peace to promote ombudsmanship
- organising seminars on topical issues and 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 Reports
- Investigation Reports
- Direct Investigation Reports
- OmbudsNews
- Publicity Leaflets

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 have been attempts of legal action including judicial reviews and civil claims against The Ombudsman. For instance, in the past five years, there were seven applications for judicial review and three civil claims against The Ombudsman's decisions 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: G.P.O. Box No. 3300, Hong Kong

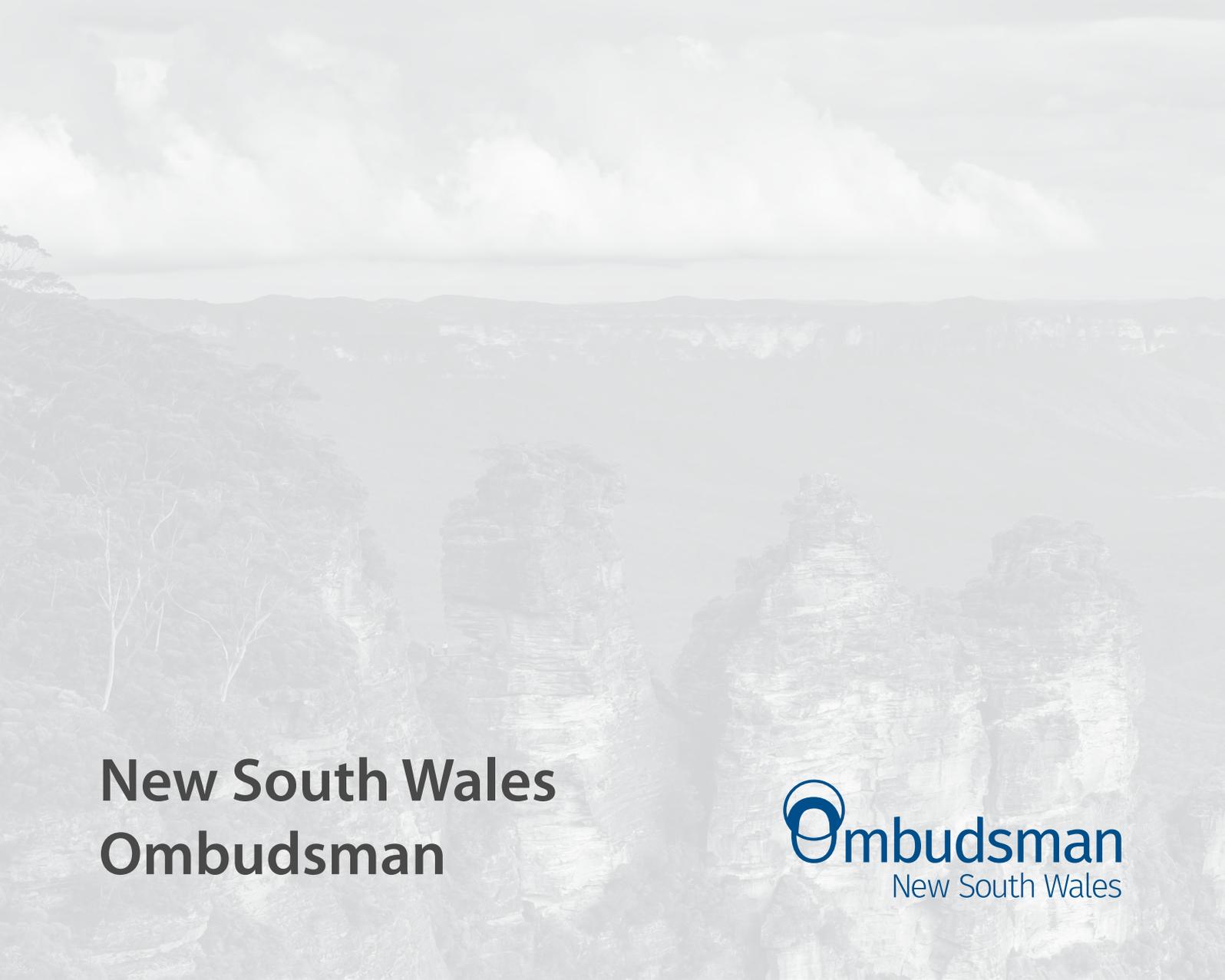
Enquiry and Complaint Hotline: (852) 2629 0555

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 eight NSW Ombudsmen appointed since the enactment of the Act:

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 – July 2015
Prof John McMillan AO	August 2015 – November 2017
Mr Michael Barnes	December 2017 – August 2020
Mr Paul Miller AO	August 2020 – April 2021
Mr Paul Miller	April 2021 – Current

Relationship to Government and Parliament

The Ombudsman Act 1974 (NSW) falls within the joint legislative portfolio of the Premier of New South Wales and the Special Minister of State.

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 upon the address of both Houses of Parliament.

The work of the office is overseen by the Parliamentary Joint Committee on the Ombudsman, Law Enforcement Conduct Commission and 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.

1. 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 8.129 million.² 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 changed on a number of occasions since it was first established. Our current statutory mandate and functions are listed below.

There is a range of administrative conduct that is excluded from the Ombudsman's jurisdiction ('excluded conduct'). This includes the conduct of:

- judges
- members of a Tribunal
- members of the NSW Parliament
- members of the NSW Police Force

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>.

2. Source: [Australian Bureau of Statistics](#) as of 31 December 2019

Our statutory mandate and functions

Our functions cover a range of activities beyond complaints and investigations – we monitor and assess certain Government programs, oversight the NSW whistleblowing regime, conduct inquiries and reviews of systemic issues affecting the public and community sectors, and review the deaths of children and other vulnerable groups in NSW with a view to preventing similar deaths occurring in the future.

Our statutory mandate is as follows:

- Complaints and investigations about public authorities – Part 3 Ombudsman Act 1974. We receive complaints about the conduct of public authorities, which include:
 - many government departments and public service agencies and their staff
 - statutory bodies that represent the Crown, and their staff
 - Ministerial staff (but not Ministers)
 - local government authorities and their staff
 - corrective services facilities and youth justice facilities
 - universities established under NSW legislation, and
 - other bodies required to keep accounts auditable by the Auditor-General.
- We conduct investigations, either in response to those complaints, or on the Ombudsman's own motion, report investigation findings and, where appropriate, make recommendations aimed at improving administrative conduct.

- Monitoring and assessment of OCHRE – Part 3B Ombudsman Act 1974 – We monitor and assess prescribed Aboriginal programs.
- Monitoring of disability reportable incidents – Part 3C Ombudsman Act 1974 – We receive reports from the Department of Community and Justice (DCJ) of disability reportable incidents (such as sexual misconduct, assaults, ill-treatment, neglect or unexplained serious injury in relation to a person with a disability in supported group accommodation). We monitor investigations by DCJ of reportable incidents, and investigate any inappropriate handling of or responses to reportable incidents. We keep under scrutiny the systems of DCJ for handling and responding to reportable incidents.
- Community services function – Part 3 and Part 4 Community Services (Complaints, Reviews and Monitoring) Act 1993 – We receive complaints about the conduct of community service providers.
- We monitor and *review* the delivery of community services, and inquire into matters affecting service providers and receivers, and we make recommendations for improvements in the delivery of community services.
- We convene the Child Death Review Team (under Part 5A Community Services (Complaints, Reviews and Monitoring) Act 1993), which:
 - maintains a register of all child deaths in New South Wales
 - analyses data to identify trends and patterns in those deaths
 - undertakes research to help prevent or reduce the likelihood of child deaths
 - makes recommendations as to legislation, policies, practices and services to prevent or reduce the likelihood of child deaths, and
 - reports biennially to Parliament on its analysis and research.
- We review the deaths of certain vulnerable individuals (including those who were in care at the time of their death), and report biennially to *Parliament* on these reviews.
- Oversight of public interest disclosures scheme – Public Interest Disclosures Act 1994 – We promote public awareness of the Public Interest Disclosures Act 1994 (PID Act) and provide information, assistance and training to public authorities. We issue guidelines on the application of the PID Act. We monitor and report to Parliament on compliance by agencies with the PID Act, and to undertake and report on compliance audits. We convene the PID Steering Committee, which provides advice on the operation of the PID Act and recommendations for reform.
- Special reports – section 31 Ombudsman Act 1974 – We make special reports to Parliament on any matter arising in connection with the discharge of the Ombudsman’s functions.
- Children (Detention Centres) Regulation 2015 – We receive notifications of and monitor the segregation of children in youth justice centres if the segregation extends beyond 24 hours duration.

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 public interest disclosures.

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 we have assessed 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 may 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. This information is used to determine whether an investigation is required.

If the Ombudsman decides to commence an investigation, a notice of investigation must be given to the public authority whose conduct will be investigated, and to the complainant (if any) (s 16).

Ombudsman investigations must be conducted in the absence of the public (s 17), and the Ombudsman and officers of the Ombudsman are subject to statutory secrecy obligations.

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 Commissions 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 other legislation. These are the Community Services (Complaints, Reviews and Monitoring) Act 1993 and the Public Interest Disclosures Act 1994. 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 Executive Leadership Team (ELT). The ELT is made up of the Ombudsman, all statutory officers, the Director, Corporate and Legal Counsel as legal adviser to the Executive.

The office is divided into the following branches/divisions:

- **Engagement & Aboriginal Programs Division** – responsible for the monitoring and assessment of Aboriginal programs in NSW and Communications, Media and Training.
- **Complaints and Investigations Branch** – deals with Assessments, Inquiries and Resolution and Investigations.
- **Projects and Systemic Reviews Branch** – Includes Projects, Research and Data Analytics and Systemic Reviews and Monitoring.
- **Corporate Branch** – Includes People and Culture, Finance and Information and Communication Technology (ICT) and Procurement and Business Operations
- **Legal, Governance and Risk Branch**

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.

Below is a table showing contacts received by our office. We categorise these contacts as follows:

Actionable complaints

These are complaints that we are authorised by legislation to receive and, if necessary, to investigate under the Ombudsman Act or the *Community Services (Complaints, Reviews and Monitoring) Act* (CS-CRAM Act).

(An actionable complaint made to us by a public official about suspected wrongdoing by a NSW public authority may also constitute a public interest disclosure under the *Public Interest Disclosures Act 1994*.)

Excluded complaints

These are complaints to our office that are about a NSW public authority (as defined in the Ombudsman Act) or service provider (as defined in the CS CRAM Act), but where the conduct complained about is excluded from our jurisdiction.

Requests for information

People (including both members of the public and public officials) may contact our complaints service not to make a complaint but rather to seek information, advice or other assistance about a public authority or community service.

Notifications

In some cases agencies have a legal duty to report to us when certain events or incidents occur. These include notifications of employment-related child protection reportable allegations or convictions (during the year this function transferred to the Children's Guardian); notifications of reportable allegations or convictions - protection of people with disability; notifications of segregation of detainees (youth justice); and notifications of the deaths of children occurring in NSW, and the deaths of persons with disability in supported group accommodation.

Misdirected contacts

We classify a contact to our office as a “misdirected contact” if it is about a person or body that is not a NSW public authority (as defined in the Ombudsman Act) or service provider (as defined in the CS CRAM Act). For example, if someone were to contact us wishing to complain about a Commonwealth agency or a private company, that would be a misdirected contact.

Feedback Assist

Feedback Assist is an online tool that enables members of the public to provide feedback via the nsw.gov.au website. We receive, review and, where appropriate, refer feedback to agencies in accordance with our function under section 35E of the Ombudsman Act.

Contact Classification	2019-20	2018-19	2017-18	2016-17	2015-16
Actionable Complaints	13674	17890	18843	24202	22951
Misdirected and Excluded Complaints	10559	13314	14176	14031	11730
Notifications	2721	3336	3810	3471	2928
Requests for Information	4462	4800	4894	5365	4807
Feedback Assist	1620	1036	64	0	0
Grand Total	33036	40376	41787	47069	42416

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 a number of 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.

These reports provide significant detail about our work and performance, and are, 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
- 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 Inclusion Act 2014 requires all NSW Government Departments to develop a Disability Inclusion Action Plan..

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 Chief Commissioner for the Independent Commission Against Corruption
- the Chief Commissioner for the Law Enforcement Conduct Commission
- the local government investigating authority
- the Commissioner of Police
- the Information Commissioner, and
- the Public Service 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 and Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts and is required to be tabled in each House of Parliament as soon as practicable after receiving it.

Reviewable deaths

Part 6 of the CS (CRAM) Act provides the Ombudsman with responsibility for monitoring, reviewing and reporting to Parliament 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.

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:

2020	<i>Investigation into actions taken by SafeWork NSW Inspectors in relation to Blue Mountains City Council workplaces</i>
2019	<i>Review of suicide clusters and evidence-based prevention strategies for school-aged children</i>
2019	<i>The role of child restraints and seatbelts in passenger deaths of children aged 0-12 years in NSW</i>
2019	<i>OCHRE Review Report</i>
2018	<i>Spatial analysis of child deaths in New South Wales</i>
2018	<i>Responses to inquiry into Parklea Correctional Centre and other operational issues</i>
2018	<i>Complaint handling improvement program - Commitments Report</i>
2018	<i>Is your builder 'fit and proper' - the weaknesses of the home building licensing scheme in NSW</i>
2018	<i>Correcting the record: Investigation into water compliance and enforcement 2007-17</i>
2017	<i>Childhood injury prevention: Strategic directions for coordination in New South Wales</i>
2017	<i>Public Interest Disclosures Act 1994 Local Aboriginal Land Councils</i>
2017	<i>Investigation into water compliance and enforcement 2007-17</i>
2017	<i>Asbestos - How NSW government agencies deal with the problem</i>
2016	<i>The use of external investigators by NSW Government agencies</i>
2016	<i>Strengthening the oversight of workplace child abuse allegations</i>
2016	<i>Operation Prospect – Second Report on Developments</i>
2016	<i>Operation Prospect – Report on Developments</i>
2016	<i>Operation Prospect – Second Progress Report</i>
2016	<i>Operation Prospect</i>
2016	<i>Fostering economic development for Aboriginal people in NSW</i>
2015	<i>Drowning deaths of children (private swimming pools) 2007–2014</i>
2015	<i>A scan of childhood injury and disease prevention infrastructure in NSW</i>
2015	<i>Policing intoxicated and disorderly conduct: Review of section 9 of the Summary Offences Act 1988</i>
2015	<i>Preventative detention and covert search warrants – Review of Parts 2A and 3 of the Terrorism (Police Powers) Act 2002 – Review period 2011-2013</i>

Guidelines

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

- [Good conduct and administrative practice - Guidelines for state and local government](#)
- [Effective complaint handling guidelines - 3rd edition](#)
- [Enforcement guidelines for councils - December 2015](#)

- Complaint management framework and model policy June 2015
- Complaint handling at universities: best practice guidelines
- Model guidelines - managing and responding to threats, aggressive behaviour and violence from members of the public
- Managing unreasonable complainant conduct - a model policy and procedure
- Managing unreasonable conduct by a complainant
- Apologies - A practical guide (2nd Edition)
- Options for Redress

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 good customer service, complaint handling and public interest disclosures.

All of the publications listed above are available at the Ombudsman's website

www.ombo.nsw.gov.au.

Office Address and Contact Details

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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

 **Ombudsman**
Tuia kia ōrite · Fairness for all





Establishment

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

Ombudsmen

There have been 16 Ombudsmen since 1962:

1. **Sir Guy Powles**
1962 to 1975—Ombudsman
1975 to 1977—Chief Ombudsman

2. **Sir George Laking**
1975 to 1977—Ombudsman
1977 to 1984—Chief Ombudsman

3. **A. Eaton Hurley**
1976 to 1980—Ombudsman

4. **Lester Casle**
1977 to 1984—Ombudsman
1984 to 1986—Chief Ombudsman

5. **Sir John Robertson**
1984 to 1986—Ombudsman
1986 to 1994—Chief Ombudsman

6. **Nadja Tollemache**
1987 to 1992—Ombudsman

7. **Susan Richards**
1992 to 1992, August 1993 to November 1993—Ombudsman

8. **Sir Brian Elwood**
1992 to 1994—Ombudsman
1994 to 2003—Chief Ombudsman

9. **Hon Sir Anand Satyanand**
1995 to 2005—Ombudsman

10. **Mel Smith**
2001 to 2005—Ombudsman
2006 to 2007—Ombudsman

11. **John Belgrave**
2003 to 2007—Chief Ombudsman

12. **Dame Beverley A Wakem**
2005 to 2008—Ombudsman
2008 to 2015—Chief Ombudsman

13. **Dr David McGee QC**
2007 to 2013—Ombudsman

14. **Professor Ron Paterson**
2013 to 2016—Ombudsman

15. **Leo Donnelly**
2016 to 2018—Ombudsman

16. **Peter Boshier**
2015 to present—Chief Ombudsman

Relationship to government and parliament

The Ombudsman is an Officer of Parliament (s 3 OA).¹

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) and 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 Ombudsman reports directly to Parliament through the Speaker of the House. The Ombudsman is financed by a separate vote, Vote Ombudsmen, the amount of which is determined by the House of Representatives. The Chief Ombudsman is accountable for his budget to the Officers of Parliament Select Committee and the Governance and Administration Committee (which are multiparty committees made up of representatives from the political parties in Parliament).

The Chief Ombudsman is required to report annually to Parliament on the exercise of his 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 role 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:

Year	Extension to jurisdiction
1976	Local government organisations
1983	Official Information Act 1982 (OIA)
1988	Local Government Official Information and Meetings Act 1987 (LGOIMA)
2001	Protected disclosures under the Protected Disclosures Act 2000 (PDA)
2005	All crown entities within the meaning of the Crown Entities Act 2004, (other than the Independent Police Conduct Authority)
2007	National Preventive Mechanism under the United Nations Optional Protocol to the Convention Against Torture (OPCAT) for prisons, mental health and certain other places of detention in New Zealand through the Crimes of Torture Act 1989 (COTA).
2010	As one of three partners of New Zealand's Independent Monitoring Mechanism, monitor 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 Land Transport Act 1998 (Land Transport Act).
2018	Provide comment to the New Zealand Customs Service on agreements for authorised provision of personal information to private sector organisations under s 317 of the Customs and Excise Act 2018. Extension to the National Preventative Mechanism under OPCAT to include courts and privately-run as well as public aged care facilities.
2019	An enhanced role to oversee complaints and investigations relating to children in care.
2020	Inspections under OPCAT to include COVID-19 managed isolation and quarantine facilities (under existing designation for health and disability facilities)

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

- Central government agencies;
- 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 (including immigration

detention centres, mental health facilities, privately-run aged care facilities and COVID-19 managed isolation and quarantine facilities);

- Publicly funded school boards of trustees, universities and polytechnics;
- District Health Boards;
- Crown entities;
- 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 section 13 of the OA an Ombudsman cannot investigate the administrative acts or decisions of:

- The New Zealand Police — 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;
- Any person acting as legal adviser to the Crown or as counsel for the Crown in relation to any proceedings ; and
- The terms and conditions of service or any order, command, decision, penalty, or punishment given to, or affecting any member of the New Zealand Naval Forces, the New Zealand Army, or the Royal New Zealand Air Force,

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 seven pieces of legislation that specify the functions of the Ombudsman in New Zealand:

- The Ombudsmen Act 1975;
- The Official Information Act 1982;
- The Local Government and Official Information and Meetings Act 1987;
- The Protected Disclosures Act 2000;
- The Crimes of Torture Act 1989;
- The Land Transport Act 1998; and
- The Customs and Excise Act 2018.

Complaints about government agencies

The Ombudsman'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). The Ombudsman does not need a complaint to start an investigation. A self-initiated investigation is usually prompted by significant systemic issues, where the Ombudsman thinks their intervention has the potential to result in wider improvement. Examples include:

- He Take Kōhukihuki | A Matter of Urgency: The Ombudsman's own-motion investigation into Oranga Tamariki's practices relating to the removal of newborn pēpi under without notice interim custody orders, 2020
- Off the Record: The Ombudsman's own-motion investigation into the Ministry of Health's collection, use and reporting of information about the deaths of people with intellectual disabilities, 2020
- Disclosure: The Ombudsman's own-motion investigation into the Ministry of Education's engagement processes for school closures and mergers, 2017
- Not a game of hide and seek: The Ombudsman's own-motion investigation into the OIA practices of 12 central government agencies, 2015
- The Ombudsman's own-motion investigation into provision, access and availability of prisoner health services, 2012
- The Ombudsman's own-motion investigation into complaint procedures or Corrections Inmate Employment, 2011
- The Ombudsman's own-motion investigation into prisoner transport, 2007
- The Ombudsman'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.

Protected Disclosures

Under the Protected Disclosures Act 2000 (PDA), the Ombudsman is one of the ‘appropriate authorities’ to whom the public can make protected disclosures. The Ombudsman also has 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 protected disclosure as the Ombudsman has under the OA.

Disability rights

The Ombudsman is part of New Zealand’s Independent Monitoring Mechanism (IMM) under the United Nations Convention on the Rights of Persons with Disabilities, along with the Human Rights Commission and Disabled People’s Organisations’ Coalition.

The IMM:

- Promotes, protects and monitors the implementation of the Convention;
- Reports to parliament, the public and the United Nations on the implementation of the Convention and specific issues; and
- Provides advice on legislation, policy and practice affecting disabled people.

The Ombudsman can investigate complaints about government agencies that relate to disabled people. The Ombudsman can investigate to see if the agency has acted reasonably and fairly, and check whether the agency has followed the principles of the Convention.

National Preventive Mechanism

Under the Crimes of Torture Act 1989, the Ombudsman is formally designated a National Preventive Mechanism to give effect to OPCAT.

The Ombudsman was 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 facilities including mental health facilities and intellectual disability facilities, youth justice and child care and protection residences. In 2018 this designation was extended to include court cells and privately-run aged care facilities.

The Ombudsman’s OPCAT inspections look at:

- how people are treated, including the use of isolation, force or restraint;
- protective measures, such as information for detainees, complaint processes, registers and record-keeping;
- conditions of detention, such as facilities and living conditions;
- detainees’ activities, including contact with family and the outside world, outdoor exercise, education and leisure activities;
- access to health care; and
- staff, including staffing levels, conduct and training.

The Ombudsman has unrestricted access to these locations and to information about the number and

treatment of detainees and conditions of detention. The Ombudsman is also entitled to interview any person in a place of detention, or who can provide relevant information.

After an inspection, the Ombudsman reports and makes recommendations to improve the treatment of detainees and conditions of detention.

Prisons

While prisoners may complain in the same manner as any other member of the public against agencies subject to the OA, (including prisons), the Ombudsman undertakes 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 Office of the Inspectorate. This office operates within, but functions independently from Corrections. The Ombudsman has adopted a monitoring role to consider whether there are any issues that should be investigated, pursuant to a Protocol between the Chief Ombudsman and the Chief Executive of the Department of Corrections.

When notified of a death in custody, the Ombudsman carries out an initial assessment of the circumstances of the death, including the nature of the individual's detention and the Department of Corrections' response to the incident. Following this assessment, in most cases the Ombudsman will await a copy of the Office of the Inspectorate's report on the death, and then consider whether to take further action. If satisfied that Corrections has responded appropriately, no further action will be taken in regards to the death.

Children in Care

In April 2019, the New Zealand Government announced a new oversight regime for Oranga Tamariki—Ministry for Children. This is the department responsible for child wellbeing, specifically children at risk of harm and children in the custody of the state. The oversight regime includes an enhanced role for the Ombudsman. Under the regime, the Ombudsman will:

- Investigate and resolve complaints about the Oranga Tamariki system, including complaints about other government departments with whom Oranga Tamariki or children in care interact;
- Monitor systemic issues and undertake resolutions and investigations where appropriate;
- Be notified by Oranga Tamariki of any serious and significant incidents that occur with children in care.
- Have additional powers to obtain information and work with other oversight bodies;
- Have explicit duties requiring engagement with, and a focus on improved outcomes for, Māori; and
- Operate a common doorway for complaints relating to a child in care that span government agencies.



The Ombudsman's jurisdiction will also be expanded to include organisations approved by Oranga Tamariki to provide care for children.

The legislation setting up the new regime is scheduled to be passed in 2022.

The Ombudsman has a new dedicated team that handles children in care complaints from receipt through to early resolution and investigation where necessary. The complaints process for this team is currently under review, in order to ensure that it is culturally responsive, accessible, and trauma-informed.

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:

- Ombudsmen investigated three petitions referred by Select Committees; and
- 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 Ombudsman's website.

Education and training

The Ombudsman's staff provide 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; and
- The role of the Ombudsman.

The Ombudsman's staff also deliver presentations and training sessions to the public and media on:

- The role of the Ombudsman; and
- How to effectively utilise New Zealand's official information legislation to access information.

The Ombudsman publishes guides and provides advice to agencies on request

Powers

The powers of the Ombudsman under the OA include:

- If, after investigating a matter under the OA, an Ombudsman forms an opinion that the agency has acted contrary to law, or in a way that was unreasonable, unjust, oppressive, improperly discriminatory, based wholly or partly on a mistake of law or fact, or wrong, then 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 Ombudsman 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)); and
- An Ombudsman can delegate most functions to staff, except for the making of a final opinion.

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 Ombudsman 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 OA 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)); and
- 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)).

If there is more than one Ombudsman, one is appointed as Chief Ombudsman and is responsible for the administration of the office and the coordination and allocation of work between the other Ombudsmen (s 3(4)). A single Ombudsman is automatically Chief Ombudsman.

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 one Ombudsman: Chief Ombudsman Peter Boshier.

The Chief Ombudsman has the power to appoint staff necessary for the efficient carrying out of the functions, duties, and powers of the Ombudsmen under the OA (s 11(1)).

Workload and statistics

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

Year	2016/17	2017/18	2018/19	2019/20
Enquiries and complaints received	11,846	11,468	11,886	11,862
Complaints disposed of during the year	12,141	11,846	11,793	11,740
Remedies obtained for the benefit of public administration	42	76	27	38
Remedies obtained for the benefit of the individual	645	808	1,192	977
Inspected places of detention	57	39	40	59
Number of COTA recommendations accepted or partially accepted	185	149	288	125
Responses to requests for advice or comment on individual decisions, legislation, policy, or administrative proposals	184	341	440	385
External resources, speeches, presentations, or trainings	96	104	104	143

Publications

New Zealand Ombudsman publications include:

- Corporate information—Annual reports to Parliament, strategic intentions, protocols with other agencies, and advisory group terms of reference;
- Special reports to Parliament—OPCAT reports and own own-motion investigations;
- Opinions on investigations;
- Guides for agencies and the public (Official Information, good administration, PDAs, disability rights);
- Case notes (case notes provide summaries of the outcomes of particular complaints made to the Ombudsman and the views that the Ombudsman has formed on those complaints); and
- Outreach—Ombudsman Quarterly Review, speeches, conference papers, pamphlets and posters.

All of the Ombudsman's publications are available at www.ombudsman.parliament.nz. Members of the public are able to search for particular documents of interest using the website's searching and filtering functions on the Resources and Publications page.

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 shall lie against an Ombudsman or their staff in respect of the exercise or intended exercise of their functions, unless bad faith is shown; nor are an Ombudsman or their staff compellable witnesses in relation to any matter 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).

International development and engagement

The Ombudsman has a dedicated international team that learns from and assists to develop international best practice across the Asia-Pacific region. As part of this work, the Ombudsman partners with Ombudsmen and integrity institutions in the region to collaborate and deliver support.

Examples of recent international work include providing investigator and corporate training and resources, initiating and leading an annual Pacific Ombudsman Leadership Forum, leading and supporting regional and international networks, and responding to ad hoc requests for support. Such work enables the Ombudsman to also gain a deeper cultural and societal understanding of various communities living in New Zealand, which ultimately allows for more informed and appropriate engagement domestically.

The Chief Ombudsman is the Regional President of the Australasia and Pacific Ombudsmen Region (APOR) branch of the International Ombudsman Institute, a member of the Australian New Zealand Ombudsmen Association (ANZOA) and a member of the Association of Australasian Information Access Commissioners (AIAC).

Offices and contact details

The Ombudsman is based in Wellington but also has an office in Auckland.

Wellington

Level 7, 70 The Terrace, Wellington 6011

Auckland

Level 10, 55 Shortland Street

New Zealand wide

PO Box 10152 Wellington 6143

Phone: (04) 473-9533

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) ¹

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 are a judicial officer, a member of parliament, a local government council or a political party or have a recent political affiliation (within the last 5 years) (s 133).

The term of appointment is 5 years, with the potential for reappointment for one further term of 5 years (s 134).

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 30 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 Brenda Monaghan (appointed 2018).

1.. 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:

- Information Commissioner (the Ombudsman has also been appointed to this position)
- Independent Commissioner Against Corruption
- 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 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, Deputy Ombudsman (ECO2), Assistant Ombudsman (SAO2) and 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 June 2020, the Office had 14 staff (including some part-time), with 3 males and 11 females.

Accessibility

Demographics

The relatively small population of the Northern Territory (approximately 245,000 in 2020)

are spread over an area of 1.35 million km². 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 78% living outside of the capital city, many of them in very small and very remote centres.

Over 15% of Territorians speak an Indigenous language at home and overall 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
- 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
- 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 and training presentations.

Workload And Statistics

Approaches received include all enquiries and complaints.

	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
Approaches received	1,992	2,767	2,568	2,036	2,304	2,592	2,535

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:

- **Strangers in their own land: Use of Aboriginal Interpreters by NT public authorities**

Considers current utilisation of Aboriginal interpreter services across a range of NT government agencies and the work of the Aboriginal Interpreter Service. It looked at international as well as Australian and Territory whole-of-government frameworks for Indigenous interpreter use and made recommendations relating to the future development of interpreter services.

- **Taser use and Management of NT Police conduct issues**

Examined the benefits and risks of Taser use by NT Police in the context of a particular incident involving the tasing of a 12 year old child. Discussed the current state of the literature on Taser use, NT Police rules regarding Taser use and the circumstances of the particular case.

- **Little Fish are Sweet: Administration of a high volume, low value, subsidy scheme**

Looked at issues relating to the administration of high volume, low value subsidy schemes, and measures that can be utilised to ensure that scheme beneficiaries and the Territory community obtain the best value for money. The particular emphasis was on ensuring that scheme structures and internal controls are designed to minimise the potential for errors, misinterpretation and fraud that may compromise the objectives of the scheme.

- **Women in Prison II**

Investigation into systemic concerns surrounding the conditions for women prisoners in the Alice Springs Women's Correctional Facility.

Litigation

There has been no recent litigation of substance.

Special Projects

In addition to its usual functions, the Office has recently undertaken the following:

- producing a detailed report on justice-related issues, The Justice Continuum, as Part 1 of the 2018/19 Annual Report;
- preparing an extensive report to brief the incoming Commissioner for Corrections on developments in Correctional services in recent years;
- liaison with key agencies to promote the quality and fairness of their responses to the coronavirus pandemic;
- planning and adapting Office operations to ensure business continuity throughout the coronavirus pandemic;
- combining with the Office of the Information Commissioner, which deals with information access and privacy rights in respect of government agencies;
- taking on, or preparing to take on, a number of additional statutory functions.

Office Address and Contact Details

Mailing address:	Ombudsman NT GPO Box 1344 Darwin NT 0801
Web address:	www.ombudsman.nt.gov.au
Email address:	nt.ombudsman@nt.gov.au
General inquiries:	08 8999 1818
Fax:	08 8999 1828
Toll free (in NT):	1800 806 380



Ombudsman Commission of Papua New Guinea





Establishment

The Ombudsman Commission is an independent institution established directly by the Constitution in 1975. It forms an integral part of the system of checks and balances that have been put in place by the Constitution to regulate the governance of Papua New Guinea and supervises the enforcement of the Leadership Code (Division 111.2).

Ombudsman

The Ombudsman Commission consists of a Chief Ombudsman and two Ombudsmen. There have been eight Chief Ombudsmen and 17 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

2008 to 2012 – Chronox Manek OL, Chief Ombudsman

2005 to 2014 – John Nero, Ombudsman

2013 to 2015 – Rigo A Lua , OBE Chief Ombudsman

2007 to 2016 – Phoebe Sangatari, Ombudsman

2018 to 2019 – Michael Dick, Chief Ombudsman

2018 to current – Kevin Kepore, Ombudsman

July 2020 to current – Richard Pagen, Chief Ombudsman

The structure of the office is to have a Chief Ombudsman, supported by two other Ombudsmen. At the time of publication one of the Ombudsman positions is vacant.

Chief Ombudsman Richard Pagen

Mr. Richard Pagen is the eighth Chief Ombudsman following his Swearing-in at the Government House on 28 July 2020.

Mr. Pagen was the Acting Chief Ombudsman until his confirmation on 2 July 2020 by the Ombudsman Appointments Committee, in accordance with Section 217(1)(2) of the Constitution.

Chief Ombudsman Richard Pagen served as an officer in the service of the Commission for over 20 years.

He first joined the service of the Commission as an Investigator and later as a Senior Investigator and Team Leader in the Leadership Division, before being appointed the Director of Leadership Division until his acting appointment as an Ombudsman in 2016. Mr. Pagen was confirmed as an Ombudsman in 2017 and became the Acting Chief Ombudsman in October 2019 before his confirmation as the Chief Ombudsman on 2 July 2020.

Chief Ombudsman Pagen has a Bachelor of Science Degree and a Bachelor of Law Degree from the University of Papua New Guinea and a Honours Degree from the University of Tasmania, Australia.

He has had vast prior experiences in both the public and private sector employments.

Prior to joining the Ombudsman Commission in 1999, Chief Ombudsman Pagen served as a Geologist with Minorco Exploration Ltd based in Port Moresby, CRA Exploration in Australia and Anglo America Mining; Exploration based in Mt. Hagen and Interim Director, National Anti-Corruption Alliance (NACA), now commonly known as Task Force Sweep.

Chief Ombudsman Richard Pagen comes from Laiagam District in the Enga Province.

Account Ombudsman Kevin Kopii Kepore

Ombudsman Kevin Kepore comes from Wabag, Enga Province. He holds a Master's degree (International Business) from the Massey University New Zealand and a Bachelor of Accounting Degree from the University of Papua New Guinea

Prior to his appointment as an Ombudsman, Mr Kepore was the Director Academic for the Certified Practicing Accountants Papua New Guinea (CPAPNG)

He was a Lecturer at the Pacific Adventist University (PAU) and the University of Papua New Guinea. He also worked as a Senior Tax Accountant with Deloitte Touche Tohmatsu, Provincial VAT Manager with the Internal Revenue Collection (IRC) and a Graduate Accountant with RAM Business Consultant.

Ombudsman Kepore was appointed as the Accountant Ombudsman on 6th November 2018.

Relationship to Government and Parliament

The Ombudsman Commission's impartiality is reinforced by having the Commission's constitutional decision-making authority vested in a three member Commission and not just in one person who might in a particular case be subject to outside influences.

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 under section 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
- misbehavior
- misconduct, as defined by the Leadership Code, or
- breach of any Organic Law that sets out their employment conditions.

Service of the Commission and Organisational Overview

The Commission's Service is designed to deliver maximum possible efficiency through its functional and position requirements. In line with methods of best practice, the Commission has optimum number of reporting relationships with the flattest possible structures to provide the highest possible levels of managerial and supervisory responsibilities.

Section 25 of the Organic Law on the Ombudsman Commission (OLOC) requires the Commission to appoint a Secretary and Counsel to the Commission. The Commission is also given power to make administrative decisions to amend the organisational structure and create other positions within its service.

Office of Secretary

The Office of Secretary is headed by the Secretary to the Commission who is also the Administrative Head of the organization. Office of Secretary provides effective and efficient administrative and executive support to the Members of the Commission and key operational sections and the Office of Counsel.

Office of Counsel

The Office of Counsel is the legal division of the Commission that provides to the Commission the best possible advice and guidance in accordance with the Constitution and all other laws, in particular the National Goals and Directive Principles and the Basic Rights and Basic Social Obligations for the proper administration of the Commission and the enforcement of those laws so as to diligently carry out the decisions and instructions of the Commission with all legal matters that come before the Commission.

The growth, development and sustainability of the Commission depend on a strong and healthy workforce to carry out the duties of the Ombudsman Commission in accordance with its yearly targets.

The Ombudsman Commission's total staff establishment is 150 which comprises of the Members of the Commission, Secretary to the Commission, Counsel to the Commission and the five (5) Divisions headed by 5 Divisional Directors.

Relationship to Government and Parliament

The Ombudsman Commission's relationship to the government is specified under its roles and functions

ROLES AND FUNCTIONS

1. Investigate complaints about the administrative actions of governmental bodies and agencies – traditional role

In this traditional role, the Ombudsman Commission is seen as the institution that is available to assist ordinary citizens throughout the country who feel aggrieved by actions of the bureaucracy or any governmental body.

Whilst the Constitution ensures that governmental bodies are responsive, efficient and effective in carrying out their statutory functions, it has also enabled and entrusted the Ombudsman Commission with the responsibility to lift the overall standards of public administration in Papua Guinea through assisting aggrieved citizens and ensuring elimination of unfairness and discrimination by governmental bodies.

The Ombudsman's traditional function allows the Commission to investigate issues, either on its own initiative or on a complaint by a person affected by administrative practices and decisions of governmental bodies that may be unreasonable, unjust or oppressive.

An investigation of alleged wrong conduct by a governmental body is carried out under the Organic Law on the Ombudsman Commission. This Organic Law is also used for a discriminatory practices investigation.

2. Administer the Leadership Code by conducting investigations into the actions of Leaders

Apart from the traditional role of investigating maladministration in the public sector, the Commission has a unique and home grown function to enforce and supervise the Leadership Code which covers leaders specified under Section 26 of the PNG Constitution. Leaders who fail to abide by this code of ethics are investigated and can be referred for prosecution. This has been the order of the Commission business over the years.

Leadership complaints are complaints against leaders who are specified under Section 26 of the Constitution. These leaders include Members of Parliament, Departmental Heads and Heads of statutory organisations such as PNG Power etc.

3. Investigate discriminatory practices under the Discriminatory Practices Act and the HIV/ AIDS Management and Prevention Act

Human rights complaints include complaints made against any government body or agency about discriminatory practices inflicted on a person.

4. Supreme Court References

The Commission can seek clarification on matters from the Supreme Court when required

Complaints

The Organic Law on the Ombudsman Commission provides that any person can make a complaint about any matter within the jurisdiction of the Commission. The Commission is obliged to consider every complaint it receives and has the discretion whether to investigate a complaint or not.

Own Initiative Investigations

Section 219(1)(a)(ii) and (c) of the Constitution empowers the Ombudsman Commission to conduct investigations on its own initiative, in addition to conducting investigations in response to specific complaints that it receives.

The power to investigate on its own initiative is another way in which the Constitution and the Organic Law have conferred a considerable degree of independence on the Commission.



The Ombudsman Commission exists, not only to impose accountability, but also to expose corruption and to positively assist the public, particularly public servants and governmental bodies to do their jobs properly.

When all these different roles are considered together, it is possible to regard the Ombudsman Commission as part of a fourth arm of government. It is not part of the legislature. It is not part of the judiciary. And it certainly is not part of the executive. The Commission has a special role along with a number of other constitutional institutions such as the Auditor-General and Public Services Commission. That role is a supervisory one. It supervises the performance of all governmental functions.

Independence guaranteed under the Constitution

The Ombudsman Commission is very fortunate to have its independence guaranteed by the Constitution. In performing of its functions, the Commission is not subject to direction or control by any person or authority. This is a feature which ombudsman institutions in many other countries do not enjoy.

Of course, it can be argued that the executive arm of government and also the Parliament can strangle the Commission in its work by constraining the funds which are available to it and imposing a resource shortage on it. This is a pressure which the Ombudsman Commission must face every year. However, the Constitution comes to the rescue in the form of Section 225. This provision states that it is the duty of all governmental bodies – including the Department of Finance – to make sure all necessary resources and funds are available to constitutional institutions such as the Ombudsman Commission.

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)).

Accessibility

The Ombudsman Commission complaint services can be accessed through its Head Office and the four Regional Offices. Complaints are submitted through letters, emails, walk-ins and outreaches through the Public Education Program. The Commission also registers complaints on its own initiative.

Complaints received over the years are listed below:

Leadership Investigations

The Leadership Division whilst entrusted with the responsibility of enforcing the Leadership Code also aims to work closely with leaders to educate them on good governance and quality leadership. This is an important role the division is entrusted to perform for the Commission.

The table below shows the number of complaints received and investigated from 2014-2019

Period	2014	2015	2016	2017	2018	2019
Total Number of leadership complaints received and investigated	194	242	137	129	168	324

Complaints and Administrative Investigations

Investigating administrative complaints is Ombudsman Commission's traditional function under the Organic Law on the Ombudsman Commission.

Period	2014	2015	2016	2017	2018	2019
Total Number of administrative complaints received and investigated	183	262	196	159	169	1184

The Complaints and Administrative Investigations Division also completed a number of major investigation reports over the years which were presented to the speaker of Parliament and were tabled on the floor of Parliament.

The table below shows the number of complaints received and investigated from 2014-2019. These Investigative Reports are listed in the table below:

January 2014	An investigation into the Department of Lands & Physical Planning on alleged improper licensing of Public Institutional Land (Section 36 Allotment 1-6 & 21 – 26) under Special Purpose to Solar Industries Limited for commercial purpose in Kimbe, West New Britain Province
October 2014	An investigation into the conduct of the Government Printer and the Government Printing Office (GPO).
March 2015	An investigation on the Department of Lands & Physical Planning's issuance of State Lease (Mission Lease) over Section 283 Allotment 48, Hohola (Morata) in the National Capital District
April 2016	An investigation into the alleged inhuman treatment of prisoners by officers of the Correctional Services of Papua New Guinea at Gilegile Correctional Institution, Milne Bay Province.
October 2017	An investigation into the alleged improper decision by the Government Office Allocation Committee to engage Central Land Limited to build a 32 Storey Government Office Complex at Waigani Central in the National Capital District.
October 2017	An investigation into improper and unlawful issuance of Entry Permits and granting of Citizenship by Naturalization and issuance of PNG passports to Joko Tjandra Alias Joe Chan by the Papua New Guinea Immigration and Citizenship Services Authority.
July 2018	An investigation into the alleged misuse and misapplication of the services improvement program grants by the Madang Joint Provincial Planning & Budget Priority Committee to purchase 19 Motor vehicles for the 19 Local-level Government Presidents in Madang Province.
July 2018	An investigation into the alleged abuse of the Eastern Highlands Provincial Government Project Trust Account by the Eastern Highlands Provincial Government and the Eastern Highlands Provincial Administration in 2009 and 2010
October 2018	An investigation into the alleged improper awarding of the Namatanai District Agriculture Development Project Contract to KPE Investment Ltd by the Namatanai Joint District Planning & Budget Priority Committee.
December 2018	An investigation into the alleged improper borrowing of AU\$1.239 Billion Loan from the Union Bank of Switzerland, Aktiengesellschaft (Australia Branch) to purchase 149,390,244 shares in Oil Search Limited and improper tender and procurement of consultants in relation to the borrowing. (UBS Loan)

Constitutional Code Compliance, Litigation and Legislative Reform

The Commission's Goal in regards to Constitutional Code Compliance, Litigation and Legislative Reform is to effectively bring references to the Supreme Court, conduct litigation and provide advice to promote compliance with the Constitution, and promote law reform to improve the effectiveness of the Leadership Code and the Organic Law on the Ombudsman Commission and address systemic governance issues.

For 2019/2020, the Commission:

- Registered 5 fresh Court matters all on jurisdictional issues;
- Referred 7 Leaders;

- Issued 2 Directions under Section 27(4) of the Constitution;
- As a result of OC's challenge, the Supreme Court ruled that the Public Money Management Regularisation Act 2018 was unconstitutional and invalid in its entirety;
- Completion of its Legislative Review Project with the issuance of the Certificate of Necessity for each of the proposed amendments to (1) Constitution (relevant provisions on the Ombudsman Commission), (2) Bill on the Organic Law on the Ombudsman Commission, (3) Bill on the Organic Law on the Duties & Responsibilities of Leadership, and (4) Bill on the Leadership Code (Alternative Penalties) Act.

Previous Years:

- In 2017 alone, the Commission was able to save the State a total of K336, 669, 863 by using its power to temporarily halt the use of public funds (DSIP and PSIP) during 2017 National General Election.
- The year 2016 was a successful year for the Commission as it continued in a wide range of court proceedings and recorded 21 fresh cases of which 3 were Leadership Tribunal Inquires and 3 National Court matters all relating to challenge on Commission's power on supervision of the enforcement of the Leadership Code. Commission saw an increase in number of fresh cases by 43 per cent in contrast to 2015.
- The Commission registered 6 Constitutional References in 2016 under sections 18(2) and 19 of the Constitution. By the end of 2016, 5 out of the 6 references were completed. As of 2017, the Commission filed 3 Special Reference under section 19 of the Constitution one of which was SCR No. 1 of 2017 where:
 - Two questions were raised before the Supreme Court, one was whether the amendments to section 27(4) of the Organic Law on the Duties and Responsibilities of Leadership (OLDRL) in 2006 to impose strict standards of proof, in accordance with the Evidence Act was constitutional, as the intentions of the Constitution did not seem to require such high standards but only to observe the requirements of natural justice. The other question was on when the suspension of a leader referred under Section 28(1) of the *Organic Law on the Duties and Responsibilities of Leadership* take effect.
 - This Reference was concluded at the end of 2017 with an unanimous ruling that the 2006 amendment to section 27(4) of the Organic Law on the Duties and Responsibilities of Leadership is invalid, ineffective and unconstitutional while on the question of suspension, the Supreme Court ruled by majority of 3 to 2 that suspension of a leader takes effect automatically by operation of law when the Public Prosecutor refers the matter (comprising the allegations of misconduct in office and the Ombudsman Commission's statement of reasons) to the tribunal at a public hearing.

Key Impact Projects

In 2012, the Commission accepted the O'Neil Government's proposal to deliver three (3) Impact Projects under the Alotau Accord agreement however the projects were never funded per the agreement.

Legislative Review

The Legislative Review Project of the Ombudsman Commission is one out of three priority Projects which was identified by the Commission in 2012 and adopted by the O'Neill Government in its Alotau Accord of 2012.

The project was divided into three phases:

- i) Consultation and Research;
- ii) Policy development; and
- iii) Legislative development.

Phase (i) of the Project commenced in 2013 with internal consultations and research and various community-wide and stakeholder consultations which ended in 2015.

Phase (ii) of the Project mainly involved the drafting of the OCPNG General Policy for the review project. This General Policy provides the reform recommendations or the outcome for the Ombudsman Commission's review of its enabling legislation. It is the culmination of various consultations and research work which were conducted during the reform project.

Phase (iii) of the Project includes the formulation of the drafting instructions for the review exercise. Drafting instructions were prepared for each of the relevant legislation consulted upon during the review exercise. This includes the Constitution (relevant provisions of the Ombudsman Commission), the Organic Law on the Ombudsman Commission, the Organic Law on the Duties and Responsibilities of Leadership, and the Leadership Code (Alternative Penalties) Act.

The Commission has approved the project's general policy which paves way for the finalization of the draft amendments to the legislations - amendments to the relevant provisions relating to the Ombudsman Commission in the Constitution, the Organic Law on the Ombudsman Commission, the Organic Law on the Duties & Responsibilities of Leadership, and the Leadership Code (Alternative Penalties) Act. These will then go before the Parliament once necessary reform processes are completed by the relevant authorities; the Constitutional & Law Reform Commission, the Office of the State Solicitor, and the Office of the Legislative Counsel."

Organisational Structure Review

Almost 50 per cent of the restructure work was completed in 2015; however the work was put on hold due to lack of manpower to assist in the restructure work.

Priority was given to fill in all vacancies (loss of senior executive management team, including late Chief Ombudsman, Acting Ombudsman, (Counsel to the Commission and Ombudsman positions) in the Commission.

As a way forward the Commission commenced recruitment and by 2018 the Commission has seen an increase in staff by approximately 76 per cent. The Commission is yet to achieve its total staff structure of 153.

Staff Institutional Housing

The Commission used its own savings of K3 million from its Business Management Account to progress the Staff Institutional Housing Project. The Project was jointly facilitated by the Department of National Planning and Monitoring and the Office of Urbanisation. Eight new houses were completed and allocated to officers in 2015.

Regardless of the above financial limitations, the Commission was able to progress the three impact projects. To date, the Commission continues to progress the impact project 1 which the GoPNG continues to support over the five years including the current year while 2 and 3 are in its final stages. The Commission is optimistic to complete them in the near future.

Apart from the three impact projects, the Commission continues to receive financial assistance and support from the Law & Justice Sector funding which is now known as 4JSSD. Some of the activities funded are:

- Police oversight function of the Commission. The Ombudsman Police Oversight Program is a joint program with the Royal PNG Constabulary. The main areas of oversight include the development of legislation that will promote effective internal investigation process of RPNGC; and to oversight high profile investigations into allegations against the RPNGC officers.
- Capacity Building including training and twinning programs. The twinning arrangement is a joint program with the Commonwealth Ombudsman of Australia as an exchange program between officers from both institutions to share knowledge, skills, experience and exposure.

- Government Bodies Liaison Program. The Governmental Bodies Liaison Program (GBLP) commenced in 2002 and was aimed at promoting and building relationships between the Ombudsman Commission and Governmental Bodies to work together to improve services to the people. The programme resulted in MoUs with the Police, the Defence Force and Correctional Services which are in progress for a MoU.

The initial aim of the program was to establish liaison officers within each government body. GBLP however, has now evolved into the concept of establishing complaints desk within each government bodies especially the most complained against departments. The Simbu Provincial Administration Complaints Desk is a success story of the Complaints Desk concept.

A recent workshop conducted to market the concept to the Provincial Administrators has prompted 8 provincial administrators to register their interest to establish their own complaints desk.

The complaints handling desk is a proactive approach to help government bodies deal with complaints made against them. Majority of the complaints received by the Commission are administrative matters which can be dealt with effectively by the respective government bodies themselves.

Challenges and Way Forward

Like many organisations in PNG, the Ombudsman Commission faces resource constraints. Whilst the national government is generally supportive of its work, the fact that the organisation's expected expenditure projections cannot be fully met remains. There are many activities that the Commission would like to undertake, but the tough economic times affecting the country means that the Commission needs to prioritize and make best use of its available resources.

The Commission often faces legal challenges. A good number of the Commission's referral is challenged in court. For example there is one case that has been in the court for the last ten years. Every decision that the court makes in favour of the Commission has been appealed, and the long delay affects the quality of the evidence at the Tribunal.

The Commission's services to the people of Papua New Guinea is challenging just like other needed government services, given the country's rugged mountainous interior, large rivers, and remote islands. It has 21 provinces and one autonomous region – the Autonomous Region of Bougainville. The provinces are grouped into four regions – New Guinea Islands, Momase, Southern Region and Highlands Region. Providing accessibility of Ombudsman service to the population is an ongoing issue. The Ombudsman Commission has opened an office in a province representing each of these regions. Perhaps the ideal situation in the future would be to have an Ombudsman Commission office in each of the provinces.

Adding to this complexity is the fact that Papua New Guinea has over 850 languages. Laws and processes are in English and must be explained to the population in one of the three official languages of the country – English, Pidgin or Motu. The Commission's External Relations Division work hard to ensure that there is effective awareness on the Organisation's roles and that complaints received are dealt with promptly and effectively.

The Commission has a broad objective to ensure that people's aspirations are met. Under this broad objective the Commission is looking at putting together a policy framework, so that it will not only be an investigative body interested in events after the fact, but attend to the rural population to identify their needs and act as a conduit to channel their needs to the government. This is a new area for the Commission and may enable us to look at environmental issue as we move forward to further develop this new area we are interested in.

The Commission face many challenges but it also has many success stories, and we hope to build on this to ensure that Papua New Guinea develops according to what is in the best interest of the people.



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Queensland Ombudsman





Establishment

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 2001.¹

OMBUDSMAN

There have been seven Queensland Ombudsmen:

- Sir David Longland 1974-1979
- Sir David Muir 1979-1981
- Mr Cedric Johnson 1981-1990
- Mr Fred Albietz 1991-2001
- Mr David Bevan 2001-2010
- Mr Phil Clarke 2011-2020
- Mr Anthony Reilly 2020-present

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 the parliamentary committee, which 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; once when the budget is being framed and again 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 council 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 Quality and Complaints Commission Act 2006*
- 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 Office has three main roles:

- to give people a timely, effective and independent way to have administrative actions of agencies investigated
- to improve the quality of decision-making and administrative practice in government agencies
- oversight of the *Public Interest Disclosure Act 2010*.

The Queensland Ombudsman has four key objectives supported by multiple strategies that underpin its operations.

- 1) **Provide independent and effective review of the administrative actions and decisions of agencies**
 - Provide timely, effective assessment and investigation of complaints
 - Make recommendations to rectify unjust decisions and poor administration
 - Enhance engagement with agencies to improve their understanding of our assessment and investigation process
 - Clearly communicate to clients and agencies the outcome of our assessments and investigations
- 2) **Improve the quality of administrative systems in agencies**
 - Identify systemic weaknesses in agency practices
 - Work directly with individual agencies to improve administration
- 3) **Build capacity in agencies and the community to better manage complaints and Public Interest Disclosures (PIDs)**
 - Monitor, review and report on agency compliance and management of complaints and PIDs
 - Improve the knowledge and skills of agency officers in managing complaints and PIDs
 - Build greater knowledge in the community about how to make an effective complaint and when to contact the Queensland Ombudsman
- 4) **Our workforce, systems and culture support accountable and sustainable service delivery**
 - Develop and implement an integrated strategy for a capable, engaged and healthy workforce
 - Develop a positive and productive culture that supports performance and innovation
 - Apply contemporary practices to improve our systems and processes, focused on client needs
 - Strengthen our governance frameworks to ensure accountability and performance.

Powers

The Ombudsman Act empowers the Ombudsman to investigate the actions of state government agencies and local councils. 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 the investigation.

The Ombudsman may also:

- enter and inspect a place occupied by the 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 he thinks its 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 given
- 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

a. Investigations

- Registration and preliminary assessment (complaints intake)
- Investigation and resolution
- Major investigations

b. Public interest disclosures (PID)

- Monitor application of the PID Act and provide information, advice and training about PIDs

c. Education and engagement

- Training for public sector officers to improve fairness in public administration.
- Advisory services to help public sector organisations improve their administrative practice, decision-making and complaint handling
- Engage the community

d. Corporate services and Executive services

- Deliver business services to support Office operations
- Provide legal services, internal audit and manage right to information and privacy functions.

In 2019-20, the Office's funded establishment was 63 full-time equivalent employees. Women made up 73% of the Office's workforce, and held 64% of senior roles.

Accessibility

The Office conducts a [wide range of activities](#) to provide access to and promote its services.

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.

The Office provides a range of training programs for state agencies, local councils and public universities. In 2019-20, the Office visited 57 regional centres and conducted training sessions, visited correctional centres, gave presentations and attended community meetings.

BrowseAloud makes the website accessible to those who require online reading support or to translate the site content into a language of their choice. To activate this service, the user clicks on the 'b' icon within an orange circle usually placed in the top right corner of the screen. A flyer was produced to support community members who use languages other than English to access information about how to make an effective complaint, and when to contact the Queensland Ombudsman. The initial range of languages is: Arabic, Cantonese, Dinka, Greek, Hindi, Indonesian, Italian, Korean, Mandarin, Polish, Punjabi, Sinhalese, Spanish, Vietnamese.

There are a range of videos in Auslan on the website and Office YouTube channel covering functions and processes of the Office.

Complaints And Investigations

Each year the Office receives thousands of contacts via phone, online, or in person, which comprise complaints, general enquiries, and matters that are out of the Office's jurisdiction.

A complaint goes through an initial assessment process to determine if it is the right time for the Office to step in; a complaint should be made to the relevant agency before being brought to the Office. The Office may choose to commence an investigation and may make recommendations.

While the majority of the Office's investigations are based on complaints, the Ombudsman may decide to initiate an investigation, i.e. serious systemic issues. These investigations are often released publicly to bring these issues to the attention of parliament, the public sector and the general public.

The annual report contains information regarding complaints and investigations.

Oversight of the Public Disclosure Act 2010

The Office is the oversight agency for the Public Interest Disclosure Act 2010. Public sector agencies are required to report anonymised data about Public Interest Disclosures (PIDs), they receive to the Office. The Office also provides training and advice to agency of agency officers.

More information about PIDs is available on the Office's website.

Education and Engagement

The Office provides a range of training programs for state agencies, local councils and public universities. It can be delivered as an agency-specific group session or open training session.

The Office also reviews agencies' complaint management systems and, upon request, provides advice to improve decision-making, administrative policies, procedures and practice.

More information about training is available on the Office's website.

Publications and Resources

The Queensland Ombudsman produces a range of publications and reports each year and makes them available on its website. These include investigative reports, brochures, annual reports, newsletters and videos.

Investigative reports

Recent reports include:

2020

- [Management of child safety complaints - second report](#)

2019

- [The Forensic Disability Service report](#)
- [The Sunshine Coast Regional Council regulatory enforcement report](#)
- [The Brisbane Youth Detention Centre report](#)

2018

- [The Indigenous birth registration report](#)

2017

- [The Cairns Regional Council councillor conflicts of interest report](#)
- [The Patient Travel Subsidy Scheme report](#)
- [The Redland City Council Defamation Report](#)

2016

- [The Toowoomba Regional Council Auction Notices Report](#)
- [Management of Child Safety Complaints Report](#)
- [Overcrowding at Brisbane Women's Correctional Centre Report](#)

Reports dating to 2002 are available on our [website](#).

Brochures

The Queensland Ombudsman has brochures available for different groups. [Brochures](#) exist for the broader community, Aboriginal people and Torres Strait Islander people, and [culturally/ linguistically diverse communities](#). There are public administration resources available on the website on [complaints management](#), [good decisions](#), [managing unreasonable complainant conduct](#) and [public sector ethics](#).

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. The current annual report is available on the [Ombudsman website](#). Previous reports can be downloaded from the [Queensland Parliament website](#)

Newsletters

Email newsletters are published quarterly and are essential reading for anyone interested in complaints management and good decision-making. *Perspectives* offers news, advice and case studies for public sector officers and key decision makers in local and state government. *Community Perspective* directs information to community and advocacy groups and officers in community services.

Website and videos

Rather than having separate guides, the fully searchable website is the point of truth for all content about the Office's functions, for example:

- [What to expect if you make a complaint to us](#)
- [How an agency responds to an Ombudsman investigation](#)
- [How to prepare, make and communicate decisions](#)
- [Complaints management](#)
- [Managing unreasonable complainant conduct](#)

Our YouTube channel includes summaries of investigative reports, Auslan translations of Ombudsman processes, and explanatory videos about PIDs and the Queensland complaints landscape.

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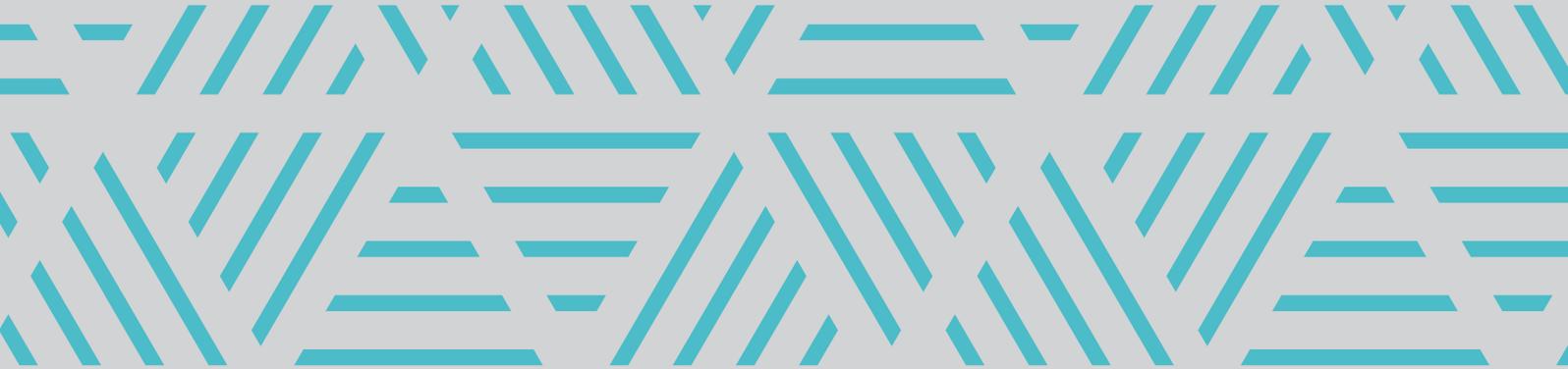


QUEENSLAND
OMBUDSMAN

Standing for fairness

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 (Komesina o Sulufaiga) Act 2013.

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 2021 – Maiava Iulai Toma

2021 to present Luamanuvao Katalaina Sapolu

The four 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 held senior government and diplomatic positions including Secretary to Government and Samoa's Ambassador to the United Nations and the United States of America and Luamanuvao Katalaina Sapolu, a prominent Samoan Lawyer who held senior international legal positions as Senior Director, Governance and Peace Directorate and Director, Rule of Law Division at the Commonwealth Secretariat in London, and Chief Legal Counsel for the African, Caribbean and Pacific Group of States (ACP Group) in Brussels.

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 endeavors 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.

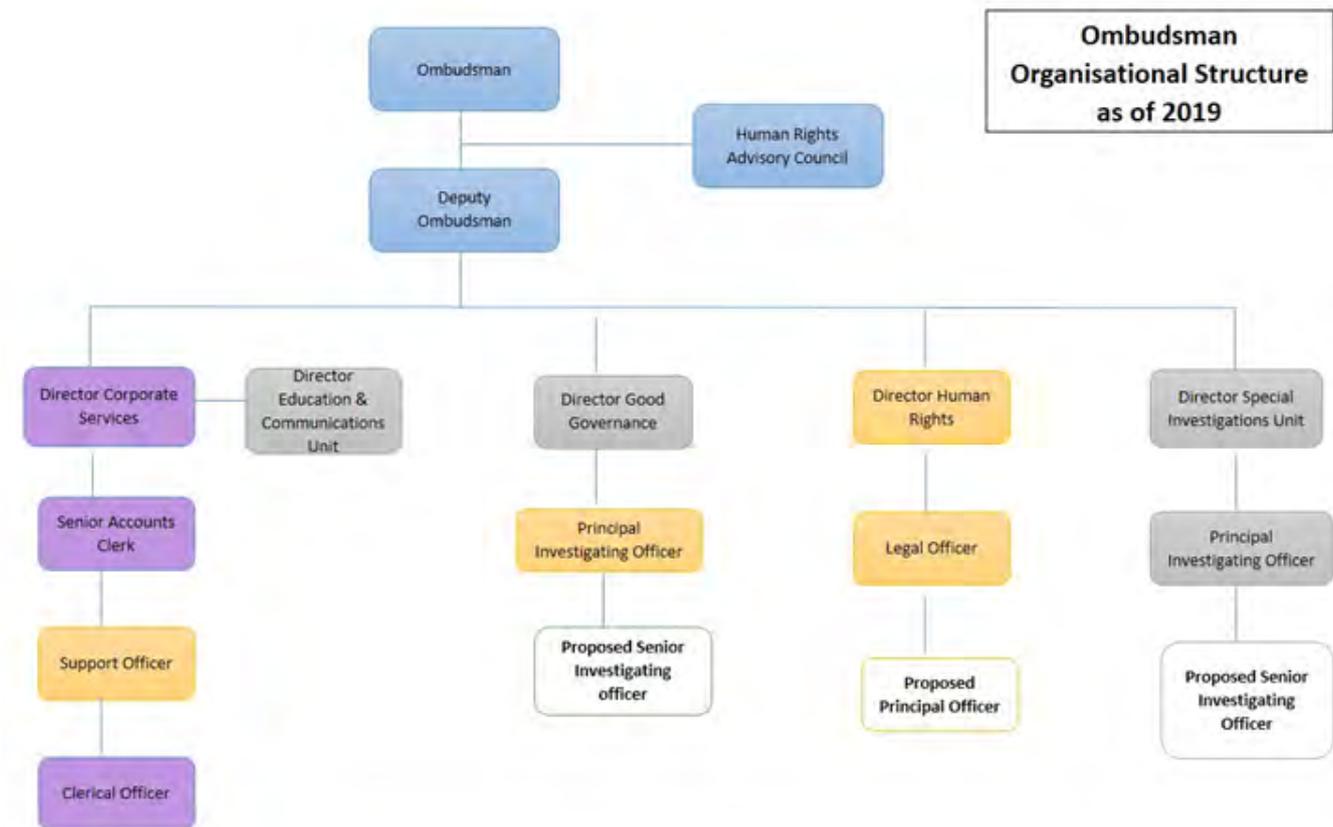
Without coercive powers to impose his determinations on government agencies, the Ombudsman function can only be important and useful when there is a general will to make it so. The lead that the Executive gives in this regard is crucial.

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.

Organisational Structure



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

- Deputy Ombudsman
- Director Good Governance (GG)
- Director Human Rights (NHRI)
- Director Special Investigations (SIU)
- Director Corporate Services (CSU)
- Director Engagement and Communications (CSU)
- Principal Investigations Officer (SIU)
- Principal Investigations Officer (GG)
- Legal & Investigations Officer (NHRI)
- Support Officer (CSU)
- Senior Accounting Officer (CSU)
- Senior Investigations Officer (GG)
- Senior Investigations Officer (SIU)
- Senior Policy Analyst (NHRI)
- Clerical Officer
- Receptionist/ Office Driver

Accessibility

Complaints can be made to the Office in person, in writing or by email or telephone. Interestingly, the Office has recorded a trend in received complaints with majority of the complainants registered were Public Servants.

Through its continuous outreach activities, the Office has been promoting and creating awareness on its NHRI and SIU mandates which has to a large extent raised the Office profile within the community and thus reached an increased number of approaches to the Office by complainants.

The Office also raises awareness about its initiative to provide Human Rights and Good Governance trainings conducted in schools, government Ministries, the National University of Samoa and other non-government organizations.

Workload And Statistics 2017-2018

Nature of Complaints received	Total
<i>In person</i>	79
<i>Letter</i>	55
<i>Telephone</i>	-
<i>Referral by Prime Minister</i>	5
<i>Number of Complaints investigated (Including own motion investigations)</i>	45
<i>Complaints referred to other Agencies (Including complaints out of jurisdiction - OOJ)</i>	27
<i>Complaints against Ministries (Not including law enforcements, SOE's & NGO's)</i>	14

Complaints against SOEs (Not including Govt Ministries & NGO's)	27
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Complaints against law enforcement offices	10
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The above statistics are taken from the office's Annual Report 2017/2018. 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
- Ombudsman/NHRI Samoa Facebook Page: www.facebook.com/NHRIOmbudsmanSAMOA
- 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 2018/2019 and State of Human Rights Report published in June 2019.
https://ombudsman.gov.ws/wp-content/uploads/2019/09/FINAL-SHRR-2019_-English-copy_-26.08.19.pdf

Litigation

There are no reported cases involving the Ombudsman.

Special Projects

National Public Inquiry into Family Violence Phase 1

Since 2013, it has been rather busy for the human rights unit with all the attention it has attracted from around the world on the National Public Inquiry into Family Violence launched in 2016. As highlighted in the Office's 2019 annual report, the Office had successfully conducted extensive consultations across Samoa to understand the gravity of the problem and to formulate a strategy and activities in which the people of Samoa can engage under the leadership of its Government to combat violence in the Samoan family. The Inquiry Report was launched in September 2018. Through the Inquiry, there has been an increase in opportunities (regional and international) for our Office to attend and participate in different forums to discuss the Inquiry Report. This has allowed not only a great deal of exposure for our staff, our office, and Samoa as a country but particularly building staff capacity. Following the launch of the Inquiry Report, we started a 2 year roll-out plan full of activities/programmes to raise awareness of the Report and to encourage our stakeholders and community to start implementing recommendations of the Report. These activities are kindly supported by various donor partners such as SPC-RRRT, UNFPA, UNICEF, and UNWOMEN.

Special Investigations Unit (SIU)

- A. Achievements/Significant matters
 - (i) Memorandum of Understanding (MOU) with PSU

On the 11th January 2016, a MOU was drawn up between the OMB and the Professional Standards Unit (PSU) of Samoa Police Services (SPS). This is to reflect the expanded oversight functions established through the creation of the SIU in 2013 and detail the administrative agreement required for both entities to meet their mandated obligations.

(ii) PSU Review

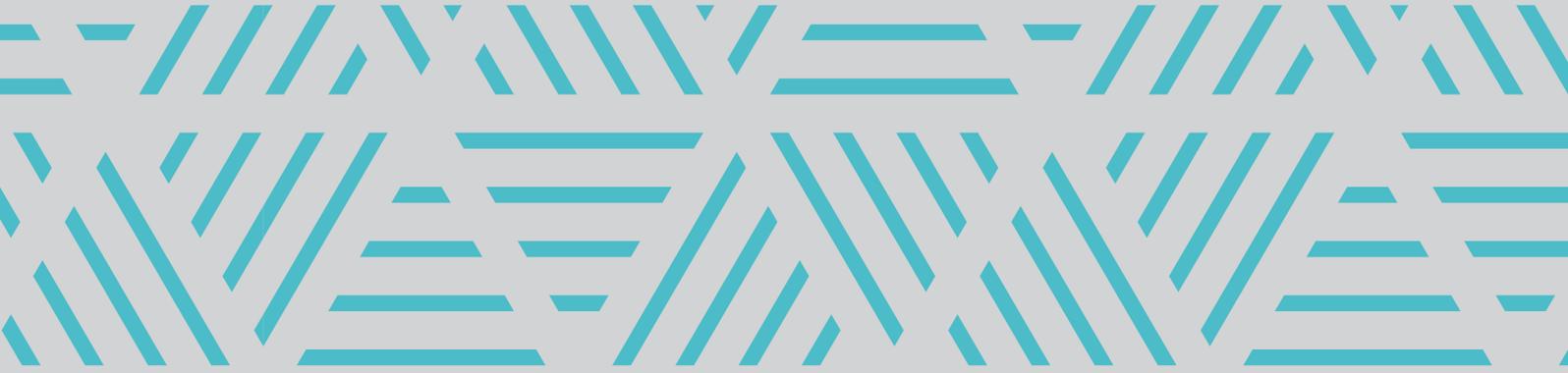
In March 2016, SIU conducted the first three tier review of Samoa Police Services' Professional Standards Unit (PSU). The first part included the review of PSU's electronic register of complaints. This was followed by a physical review of a number of files that were selected at random. The final tier involved the takeover of five (5) PSU investigation files that were unreasonably delayed. This was a success as noted in the second annual PSU review in March 2017, as PSU had implemented some of the recommendations from the first review.

Offices and Contact Details

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Solomon Islands Ombudsman





Establishment

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

Ombudsman

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

1981 – Mr Daniel Maeke

1986 – Mr Isaac Qoloni

1990 – Mr Frank Pororara

1996 – Sir Peter Kenilorea

2000 – Mr John Smith Pitabelama

2006 – Mr Joe Poraiwai

2017 to present – Mr Fred Fakarii.

The Ombudsman is appointed under s 96(2) of the Constitution by the Governor-General on advice of a committee consisting of representatives of the three arms of the government – the Speaker of Parliament, the Chairman of the Judicial and Legal Service Commission (the Chief Justice) and the Chairman of the Public Service Commission. The Ombudsman serves for a term of five years and is eligible for reappointment.

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 shall not be subject to the direction or control of any other person or body in the discharge of his or her functions.

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 identified. 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 Act 2017 (the Ombudsman Act) which repealed and replaced the 1980 Ombudsman (Further Provisions) 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.

Jurisdiction

Under s 97(3) of the Constitution and ss 5 and 19 of the Ombudsman Act, the OOSI investigates complaints (oral or written) about the administrative conducts of members of the Solomon Islands public service; the police force; the prisons service; the government of Honiara city; provincial governments; a local authority, an agency, Ministry or department of the government or of a local authority; a body or office established by the Constitution or by any other written law; a contractor of any such prescribed bodies; 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 Member of Parliament
- the Ombudsman considers it desirable to do so of his own motion on the basis of information received from another source.

As per s 97(3) and (4) of the Constitution, the OOSI has no jurisdiction in respect of the Governor-General or his personal staff or the Director of Public Prosecutions (DPP) or any person acting in accordance with the DPP's instructions. Nor has the Ombudsman the power to question or review any judicial decision of any judge, magistrate or registrar.

Further, the Ombudsman cannot investigate complaints:

- about any decision of any person or body whose independence is clearly guaranteed by the Constitution or an Act of Parliament,
- about a private person, company or organisation unless such person, company or organization is a contractor of a prescribed public body.
- 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.

Functions

The functions of the Ombudsman as provided for by s 97 of the Constitution includes:

- enquiring into the conduct of a person within jurisdiction in the exercise of that person's office or authority,
- improving the practices and procedures of public bodies, and
- ensuring the elimination of arbitrary and unfair decisions.

Along with the above functions, the Ombudsman has inter-agency coordination functions for purposes of combating corruption in the Solomon Islands. That is, the Ombudsman can liaise with and may share information with the Solomon Islands Independent Commission Against Corruption under s 10 and s 64 of the Anti-Corruption Act 2018.

The Ombudsman is also one of the appropriate authorities for public interest disclosure under s 5 of the Whistleblowers Protection Act 2018. He can receive public interest information about maladministration.



As part of the effort to carry out these broad functions, the OOSI continues to provide advocacy and educational programs to both members of the government sector and the public at large.

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

- assisting to resolve complaints about government administration
- independently investigate and report on the actions and practices of government
- fostering accountable, lawful, fair, transparent and responsive administration.

Powers

The Ombudsman Act gives the Ombudsman extensive powers to investigate complaints received from members of the public, referred to him by any Member of Parliament or initiated on his own motion. These include the power to:

- determine the administrative procedures for investigating of complaints (s 21(2)).
- conduct preliminary inquiries in relation to a complaint before deciding what action to take regarding such complaint (s 17).
- compel an agency (or their officers) to provide a specified information, document or thing or to attend for oral examination on a specified date (s 22(1)).
- enter official premises and seize any document or item, or take extracts from, or copy in any way, any document located at the premises (s 23).
- produce investigation reports and recommend corrective measures to address the issues investigated. After giving an opportunity for the agency concerned to provide any comments on the findings of the report, the Ombudsman can finalise the report and send copies to the concerned agency, the government Minister responsible for that agency, the Prime Minister and the complainant. A further report about the agency's attitude in implementing the Ombudsman's recommendation may be produced and submitted to the Prime Minister and also to the Parliament (ss 25, 26).
- summarily dismiss a complaint under s 18 of the Ombudsman Act without conducting a full investigation into it if:
 - further information requested from a complainant is not provided and there is insufficient information to investigate the complaint further;
 - the complaint is vexatious, misconceived, frivolous or lacking in substance;
 - the complainant lacks sufficient interest in the subject matter of the complaint;
 - it is confirmed through preliminary inquiries that the matter complained of can satisfactorily be resolved without an investigation;
 - it is reasonable in the circumstances for the complainant to pursue another available avenue to deal with the conduct complained of;
 - the conduct complained of has been the subject of a previous complaint that has been dealt with by the Ombudsman;
 - the conduct complained of occurred more than 12 months before the complaint was made, and there was no reasonable cause for the delay in making the complaint;
 - the complaint cannot be dealt with under the Ombudsman Act.
- delegate any of the above powers to a staff member of the Ombudsman's Office (s 35).

Internal Structure

OOSI is headed by an Ombudsman, supported by three Directors (Director Legal Services, Director Investigations, Director Research & Communication) and a Chief Administration Officer. The Executive Management Team of the Office (comprises of the Ombudsman, the three Directors and the Chief Administration Officer) is responsible for the management and oversight of the operational activities of the OOSI.

The current organisational structure of OOSI can be represented generally as follows:



Accessibility

Complaints may be made to the office in writing (email, letter, fax) or by telephone or in person. A complaint that is made orally must be put into writing by an OOSI staff as required by s 13(2) of the Ombudsman Act.

Accessibility to the services provided by OOSI is also made possible through:

- a prepaid aerogramme form accessible from any post office in Solomon Islands,
- a recently launched website www.ombudsman.gov.sb which also contains an online complaints form,
- regular advocacy and awareness programs via air (radio) and visits to provincial centres, schools, and other organisations, and
- giving of talks to public officers about the Office's role and on specific subjects upon invitation from the Institute of Public Administration and Management.

Workload And Statistics

The complaints received and disposed of from 2013 to 2019 are as follows:

Year	Complaints received	Complaints disposed of
2013	112	9
2014	120	9
2015	152	125
2016	178	141
2017	198	141
2018	225	162
2019	196	157

Publications

OOSI publications include the following:

- annual reports to Parliament as required by s 98(3) of the Constitution
- special reports to Parliament under s 98(3) of the Constitution and s 26 of the Ombudsman Act
- newsletter (published biannually)
- (What you should know about the role of the Ombudsman)
- booklets (SIG officer employment grievances – where should you go?, Teacher employment grievances – where should you go?)

These publications are available at OOSI in Honiara and also online at <https://www.ombudsman.gov.sb/resources/publications.html>.

Litigation

Under s 98(1) of the Constitution, the proceedings of the Ombudsman shall not be called in question in any court of law.

Additionally, the Ombudsman and his authorized officers and staff are protected by s 30 of the Ombudsman Act from any civil or criminal liability for an action or omission made in good faith in the exercise of a power or performance of a function.

On the question of whether the Ombudsman can represent the public or the Crown in a legal action where he or she feels that some public right has been or is likely to be infringed, the High Court of Solomon Islands answered 'no' (in the absence of a clear authority) and adds that to do so would usurp the function of the Attorney General (see *Ombudsman v Attorney General* [1987] SBHC 11; [1987] SILR 75 which is available at <http://www.pacii.org/sb/cases/SBHC/1987/11.html>).

Regarding the selection and appointment of the holder of the position of Ombudsman, a legal challenge ensued in 2007 as reflected in the following two cases:

- *Poraiwai v Acting Attorney-General; Kenilorea v Acting Attorney-General [2007] SBHC 67; HCSI-CC 20 & 30 of 2007.* Available at <http://www.paclii.org/sb/cases/SBHC/2007/67.html>
- *Acting Attorney General v Poraiwai [2008] SBCA 4; CA-CAC 27 of 2007* Available at <http://www.paclii.org/sb/cases/SBCA/2008/4.html>

In this litigation, one Mr. Joe Poraiwai was recommended for appointment as the Ombudsman on the advice of the Chairman of the Ombudsman Appointment Committee on 9 November 2006. The Governor-General however declined to follow the Committee's recommendation after the Acting Attorney-General suggested that the Committee's selection process allegedly involved unfairness, bias, undue process and irregularities. The High Court held that Mr 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 Committee. The Court adds that the allegations of unfairness, bias, undue process and irregularities were 'wholly unsubstantiated' and a 'farrago of falsity' that were 'tantamount to slander'. The Court concluded that the Governor-General had no discretion to refuse to ignore the recommendation of the Committee, and that Mr Poraiwai should be appointed. On appeal by the Acting Attorney-General against the High Court decision, the Court of Appeal dismissed the appeal and held in favour of the appointment of the Ombudsman.

Special Projects

Currently the OOSI is not undertaking any special projects.

Offices and Contact Details

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Website:	www.ombudsman.gov.sb



South Australian Ombudsman



OmbudsmanSA



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
- South Australian universities
- 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. The Ombudsman must refuse to entertain the complaint if it is made more than 12 months after the complainant first had notice of the matters alleged in the complaint subject to a discretion to deal with the complaint in certain circumstances.

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 nine separate Acts giving the Ombudsman particular roles. These include:

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.

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 South Australian Civil and Administrative Tribunal against an Ombudsman decision.

Public Interest Disclosure Act 2018

The main function of the Ombudsman under this Act is to receive and investigate disclosures of '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. The Ombudsman is identified as an inquiry agency in the ICAC Act.

Return to Work Act 2014

The Return to Work Act provides for the workers compensation system across the State with the Return To Work Corporation established as the authority with oversight of the system. The Ombudsman is empowered to receive and investigate complaints about breaches of services standards by the Corporation and claims agents and to review decisions refusing workers access to their claims files

Criminal Law (Forensic Procedures) Act 2007

Under this Act the Ombudsman is required to conduct an annual audit to monitor compliance by the South Australian Police Department and the Forensic Science Unit with the procedures stipulated in the Act for taking, recording, preserving and destroying forensic evidence related to criminal offending.

Children and Young People (Oversight and Advocacy Bodies) Act 2016

Under this Act the Ombudsman has primary oversight of the actions of the Department for Child Protection and in relation to prescribed child protection complaints, that is, matters that concern children at risk of harm.

Powers

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 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, which 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 26 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).

Internal Structure And Functions

The Ombudsman is assisted by a Deputy Ombudsman and the office is divided into four main teams – Administration, Intake and Assessment, Investigations and Information and Audit. As at August 2020, there are twenty-two full time positions in the office.

Accessibility

Complaints can be made to Ombudsman SA in writing, in person, by phone, or by using the online complaints form. All Ombudsman SA services are provided without charge.

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 Health and Community Services Complaint Commissioner or the Equal Opportunity Commissioner.

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.

When requested by a complainant, Ombudsman SA will supply an interpreter free of charge.

Workload and Statistics

Ombudsman SA workload, 2017–2020

	2017–18	2018–19	2019-20
Complaints under Ombudsman Act	4,270	4201	3946
Complaints/reports referred by ICAC	32	33	28
Complaints under Return to Work Act	191	121	107
Freedom of Information reviews	127	262	273

Publications

The Ombudsman annually publishes a report to Parliament (the Annual Report). 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 Freedom of Information external review determinations are regularly published.

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.

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 the 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:	South Australian Ombudsman L8, 95 Grenfell 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 1978¹

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.

¹ 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 but we have conducted a small number in more recent years. We have conducted a number of investigations over the past few years including into use of force in the juvenile detention centre, a public interest disclosure in relation to a department's handling of workers compensation claims, the Architects Board and a number of others. We have investigated a handful of complaints about personal information protection breaches and a small number of whistleblower, or public interest disclosures.

Energy Ombudsman Act 1998

Under this legislation, the Ombudsman receives complaints relating to the sale and supply of gas or electricity by entities authorised to operate in Tasmania as follows:

- an electricity entity within the meaning of the Electricity Supply Industry Act 1995; or
- a retailer within the meaning of the National Energy Retail law (Tasmania); or
- an exempt seller within the meaning of the National Energy Retail Law (Tasmania); or
- a person to whom, or a person who sells electricity to which, section 23 of the National Energy Retail Law (Tasmania) Act 2012 applies;
- A gas entity within the meaning of 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 [now repealed] Freedom of Information Act 1991 with a 'push' model encouraging release of information.

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 external 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, the 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 historically the Office has received very few complaints under this legislation although numbers have risen slightly over the last three years.

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* and the *Misuse of Drugs Act 2001*. Under each of these Acts 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. The Ombudsman team also provides training on request and regularly talks to police recruits

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 27 staff, 10 of those being full-time and the rest part-time. There are seven males and the rest 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
2014/15	664	29	328	307	1328
2015/16	767	25	344	203	1339
2016/17	865	75	368	262	1570
2017/18	771	49	321	235	1376
2018/19	795	39	431	193	1458
2019/20	660	47	371	145	1223

Enquiries data (finalised 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
2014/15	1775		487	284	2546
2015/16	1214		377	221	1812
2016/17	1237		550	243	2030
2017/18	1027		408	275	1710
2018/19	1266		486	168	1920
2019/20	997		564	124	1685

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 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:	Ombudsman Tasmania 6 th floor, 86 Collins Street Hobart Tasmania 7000
Mailing address:	Ombudsman Tasmania 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

The Inspector-General of Taxation and Taxation Ombudsman (IGTO)



Australian Government
Inspector-General of Taxation
Taxation Ombudsman



Establishment of the Office

The Inspector-General of Taxation was established in 2003 as an independent statutory office to provide advice to the Australian Government on the resolution of systemic tax administration issues of concern to taxpayers. At the time, only the Australian Taxation Office fell within the jurisdiction of the Inspector-General.

That role was expanded twelve years later (with bipartisan support), in May 2015 to include the Tax Practitioners Board within jurisdiction as well as to transfer the Commonwealth Ombudsman's tax complaints function.

The Inspector-General of Taxation and Taxation Ombudsman (IGTO) now effectively performs a dual role:

- The Taxation Ombudsman provides independent assistance and assurance directly to taxpayers and tax professionals and investigates taxation complaints about their tax affairs — complaint enquiries and complaint investigations, respectively; and
- The Inspector-General of Taxation undertakes investigations of actions, systems and taxation laws regarding tax administration matters – review investigations.

Taxation Ombudsman investigations are conducted, and recommendations are made, in private, which is consistent with taxpayers' rights to privacy in respect of their tax affairs and tax secrecy requirements. Inspector-General of Taxation review investigations are conducted, and recommendations are made, publicly, which is consistent with the public interest in systemic issues and assurance regarding their recommended treatment. These investigations may be own-initiated, directed by the Minister or requested by the Minister, Parliamentary Committees, the ATO or TPB.

The two roles and investigation modes of the IGTO complement each other. The dual roles provide a capability to quickly address taxpayer concerns on a case-by-case basis but also observe systemic trends and collective community concerns that may suggest systemic issues that require a review investigation. The investigation modes collectively can provide assurance to the community that taxation laws are being administered consistently with community expectations, which builds confidence in the fairness of the tax system.

Cross referral arrangements for taxation complaints between the Commonwealth Ombudsman and the Inspector-General of Taxation were introduced and the *Inspector-General of Taxation Act 2003*¹ (IGT Act) now includes cross referencing (s.15) to the *Ombudsman Act 1976*.

The abbreviation IGTO shall be used hereinafter except where specific mention of either the Inspector-General of Taxation or Taxation Ombudsman is warranted.

Inspector General of Taxation and Taxation Ombudsman appointments

The IGTO is appointed by the Governor-General for a term of up to five years (s 28) and may be reappointed. The practice has been to appoint the IGTO for a five-year term. The IGTO's appointment may be terminated only in limited circumstances as set out in s 35 – this includes bankruptcy, unexplained extended absences, engaging in non-approved other paid work or failure to disclose interests in accordance with the *Public Governance, Performance and Accountability Act 2013*.

¹ Unless otherwise noted, all reference to sections are to the Inspector-General of Taxation Act 2003

There have been three appointed Inspectors-General and one acting arrangement (appointed by the Minister under s29) as follows:

David Vos, AM	August 2003 – November 2008
Ali Noroozi	November 2008 – November 2018
Andrew McLoughlin (Acting)	November 2018 – May 2019
Karen Payne	May 2019

The current IGTO, Ms Karen Payne, was previously a Member of the Board of Taxation (a policy advisory board to the Australian Government), as well as the inaugural Chief Executive Officer of that Board. She was formerly a partner with MinterEllison, specialising in corporate and international tax for mergers and acquisitions, and capital raising for the financial services, mining, energy, and utilities sectors. Her career includes a broad range of experience (legal, accounting, audit, education and tax return preparation) across a diverse range of taxpayers (including individuals, trusts, companies and partnerships).

She brings a wealth of experience and extensive networks to the role of IGTO having worked with a range of government and private stakeholders as well as the legal and tax profession, and many industry bodies.

Ms Payne is a solicitor (admitted in New South Wales), Chartered Accountant and Chartered Tax Advisor. She is a member of Chartered Accountants Australia and New Zealand; The Tax Institute and the Australian Institute of Company Directors.

The current Deputy IGTO is Mr Andrew McLoughlin, who commenced on 18 August 2009.

Relationship to Government and Parliament

The IGT Act falls under the ministerial responsibility of the Treasurer and Assistant Treasurer, and the office falls within the Treasury portfolio. The Inspector-General of Taxation reports directly to the Treasurer or the Assistant Treasurer, as confirmed by portfolio responsibilities. Although the Minister may direct the Inspector-General of Taxation to conduct a review investigation, such directions have been rare since the office's inception. Both complaint and review investigations and reporting in relation to those investigations are generally conducted independently of the Minister and Government. A report which makes recommendations for legislative change must be sent to the Minister who then has an obligation to release it within 25 sitting days of the House of Representatives (s 18).

Specific legislative reporting accountabilities to Parliament are set out in section 41 of the IGT Act, namely:²

- the number of complaints received;
- the number of investigations into complaints that were started and completed;
- the number of investigations into systemic issues that were started and completed; and
- the number of times a formal notice has been issued to a person to provide information and documents along with the circumstances giving rise to this action³.

The IGTO engages regularly with the following Parliamentary Committees:

- House of Representatives Standing Committee on Tax and Revenue
- Senate Standing Committees on Economics⁴

2 Inspector-General of Taxation Act 2003, s 41(2).

3 Ombudsman Act 1976, s 9 (by virtue of s 15 of the Inspector-General of Taxation Act 2003).

4 Senate Economics Legislation Committee and Senate Economics References Committee

Review investigations are typically initiated by the Inspector-General of Taxation's own motion (usually following consultation with stakeholders or, more recently, from intelligence and data gathered in complaint investigations as the Taxation Ombudsman). Although the Minister, a Parliamentary Committee or the Commissioner of Taxation may request a review investigation, the Inspector-General of Taxation has discretion as to whether and when to commence these investigations.⁵ They must be commenced if directed by the Minister.⁶

Most reports prepared in respect of review investigations are released publicly by the IGTO once completed. Where the report includes recommendations to Government for legislative change, paragraph 18(1)(b) states that the IGTO may make a report to the Minister 'setting out any recommendations for how that taxation law might be improved.' The Minister must publicly release the report before the 25th sitting day of the House of Representatives.

Jurisdiction

The Taxation Ombudsman investigates complaints about the administrative actions and decisions of Tax Officials – the Australian Taxation Office and Tax Practitioners Board. The Inspector-General of Taxation also investigates taxation administration actions, taxation systems and laws (to the extent they deal with tax administration matters) for the purposes of making recommendations for improvements.

The Taxation Ombudsman has jurisdiction over Commonwealth taxation laws only – as administered by the Commissioner of Taxation. The Taxation Ombudsman has no jurisdiction over State and Territory taxation laws.

The IGTO is also one of a number of public sector integrity agencies at the federal level. These include the Commonwealth Ombudsman, Australian Human Rights Commission, the Australian National Audit Office, the Office of the Australian Information Commissioner, the Australian Commission for Law Enforcement Integrity, and the Inspector-General of Intelligence and Security. The IGTO's investigation processes are also separate and independent from review and judicial processes undertaken by the Courts and Administrative Appeals Tribunal.

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

2003	Inspector-General of Taxation and Agency created
2015	Taxation Ombudsman role commences – previously part of the Commonwealth Ombudsman
	Jurisdiction extends to include the Tax Practitioners Board (being Tax Officials)

⁵ Inspector-General of Taxation Act 2003, s 8(3).

⁶ Inspector-General of Taxation Act 2003, s 8(2).

Areas excluded from the jurisdiction of the Taxation Ombudsman include:

- investigating rules imposing or creating an obligation to pay an amount under a taxation law (s7(2)(a));
- rules dealing with the quantification of such an amount(s7(2)(b));
- Public Interest Disclosures – complaints made by public officials (such as Tax Officials) about their own agency’s actions and processes – essentially public servant whistleblowing complaints. These are the jurisdiction of the Commonwealth Ombudsman.
- Similar to the Commonwealth Ombudsman, the Taxation Ombudsman is not authorised to investigate:
 - action taken by a minister (s 5(2)(a)) of the *Ombudsman Act 1976* — 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 of the *Ombudsman Act 1976*), 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) of the *Ombudsman Act 1976*)
 - the actions of courts and tribunals headed by a judge (s 5(2)(b)-(c) of the *Ombudsman Act 1976*);
 - the actions of the six intelligence agencies (s 5(3B) of the *Ombudsman Act 1976*) — this jurisdiction belongs to the Inspector-General of Intelligence and Security (see *Inspector-General of Intelligence and Security Act 1986*).

Functions

The IGTO has three major statutory functions.

Taxation complaint investigations

The office investigates complaints about the actions and decisions made by Tax Officials being:

- Employees of the Australian Taxation Office; or
- Employees and members of the Tax Practitioner’s Board.

Complainants may be taxpayers or their representatives (family, friends, solicitors or registered tax agents) and tax practitioners (again as represented)

Review investigations

The office also undertakes own-motion investigations into the administrative actions of Tax Officials, taxation systems and laws (s 7(1)(b), (c) and (d)). These often arise from insights gained through handling individual complaints and our stakeholder engagements – especially tax practitioners and professional and industry organisations.

Advice to the Minister and Government

The original jurisdiction of the Inspector-General of Taxation was to provide advice to the Minister on Taxation Administration issues of concern to the community.

Since 2015, the investigation function has been broadened and the reporting function, including to the Minister has been broadened to reflect public reporting on matters of community concern.

Taxation Complaint Investigations

The IGTO, ATO and TPB are independent agencies. Each agency has its own complaints investigation processes.

The IGTO encourages all taxpayers and practitioners, where they have not done so, to reach out to the ATO and the TPB in the first instance to try and resolve any concerns or complaints. This has been a feature of our online complaints form, in particular.

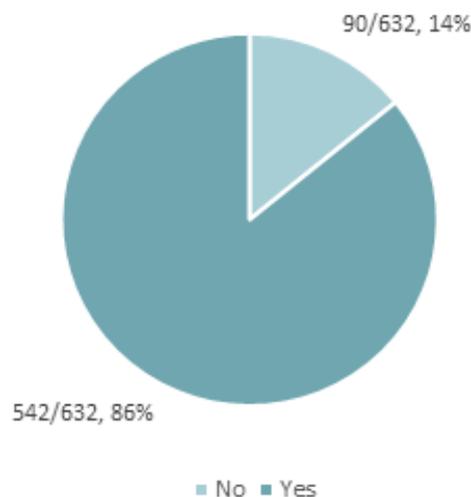
The IGTO does not track all approaches to the office. Although the IGTO operates both a general enquiry line (+61 2 8239 2111) and a complaints telephone line (1300 IGT Tax or 1300 44 88 29) - which is a recorded line, the IGTO does not track or report any approaches made through our general inquiry line unless it is identified as a complaint enquiry or matter warranting investigation and transferred to our case management system. All approaches made through IGTO complaint channels – recorded telephone line, online webform, facsimile, email and by post - are recorded and included in our case management system, for tracking and reporting purposes.

How we manage complaints

The IGTO is approached by individuals, small businesses, other taxpayers and tax professionals through a range of different channels including an online smart webform, dedicated complaints telephone line, facsimile and email. In order to manage the impacts of the COVID-19 pandemic on our team, we have actively encouraged complainants to make use of the online webform as the most effective channel to lodge a complaint.

The IGTO commenced tracking category 3.1 complaints in July 2018 – that is, where the ATO has no record of a previous complaint. Between July 2018 and June 2020, in approximately 86% of these complaints lodged with the IGTO online, the taxpayer had indicated (and thought) they had (in fact) lodged a complaint with the ATO.

Figure 4: Percentage of web complaints lodged with the IGTO where the ATO has no record of a complaint but the taxpayer indicates they had lodged a complaint with the ATO



Regardless of the complaint channel through which we are approached, all complaints are recorded on an electronic case management system, allocated to an officer and is assigned a category which increases from 0 to 5 as the matter progresses, depending on its subject-matter, time taken and/or complexity.

A summary of our Complaint categories can be found on our website . The IGTO provides this summary explanation to assist stakeholders and the community to better understand the nature of the services we provide and the IGTO's reporting in relation to these services.



Categories 0, 1 and 2 represent independent assistance and assurance services;

Categories 3, 4 and 5 represent cases where a formal complaint investigation is commenced.

Importantly Category 3 is further divided as follows:

- Category 3.1 — ATO has no record of a previous complaint — IGTO identifies issues requiring formal investigation and options for resolution and requires the matter to be dealt with by an identifiable ATO/TPB officer providing accountability for the management and resolution of the complaint. IGTO also checks the ATO/TPB's handling of the complaint for satisfactory conclusion.
- Category 3.2 — Uncomplicated Cases — IGTO investigates independently, engages with the ATO to verify facts and issues, determines the most appropriate and timely actions, and identifies who will take them for early resolution.
- Category 3.3 — Frequently Raised Issues — IGTO identifies the case as involving a common area of complaint that is capable of being resolved efficiently and effectively through pre-agreed investigation processes.

Category 4 and 5 cases represent Complex and Highly Complex Cases respectively — IGTO investigates Highly Complex cases by engaging directly with ATO senior management (SES), and provides ATO senior management with early warning of emerging risks and the opportunity to address sensitive issues.

Under section 42, the IGTO may not delegate her power to make a report under section 15 of the *Ombudsman Act 1976*. Accordingly and necessarily, the IGTO is involved in all complaint cases which have been classified as Category 5 complaints.

Workload and Statistics

Financial Year	Independent Assistance and Assurance			Subtotal	Independent Formal Investigation			Sub-total	Total IGTO Complaints	% of Total that is commenced as Formal Investigation
	Category 0	Category 1	Category 2		0,1 and 2	Category 3	Category 4			
2019-2020	389	871	112	1,366	1,302	100	7	1,409	2,775	50.775%
2018-2019	298	919	91	1,308	1,314	84	6	1,404	2,712	51.770%
2017-2018	196	676	60	932	1,331	122	27	1,480	2,412	61.360%
2016-2017	159	712	60	931	1,219	79	22	1,320	2,251	58.641%
2015-2016	122	652	47	821	1,270	47	10	1,327	2,148	61.778%
Totals	1,164	3,828	370	5,362	6,438	431	67	6,936	12,298	56.399%
% of Total for last 5 years	9.4162%	31.1433%	3.0086%	43.5681%	52.3337%	3.5128%	0.5855%	56.4319%	100.0000%	

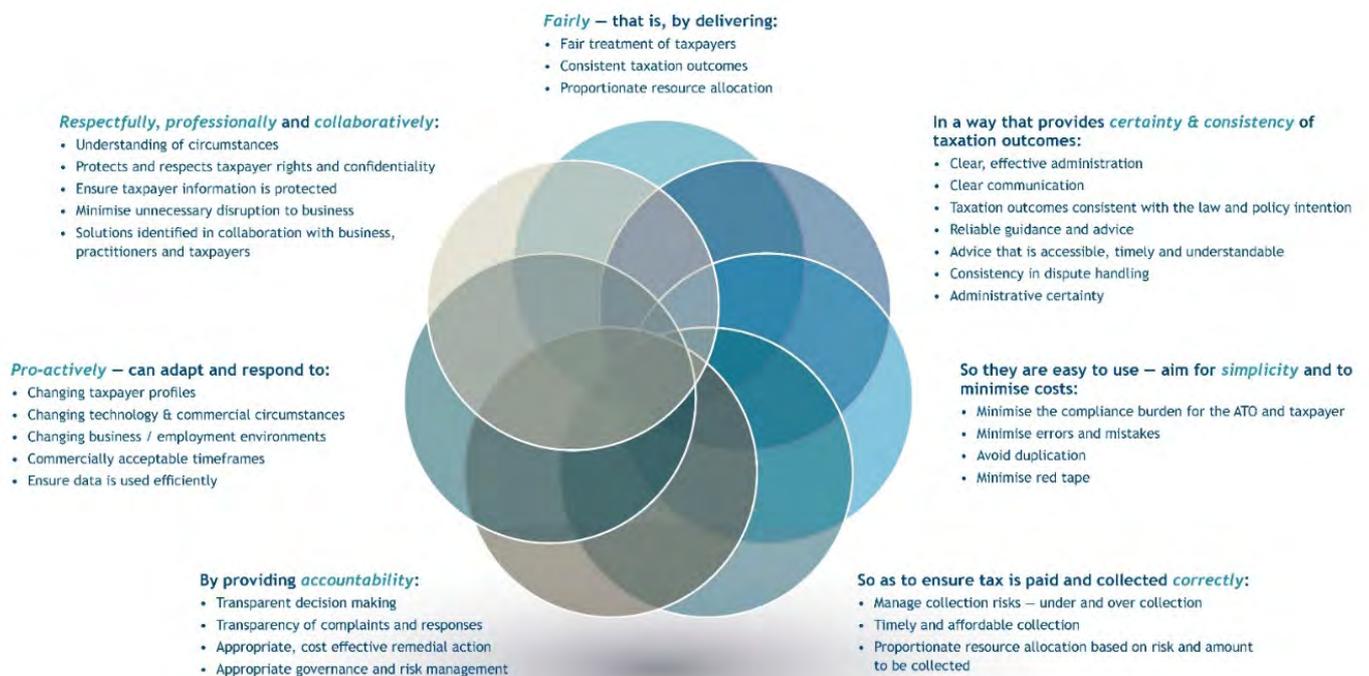
Review Investigations

Since its inception, the IGTO has conducted review investigations into broader or systemic tax administration issues. These investigations cover a wide range of topics that are relevant to all taxpayers and tax practitioners. Through extensive consultation with stakeholders, research and analysis, these reviews have shaped the tax administration landscape for the benefit of all Australians.

Many positive changes to the administration of the tax system in Australia have their genesis in IGTO review investigations as well as other related IGTO activities. They have, collectively, improved the transparency, fairness and certainty of the tax system.

Our review investigation work is grounded in ensuring the administration of the tax system aligns with community expectations. Our understanding of the community's expectations with respect to the features of good tax administration is summarised in Figure 1 below.

Figure 1 - Features of Good Tax Administration



The chart below provides a breakdown of our completed review investigations according to the features of tax administration which they had investigated.

Our review investigations originate from a number of different sources – the IGTO's own initiative; a direction by, or request from, the Minister; a request from either or both Houses of Parliament or a Parliamentary Committee; or a request from the Commissioner of Taxation or the Chair of the Tax Practitioners Board (TPB). The table below provides a breakdown of IGTO reviews that were conducted at the IGTO's own initiative or otherwise.

Reviews commenced by the IGTO (as at September 2020)

Reason for the review	Number completed	Percentage
IGTO own initiated	42	84%
Requested or directed by the Minister	3	6%
Requested by Parliamentary Committees	2	4%
Requested by the ATO	3	6%
Total	50	100%

Breakdown in Years	Completed Reviews
2003 – 2008	15
2009 –2018	32
2019 to date	3
Total	50

Powers

The powers of the IGTO largely mirror those of the Commonwealth Ombudsman, being derived from the *Ombudsman Act 1976*.

These powers 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 of the *Ombudsman Act 1976*);
- if the agency does not accept the recommendation the Ombudsman can report to the Minister and/or the Parliament (ss 16 and 17 of the *Ombudsman Act 1976*);
- 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) of the *Ombudsman Act 1976*);
- investigations are to be conducted in private and in such manner as the Ombudsman thinks fit (s 8(2) of the *Ombudsman Act 1976*);
- in conducting an investigation the Ombudsman can require a person to provide information or documents, can administer an oath, or enter premises (ss 9(1), 14 and 14 of the *Ombudsman Act 1976*);
- the Ombudsman is not compellable to provide evidence in response to a summons (s 35(8) of the *Ombudsman Act 1976*);

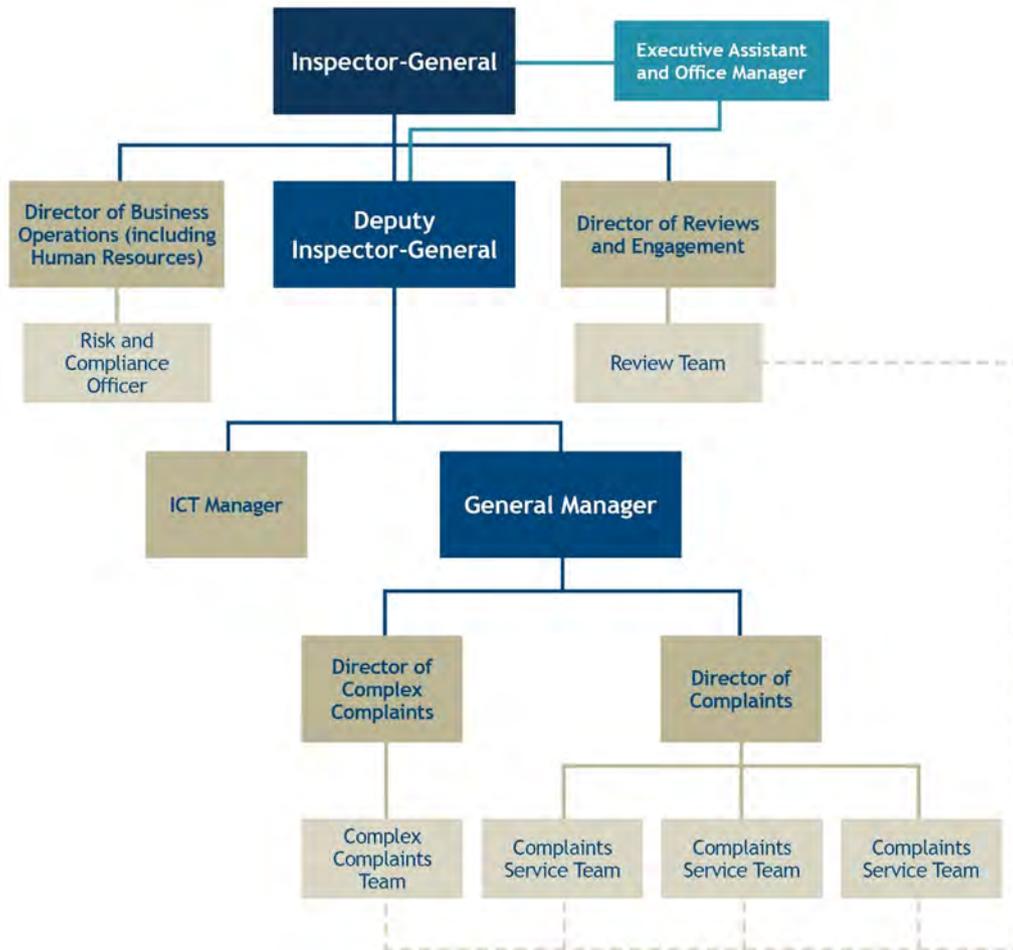
- 
- any person who complains to or provides information to the Ombudsman is protected against civil action (s 37 of the *Ombudsman Act 1976*); and
 - the Ombudsman can delegate most functions to other officers (s 34 of the *Ombudsman Act 1976*).

Notable features of the *Ombudsman Act 1976* (applicable to the IGTO) that differ from the scheme applying to some other Ombudsmen include:

- Complaints can be received orally or in writing (s 7(1) of the *Ombudsman Act 1976*)
- The IGTO may make a written arrangement with an agency for the notification of complaints (s 8(1A) of the *Ombudsman Act 1976*) — this avoids the need for formal notification of each individual complaint.
- The IGTO can release any information in the public interest (s 35A of the *Ombudsman Act 1976*) — this enables the IGTO to publish an investigation report without having to present the report to the Parliament.
- Protected information cannot be disclosed for any other purposes than IGTO discharge of functions under the IGT Act and, similar to s35 of the *Ombudsman Act*, IGTO Officers cannot be compelled to provide information to a Court or Tribunal unless disclosure is necessary for the purposes of giving effect to the IGT Act (s37(3) IGT Act);
- 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 of the *Ombudsman Act 1976*) — this amendment to the *Ombudsman Act 1976* 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*.

Internal Structure

Our organisational structure is designed to ensure our people are not only empowered to perform their roles but also supported by experienced leaders. They have access to and can engage with the most senior members within the IGTO. Our organisational structure, processes, practices, procedures and culture enable the IGTO to effectively manage and develop our people to achieve their best performance.



Accessibility

A key objective of the IGTO is to make its complaint services more accessible to vulnerable people within the community. The Taxation 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. Since inception, the aggregate of IGTO tax complaints have been received :

- by telephone (48.7%),
- in writing (6.3%),
- in person (0.5%) and
- electronically (44.5%).



The IGTO offers interpreter services to complainants from culturally and linguistically diverse (CALD) backgrounds, and IGTO staff are trained in effectively working with interpreters and working cross-culturally. The office has a range of multilingual brochures, in 56 languages, about lodging a Taxation Complaint. They are available on the IGTO website (www.igt.gov.au) on the 'Publications & Media' page.

The IGTO has responsibilities under the Commonwealth Multicultural Access and Equity policy, *Respecting Diversity*. Prior to 2020, the IGTO operated under the plans and policies of the Department of the Treasury, as a shared services provider under a Memorandum of Understanding, in relation to Multicultural Access. Moving forward, following the IGTO's move away from the Treasury, we will be revisiting our plans and policies, generally, including those relating to multicultural access awareness and equity.

Publications

The IGTO's publications that are available at www.igt.gov.au and include:

- Annual reports
- Corporate Plans
- Quarterly Reports against Corporate Plans
- Review Investigation reports — between 2003 and 2020 - 50 reports have been published online including:
 - *Death and Taxes – An Investigation into ATO Systems and Processes for dealing with Deceased Estates (2020)*
 - *The Future of the Tax Profession (2019)*
 - *Review into the ATO's use of Garnishee Notices (2019)*
 - *Review into the ATO's Fraud Control Management (2018)*
 - *GST Refunds (2018)*
- Submissions lodged in Parliamentary Committee inquiries; and
- Brochures — covering issues such as making a complaint in 56 languages

Litigation

Certain decisions of the IGTO are reviewable by the Federal Court of Australia or the Federal Circuit Court of Australia under the Administrative Decisions (Judicial Review) Act 1977.

Decisions that the IGTO makes under the Freedom of Information Act 1982 are reviewable by the Australian Information Commissioner and the Administrative Appeals Tribunal. Similarly, where allegations are made that the IGTO has interfered with the privacy of taxpayers, or otherwise mishandled private information, these matters may be investigated by the Australian Information Commissioner and is reviewable by the Administrative Appeals Tribunal.

Other Information

Memberships

The IGTO and our team are members of various professional bodies and organisations including:

- Australasian-Pacific Ombudsman Region;
- Australian and New Zealand Ombudsman Association (ANZOA);
- Australian Institute of Administrative Law;
- Australian Institute of Company Directors;
- Chartered Accountants Australia and New Zealand;
- CPA Australia
- International Ombudsman Institute;
- Institute of Public Accountants;
- Law Society of New South Wales;
- Society of Consumer Affairs Professionals (SOCAP);
- SOCAP Complaint Handler Certification; and
- The Tax Institute.

Office and Contact Details

The IGTO is located in a single office location, in Sydney, New South Wales, Australia.

Enquiries	+61 2 8239 2111 (non-complaint-related enquiries)
Complaints	1300 IGT TAX /1300 44 88 29 (complaint related enquiries)
Fax	+61 2 8239 2100
Postal	GPO Box 551 Sydney NSW 2001
Email	enquiries@igt.gov.au (non-complaint related enquiries)
Web	www.igt.gov.au



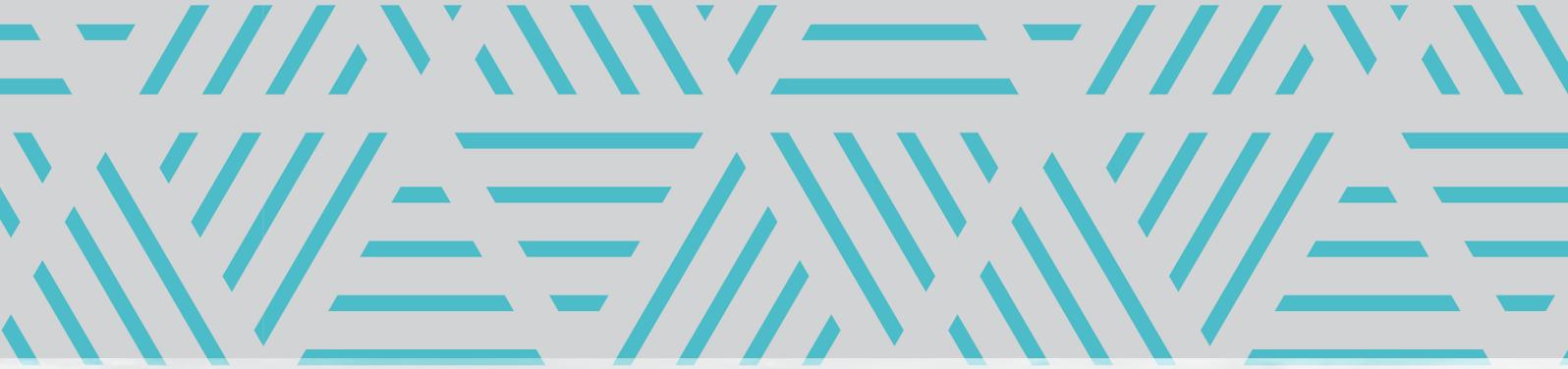
Australian Government

Inspector-General of Taxation

Taxation Ombudsman

Ombudsman Office Tonga





Establishment

Founded in 2001, the Office of the Ombudsman of the Kingdom of Tonga, formerly known as the Commissioner for Public Relations, was established by the Commissioner for Public Relations Act 2001. The Ombudsman Amendment Act 2016 (“amendments”) provided key legislative changes including a change of name, aligning the institution to the commonly known term of the ‘Ombudsman’. The guiding legislation is now referred to as the Ombudsman Act 2001 (“Act”).

Ombudsman

The amendments provided a fundamental shift from accountability to the Executive to a structural autonomous institution under the Legislative Assembly (“Assembly”). These include:

- Appointing authority from Cabinet to the Speaker with the consent of the Assembly;
- Prescribed eligibility requirements for appointment; and
- Appointment of staff under terms and conditions the Ombudsman may determine.

The current Ombudsman, Mr. ‘Aisea Havea Taumoepeau, SC was appointed Commissioner in 2014 for a term of 5 years until 2019. The Speaker is currently implementing due process for the reappointment of the Ombudsman.

Relationship to Executive and the Assembly.

Structural autonomy was achieved through the amendments resulting in the Ombudsman not being accountable to the Executive nor its staff to the Public Service Commission. However, financial accountability under the Ministry of Finance as custodian of public finances remain notwithstanding the audit obligations to the Auditor General.

Now an Officer of the Assembly, the Ombudsman provides the Speaker with a Quarterly Report highlighting key issues and developments as they occur that is separate from the Annual Report reporting obligation. The Speaker has yet to table any matter as provided in section 18(4) of the Act.

Under the powers vested by section 11(8) of the Act, the Speaker, by Order, amended the Schedule to the Act to include public authorities that were not included at the time of the amendments.

Jurisdiction

The Ombudsman's primary function is to investigate any decision, recommendation, act or omission relating to a matter of administration affecting any person by any employee, or member of any public authority starting that the Ministerial level (including Governors) to the most junior employee.

These include:

- Any government ministry, department or office but does not include the Cabinet, Privy Council, Assembly or the Judiciary;
- Organisations to which the Act applies listed in the Schedule; and
- Organisations listed by Order of the Speaker of the Assembly declared on 18 April 2018.

Other areas that are excluded are decisions, recommendations, acts or omissions of:

- Person in his capacity as a trustee;
- Person acting as a legal adviser or counsel for the Crown in relation to proceedings; and
- Person who is a member of His Majesty's Armed Forces relating to the terms and conditions of service or any order including punishment given affecting him as a member.

The Ombudsman may launch any investigation on his own motion. The Prime Minister, with the consent of the Ombudsman, may refer to the Ombudsman any matter which the Prime Minister considers should be investigated by the Ombudsman other than a matter of concerning judicial proceeding.

If any jurisdiction question arises, the Ombudsman may apply to the Supreme Court for a declaratory order determining the question.

Functions

The current model is considered as a classical Ombudsman model with the core function of receiving and investigating complaints and providing the appropriate redress. Incidental to this is the outreach function which requires the Ombudsman to promote itself by maintaining visibility and ensuring accessibility to its primary function.

The Ombudsman is obligated to pay particular attention to any letter appearing to written by any person in custody or by any patient within the meaning of the Mental Health Act. This is a door way for expansion of functions towards a creation of a national prevention mechanism but this has yet to materialise.

There are ongoing discussions for the Ombudsman to increase functions to include:

- Independent oversight for complaints against Police;
- Be designated as the National Human Rights Institution; and
- Serve under a hybrid model to include the powers and functions of the Anti-Corruption Commissioner.

However, these are ongoing discussions that are ongoing.

Powers

The Ombudsman may employ such persons as are necessary for the performance of the Ombudsman functions under such terms and conditions of employment that the Ombudsman may determine. This is vital for the institution as it provides a layer of independence for employees to carry out investigations eliminating the perceptions of non-impartiality.

Once the Ombudsman determines an investigation, the Ombudsman has the power to call on any persons to give information relating to the matter being investigated notwithstanding if that person is an officer of the public authority or not. Further, the Ombudsman may enter any premises occupied by the public authority to carry out the investigation within his jurisdiction.

During the course of the investigation, the Ombudsman may summon and examine on oath:

- Any person who is an officer or employee or member of the public authority;
- Any complainant; or
- Any other person who the Ombudsman considers relevant to the investigation.

This procedure is deemed as a judicial proceeding.

At the end of the investigation, the Ombudsman may make recommendations if the Ombudsman 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 biased should be altered
- that any law on which the decision, recommendation, act, or omission was biased should be reconsidered
- that reasons should have been given for the decision, or
- that any other steps should be taken.

No judicial proceedings, civil or criminal, shall lie against the Ombudsman or any employee in the exercise of its functions unless it is shown to be performed in bad faith. No proceeding or decision of the Ombudsman shall be liable to be challenged, reviewed, quashed, or called in question in any Court and he cannot be compelled to provide evidence thereof thus providing protection to the Ombudsman's independence from judicial challenge.

Internal Structure

There are currently five (5) divisions that comprise the organisational structure:

- Office of the Ombudsman – Ombudsman, Secretary to the Ombudsman, VIP Driver;
- Office of the Chief Executive Officer – Chief Executive Officer, Personal Assistant;
- Legal and Corporate Services division – Deputy Chief Executive Officer, Senior Assistant Secretary, Accounting Officer, Assistant Accounting Officer, Compliance Officer, Receptionist, Information Technology Officer, Driver and an Office cleaner
- Communications and Media Division – Communications and Media Officer, Assistant Communications and Media Officer and a clerk
- Investigations Division – Director of Investigations, Two (2) principal investigation officers; 2 senior investigation officers, 2 investigation officers, secretary and a driver.

There is a total of 22 staff, 11 males and 11 females, with some vacancies on the organisational structure yet to be filled.

Accessibility

The Ombudsman institution is located at:

Office of the Ombudsman
Level 2 Retirement Fund Building
Corner of Railway and Mateialona Roads
PO BOX 847
Nuku'alofa

Complaints or inquiries may be lodged directly in person by visiting the physical address, written letters can be sent to the PO BOX addressed to the Ombudsman, submitted through the webpage at www.ombudsman.to, send through email at investigation@ombudsman.to, and now recently through the Office Facebook page.

Workload and Statistics

Year	Complaints	Own Motion	Prime Ministers Referral
2015	76		
2016	100		1
2017	261		
2018	120	1	
2018-2019 (FY)	112	3	
2019/2020 (FY)	142	1	

The gradual rise in the number of complaints is credited to the significant focus in targeted outreach where the equation was simple, the more the outreach the more the complaints. New initiatives, forms and modes of engagement had to be strategically drummed in order to reach our intended audiences. However, for the most part, all outreach strategies appear to have been successful.

Previously investigators were charged with arranging and leading outreach activities. However, the increase in complaint numbers meant that a division solely for the purposes of outreach had to be established. A Communications and Media Division was established in 2018 for ease of operations.

The institution is continuously pursuing new outreach strategies as we try to maintain our visibility and accessibility not only in the community but also to our diaspora populations. We are seeing more and more Tongans residing overseas making enquiries which often led to them lodging a complaint. We have conducted outreaches in Auckland, Brisbane and Suva.

Despite leaping mounds since 2014, the complaint numbers have remained at a steady rate over the 5-year period. This is not to be complacent but to ensure that these numbers are maintained.

However, given the ongoing discussions to possible future functions, it is envisaged that the current institution will look entirely different come next APOR review.

Publications

All Annual Reports, Corporate Plans and Investigation reports can be accessed at www.ombudsman.to

'Aisea H. Taumoepeau (2019) The Ombudsman and good governance: Tonga's experience, Asia Pacific Journal of Public Administration, 41:1, 33-41, DOI: 10.1080/23276665.2019.1589698

Litigation

Rizvi Jurangpathy v Commissioner for Public Relations CVT54 2016

Office and Contact Details

Inquiries/complaints:

Mrs 'Alisi Taumoepeau, KC

Chief Executive Officer

Office of the Ombudsman

Postal: Office of the Ombudsman
Level 2 Retirement Fund Building
Corner of Railway and Mateialona Roads
Nuku'alofa

Phone: 00 (676) 7401450

Email: ceo@ombudsman.to

An aerial photograph of a tropical coastline, showing a white boat on the water, a wooden pier, and buildings on the shore. The image is overlaid with a semi-transparent pattern of teal and grey geometric shapes.

Republic of Vanuatu Office of the Ombudsman



OFFICE OF THE
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 Courts¹ 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 are 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 six Vanuatu Ombudsmen and three Acting Ombudsmen (with one acting on two different occasions)

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 - Kalkot Mataskelekele

2018 – Alain Molgos (Acting Ombudsman)

2019 to present - Hamlison Bulu

1 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. An 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.

Article 64 (i) 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 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. Section 34 of the Leadership Code Act 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 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, two Deputy Ombudsman as stipulated in the recent amendment of the Ombudsman Act 2020, 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).

The 2020 amendment to the Ombudsman Act provides the Ombudsman with the authority to employ staff directly. Previously, the Public Service Commission appointed 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.

The office awareness programme, which covering the government, private and non-government sectors, schools and prisons has been undertaken successfully but on a restricted basis due to resource limitation.

People with access to internet can also obtain information on the work of the Ombudsman by visiting the office website at ombudsman.gov.vu or through our office Facebook page; Vanuatu Ombudsman Office.

The 2019 Annual Report showed that more maladministration complaints were made (30) than Leadership Code complaints (16), while no Language Rights complaint was received.

The Annual Report also showed that complaints lodged by complaint form was the highest

(20) followed by complaints by letters (19), own initiative investigations (4), Visit by us (2) and email complaints the lowest (1).

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, "1. 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.

The Office also secured funding from the Vanuatu Government to extend its head office in Port Vila. In December 2019, work to extend the Office began and was expected to be completed by August 2020. However, due to the COVID-19 pandemic crisis, these works were only completed in September 2020 with the building being ready and open for use in November 2020.

A Bill for the Ombudsman (Amendment) Act No of 2020 was put forward to Parliament in the November 2020 sitting. Two major changes in this amendment are (i) to disconnect all linkages with the Public Service Commission and (ii) to increase penalties for a person found guilty of an offense under the Ombudsman Act.

Last but not the least, then Vanuatu Office of the Ombudsman has also strengthened ties with the New Zealand Office of the Ombudsman for support ranging from capacity building to providing technical and other assistance.

Offices and Contact Details

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Victorian Ombudsman

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Establishment

The Victorian Ombudsman is an independent officer of the Victorian Parliament. The office was established on 30 October 1973 by the Ombudsman Act 1973 (Vic).¹

Ombudsman

The Ombudsman is appointed by the Governor in Council for a 10-year term and is not eligible to be re-appointed. The Ombudsman must 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 and is the first female Victorian Ombudsman. She has extensive experience in public integrity, including holding 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 – Sir John Vincent Dillon

1980 – Mr Charles Norman Geschke OBE

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

At the completion of a formal investigation, where the Ombudsman has concluded there is an administrative error and that steps need to be taken by the relevant authority, then a report must be provided to the relevant Minister and the Secretary of the relevant department, principal officer of the relevant agency, or to the Mayor of a Council where the authority is a member of Council staff.²

The outcome of an investigation is also provided to a complainant to inform them of the results of the investigation.³

Otherwise, the Ombudsman may make a report to Parliament at any time on any matter arising in connection with the performance of her functions and is also required to present an annual report to Parliament on the performance of her functions.⁴

1. Unless otherwise noted, all references to section numbers in this chapter are to the Ombudsman Act 1973 (Vic)

2. See section 23.

3. Section 24

4. Section 25

Parliamentary referrals

Under s 16, the Ombudsman must investigate and report on 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 either or both Houses of Parliament.

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 Victorian Inspectorate oversees all three offices.

The Ombudsman can enquire into or investigate administrative actions taken by Victorian government departments, most statutory authorities, local government, and private organisations performing public functions, such as the privately-run prisons.

As part of an investigation, the Ombudsman may consider the broader issues arising from a complaint 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. Various actions (specified in s 23(2)) can be taken by the Ombudsman if she is of the opinion that the administrative action under investigation 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 persons or bodies such as:

- government ministers
- judicial officers, courts, tribunals, commissions or other bodies presided over, as required by statute, by judicial officers or Australian lawyers
- a person acting as legal adviser to the Crown, or counsel for the Crown in any proceedings
- the Director of Public Prosecutions
- the Auditor-General, and
- Victoria Police.

Functions

In addition to enquiring into or investigating the administrative actions taken by Victorian government departments, statutory authorities and local government, the Ombudsman has further 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*, and if the administrative action involves a decision, whether there was a failure to give proper consideration to a relevant human right set out in the Charter.

Public Interest Complaints

The *Public Interest Disclosures Act 2012* (formerly the *Protected Disclosure Act 2012*) provides for 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.

While IBAC has overall responsibility for the administration of the Act and is the body responsible for determining whether a disclosure is a public interest complaint, the Victorian Ombudsman maintains a role in receiving complaints and disclosures. After determining that a complaint is a public interest disclosure, the Ombudsman must notify IBAC within 28 days in order to enable IBAC to make a determination.

IBAC may subsequently refer a public interest complaint matter back to the Victorian Ombudsman for investigation.

Functions added by 2019 legislative amendments

The Ombudsman Act 1973 (Vic) received significant amendment in 2019, providing the Ombudsman with additional functions, including the power to review the complaint practices and procedures of authorities, as well as to provide education and training to the Victorian community and the public sector about matters relating to the functions of the Ombudsman.

Notably, the amendments have also provided the Ombudsman the ability to conduct alternative dispute resolution of complaints (Part IIIAC), which is defined to include conciliation and mediation. Alternative dispute resolution may be undertaken at any time as part of an enquiry or an investigation of a complaint under s 15B and has the purpose of attempting to resolve the complaint.

Powers

Enquiries

The majority of complaints received by the Ombudsman are dealt with under s 13A of the Act, with the purpose of determining whether a matter may be informally resolved or should be investigated. This allows for enquiries to be made by telephone, email, fax, or letter, and may also involve review of files, and interviews. The respondent's principal officer must assist the Ombudsman with their enquiries.

Investigations

The Ombudsman may choose to conduct an investigation of a complaint under s 15B. This generally occurs when a complaint is not amenable to informal resolution, relates to more serious conduct or failings, and the public interest is served by the Ombudsman exercising powers to uncover what happened. Notable powers in respect of an investigation include:

the Ombudsman can obtain information from persons and in a manner they deem fit, and there is no obligation to hold a hearing

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:

www.ombudsman.vic.gov.au/our-impact/investigation-reports

Own motion powers

The Ombudsman may also 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

As at 30 June 2020, the Victorian Ombudsman employs 104 staff, about 70 per cent female, with a diverse range of qualifications, experience and backgrounds. For instance, qualifications range from law and criminal justice to social sciences, human rights and communications. The Ombudsman is committed to providing a working environment where equal opportunity and diversity are valued.



Accessibility

Members of the public can access the Victorian Ombudsman's office via telephone, an online complaints form, email, mail, or by visiting the office.

About 70 per cent of the contact made with the office is via telephone.

Contact with the Victorian Ombudsman's office – 2019/20

Contact method	Number of people who used this method
Telephone	15,751
Online complaint form	4,514
Email	2,168
Letter via post	709

Outreach

The importance of engaging with the Victorian community and with public sector employees is reflected in the Ombudsman's Strategic Framework (<https://www.ombudsman.vic.gov.au/about-us/mission-and-values/strategic-framework/>) which sets out commitments to:

- educate Victorians on the role of the Ombudsman, how to complain, and what they should expect from their dealings with the public sector
- make it easier for vulnerable people to complain
- constructively assist the public sector to continuously improve its standards and practices.

Presentations / Q&As

The Ombudsman and members of her staff often participate in presentations to, or discussions with, community organisations, students and government organisations. These include community legal centres, financial counsellors, Victorian Legal Aid, the Asylum Seekers Resource Centre and more.

Education

The Victorian Ombudsman also delivers workshops for public sector employees on:

- Good complaint handling
- Conflict of interest risks
- Dealing with challenging behavior.

More information about training offered by the Ombudsman can be found at:

<https://www.ombudsman.vic.gov.au/learn-from-us/training/>

Social media

The Ombudsman has accounts on Twitter, LinkedIn, Facebook and YouTube, used to share findings on investigations and to raise awareness that members of public can complain to the office about Victorian public organisations.

Reconciliation Action Plan

The Victorian Ombudsman wants the office to be an organisation that Aboriginal and Torres Strait Islander peoples trust and are willing to approach. The Ombudsman's Reconciliation Action Plan (RAP) sets out actions the office is taking to develop respectful and mutually beneficial relationships with Victorian Aboriginal and Torres Strait Islander peoples and organisations. The Ombudsman successfully delivered its *Reflect RAP*, which was launched in 2017, and is in the process of developing a new three-year *Innovate RAP*.

Through building relationships, the Ombudsman hopes to gain a deeper understanding of issues facing Aboriginal and Torres Strait Islander peoples in Victoria and across Australia. In doing this, the Ombudsman anticipates an increase in contact from Aboriginal and Torres Strait Islander peoples.

More information about the Victorian Ombudsman's RAP is located on the website at: <https://www.ombudsman.vic.gov.au/about-us/mission-and-values/reconciliation-action-plan/>

Accessibility Action Plan

The Ombudsman has an Accessibility Action Plan to make the office's services more accessible to people with disability. Through this plan, the Ombudsman set's out a vision for an office that has less barriers for people with a disability, that supports people with a disability in the workplace, and promotes engagement with people with a disability.

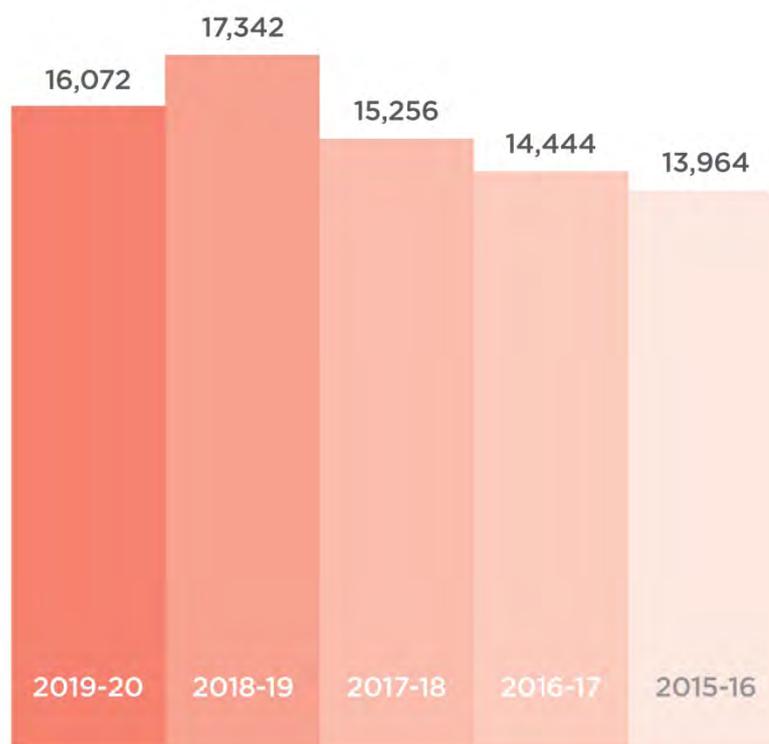
More information about Ombudsman's Accessibility Action Plan can be found at: <https://www.ombudsman.vic.gov.au/about-us/mission-and-values/accessibility-action-plan/>

Workloads and Statistics

The Victorian Ombudsman receives about 42,000 approaches per year from members of the public. When someone makes a complaint about a matter outside of the Ombudsman's jurisdiction, the office redirects them to an organisation that can help them.

Complaints that the Victorian Ombudsman can deal with (jurisdictional complaints)

In general, the number of jurisdictional complaints made to the Victorian Ombudsman has been steadily increasing year on year, as shown in the graph below. In 2019/20, there was a slight decrease on the previous year, attributable to the COVID-19 pandemic.



In 2019–20, the Victorian Ombudsman:

- completed 54 formal investigations
- made 83 recommendations to public organisations, 99% of which were accepted in full or partially
- tabled 10 investigation or inquiry reports in the Victorian Parliament.

Updated statistics are generally provided in the Ombudsman’s Annual Reports, which can be viewed at: <https://www.ombudsman.vic.gov.au/about-us/annual-reports-and-policies/annual-reports/>

Publications

The Victorian Ombudsman's publications include:

- annual reports
- investigation reports
- good practice guides
 - dealing with challenging behavior
 - managing complaints involving human rights
 - apologies
 - handling complaints
- case examples
- media releases

They are available via the Ombudsman's website:

www.ombudsman.vic.gov.au.

Litigation

In 2016 the Ombudsman made an application to the Supreme Court of Victoria seeking a determination as to whether she had jurisdiction to investigate a referral from the Legislative Council. The referral was for the Ombudsman to investigate allegations that Members of Parliament had used electorate staff to engage in campaign work. An initial decision was made in favour of the Ombudsman and found that the Ombudsman did have the relevant jurisdiction in August 2016.⁵ The Victorian Attorney-General sought leave to appeal this decision. The leave was allowed but the appeal was dismissed,⁶ with the Court of Appeal finding that the trial judge had made no error in his analysis. The Attorney-General then sought special leave to appeal to the High Court of Australia, which was refused in April 2017.⁷

Significant investigations since 2015

- Investigation into complaints about assaults of five children living in Child Protection residential care units (October 2020)
- Investigation into the Planning and delivery of the Western Highway duplication project (July 2020)
- Investigation of matters referred from the Legislative Assembly on 8 August 2018 (December 2019)
- WorkSafe2: Follow-up investigation into the management of complex workers compensation claims (December 2019)
- OPCAT in Victoria: A thematic investigation of practices related to solitary confinement of children and young people (September 2019)
- Investigation into State Trustees (June 2019)

5. *Glass v President of the Legislative Council* [2016] VSC 507.

6. *Attorney-General v Glass (in her capacity as Ombudsman)* [2016] VSCA 306.

7. *The Attorney-General for The State of Victoria v Deborah Glass (in Her Capacity As Ombudsman for The State Of Victoria) and Anor* [2017] HCASL 82

- Investigation into child sex offender Robert Whitehead’s involvement with Puffing Billy and other railway bodies (June 2018)
- Investigation of a matter referred from the Legislative Council on 25 November 2015 (March 2018)
- Implementing OPCAT in Victoria – report and inspection of Dame Phyllis Frost Centre (November 2017)
- Investigation into the management of complex workers compensation claims and WorkSafe oversight (September 2016)
- Investigation into Department of Health oversight of Mentone Gardens, a Supported Residential Service (April 2015)

The Ombudsman’s investigation reports that have been made public are available on the Victorian Ombudsman website:

www.ombudsman.vic.gov.au/our-impact/investigation-reports

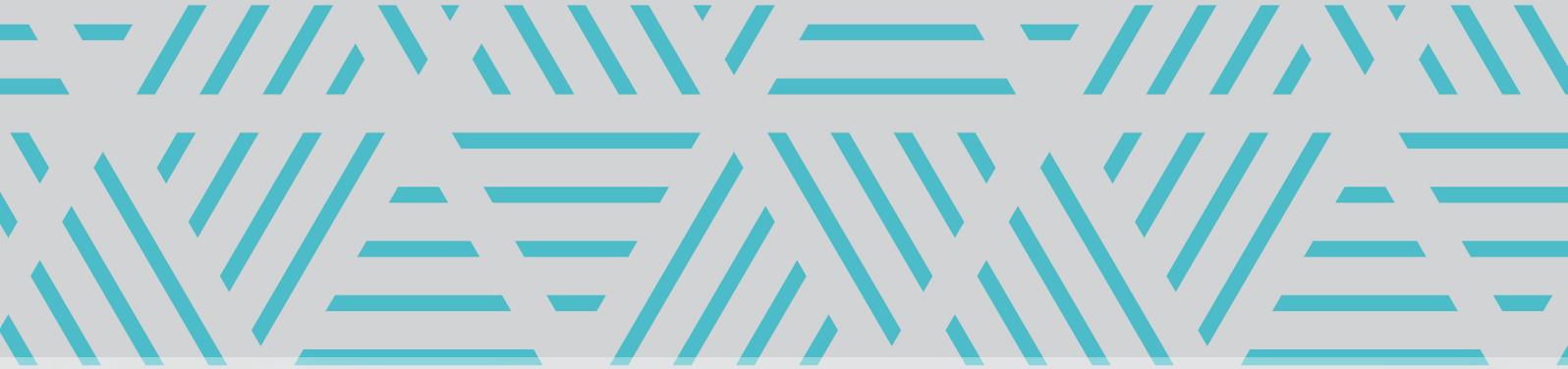
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Western Australian Ombudsman





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 Providers of Education and Training to Overseas Students 2018

- **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

- **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, Four Senior Assistant Ombudsman, and three Assistant Ombudsmen. These are:

- Senior Assistant Ombudsman Corporate Executive Services and Chief Financial Officer
- Senior Assistant Ombudsman Complaint Resolution
- Senior Assistant Ombudsman Reviews
- Senior Assistant Ombudsman Own Motion Investigations and Monitoring
- Assistant Ombudsman Energy and Water
- Assistant Ombudsman Investigations, and
- Assistant Ombudsman Strategic Policy and Projects National and International Relations.

As at 30 June 2020 there were 72 staff (66 full time equivalent) undertaking the work of the office.

As at 30 June 2020 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 Major Own Motion Investigations Team undertakes own motion investigations and other strategies aimed at improving public administration
- 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 Aboriginal Engagement and Collaboration Team provides expert advice and support to each of the Ombudsman's functions including continuing to promote high levels of awareness and accessibility for Aboriginal Western Australians to the office
- the Investigations Team handles the investigation of complaints
- The Monitoring Team undertakes inspections of telecommunications interception records
- the Energy and Water Team has responsibility for handling enquiries and receiving, investigating and resolving complaints about electricity, gas and water services providers
- the Corporate Governance and Business Services and Information Technology Services Teams support the office in providing corporate communications, governance, business services, internal audit and integrity of corporate services, and
- the Executive Services and Children and Youth Teams are responsible for strategic research, policy and projects; national and international relations; strategic and corporate communications; executive services and services for children and youth.

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 freecall number which is free from landline phones
- 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 as well as children and young people
- 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.

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
2014-15	9,096	2,047	1,503	526	2,060
2015-16	9,701	1,963	1,296	561	1,887
2016-17	10,132	2,190	1,477	658	2,169
2017-18	11,595	2,234	1,472	838	2,358

2018-19	10,552	1,965	1,340	594	1,986
2019-20	10,579	1,981	1,432	514	2,005

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 2019-20 were Corrective Services (17%), local governments (17%), Police (7%), Public Housing (5%), Transport (4%),

Child Protection (3%), and Education (3%).

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
2014-15	84	16
2015-16	84	22
2016-17	89	15
2017-18	73	16
2018-19	78	17
2019-20	65	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/publications. This includes:

- Annual reports
- Own motion investigation reports. **Recent reports include:**
 - Preventing suicide by children and young people 2020
 - Local government collection of overdue rates for people in situations of vulnerability: Good Practice Guidance
 - A report on giving effect to the recommendations arising from Investigation into ways to prevent or reduce deaths of children by drowning
 - Investigation into ways to prevent or reduce deaths of children by drowning
 - A report on giving effect to the recommendations arising from the Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities
 - Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities
 - 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

- The Management of Personal Information – good practice and opportunities for improvement
- 2009-10 Survey of Complaint Handling Practices in the Western Australian State and Local Government Sectors

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:

- an investigation into family and domestic violence and suicide, and
- An investigation into homelessness

In addition, the office undertakes a range of collaborative activities and projects with other agencies. Some of these are outlined below.

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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SMS Relay: 0423 677 767

Voice-only: 1300 555 727 (speak and listen)

Interpreter Service: 131 450



