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**AUSTRALASIA AND PACIFIC
OMBUDSMAN REGION
INFORMATION MANUAL**

2009

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Papua New Guinea
Western Australia Taiwan
Cook Islands
Samoa
Australian Capital Territory



**AUSTRALASIA AND PACIFIC
OMBUDSMAN REGION
INFORMATION MANUAL**

2009

Commonwealth of Australia 2009

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The General Secretariat
C/- Austrian Ombudsman Board
Singerstrasse 17A – 1015
PO Box 20
Vienna

Email: ioi@volksanw.qu.at website: www.theioi.com

Produced by the Commonwealth Ombudsman, Canberra, Australia.

FOREWORD

This manual describes the role of individual Ombudsman offices in the Australasia and Pacific region. The descriptions were prepared by each Ombudsman office.

The offices covered by this manual are all members of the Australasia and Pacific Ombudsman Region of the International Ombudsman Institute. The Institute provided a grant to support the preparation of the manual. The primary work in assembling and publishing the manual was undertaken by the office of the Commonwealth Ombudsman.

The common role of each office in this manual is to deal with complaints against government agencies within their particular jurisdiction. The description 'parliamentary ombudsman' is sometimes used to describe those offices. Many of the offices, as the manual describes, also perform additional oversight functions that contribute to accountability, responsiveness and integrity in government.

The information in the hardcopy form of the manual was accurate at May 2009. The manual will also be published electronically on the websites of Ombudsman offices, and it is intended that periodic updates will be made. Any comments on the manual should be sent to ombudsman@ombudsman.gov.au.

CONTENTS

FOREWORD.....	I
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AUSTRALIAN OMBUDSMAN OFFICES

COMMONWEALTH OMBUDSMAN.....	1
NEW SOUTH WALES OMBUDSMAN.....	9
NORTHERN TERRITORY OMBUDSMAN	19
QUEENSLAND OMBUDSMAN.....	27
SOUTH AUSTRALIAN OMBUDSMAN	37
TASMANIAN OMBUDSMAN	43
VICTORIAN OMBUDSMAN.....	51
WESTERN AUSTRALIAN OMBUDSMAN	57

PACIFIC REGION OMBUDSMAN OFFICES

OMBUDSMAN OF THE COOK ISLANDS	67
THE OMBUDSMAN OF HONG KONG.....	71
NEW ZEALAND OMBUDSMEN	75
OMBUDSMAN COMMISSION OF PAPUA NEW GUINEA.....	85
OFFICE OF THE OMBUDSMAN SAMOA	93
OFFICE OF THE OMBUDSMAN OF SOLOMON ISLANDS	97
THE CONTROL YUAN	105
COMMISSIONER FOR PUBLIC RELATIONS OF THE KINGDOM OF TONGA	115
OFFICE OF THE OMBUDSMAN — REPUBLIC OF VANUATU.....	123

AUSTRALIAN OMBUDSMAN OFFICES

COMMONWEALTH OMBUDSMAN

Establishment

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

The title *Commonwealth* Ombudsman reflects the naming practice of the time. The more recent practice is to describe national agencies as the *Australian* department, authority or agency. It is possible that the office will be re-named the Australian Ombudsman when a general review of the Act next occurs.

Ombudsman

There have been seven Commonwealth Ombudsmen:

- 1977 — Prof. Jack Richardson, AO
- 1986 — Geoffrey Kolts, QC
- 1988 — Prof. Dennis Pearce, AO
- 1991 — Alan Cameron, AM
- 1993 — Philippa Smith, AM
- 1998 — Ron McLeod, AM
- 2003 — Prof. John McMillan.

Prior to their appointment, three Ombudsmen (Richardson, Pearce and McMillan) were legal academics at the Australian National University; Kolts was First Parliamentary Counsel; Cameron was the managing partner of a national law firm; Smith held senior roles in the Australian Council of Social Services and the Australian Consumers' Association; and McLeod had a wide ranging career in government, including Inspector-General of Intelligence and Security.

The current Deputy Ombudsmen are Ron Brent (appointed 2003; reappointed 2008) and Dr Vivienne Thom (appointed 2006).

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

Relationship to Government and Parliament

The Ombudsman Act is administered by the Prime Minister; the office falls within the portfolio of the Department of Prime Minister and Cabinet. The present arrangement is for the Ombudsman to report to the Special Minister of State, who is also located in that portfolio. The Ombudsman and other independent oversight agencies located in this portfolio are now referred to informally as the integrity branch of government. The

¹ Unless otherwise noted, all references to section numbers are to the *Ombudsman Act 1976*.

other agencies are the Australian Public Service Commission, Australian National Audit Office, Inspector-General of Intelligence and Security, Privacy Commissioner, National Archives.

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 Committee on Finance and Public Administration.

The Ombudsman is required to report to and appear annually before two Parliamentary committees in relation to the oversight of controlled operations — the Parliamentary Joint Committee on the Australian Crime Commission, and the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity: see *Crimes Act 1914* s 15UC and *Law Enforcement Integrity Commissioner Act 2006* s 218. As noted below, the Ombudsman is also required to provide other reports to the Parliament on matters such as immigration detention, telephone interception, and police complaint handling.

Jurisdiction

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

The jurisdiction was extended in 2005 to include complaints against non-government organisations that provide services to the public under a contract with an Australian government agency (s 3BA). Examples are employment assistance under the Job Network, and the management of immigration detention centres. The actions of the service provider are deemed to be the actions of the agency (s 3(4B)). Consequently, while the Ombudsman may deal directly with the service provider during investigation of a complaint, any formal recommendation or report is directed to the agency.

Areas excluded from the jurisdiction of the Ombudsman include:

- action taken by a minister (s 5(2)(a)) — though the office can investigate the advice given to a minister and action taken to implement a minister's decision (ss 5(3) and 3A), and a report of the Ombudsman can find that legislation or government policy has an unreasonable, unjust, oppressive or discriminatory result (s 15(1)(a)(iii));
- public service employment (s 5(2)(d)) — though 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, whistleblower disclosure)
- the actions of courts and tribunals headed by a judge (s 5(2)(b)-(c)) — though the office can investigate the actions of court and tribunal registries (see the Ombudsman report, *Commonwealth Courts and Tribunals*, Report No 12/2007)
- the actions of the six intelligence agencies (eg, ASIO, ASIS) (s 5(3B)) — this jurisdiction belongs to the Inspector-General of Intelligence and Security (see *Inspector-General of Intelligence and Security Act 1986*).

Functions

The core function of the Ombudsman is to receive and investigate complaints from members of the public (ss 5(1)(a) and 7). The Ombudsman can commence own motion investigations (s 5(1)(b)).

The Commonwealth Ombudsman also hosts special roles and functions:

- 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 ACT Ombudsman is established by an ACT statute, the *Ombudsman Act 1989*; and the exercise of this function by the Commonwealth Ombudsman is permitted (s 4(2)). The ACT Ombudsman is required to conduct an annual inspection of the Child Sex Offenders Register and to prepare a report that is tabled in the ACT Legislative Assembly: see *Crimes (Child Sex Offenders) Act 2005* (ACT) s 6(2)(h) and ss 17A-17C of the ACT Ombudsman Act. The ACT Ombudsman is designated by the *Public Interest Disclosure Act 1994* (ACT) as an agency that can receive and investigate disclosures under the Act, and can commence proceedings in the ACT Supreme Court to seek a remedy for a person who has suffered an unlawful reprisal (s 30).
- The Ombudsman is the Defence Force Ombudsman, with jurisdiction to investigate complaints from current and former Australian Defence Force personnel about 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.
- The Ombudsman is the Postal Industry Ombudsman (s 19L). This jurisdiction extends to complaints against Australia Post, and against private postal operators that opt to be members of the scheme (s 19ZA). As at 2009, eight private operators had elected to join the scheme. The cost of this function is recouped through charges levied on members in respect of each complaint; there are four levels of charges (s 192E).
- The Ombudsman may choose to be called the Taxation Ombudsman in handling complaints against the Australian Taxation Office (s 4(3)). A separate independent office of Inspector General of Taxation can investigate and make reports to government on systemic issues arising in taxation administration: see *Inspector-General of Taxation Act 2003*.
- The Ombudsman may choose to be called the Immigration Ombudsman in handling complaints about immigration matters (s 4(4)). Special funding was provided by government for this function, that includes (in addition to complaint investigation and own motion investigations) visits to immigration detention centres (including unannounced visits), monitoring immigration compliance activities, monitoring the reception of boat arrivals at Christmas Island, preparation of a report that is tabled in the Parliament on each person held in detention for more than two years and thereafter at six monthly intervals (*Migration Act 1958* s 486O), and (in addition to that statutory reporting function) preparation of a brief report to the Secretary on each person held in immigration detention for six months.
- The Ombudsman may choose to be called the Law Enforcement Ombudsman in handling complaints against the Australian Federal Police (AFP) (s 4(5)). Special statutory arrangements apply to police complaints: see *Australian Federal Police Act 1979* ss 40RK–40XD. Complaints received directly by the AFP that are classified as Level 1 or 2 (minor conduct matters) are dealt with by the AFP; complaints classified as Level 3 (serious misconduct) must be notified to the Ombudsman, who may choose to investigate the complaint; complaints classified as Level 4 (corruption) must be notified to the Australian Commissioner for Law Enforcement Integrity, who may choose to conduct an

investigation or oversight or manage an investigation conducted by the AFP (see *Law Enforcement Integrity Commissioner Act 2006* s 23). The Ombudsman is required to conduct at least an annual audit of AFP complaint handling, and to report to the Parliament (*Australian Federal Police Act 1979* ss 40XA–40XD). The Ombudsman is required to transfer serious corruption allegations against police to the Law Enforcement Integrity Commissioner: s 6(16) *Ombudsman Act 1976*.

The Commonwealth Ombudsman has a compliance auditing role under a number of statutes, to conduct an inspection of law enforcement records to ensure compliance with statutory requirements. Specifically, this function applies to records relating to telephone interception and stored communications (*Telecommunications (Interception and Access) Act 1979* s 152); use of surveillance devices (*Surveillance Devices Act 2004* s 55); and controlled operations (*Crimes Act 1914* s 15UA). The inspection of surveillance device records applies to the use of those records by State police forces.

The Ombudsman will have a similar role examining the exercise of coercive powers by the Fair Work Building Industry Inspectorate: see *Building and Construction Industry Improvement Act 2005* ss 49, 54A.

The Ombudsman is funded to conduct regular reviews of quarantine investigations — for example, see Ombudsman report *Compliance and investigation activities of AQIS*, this function rests on the Ombudsman's power to conduct own motion investigations (s 5(1)(b)).

There is specific statutory recognition of the role of the Ombudsman in investigating freedom of information complaints: see *Freedom of Information Act 1982* (Cth) s 57 and *Freedom of Information Act 1989* (ACT) ss 53–57. (This is likely to be replaced in 2010 by the creation of a new statutory agency, the Office of the Information Commissioner.)

The Ombudsman is an ex officio member of the Administrative Review Council, which provides reports to the Attorney-General on administrative law reform: see *Administrative Appeals Tribunal Act 1975* s 48.

The Ombudsman was an ex officio member of the Security Legislation Review Committee, which prepared a report to the Attorney-General in 2006 on the counter terrorism legislation enacted in 2002: see *Security Legislation Amendment (Terrorism) Act 2002*.

Powers

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

protected against civil action (s 37); and the Ombudsman can delegate most functions to other officers (s 34).

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

- Complaints can be received orally or in writing (s 7(1)) — in practice, over 70% of complaints are received by telephone by a Public Contact Team.
- The Ombudsman may make a written arrangement with an agency for the notification of complaints (s 8(1A)) — this avoids the need for formal notification of each individual complaint.
- The Ombudsman can release any information in the public interest (s 35A) — this enables the Ombudsman to publish an investigation report without having to present the report to the Parliament.
- An agency that provides information to the Ombudsman in the good faith belief that it is relevant to an investigation is not in breach of privacy or secrecy laws (ss 2A–2E) — this amendment to the Act in 2005 overcame a growing tendency of agencies not to volunteer information to the Ombudsman arising from a concern that to do so would be in breach of the *Privacy Act 1988*.
- The Commonwealth and a State Ombudsman may jointly conduct an investigation into an issue that arises within the jurisdiction of both (s 8A).
- A recommendation by the Ombudsman that an agency pay administrative compensation to a person is recognised as a criterion for payment under the *Scheme for Compensation for Detriment caused by Defective Administration*: see Ombudsman report *Putting things right: Compensation for defective administration*, report No.11|2009.

Internal structure

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

- Corporate—Business Improvement, Finance, Human Resources, Information Technology and Public Affairs
- State offices, Child Support Agency, International and Postal Industry
- Social Support and Indigenous
- ACT Ombudsman, Defence, Public Contact and Records Management
- Immigration and Legal
- Inspections, Law Enforcement and Taxation.

Workload and statistics

Year	Enquiries and complaints	Complaints (in jurisdiction)	Complaints investigated
1999–2000	11,556	8,943	2,504
2004–2005	19,323	17,310	10,386
2007–2008	39,932	19,621	4,700

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

The seven agencies against which most complaints were received in 2007–08 were: Australia Post (743), Australian Taxation Office (130), Centrelink (1,636), Child Support Agency (604), Defence agencies (200), Department of Education, Employment and Workplace Relations (176) and the Department of Immigration and Citizenship (518).

The outcome of investigations is currently recorded in two ways:

- **Administrative deficiency:** administrative deficiency was recorded in 2007-08 in 8% of cases. The most common type of deficiency noted was unreasonable delay (27% of cases), followed by human error (18%), procedural deficiency (18%), flawed administrative process (15%) and inadequate advice, explanation or reasons (9%). The Ombudsman policy on Administrative Deficiency is outlined in Fact Sheet No 2, available on our website, www.ombudsman.gov.au.
- **Remedy:** a remedy was recommended or provided in 75% of investigated cases. The most common remedy for complainants was the provision of a better explanation by an agency of its decision or action (28% of cases where a remedy was indentified). Other major types of remedy were an explanation of the circumstances by the Ombudsman's office (23%), agency action being expedited (11%), a financial remedy (11%), agency decision changed or reconsidered (10%), and an apology being offered by an agency (8%).

The method of receipt of complaints in 2007–08 was telephone (77%), written (7%), in person (3%) and electronic (13%).

Publications

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

- Annual report
- Special reports — annual reports on the Ombudsman law enforcement record inspection functions, and the Taxation Ombudsman Annual report
- Investigation reports — nearly 50 reports have been published between January 2007 and July 2009, covering social support issues, taxation, military justice, police watch houses, immigration detention, visa processing, agency complaint handling and Australia Post processes and procedures, administrative compensation, child support and executive schemes
- Immigration detention reports — over 550 reports have been prepared on people detained in immigration detention for more than two years.
- Better Practice guides — on *Unreasonable Complainant Conduct*, *Automated Assistance in Administrative Decision-Making* and *Complaint Handling*. See also, the Administrative Review Council *Best Practice Guides to Good Decision Making* (five guides covering administrative law, natural justice, evidence and fact finding, reasons and accountability—available at ag.gov.au/arc)

- Fact sheets — No.1 *Ombudsman Investigations*; No.2 *Administrative Deficiency*; No.3 *Providing Remedies*; No.4 *Use of Interpreters*; No.5 *Ten Principles for Good Administration*; No.6 *Complaint Handling — Outsourcing*; No.7 *Complaint Handling — Multiple Agencies*; No.8 *Executive Schemes*
- E-bulletin — an electronic e-bulletin is published every 4 months containing case studies and the lessons to be drawn from them, and a summary of recent Ombudsman reports
- Conference papers and speeches — papers are available from three conferences: the Commonwealth Ombudsman thirtieth anniversary conference on improving administration; a joint Commonwealth/Papua New Guinea Ombudsman conference on oversight of defence and police; and the Defence Force Ombudsman twenty-fifth anniversary seminar on administrative oversight of military justice.
- Brochures — covering issues such as the Ombudsman role, making a complaint to the Ombudsman, and responding to Ombudsman investigations (for agencies)
- Speeches — by the Ombudsman and staff.

Litigation

Ombudsman office decisions can be reviewed by the Federal Magistrates Court or the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977*. Decisions made by the Ombudsman under the *Freedom of Information Act 1982* (FOI) are reviewable by the Administrative Appeals Tribunal (AAT). It is common for one or more proceedings to be commenced each year.

Noteworthy cases include:

- *Aboriginal and Torres Strait Islander Commission v Commonwealth Ombudsman* (1995) 134 ALR 248. In this case a government statutory authority sought an order restraining the completion and publication of a draft Ombudsman report that was critical of the agency. The action succeeded in part. The Court held that an Ombudsman report could not contain a prima facie finding of criminal guilt. Otherwise the action failed.
- *Kavvadias v Commonwealth Ombudsman* (1984) 1 FCR 80. This involved a challenge to a denial of access to documents by the Commonwealth Ombudsman under freedom of information legislation.
- *Zoia v Commonwealth Ombudsman Department* [2007] FCAFC 143. The Full Federal Court dismissed an appeal from the Federal Court (in *Zoia v Commonwealth Ombudsman* [2007] FCA 245). The Court had affirmed a decision of the AAT to dismiss and not reinstate an application because the applicant failed to attend hearings scheduled by the AAT.

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

Special projects

The Commonwealth Ombudsman hosts the Secretariat for the Pacific Ombudsman Alliance, and Prof McMillan is the Chair of the Alliance. The members of the Alliance are from countries that are members of the Pacific Forum: Commonwealth Ombudsman, Cook Islands, New South Wales, New Zealand, Papua New Guinea, Tonga, Samoa, Solomon Islands and Vanuatu. The Commonwealth Ombudsman is a partner in a Twinning program with the Papua New Guinea Ombudsman Commission.

The office is a member of the Australian and New Zealand Ombudsman Association (ANZOA); the Ombudsman is a member of the ANZOA Executive. ANZOA held its inaugural conference, *The role of the Ombudsman—yesterday, today and tomorrow*, in April 2008. Ombudsman staff participate in various ANZOA sub-groups, looking at issues such as public relations and communications, learning and development, information technology and first contact.

The office has been a partner in three research projects that are partially funded by Linkage Grants from the Australian Research Council – Whistling While they Work (on protection of public interest whistleblowers); Dilemmas in Non-Citizen Detention and Removal (a comparative study of the more difficult detention and removal decisions facing government); and Applying Human Rights Legislation in Closed Environments (a study of policy and practice in place of detention, such as prisons, police watch houses, immigration detention centres).

Offices and contact details

Enquiries/complaints: 1300 362 072
Fax: 02 6249 7829
Postal: GPO Box 442, Canberra ACT 2601
SMS: 0413 COM OMB (0413 266 662)
Email: ombudsman@ombudsman.gov.au
Web: www.ombudsman.gov.au

We also have offices in Adelaide, Alice Springs, Brisbane, Darwin, Hobart, Melbourne, Perth and Sydney.

NEW SOUTH WALES OMBUDSMAN

Establishment

The New South Wales Ombudsman office was established by the *Ombudsman Act 1974* (NSW).² The office commenced operation in May 1975.

Ombudsman

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

- 1975 — Mr Ken Smithers
- 1981— Mr George Masterman QC
- 1988 — Mr David Landa
- 1995 — Ms Irene Moss, AO
- 2000 to present — Mr Bruce Barbour.

Relationship to Government and Parliament

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

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

The work of the office is overseen by the Committee on the Office of the Ombudsman and the Police Integrity 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.

² Unless otherwise noted, all references to section numbers are to the *Ombudsman Act 1974*.

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 and Assistant 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.

Jurisdiction

New South Wales is one of eight States and Territories that make up the Commonwealth of Australia, and has a population of 6.9 million. New South Wales has a two tiered political system, with both State and Local government. The office of the Ombudsman handles complaints relating to both tiers, as well as a number of private sector bodies providing public services. This means that the Ombudsman's jurisdiction is particularly broad.

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

1976	local government authorities
1978	limited oversight of police complaints
1984	limited powers to conduct direct investigation of police
1986	elected members of local government
1987	telecommunications interception inspection
1989	freedom of information
1993	direct investigation police complaints
1994	protected disclosures
1995	conciliation powers; witness protection appeals
1997	controlled operations inspection
1998	child protection
2002	community services.

The Ombudsman's jurisdiction now includes:

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

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

- judges
- members of a Tribunal

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

Schedule 1 of the Ombudsman Act lists all exempted bodies and conduct. A full copy of the Act can be found at www.legislation.nsw.gov.au/.

Functions

Complaint handling

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

Oversight

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

For police complaints, the Ombudsman enters into an agreement with the Police Integrity Commission and the NSW Police Commissioner, known as a class or kind agreement, whereby police have to notify the Ombudsman and the Police Integrity Commissioner of certain types of complaints. Police then investigate the complaint, and provide the Ombudsman with an investigation report and all related documents. If the Ombudsman is satisfied with the way in which the complaint was handled, the matter can be finalised. The Ombudsman can request additional information about the complaint and the investigation, as well as further investigation of the complaint. The Ombudsman is also able to directly investigate the complaint itself or the way in which it was dealt with by Police.

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

Reviewable deaths

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

Audits

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

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

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

Legislative reviews

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

- Review of the *Justice Legislation Amendment (Non-association and Place Restriction) Act 2001*
- Review of the *Police Powers (Drug Detection Trial) Act 2003*
- Review of Emergency Powers to Prevent or Control Disorder
- DNA sampling and other forensic procedures conducted on suspects and volunteers under the *Crimes (Forensic Procedures) Act 2000*
- Firearm and Explosive Detection Dogs: Review of the *Firearms Amendment (Public Safety) Act 2002*
- Review of the *Police Powers (Drug Detection in Border Areas Trial) Act 2003*
- Review of Children (Criminal Proceedings) Amendment (Adult Detainees) Act
- Review of the *Police Powers (Drug Detection Dogs) Act 2001*
- Review of the *Crimes (Administration of Sentences) Amendment Act 2002* and the *Summary Offences Amendment (Places of Detention) Act 2002*
- On the Spot Justice? The Trial of Criminal Infringement Notices by NSW Police
- Review of the *Police Powers (Internally Concealed Drugs) Act 2001*
- Review of the *Police Powers (Drug Premises) Act 2001*.

Own motion investigations

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

- Opening up government: Review of the *Freedom of Information Act 1989*
- The use of Taser weapons by New South Wales Police Force
- Domestic violence: improving police practice
- Misconduct at the NSW Police College.

Education and training

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

Powers

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

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

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

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

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

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

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

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

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

The Ombudsman also has a role under several other pieces of legislation. These are the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, the

Freedom of Information Act 1989 and the *Police Act 1990*. The Ombudsman is able to use the powers provided by the Ombudsman Act in performing these functions.

Internal structure

In addition to the Ombudsman, the office has two Deputy Ombudsmen and three Assistant Ombudsmen. These senior staff head a number of separate divisions within the office:

- Child protection division — schools; non-schools; investigation and training; research
- Community service division — policy and community education service; improvement and review; reviewable death; complaint resolution and investigation; community visitor scheme
- Police division — serious misconduct; legislative review; projects, intelligence and auditing
- General division — State and local government; corrections; universities and protected disclosures; Dept of Community Services and Dept Juvenile Justice; inquiries and resolution; freedom of information; secure monitoring unit; research; special projects; training
- Cross agency team — Aboriginal unit; youth liaison projects.

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

Year	Inquiries and complaints received	Matters finalised informally	Formal complaints and notifications received	Complaints and notifications finalised
2002–03	35,119	26,067	8,739	9,052
2003–04	35,680	26,521	9,167	9,159
2004–05	35,076	24,362	10,714	10,866
2005–06	33,315	23,011	10,304	10,096
2006–07	32,390	22,698	9,692	9,569
2007–08	34,021	24,701	9,320	9,544

Publications

The office produces a varied range of publications every year that are available at the Ombudsman's website www.ombo.nsw.gov.au. This includes annual reports, special reports to Parliament, guidelines, facts sheets and information brochures.

Annual reports

There are five reports produced by the office every year:

- NSW Ombudsman Annual Report: This report to Parliament under the *Annual Reports (Departments) Act 1986* allows the office to outline its work from the preceding year.
- Report of reviewable deaths of people with a disability in care: This report to Parliament under the *Community Services (Complaints, Reviews and Monitoring) Act 1993* is aimed at preventing or reducing the premature deaths of people living in disability services and licensed boarding houses by identifying trends, risk factors and systems issues.
- Report of reviewable deaths of certain children and young people: This report to Parliament under the *Community Services (Complaints, Reviews and Monitoring) Act 1993* provides information around the work of the office in reviewing the deaths of certain children and young people.
- Law Enforcement (Controlled Operations) Act 1997 annual report: This report to Parliament under the *Law Enforcement (Controlled Operations) Act 1997* outlines the work of the office in reviewing the use of listening devices and other means of gathering information by both police and other law enforcement bodies, including the NSW Crime Commission, Independent Commission Against Corruption and the Police Integrity Commission.
- Audit of freedom of information annual reporting: This report is not prepared in response to any legislative requirement. It is compiled following a review of the annual reports of a representative sample of NSW public authorities. Unlike a number of other jurisdictions, the NSW Freedom of Information Act does not require the preparation of a consolidated report containing information about FOI applications for the preceding year by all agencies. While the NSW Ombudsman report is not comprehensive, it is the only compilation of freedom of information statistics for NSW.

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:

- 2009: Opening up government: Review of the *Freedom of Information Act 1989*
- 2008: The use of Taser weapons by New South Wales Police Force
- 2008: Supporting people with an intellectual disability in the criminal justice system: Progress report
- 2006: Domestic violence: improving police practice
- 2006: Misconduct at the NSW Police College
- 2006: DADHC: Monitoring standards in boarding houses
- 2006: Services for children with a disability and their families
- 2005: Improving the quality of land values issued by the Valuer General
- 2005: Working with local Aboriginal communities: Audit of the implementation of the NSW Police Aboriginal Strategic Direction (2003–2006)
- 2004: Improving outcomes for children at risk of harm — a case study

- 2004: Assisting homeless people — the need to improve their access to accommodation and support services
- 2004: Summary report: Assisting homeless people — the need to improve their access to accommodation and support services
- 2004: DADHC: The need to improve services for children, young people and their families.

Guidelines

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

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

Facts sheets and brochures

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

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

Litigation

Botany Council v The Ombudsman [1995] 37 NSWLR 357

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

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

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

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

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

Special projects

In February 2009, the Ombudsman tabled a final report in Parliament as part of a review of the New South Wales *Freedom of Information Act 1989*. The final report made 88 recommendations.

The office will soon complete an 18 month own motion investigation of the system for providing stable and appropriate housing to people with mental health problems and disorders. As part of the investigation, staff from the office travelled throughout NSW, speaking with over 460 people with experience working in the area.

This year marks the tenth anniversary of the Ombudsman's jurisdiction in relation to child protection in the workplace. In May 2009, the Ombudsman hosted a Child Protection Symposium, involving workers in the area, academics and commentators from across Australia and around the world. At the same time, the office will be presenting a special report to Parliament outlining the history of the role, the important developments in the sector during that time, as well as some of the emerging issues and challenges for the future. The Child Protection Division is also continuing its research into the use of modern technology to target children and young people for abuse.

The office is undertaking a large scale project aimed at assessing a range of services provided to children and young people at risk. This project will involve all of the various Divisions of the office, and will be managed by the Cross Agency Team.

Office address and contact details

Mailing address: NSW Ombudsman
Level 24
580 George Street
Sydney NSW 2000

Web address: www.ombo.nsw.gov.au

Email address: nswombo@ombo.nsw.gov.au

General enquiries: 02 9286 1000

Toll free (outside Sydney metro): 1800 451 524

Telephone Typewriter (TTY): 02 9264 8050

Media enquiries: 02 9286 1008

Publications enquiries: 02 9286 1072

NORTHERN TERRITORY OMBUDSMAN

Establishment

The Northern Territory Ombudsman office was established by the *Ombudsman (Northern Territory) Act*.³ The office commenced operation in 1978.

Ombudsman

There have been seven NT Ombudsman appointed since the office started operating in 1978:

- 1978 (July to December) — Mr Harry Giese
- 1978 — Mr Russell Watts
- 1984 — Dr Kenneth Rhodes
- 1989 — Mr Robert Eddie
- 1991 — Mr Ian Knight
- 1995 — Mr Peter Boyce
- 2005 to present — Ms Carolyn Richards.

The current Deputy Ombudsman is Mr Vic Feldman (appointed August 2002).

Relationship to Government and Parliament

Under the *Ombudsman (Northern Territory) Act*, the Ombudsman is independent of the Government and is not accountable to a Minister, but rather to the Legislative Assembly as a whole. However, under the Administrative Arrangements Orders, where relevant, the *Ombudsman (Northern Territory) Act* is the administrative responsibility of the Chief Minister. It is important to note that this does not impact on the Ombudsman's independence and impartiality, as the Chief Minister takes no direct role in relation to the Ombudsman's work.

The Ombudsman is appointed by the Administrator on the recommendation of the Legislative Assembly. The Ombudsman can be appointed for a term of up to five years, and is eligible for re-appointment. The Ombudsman can only be removed from office by the Administrator if asked to do so by the Legislative assembly.

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

Jurisdiction

Northern Territory is one of eight States and Territories that make up the Commonwealth of Australia, and has a population of 260,000. Northern Territory has a two tiered political system, with both Territory 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.

³ Unless otherwise noted, all references to section numbers are to the *Ombudsman (Northern Territory) Act*.

The jurisdiction of the office has been extended on a number of occasions as per the following additions:

- 2007 telecommunications interception inspection
- 2008 surveillance devices inspections.

The Ombudsman's jurisdiction now includes:

- all government departments and authorities
- correctional services
- NT Police Force
- local councils
- university.

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

- persons discharging a responsibility of a judicial nature
- persons acting as counsel or legal adviser to the Crown or Minister
- a coroner, magistrate or Justice
- the Director of Public Prosecutions (not amounting to inordinate delay)
- an application to or a decision of a consent authority under the *Planning Act* (not amounting to inordinate delay)
- a decision by the Liquor Commission under the *Liquor Act* (not amounting to inordinate delay)
- the Anti Discrimination Commission
- the Parole Board of the Northern Territory
- public service employment matters
- members of a Tribunal
- members of Parliament.

Functions

The core functions of the Ombudsman are:

1. To receive and deal with complaints by members of the public.
2. To investigate any administrative action by, in, or on behalf of, any Northern Territory Government Agency or Local Government Council to which the Ombudsman (Northern Territory) Act applies.
3. To arrange investigation, by the Ethical and Professional Standards Command of the Northern Territory Police, of any action taken, or refusal to take action, by a member of the Police Force of the Northern Territory, whether or not that action was an administrative action, where that action was, or was purported to be, for, or in connection with, or incidental to, the exercise or performance of that member's powers or functions as a member of the Northern Territory Police Force.

4. To monitor and receive reports of investigations into the conduct of Members of the Northern Territory Police Force carried out by Ethical and Professional Standards Command of the Northern Territory Police.
5. To inspect records of the Northern Territory Police and report to the Legislative Assembly through the Minister on compliance with use of surveillance devices under the *Surveillance Devices Act 2007*. To monitor and report to the Minister on compliance with the *Telecommunications (Interception) Northern Territory Act* and the Commonwealth *Telecommunications (Interception and Access) Act* by law enforcement agencies within the Northern Territory.
6. Pursuant to a co-location agreement with the Commonwealth Ombudsman, to provide administrative support to a representative of the Commonwealth Ombudsman's Office who is co-located within the Office of the Ombudsman in both Darwin and Alice Springs. The Alice Springs Office acts as the representative of the Anti-Discrimination Commission.
7. To act as a member of the Northern Territory Law Reform Committee.
8. Pursuant to s 9 of the *Health and Community Services Complaints Act* the Ombudsman is also appointed as the Commissioner for Health and Community Services Complaints. The Commission reports separately to the Legislative Assembly.

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

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 to investigation techniques.

Powers

The *Ombudsman (Northern Territory) Act* provides the Ombudsman with the power to investigate complaints made to the office that are within jurisdiction.

If the Ombudsman decides that the issues of complaint appear to fall into one or more of the categories listed below, the Ombudsman may choose to conduct an investigation (s 26):

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

In order to decide if certain conduct should be investigated, the Ombudsman will first make preliminary inquiries (s 17A). These can be made to anyone, not just the public authority that is involved. While those asked for information cannot be compelled to

respond, most public authorities provide the requested information, often removing the need for a more formal investigative process.

If preliminary inquiries fail to provide the information needed, or demonstrate the need for closer investigation, the Ombudsman can choose to issue a formal notice of investigation s 19(1)). Such an investigation must be conducted in private (s 19(2)).

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 20).

The Ombudsman may also make or hold inquiries (s 20). For the purposes of such inquiries, the Ombudsman has the powers, authorities, protections and immunities conferred on a commissioner under the *Inquiries Act*.

The Ombudsman may also enter and inspect any premises and inspect any document or thing in or on the premises (s 21).

The Ombudsman may also make a special report to Legislative Assembly on any matter arising in connection with the discharge of his or her functions (s 28(2)).

Internal structure

In addition to the Ombudsman, the office has one Deputy Ombudsman and one Assistant Ombudsman; each is responsible for specific functions in the office:

- Health and Community Services Complaints Commission (HCSCC) — investigation, conciliation and complaint resolution; Ombudsman enquiries and complaints; corporate support unit
- police complaints; Ombudsman and HCSCC investigations; own motion investigations; telecommunications interceptions and surveillance devices; training and development.

Workload and statistics

Approaches	2003–04	2004–05	2005–06	2006–07	2007–08
Enquiries	1804	2141	1787	1307	1793
Complaints	551	1134	883	774	661
Total	2355	3275	2670	2081	2454
Less enquiries to complaint	379	923	670	468	492
Approaches	1976	2352	2000	1613	1962

The information included in the table above is taken from the office's Annual Reports, all of which are available at the Ombudsman website. The table refers to 'enquiries' and 'complaints'. Enquiries can include providing information or an explanation, referral to the relevant agency, or advising the complainant to put their complaint in writing. Complaints can be varied, and the response of our office to these matters can vary from providing information to a full-scale investigation over many months.

The method of receipt of complaints in 2007–08 was telephone (67%), in person (15%), written (10%), electronic (4%) and referred (4%).

Publications

The office produces a varied range of publications every year that are available at the Ombudsman's website www.ombudsman.nt.gov.au. This includes:

- Annual reports — this report to Legislative assembly allows the office to outline its work from the preceding year.
- Brochures — covering issues such as the Ombudsman role, making a complaint to the Ombudsman, and where to complain
- Guidelines — between the Ombudsman and the Commissioner of Police for the handling of complaints against Police
- Public reports — press releases and the following reports to the Legislative Assembly:
 - Concerns arising from an investigation into the alleged misuse of telephone monitoring equipment at Alice Springs Correctional Centre, June 2002
 - An investigation into the adequacy of the administrative actions taken by certain government authorities in relation to the granting and acceptance of a 'Special Purpose Grant', March 2005.
 - Report of the investigation into complaints from women prisoners at Darwin Correctional Centre, 2008
 - On a complaint about the conduct of members of the Northern Territory Police Force at Alice Springs, April 2008.

Litigation

Owen v Boyce [1999] NTSC 126

This case was heard by the Supreme Court of the Northern Territory. The plaintiff challenged the jurisdiction of the Ombudsman to undertake an 'own motion' investigation into the conduct of a police officer because there was not a complaint from an aggrieved person.

The Ombudsman became involved in the matter following a reporter for the NT News approaching the Commissioner of Police with questions about the alleged inappropriate conduct of a police officer. The Police ordered an inquiry into the allegations and this commenced a series of events which led to the Ombudsman embarking on an investigation into the matter.

Justice Martin held that:

- the Ombudsman had no jurisdiction under s14(1)(b) because there was no complaint made and, if a complaint was made, it was not made by an aggrieved person, and if it was made by an aggrieved person, then it was not made to a member of the Police Force.
- The investigative power of the Ombudsman under s 16(1) is limited to those authorised by the Act, and those referred to in s 14(1)(b) are not authorised unless compliant within s 14(2).

As a result of this case the Ombudsman is unable to undertake an 'own motion' investigation into the conduct of a Police Officer.

Special projects

New Ombudsman Act

The government commissioned a review of the *Ombudsman (Northern Territory) Act*. The review examined all aspects of the existing framework, and considered the Ombudsman's powers, existing practices and procedures, use of conciliation and mediation as an alternate dispute resolution mechanism, and involvement with the police complaints process with particular regard to best practice in the delivery of a more open and transparent complaints handling process.

The public discussion paper prepared for the review received over 30 submissions in addition to various verbal submissions, and a draft bill was released to targeted stakeholders in September 2004. The comments received through the consultation process, together with input from the Ombudsman, were all taken into account in presenting the Bill to the Legislative assembly on 26 November 2008. The Bill was passed on 11 February 2009 and the new *Ombudsman Act 2009* is likely to come into effect on 1 July 2009.

The more significant changes are:

- ability to delegate certain powers and functions to other interstate Ombudsman
- power to allow the Ombudsman to issue a notice to the principal officer of an agency in specified circumstances seeking that he or she refrain from performing an administrative act for a maximum of 45 days (along the same lines as the SA model)
- inclusion of provisions to allow for the use of conciliation or mediation to resolve complaints with enforceable agreements.

Specific to the Police:

- complaints against police to be a separate part of the legislation
- inclusion of own motion power
- police officers can complain direct to the Ombudsman about serious matters (similar to Victorian model)
- formal conciliation and mediation processes
- complaints against senior officers able to be investigated by Ombudsman.

Partnership with Charles Darwin University (CDU)

The Ombudsman initiated a partnership with the CDU to introduce a Certificate IV in Government (Investigation) course. The course, designed and delivered by the Ombudsman, will be conducted on the CDU campus.

The units to be taught fall into the following categories:

- Compliance
 - Uphold & support the values and principles of public service
 - Encourage compliance with legislation in the public sector
 - Use advanced workplace communication strategies
 - Exercise regulatory powers
 - Investigate non-compliance

- Regulatory
 - Produce formal record of interview
 - Gather information through interviews
 - Gather and manage evidence
 - Advise on progress of investigations
 - Finalise and report on investigations
- Fraud investigation
 - Gather and analyse information
 - Identify and treat risks
 - Anticipate and detect possible fraud activity
 - Receive and validate data
- Occupational Health and Safety
 - Contribute to workplace safety.

Office address and contact details

Mailing address: NT Ombudsman
PO Box 1344
Darwin NT 0800

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 (within NT): 1800 806 380

QUEENSLAND OMBUDSMAN

Establishment

The Queensland Ombudsman was established by the *Parliamentary Commissioner Act 1974*. The Queensland Ombudsman now operates under the *Ombudsman Act 2001*.⁴

Ombudsman

There have been five Queensland Ombudsmen:

- 1974 — Sir David Longland
- 1979 — Sir David Muir
- 1981 — Mr Cedric Johnson
- 1991 — Mr Fred Albietz
- 2001 to present — Mr David Bevan.

Relationship to Government and Parliament

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.

The performance of the Office is monitored and reviewed by the parliamentary committee, which also:

- reports to the Assembly on any matter concerning the Ombudsman's activities and functions
- examines each annual report tabled in the Assembly and comment as appropriate
- reports to the Assembly 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.

⁴ Unless otherwise noted, all references to section numbers are to the *Ombudsman Act 2001*.

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, and local councils. The Ombudsman can investigate an administrative action despite a provision in any Act to the effect that the action is final.

The Ombudsman cannot 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 also cannot 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.

Functions

The Queensland Ombudsman has four key objectives that underpin operations. They are:

- 1) Promote administrative justice by providing an independent, fair and effective investigative service
- 2) Contribute to improving the quality of administrative practice in Queensland public sector agencies
- 3) Ensure all sections of the community are aware of and have reasonable access to the office's services
- 4) Promote organisational excellence and a skilled, committed workforce within the office.

1. Promote administrative justice by providing an independent, fair and effective investigative service

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

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

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

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

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

2. Contribute to improving the quality of administrative practice in Queensland public sector agencies

The Queensland Ombudsman's main strategies for assisting agencies to improve their practices and procedures are:

- to encourage and assist agencies to develop effective internal complaints management systems
- to carry out broad systemic reviews, of the Ombudsman's initiative, with particular reference to agencies with regulatory responsibilities, often by auditing a sample of the agency's files for compliance with legislation, the agency's own procedures, and recognised standards
- to report to Parliament in significant cases; a recent example was the Ombudsman's report on an 'own motion' investigation titled the *Report on the Regulation of Mine Safety in Queensland: a review of the Queensland Mines Inspectorate*
- to provide training to agencies on good decision-making and complaints management. In the 2007–2008 financial year, 100 training sessions were delivered throughout Queensland.

3. Ensure all sections of the community are aware of and have reasonable access to the Office's services

The Ombudsman conducts a range of activities to promote awareness in the community of the office and its role. These activities include regular media campaigns, particularly in regional Queensland, and working with other independent complaints agencies to promote awareness throughout all sections of the community.

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

4. Promote organisational excellence and a skilled, committed workforce

The Queensland Ombudsman is implementing recommendations from reviews of the *Ombudsman Act 2001*. Workforce capability strategies are in place to align staff core competencies with professional development and training programs. An office intranet centralises communication within the office and facilitates sharing of corporate knowledge.

The Ombudsman also conducts regular surveys to monitor and improve his office's own service levels.

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

The Ombudsman's staff includes a Deputy Ombudsman, four Assistant Ombudsman and two Managers. Each of these officers, other than the Deputy, heads a separate team in the office:

- Administrative improvement unit
- Communication and research unit

- Corporate services unit
- Assessment and resolution team
- Local government and infrastructure team
- Community services and corrections team.

Workload and statistics

The following information is taken from the Queensland Ombudsman's Annual Report 2007–2008, which is available from our website.

Complaints received by the Queensland Ombudsman

Complaints	Service delivery statement targets	2006–2007	2007–2008	Change from previous year
Received		7,084	7,172	1.2%
Finalised	7,000	7,134	7,201	1.0%
Open at 30 June 2008		329	300	8.8%
% of accepted recommendations	90%	98%	99%	1.0%

Training sessions managed

Training sessions	Service Delivery Statement Targets	2006–2007	2007–2008	Change from previous year
Number of sessions	100	74	100	35.1%
Officers trained		1,278	1,700	33%
Sessions delivered outside Brisbane	50	42	58	38.1%

Complaint numbers for agency types

Agency type	2003–04	2004–05	2005–06	2006–07	2007–08
State Government	5,156	4,505	4,271	4,137	4,268
Local councils	2,017	1,894	1,961	1,888	1,843
Universities	71	74	74	113	130
Other* (police, private, C'wealth, etc)	1,734	1,394	965	905	931
Total	8,978	7,867	7,271	7,084	7,172

* While we do not have jurisdiction over complaints about police, Commonwealth Government agencies or private agencies, we receive many complaints of these types and refer them to the appropriate complaints agency.

Publications

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, casebooks, newsletters, guidebooks and manuals.

Investigative reports

A number of investigative reports have been published in recent years. These include:

2008

- The Q150 Contract Report
- The regulation of mine safety in Queensland: a review of the Queensland mines inspectorate

2007

- The Councillor Code of Conduct Report
- Tips and traps for regulators
- The Pacific Motorway Report

2006

- The Coronial Recommendations Project Report
- The Daintree River Ferry Report
- The Miriam Vale IPA Report

Earlier

- The Workplace Electrocution Project Report
- Baby Kate report
- Brooke Brennan report.

Brochures

The Queensland Ombudsman has a range of brochures available for different groups. Brochures exist for the broader community, Aboriginal people and Torres Strait Islander people, prisoners and prisoner support groups, and culturally/linguistically diverse communities.

Annual reports

Annual reports are completed every year. These reports provide highlights on activities undertaken by the Queensland Ombudsman, including investigations, reports, community engagement activities and financial information.

Casebooks

Published in 2008, the *Local Government Casebook* contains a collection of cases from Ombudsman investigations across Queensland. It includes key recommendations, lessons and advice to help councils make better decisions and ensure effective administrative practices.

A 'State government casebook' is presently underway and expected to be completed later in 2009.

Newsletters

A range of newsletters tailored for specific audiences have been devised. These newsletters provide news, tips and advice for decision-makers and frontline officers working in State Government agencies and local councils. A newsletter is also tailored specifically for lawyers who provide advice to government departments. Each newsletter is published three times a year.

Guidebooks and manuals

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

- *The good decision-making guide* helps decision makers make consistent, fair and transparent decisions
- *Handling an Ombudsman investigation* provides information and principles to assist agencies involved
- *Unreasonable Complainant Conduct Manual* aims to assist officers to better manage unreasonable complainant behaviour and provide a more effective complaints service for the community.

Litigation

Certain decisions made by the Ombudsman under the *Ombudsman Act 2001* may be subject to review by the Supreme Court under the *Judicial Review Act 1991* (Qld).

To date, there has only been one application for judicial review involving the Queensland Ombudsman that has reached the stage of a hearing before the Supreme Court:

Douglas Shire Council v Queensland Ombudsman [2005] QSC 207

In March 2003, the *Local Government Act 1993* Qld (the LG Act) was amended. The amendments included a new s 36(2)(c), commonly referred to as the 'commercial charging head of power', which permits a local government to 'charge for services and facilities it supplies, other than a service for which a regulatory fee may be fixed'.

On 26 May 2003, the then Douglas Shire Council (which has since been amalgamated within the Cairns Regional Council) decided that the fees payable by passengers and specified kinds of vehicles in order to use the Daintree River Ferry would be subject to a levy. The levy proceeds were to be used to establish a Conservation and Infrastructure Management Fund (CIMF) to buy back environmentally sensitive rainforest land in the Daintree World Heritage Area that was under threat from development. The Council asserted that the increase in ferry fares represented a commercial charge and was therefore permitted under s 36(2)(c) of the LG Act.

Several local residents lodged complaints with the Ombudsman, arguing that the increase in ferry fares represented a tax and was therefore unlawful because a local government cannot levy a tax.

The Ombudsman investigated the matter and prepared a report under s 50 of the Ombudsman Act. The Ombudsman formed the opinion that:

- s 36(2)(c) of the LG Act does not authorise the making of a charge that includes a tax component
- the fee charged by the Council for ferry travel included a tax component and therefore was unlawful.

The Ombudsman recommended that the Council cease charging the CIMF portion of the ferry fare.

The Council sought a declaration from the Supreme Court that 'the fees for travel on the Daintree River ferry, as currently determined by the [Council] by resolution, are lawful'.

The matter was heard on 31 May 2005 and the Court delivered its decision on 26 July 2005. It refused to grant the declaration sought by the Council. The Court held that the use of the word 'for' in s 36(2)(c) connotes a connection between the charge, and the service or facility supplied. It found that the conservation component of the ferry fare was used by the Council for public purposes not sufficiently connected with the provision of ferry services. In other words, the Council did not have the legal authority to increase the ferry fare by way of a conservation levy.

The Court also ordered that the Council pay the Ombudsman's costs of the action.

Special projects

The Queensland Ombudsman is currently involved in a number of special projects such as the *Unreasonable Complainant Conduct* project and the *Whistling While They Work* project.

Unreasonable complainant conduct manual

Since 2006, Australian Ombudsman offices have been developing a joint project called the 'unreasonable complainant conduct manual'. This manual develops strategies for dealing with unreasonable complainant conduct, an issue many public sector agencies regularly face. Strategies developed within this manual can assist officers to better manage unreasonable complainant behaviour and provide a more effective complaints service for the community.

'Whistling while they work' project

In November 2006, the Queensland, New South Wales and Commonwealth Ombudsman offices released a joint issues paper that reviewed all existing public sector whistle blowing legislation in Australia. The paper illustrated the inconsistencies between the nine Acts covering whistle blowing in Australia—ranging from who will be protected, how they will be protected and the obligations on agencies themselves.

This paper reviews the eleven legislative proposals that have dealt with the management of public sector whistle blowing in Australia since 1993, including nine Acts now in force and two current proposals. The Queensland Ombudsman is assisting progress towards a consistent national approach towards whistleblowing across all Australian governments. It is also working in conjunction with the Crime and Misconduct Commission and the Public Service Commission to produce three guidelines for managers, individuals and agencies. The guidelines for managers and individuals will be available by June 2009 while the agency guidelines will be released in the second half of 2009.

Office and contact details

Mailing address: Queensland Ombudsman
Level 17
53 Albert Street
Brisbane QLD 4000

Web address: www.ombudsman.qld.gov.au

Email address: ombudsman@ombudsman.qld.gov.au

General enquiries: 07 3005 7000

Toll free: 1800 068 908

Telephone Typewriter (TTY): 07 3006 8174

Media enquiries: 07 3005 7049

Publications enquiries: 07 3005 7049

SOUTH AUSTRALIAN OMBUDSMAN

Establishment

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

Ombudsman

There have been five 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 to present — Mr Richard Bingham.

There have been four acting appointments, including Mr Ken McPherson from September 2007 to May 2009.

Relationship to Government and Parliament

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 1972*. Appointment is for a term ending when the Ombudsman reaches 65 years of age. 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 oversees the operation of the Office of the Ombudsman, and reports annually to the Parliament.

Staff are provided to the Ombudsman by the Attorney General's Department and are employed under the *Public Sector Management Act 1995*. For administrative purposes the Office forms a business unit of the Department, and corporate services are provided by the Department.

Jurisdiction

South Australia is one of the less populous States of Australia, with a population of approximately 1,500,000, but it covers a large geographical area. 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. It includes:

- statutory office-holders
- administrative units established under the *Public Sector Management Act 1995* (which is expected to be replaced by new legislation later in 2009)

- development Assessment Panels established under the *Development Act 1993* (to deal with planning and development matters)
- 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 1972* 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 an employment relationship exists between the complainant and respondent. There is also the usual discretion to refuse to investigate a complaint if it is trivial or vexatious, if the complainant does not have a sufficient personal interest in the subject matter of the complaint, or if the continuation of the investigation is otherwise unnecessary or unjustifiable.

Functions

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

Ombudsman Act 1972

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

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

Since 2002, the Ombudsman has had the power to conduct administrative audits of agencies to which the Act applies, but this power has not been used to date.

Freedom of Information Act 1991

In 1992 the proclamation of the Freedom of Information Act and the Local Government (Freedom of Information) Amendment Act gave the Ombudsman the role of external reviewer of 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 LGA.

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

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

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

Whistleblowers Protection Act 1993

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

Local Government Act 1993

Amendments to the Local Government Act in 1996 gave the Ombudsman the specific role of reviewing and reporting on decisions by Councils to preclude the public from meetings or to refuse access to minutes of meetings.

Education and training

The Ombudsman provides occasional training on the role and functions of the office, and on the application of the *Freedom of Information Act 1991*. There is a provision requiring the Minister administering that Act to consult with the Ombudsman in relation to training for agencies about their obligations under the Act.

Powers

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

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

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

The Ombudsman may attempt at any time to deal with a matter by conciliation, and there is a power to direct an agency to refrain from doing an act 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*. These include the power to hold public or private hearings, to control publication of proceedings, to summon witnesses to give evidence and produce documents, and to examine them on oath. There is a specific power of entry and inspection conferred by the Ombudsman Act, and that Act also makes it an offence to obstruct an Ombudsman's investigation.

If an investigation uncovers evidence of any breach of duty or misconduct by an agency staff member, the Ombudsman must report it to the principal officer of the relevant agency.

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

There is an obligation imposed by the Ombudsman Act s 22, 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

The Ombudsman is assisted by a Deputy Ombudsman and the office is divided into two main teams—General Investigations and Administration—plus a specialist Freedom of Information team.

Workload and statistics

General jurisdiction	2006–2007				2007–2008			
	Government Departments	Local Government	Other Authorities	Total	Government Departments	Local Government	Other Authorities	Total
OPEN CASES								
Cases open at beginning of period	72	80	35	187	68	83	29	180
Cases opened during period	1353	598	339	2290	1365	594	376	2335
Total Cases open	1425	678	374	2477	1433	677	405	2515
LESS CLOSURES								
Advice Given	513	269	157	939	450	293	174	917
Conciliated	1	1		2				
Declined	21	17	14	52	35	21	15	71
Determination s32 Water Resources Act	1			1				
Full Investigation	20	20	9	49	9	10	4	23
Outside of jurisdiction	22	2	8	32	26	6	12	44

Preliminary investigation	749	278	149	117 6	821	245	144	1210
Transferred to HCSCC	7			7				
Withdrawn	25	11	9	45	27	12	12	51
Total cases closed	1359	598	335	229 2	1368	587	361	2316
STILL UNDER INVESTIGATION	66	80	39	185	65	90	44	199

Freedom of Information	2006-07	2007-08
OPEN CASES		
Cases open at beginning of period	61	50
Cases opened during period	234	214
Total cases open	295	264
LESS CLOSURES		
FOI advice given	177	145
FOI investigation	11	14
FOI review	55	53
Total cases closed	243	212
STILL UNDER INVESTIGATION	52	52

Publications

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

Details of these publications are available from the web address listed at the end of this entry.

Litigation

A number of cases have involved the interpretation of the *Ombudsman Act 1972*. Some illustrative examples are listed below:

- *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.

- *Smith v The State of South Australia* [2001] SASC 356 (30 October 2001).
A complainant sought to take legal action alleging (inter alia) that the Ombudsman had breached s 18 of the *Ombudsman Act 1972* by denying him natural justice. He was unsuccessful in attempting to persuade the Supreme Court to permit amendment of his statement of claim.

Special projects

Currently the Office is not undertaking any special projects.

Office address and contact details

Street address: State Ombudsman
5th Floor, East Wing
50 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 1978*. The office commenced operation in September 1979.

Ombudsman

There have been seven Tasmanian Ombudsmen appointed since the office started operating in 1979:

- 1979 — Mr Charles Richard (Dick) Woodhouse
- 1985 — Mr Roger C Willee
- 1989 — Mr Neil C L Batt
- 1991 — Mr Ronald F X Green
- 1996 — Mr Damon C Thomas
- 2001 — Mrs Janine G O'Grady
- 2005 to present — Mr Simon N Allston.

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. There is presently no arrangement in Tasmania for oversight of the work of the Ombudsman by a Parliamentary committee. However, the Ombudsman appears before Estimates Committees of the Parliament each year, and addresses questions about the work and performance of the Office in that setting.

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.

From 1 July 2009, the Ombudsman will also have jurisdiction over the four companies which will be providing water and sewerage services within Tasmania.

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 1978

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 under this Act have in the past been relatively infrequent. A major inquiry was held in 2000–2001 into the State’s prison system and the Risdon Prison hospital following a number of deaths in custody. Another such investigation is currently underway, into the management of the maximum security facility at the Risdon Prison complex, being the State’s principal prison. Further own motion investigations are in train or in view.

Although not strictly an own motion investigation carried out under the Ombudsman Act, but rather at the request of government, the Ombudsman had responsibility between July 2003 and July 2006 for reviewing claims by adults that they had been abused whilst in State care as children.

Energy Ombudsman 1998

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

Freedom of Information Act 1991

The Ombudsman fulfils a review function under this 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 decision to charge for the provision of information (in relation to the amount of the charge)
- a decision to provide information relating to the person’s personal affairs to another person
- a decision to provide information which is likely to expose the person (being an undertaking) to competitive disadvantage
- a decision not to amend personal information in respect of the person.

The agency which is the respondent to the review is obliged by the Act to implement the Ombudsman’s decision.

It is presently proposed that the Ombudsman’s responsibilities under this Act be extended, to include the preparation of guidelines for decision-makers, and educational and advisory functions.

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.

Consideration is being given to the establishment within the State of an Ethics Commission, one of the principal functions of which would be to investigate allegations of corruption. If this occurs, it may be that these functions will pass to that body.

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 no complaints have been received as at March 2009.

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*. The last of these Acts has yet to commence, but this is expected shortly. Under each of these Acts, as implemented, the Ombudsman is required to audit compliance by Tasmania Police with recordkeeping requirements in the Act.

Health Complaints Act 1995

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

Official Visitors

Since 2001, the Office of the Ombudsman has provided administrative support for the Official Visitors to the State's prisons. There are currently six Official Visitors, who between them visit each of the prison facilities on a regular basis.

It is presently proposed that the Office take over the administration of the Official Visitors scheme under the *Mental Health Act 1996*, from 1 July 2009.

Education and training

The Ombudsman provides occasional training on the application of the *Freedom of Information Act 1991*, and has in the past provided training in relation to complaint management and the conduct of investigations.

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 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 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 Act are resolved through preliminary inquiries under s 20A, with experience being that formal investigation is rarely necessary. Indeed, the tendency is for formal investigation to be reserved for own motion investigations.

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 six teams:

- Ombudsman investigations
- freedom of information; public interest disclosure; personal information protection
- health complaints
- energy complaints
- corporate functions
- conciliation.

Workload and statistics

The following data has largely been taken from the office's annual reports, which can be seen on its three websites, details of which are given at the end of this chapter. Until recently, no distinction was made between enquiries and complaints in the records kept of FOI and energy cases. This explains why the data for these two jurisdictions does not vary between the two tables presented.

Complaint data (finalised cases, by jurisdiction)

Year	Ombudsman	FOI	Health	Energy	Total
2005/06	575	57	290	255	1177
2006/07	370	79	238	262	949
2007/08	420	63	260	292	1035

Case data (finalised cases and enquiries, by jurisdiction)

Year	Ombudsman	FOI	Health	Energy	Total
2005/06	1000	57	587	255	1899
2006/07	882	79	536	262	1759
2007/08	1048	63	735	292	2138

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 three annual reports, in the Ombudsman, Health Complaints and Energy Ombudsman jurisdictions. The last of these is only published to energy entities and relevant government agencies, and essential information in relation to the Energy Ombudsman jurisdiction is published more widely in the Ombudsman annual report.

The websites also carry case summaries and extensive reports of matters dealt with in each of the jurisdictions. The most frequent publications of this kind are decisions made by the Ombudsman on applications for review under the *Freedom of Information Act 1991*.

Litigation

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

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

Special projects

As mentioned above, between 2003 and 2006 the Ombudsman conducted a review at the request of the government into allegations by adults that they had been abused whilst in State care as children.

Office address and contact details

Street address: Tasmanian Ombudsman
Ground floor, 99 Bathurst Street
Hobart Tasmania 7000

Mailing address: Tasmanian Ombudsman
GPO Box 960
Hobart Tasmania 7001

Web address: www.ombudsman.tas.gov.au
www.healthcomplaints.tas.gov.au
www.energyombudsman.tas.gov.au

Email address: ombudsman@ombudsman.tas.gov.au

General enquiries: (03) 6233 6217

Toll free: 1800 001 170

VICTORIAN OMBUDSMAN

Establishment

The Victorian Ombudsman is a constitutional independent officer of the Victorian Parliament. The office was established on 30 October 1973 under the *Ombudsman Act 1973* (the Act).

Ombudsman

The current Ombudsman, Mr George Brouwer was appointed in 2004. Mr Brouwer has over 30 years experience, including at senior executive and chief executive levels, in the federal and state public services, statutory authorities, the private sector and overseas.

The previous office holders were:

- 1973 — Mr John Vincent Dillon
- 1980 — Mr Charles Norman Geschke
- 1995 — Dr Barry Perry
- 2003 — Mr Robert Seamer was appointed Acting Ombudsman.

The current Deputy Ombudsman, Mr John Taylor was appointed in 2004.

Relationship to Government and Parliament

The Victorian Ombudsman is a constitutional independent officer of the Victorian Parliament: see *Constitution Act 1975* s 94E. He is appointed by the Governor in Council and holds office for a term of 10 years and is not eligible to be re-appointed.

Reports to Parliament

Under s 23 of the Act, at the completion of an investigation, reports are provided to the relevant Minister and the Secretary of the department or principal officer of the agency. The outcome of an investigation is also provided to complainants in order to inform them of the results of investigations.

Under s 25 of the Act, the Ombudsman may make a report to Parliament at any time on any matter arising in connection with the performance of his functions. The Ombudsman is also required to make an annual report to Parliament on the performance of his functions.

Parliamentary referrals

Under s 16 of the Act, the Ombudsman must investigate any matter referred by Parliament, other than a matter concerning judicial proceedings, even when the subject matter would usually be outside his jurisdiction. A referral may be made by either House or a Committee.

In 2007 the Ombudsman conducted the Investigation into the disclosure of electronic communications addressed to the Member for Evelyn and related matters (see www.ombudsman.vic.gov.au). That investigation was conducted at the invitation of a Presiding Officer. In 2009 the Ombudsman was investigating a matter referred by the

Legislative Council pursuant to s 16 of the Act. This is the first such referral since the Act came into operation.

Jurisdiction

The Ombudsman can enquire into or investigate administrative actions taken by Victorian government departments such as the Department of Human Services, most statutory authorities, such as VicRoads, local government and some private agencies such as the privately run prisons and WorkSafe agents.

The Ombudsman may consider the broader issues arising from an investigation and is not limited to considering the procedural or legal correctness of an administrative action. He may also enquire into whether an individual complaint indicates a broader systemic failure. He can act when he considers that the administrative action is:

- taken 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
- wrong.

The Ombudsman's jurisdiction excludes:

- Ministers
- courts of law, judges or magistrates, tribunals, commissions or other body presided over by such a person as required by statute
- legal adviser or counsel to the Crown in any proceedings
- the Director of Public Prosecutions
- the Auditor-General.

Functions

In addition to the enquiries and investigations into the administrative actions taken by Victorian government departments, statutory authorities and local government, the Ombudsman has statutory functions as described below.

Human rights

Under the *Charter of Human Rights and Responsibilities Act 2006* the Ombudsman has the power to enquire into or investigate whether any administrative action is incompatible with a human right set out in the charter.

FOI

The *Freedom of Information Act 1982* confers upon the Ombudsman a role relating to FOI complaints.

Whistleblowers

The *Whistleblowers Protection Act 2001* extended the role of the Ombudsman to investigate and oversee investigations of whistleblower complaints.

Audit

The Ombudsman undertakes statutory auditing and oversight functions assigned to him including City Link, Royal Society for the Prevention of Cruelty to Animals and domestic and feral animal legislation.

Police complaints

- In June 2004, the *Ombudsman Legislation (Police Ombudsman) Act 2004* abolished the position of Deputy Ombudsman (Police Complaints) and created the office of Police Ombudsman.
- In November 2004, the *Major Crime Legislation (Office of Police Integrity) Act 2004* commenced. The Office of Police Integrity was proclaimed. The Director, Police Integrity replaced the Police Ombudsman. The same person who held the office as Ombudsman was to be the Director, Police Integrity.
- In May 2008, there was the appointment of a separate Director of Office of Police Integrity. The appointment separated the Office of Police Integrity from the Ombudsman's office.
- The Ombudsman retains a residual jurisdiction over public servants employed by Victoria Police; an example is a recent investigation into police crime statistics.

Powers

Informal enquiries

The majority of complaints received are dealt with informally under s 13A of the Act. This allows for enquiries to be made by telephone, email, fax and letter and may also involve site inspections, review of files and informal interviews. Under this section, the respondent's principal officer must assist the Ombudsman.

Formal investigations

The Ombudsman's formal powers under s 14 investigations include the following:

- the Ombudsman can conduct an investigation in such manner as he thinks fit and there is no obligation to hold a hearing
- the provisions of ss 17, 18, 19, 20 and 20A of the Evidence Act apply to formal investigations 'as if he were the sole Commissioner issued with a commission by the Governor in Council'
- the Ombudsman may summon witnesses, request production of documents, and take evidence under oath
- The Ombudsman may enter the premises of an authority to inspect the premises or anything in them
- certain privileges which protect disclosures of information are not available to the Crown for the purposes of an investigation.

Own motion powers

The Ombudsman may undertake an enquiry or investigation into a matter or systemic issue without receiving a specific complaint. He is able to initiate the proceedings under his own motion.

Powers under the Whistleblowers Protection Act 2001

Under the *Whistleblowers Protection Act 2001*, the Ombudsman has a broader jurisdiction compared to the *Ombudsman Act 1973*, including being able to investigate elected councillors and Members of Parliament, as well as public servants. The Ombudsman also has the discretion to refer an investigation to another more appropriate body, such as Victoria Police or the Office of Police Integrity.

Outreach

Ombudsman Victoria offers a variety of educational services. The Ombudsman's educational services aim to promote good administration in the Victorian Public Service and its agencies and to raise awareness of the Ombudsman in the community. This includes information sessions, regional visits, and publications.

Internal structure

The Ombudsman and Deputy Ombudsman are assisted by four Directors:

- Director, Corporate services
- Director, Transport Accident Commission/Victorian Workplace Authority and Ombudsman communications
- Director, Investigations — intake and assessment, investigation teams
- Director, Investigations — legislative compliance.

Workloads and statistics

Since 2004, there has been a consistent increase in complaints made to the Ombudsman of 12–14% each year accumulative. In 2007–08 16,344 approaches were made. The office receives a large number of enquiries which do not fall within the Ombudsman's jurisdiction. The office plays an important function by referring people to the correct agency.

In 2007–2008:

- 90 per cent of all files closed were open for less than 30 days
- 97 per cent of all files closed were open for less than 90 days
- the office received 8,541 complaints within jurisdiction under the Ombudsman Act
- the office received 147 complaints related to the FOI Act and 103 related to the Whistleblowers Protection Act.

A new case management system was installed in 2007, which provides greater opportunity to monitor the handling of complaints, the outcomes and the workload which the enquiries and investigations generate.

Publications

The Ombudsman's publications are available at www.ombudsman.vic.gov.au and include:

- Annual reports
- Investigation reports such as:

- Investigation into the disclosure of electronic communications addressed to the Member for Evelyn and related matters, November 2007
- Investigation into a disclosure about WorkSafe and Victoria Police handling of a bullying and harassment complaint, April 2007
- Systemic reviews such as:
 - Probity controls in public hospitals for the procurement of non-clinical goods and services, August 2008
 - Conflict of interest in the public sector, March 2008
- Ombudsman's newsletters and TAC/WorkSafe bulletins
- Conference papers
- *Ombudsman Victoria's guide to complaint handling for Victorian Public Sector Agencies*
- Fact sheets such as:
 - The *Whistleblowers Protection Act 2001* and the role of the Ombudsman
 - The *Victorian Charter of Human Rights and Responsibilities Act 2006* and Ombudsman Victoria
 - Section 13A — Agency information
 - Powers of the Ombudsman.

Litigation

The following is an extract from the Ombudsman's 2007 Annual Report:

For the first time in 30 years, the Ombudsman's jurisdiction was challenged before the Supreme Court of Victoria on 4 April 2007.

The Convenor of Medical Panels sought a declaration from the court that the Ombudsman did not have jurisdiction to enquire into or investigate the appointment of a medical panel by the convenor under section 63(4) of the *Accident Compensation Act 1985*.

My office had received a number of complaints alleging conflicts of interest and bias in the methods of appointment used by the convenor to appoint particular medical panels.

The court accepted my argument that the convenor was carrying out an administrative action when appointing a medical panel and would therefore be subject to the Ombudsman's jurisdiction. However, the court also found that by virtue of a provision of the *Accident Compensation Act*, the convenor had the immunity and protection of a judge of the Supreme Court. This meant that his administrative actions were not in my jurisdiction, as I am prevented by the provisions of the *Ombudsman Act* from investigating the actions of judges.

As a result the court granted a declaration that my office is precluded from enquiring into or investigating the actions of the convenor. In my view this has created a hiatus in the accountability of the convenor, with a number of complaints remaining outstanding.

The *Accident Compensation Act 1985* is currently under review by the Victorian Government.

Special projects

- Charter of Human Rights Linkage project
- Interdepartmental review of the *Whistleblowers Protection Act 2001*
- Own Motion Investigations
 - Investigation into the alleged improper conduct of Brimbank councillors at Brimbank City Council
 - Investigation into Corporate Governance at Moorabool Shire Council, April 2009
 - Crime statistics and police numbers, March 2009
 - Probity controls in public hospitals for the procurement of non-clinical goods and Services, August 2008
 - Conflict of interest in local government, March 2008
 - Conflict of interest in the public sector, March 2008
 - Investigation into VicRoads driver licensing arrangements, December 2007
 - Own motion investigation into the policies and procedures of the planning department at the City of Greater Geelong, February 2007
 - Conditions for persons in custody, July 2006
 - Review of the Freedom of Information Act, June 2006
 - Improving responses to allegations involving sexual assault, March 2006
 - Own motion investigation into VicRoads registration practices, June 2005
 - Review of complaint handling in Victorian universities, May 2005.

Offices and contact details

Mail	Level 9, 459 Collins Street, Melbourne
Phone	03 9613 6222 or 1800 806 314
Fax	03 9614 0246
Web	www.ombudsman.vic.gov.au
Email	ombudvic@ombudsman.vic.gov.au

WESTERN AUSTRALIAN OMBUDSMAN

Establishment

The Western Australian Ombudsman was established by the *Parliamentary Commissioner Act 1971*.⁵ 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

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 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 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
- appearing at Estimates (the budget appropriation process)
- appearing before the Standing Committee on Public Administration;
- Annual Reports
- reports on investigations when agencies refuse to accept recommendations
- special reports to Parliament on the Ombudsman's own motion investigations
- the Parliament, or any of its committees, may refer to the Ombudsman any matter for investigation and report.

⁵ Unless otherwise noted, all references to section numbers are to the *Parliamentary Commissioner Act 1971*.

Jurisdiction

The Ombudsman investigates complaints about the administrative actions of state government departments and authorities, local government, and public universities, and makes recommendations for administrative improvements. 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 As at May 2009, it is proposed that jurisdiction to undertake reviews and investigations relating to child deaths be added.

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, judge, commissioner of any court, and stipendiary magistrates (s 13(2))
- the Coroner (s 13(2))
- the Governor (s 13(2))
- entities specifically excluded in Schedule 1 of the Parliamentary Commissioner Act.

Functions

Complaint resolution

The Ombudsman has two principal functions. First, the office investigates and resolves complaints about public authorities. 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. Second, the office aims to improve public administration for the benefit of all Western Australians. In part this occurs through the recommendations for change to administrative practices that result from the investigation of complaints.

Improved public administration

Although most of the investigations the Ombudsman conducts result from specific complaints, the Ombudsman is also able to conduct own motion investigations. These may be initiated for a number of evidenced-based reasons, including where there is a trend in complaints which highlight potential systemic issues. Targeted own motion investigations are seen as an efficient way to address improvement of public administration. Investigations can result in recommendations intended to have a net beneficial effect on public administration in Western Australia.

In addition to complaint handling and own motion investigations, the Ombudsman seeks to improve public administration through relevant publications, communications, workshops and training. Examples include:

- providing strategic advice to public authorities implementing new internal complaint handling systems
- producing complaint handling guidelines and other fact sheets for public authorities
- providing awareness sessions to trainee prison officers on the role of the Ombudsman
- promoting the Ombudsman's services to regional and indigenous Western Australians through a Regional Awareness and Accessibility Program.

Child death review and investigation

An independent review of the Department for Community Development (now the Department for Child Protection) recommended that the child death review jurisdiction be transferred from the ministerial Child Death Review Committee to the Western Australian Ombudsman. Dependent upon appropriate legislative change being passed by Parliament, a specialist unit, led by an Assistant Ombudsman, will be established in the office to undertake the child death review function. It is anticipated this function will commence in July 2009.

Audit and review of statutory compliance

The *Telecommunications (Interception) Western Australia Act 1996*, the *Telecommunications (Interception) Western Australia Regulations 1996*, the *Commonwealth Telecommunications (Interception) Act 1979* and the *Corruption and Crime Commission Act 2003* permit certain designated 'eligible authorities' to carry out strictly regulated telecommunication interceptions. In this State, the Western Australia (WA) Police and the Corruption and Crime Commission are the eligible authorities.

Under the Regulations, the Ombudsman is appointed as the Principal Inspector to audit the interception activities of the WA Police and the Corruption and Crime Commission to ensure they are meeting their legislative requirements and carrying out the interceptions lawfully. The Ombudsman must inspect the telecommunications interception records of the WA Police and the Corruption and Crime Commission at least twice a year and report on the outcome to the relevant Ministers within three months of the end of the financial year. The report on the WA Police is sent to the Commissioner of Police and the State and Federal Ministers for Police and the report on the Corruption and Crime Commission is provided to the State Attorney General, the Federal Attorney General and the Corruption and Crime Commissioner.

Other functions

Other functions of the Ombudsman include:

- receiving disclosures under the *Public Interest Disclosure Act 2003* about matters of state and local government administration
- receiving complaints from a person detained under the *Terrorism (Preventative Detention) Act 2006* about administrative matters connected with his or her detention
- under a service delivery arrangement between the Ombudsman and the Commonwealth, receiving complaints from residents of the Indian Ocean Territories (Christmas Island and the Cocos (Keeling) Islands) about public authorities within the Ombudsman's jurisdiction that operate in the Territories at the request of the Commonwealth
- receiving complaints from international students under the *National Code of Practice for Registration Authorities and Providers of Education for Overseas Students 2007*, which gives international students the right of appeal to the Ombudsman if their internal appeal to their school or university is unsuccessful.

Energy Ombudsman Western Australia

The Ombudsman also undertakes the role of the Energy Ombudsman Western Australia, an independent industry-funded scheme which aims to resolve complaints from residential and small business customers about their gas or electricity provider.

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)
- 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))
- 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* 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)
- 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
- 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 and four Assistant Ombudsmen who manage a range of separate divisions within the office. These are:

- Assistant Ombudsman Administrative Improvements (Administrative Improvements Team)
- Assistant Ombudsman Complaint Resolution (Access and Resolution Team; Investigation and Resolution Team; Energy Team)
- Assistant Ombudsman Child Death Review (Child Death Review Team)
- Assistant Ombudsman Strategic Services (Strategic Services and Communications Team; Business Services Team).

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. The table refers to complaints finalised at the initial stage (without investigation) and finalised with investigation. Matters may be finalised at the initial stage by providing information or an explanation, by referring the matter back to the agency concerned or by referring the complaint to a more appropriate agency for handling the complaint. Matters finalised with investigation may involve requesting and considering a report from the agency

complained about and may include a full-scale investigation undertaken over several months. Some complaints are complex and include a number of allegations with different outcomes and timeframes. Therefore, the office reports on allegations not complaints.

Year	Inquiries received	Complaints received	Allegations received	Allegations finalised at initial stage	Allegations finalised with investigation	Total allegations finalised
2004–05	3664 ⁶	1343	1584	960	616	1576
2005–06	3890	1279	1602	1314	504	1818
2006–07	3924	1152	1275	1181	361	1542
2007–08	4005	1119	1249	1021	223	1244

The seven agencies against which most complaints were received in 2007–08 were Corrective Services (21%), local governments (16%), Police (10%), Child Protection (4%), Housing and Works (4%), Planning and Infrastructure (4%) and Education and Training (3%).

Publications

The office produces a varied range of publications every year that are available on the Ombudsman's website www.ombudsman.wa.gov.au. This includes annual reports, investigation reports, newsletters, speeches, brochures, guidelines, information sheets, checklists and forms. An electronic newsletter is published quarterly and distributed to stakeholders. Speeches given by the Ombudsman are also available on the website.

Reports on own motion investigations include:

- *Report by the Ombudsman on complaints management processes in the Department of Education and Training* (2006) and progress report (November 2007)
- *Report on Allegations Concerning the Treatment of Children and Young People in Residential Care* (2006)
- *Own Motion Investigation into the Department of Corrective Services' Prisoner Grievance Process* (2006)
- *An investigation into the Police Response to Assault in the family home* (2003)
- *The Management, Supervision and Control of Operation Safe Trains* (2002)
- *Report on an investigation into a complaint by the Town of Cambridge concerning the City of Perth* (2001)
- *Report on complaint handling in the Western Australian public sector* (1999 and 2001)
- *The Falsification of Random Breath Testing Statistics in the Western Australia Police Service* (2001)
- *Reporting Police Misconduct* (2001)

⁶ The office commenced recording phone enquiries in a dedicated database on 11 October 2004. Consequently this figure is extrapolated from data over a nine month period in 2004–05.

- *Report on an investigation into deaths in prisons (2000).*

Information sheets and Checklists published by the office to provide information to complainants include:

- Service Charter
- About the Ombudsman Western Australia (with complaints process flow chart)
- About the Ombudsman Western Australia and Energy Ombudsman Western Australia
- Overview of the complaints management process
- Making a complaint to a State Government agency
- How we assess complaints
- Assessment of complaints checklist
- Being interviewed by the Ombudsman
- Requesting a review of a decision
- Complaining to the Ombudsman — information for prisoners
- About the Ombudsman (with complaints process flow chart).

Guidelines and checklists published by the office for agencies include:

- Effective handling of complaints made to your organisation — an overview
- Complaint handling systems checklist
- Making your complaint handling system accessible
- Guidance for complaint handling officers
- Conducting administrative investigations
- Investigation of complaints
- Procedural fairness (natural justice)
- Dealing with unreasonable complainant conduct
- Remedies and redress
- Good recordkeeping
- Information for boards and tribunals.

The office also publishes a number of publications under its Energy Ombudsman Western Australia role. These include:

- annual reports
- information for complainants
- information sheets
- complaint and authority to act/authority to release information 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 more recent 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 s 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

Collaboration with other agencies

The Integrity Coordinating Group (ICG)

The Ombudsman is a member of the ICG which has been formed to promote and strengthen integrity in Western Australian public bodies. The other members of the ICG are the Auditor General, the Corruption and Crime Commissioner and the Commissioner for Public Sector Standards. The group collaborates to support integrity in public bodies by encouraging coordinated research, evaluation and monitoring, and fostering operational cooperation and consistency in communication and education. As part of the ICG, the Ombudsman has been involved in:

- the development of a conflict of interest toolkit
- research to support Griffith University's project, *Whistling While They Work: Enhancing the Theory and Practice of Internal Witness Management in the Australian Public Sector*
- organising the 2008 ICG Forum, *Taking Action on Integrity Issues*, and producing a DVD of the Forum to be utilised as an education and training tool.

Unreasonable Complainant Conduct

The Ombudsman participated in a national project led by the New South Wales Ombudsman to develop better strategies for dealing with complainants whose behaviour is challenging and has produced a manual for handling unreasonable complainant conduct.

Indonesian Australian Ombudsman Linkages and Strengthening Program

The Ombudsman partnered with the Commonwealth and New South Wales Ombudsman in the AusAID funded program to strengthen the capacity of Ombudsman services in Indonesia.

Australian and New Zealand Ombudsman Association (ANZOA)

The Ombudsman is a member of ANZOA and participates in various ANZOA Interest Groups looking at issues such as information technology, public relations and communications, learning and development and first contact.

Administrative Improvement Team

Following the creation last year of the Administrative Improvement Team, and the appointment of the Assistant Ombudsman, Administrative Improvement, the following topics have been approved for systemic review and investigation in 2009–2010:

- the management of personal information by state and local government agencies
- the effective administration of complaint handling systems
- the administration of statutory boards.

Regional Awareness and Accessibility Program

This is one of the key strategic initiatives for the office in 2009. The aim of the program is to increase awareness and accessibility in regional Western Australia to the Ombudsman and the Energy Ombudsman. An important target for the program will be improving awareness and accessibility for Indigenous Western Australians. Visits to three regional centres, Kalgoorlie, Geraldton and Mandurah, are planned for 2009. The visits will include a complaints clinic, seminars, workshops, prison visits and key stakeholder meetings. It is hoped that successful visits will form the basis for regular visits to these and other regional centres in the future.

Office address and contact details

Office address: Western Australian Ombudsman
Level 12
44 St George's Terrace
Perth WA 6000

Postal address: PO Box Z5386
St Georges Terrace
Perth WA 6831

Website: www.ombudsman.wa.gov.au

Email: mail@ombudsman.wa.gov.au

General enquiries: 08 9220 7555

Toll Free (outside Perth): 1800 117 000

Telephone Typewriter (TTY): 133 677 (quote 9220 7555)

Media enquiries: Communications Manager, 08 9220 7555 or
email media@ombudsman.wa.gov.au

Publications enquiries: Communications Manager, 08 9220 7555 or
email mail@ombudsman.wa.gov.au

PACIFIC REGION OMBUDSMAN OFFICES

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 four Cook Island's Ombudsman. They are:

- Pangata Simiona
- Henry Brown
- Andrew Turua
- Janet Maki.

Relationship to Government and Parliament

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

Jurisdiction

There are three 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) and the *Disability Act 2008* (Disability Act).

The Ombudsman Act sets out the Ombudsman's jurisdiction over the public sector in the Cook Islands, including local government. 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 received 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.

Functions

Complaints

The Ombudsman of the Cook Islands takes complaints from members of the public about a range of issues of concern. All complaints to the Ombudsman must be made in writing. Some are referred to more appropriate agencies, some are resolved

without investigation and the remainder are investigated by the office. Every investigation conducted by the Ombudsman must be conducted in secret.

Own motions investigations

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

Freedom of Information

The implementation of the OIA began in February 2009, but was staggered across the public sector to allow time to prepare for the new arrangements. The Ombudsman has already 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 is responsible for preparing government agencies for the implementation of OIA, as well as for raising the awareness of the public of this new Act. At present one assistant ombudsman is working full time in this role. 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 two assistant ombudsmen and an office administrator. The office has received a direction from the Cabinet to set up a human rights position within the office; however, this position cannot be supported out of the current budget and no additional funding has been received.

Publications

Annual reports were published until 2006. The office suffered substantial damage in a fire in September 2008 and the 2007 annual report, along with other investigative material and equipment, was lost. The next annual report will be for the 2007 and 2008 years and will be submitted at the next sitting of Parliament.

Investigation reports were published prior to 2007. Publication of these reports has been disrupted by the fire and the delay in re-equipping the office.

A brochure has been published by the office on the functions of the office and the role of an Ombudsman.

Litigation

The office has not been involved in any litigation since its inception; however, a former ombudsman was questioned in court about his use of rents from clan property.

Special projects

The special project that the office is currently working on is the record management assessments and the training upon the implications of the new OIA for the Cook Islands public sector.

Office address and contact details

Street address:	Office of the Ombudsman of the Cook Islands 1 st floor Ingram House Avarua Rarotonga
Mailing address:	Ombudsman PO Box 748 Rarotonga
Telephone:	(682) 20605
Facsimile:	(682) 21605
Email:	complaint@ombudsman.gov.ck

THE OMBUDSMAN OF HONG KONG

Establishment

The Office of the Ombudsman, formerly known as the Office of the Commissioner for Administrative Complaints, was established in 1989. The post was retitled The Ombudsman by legislative amendment in December 1996.

Ombudsman

Appointment to the post since 1989 has been as follows:

- 1989 — Mr Arthur Garcia
- 1994 — Mr Andrew So
- 1999 — Ms Alice Tai
- 2009 to present — Mr Alan Lai.

Relationship to Government

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 shall be eligible for reappointment. 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 his office or misbehaviour.

On its establishment in 1989, the Office operated largely like a Government department. It adopted civil service rules and practices and had a fixed staff establishment comprising mainly civil servants on loan from Government. In this context, its independence was seen to be compromised by its reliance on administrative and staffing support from Government.

To safeguard the integrity and independence of the Office, the Ordinance was amended on 19 December 2001 to establish The Ombudsman as a corporation sole with full powers to formulate and implement policies and procedures for administrative, financial and operational activities. The Ombudsman was empowered to recruit staff on terms and conditions determined by him. Specifically, the Ordinance states that The Ombudsman shall not be regarded as a servant or agent of the Government.

Meanwhile, The Ombudsman is subject to public scrutiny in the exercise of his powers. The Ordinance requires that The Ombudsman shall, within six months after the end of a financial year, submit a report on his activities and an audited statement of accounts to the Chief Executive for tabling in the Legislative Council.

Jurisdiction and functions

The Ombudsman's jurisdiction covers all Government departments and public organisations listed in Schedule 1 to the Ordinance in respect of alleged acts of maladministration. In the absence of a complaint, he may also initiate investigation on any action taken by or on behalf of the scheduled bodies if he is of the opinion that any person may have sustained injustice as a result of that action. This enables The Ombudsman to conduct direct investigations into matters of public interest and problems of a systemic nature.

Apart from the addition of new or reconstituted departments and public organisations from time to time, the jurisdiction of The Ombudsman has undergone some major changes over the years:

- 1994 Members of the public may complain to The Ombudsman directly. Prior to that, The Ombudsman could investigate only complaints referred by the Legislative Council Members.
The Ombudsman may initiate investigation in the absence of a complaint.
- 1996 The Ombudsman may receive and investigate complaints against Government departments on non-compliance with the Code on Access to Information.
- 2001 The Ombudsman became a corporation sole with full powers to formulate and implement policies and procedures for administrative, financial and operational activities.

The Ombudsman's jurisdiction now includes all Government departments and 19 public bodies on Schedule 1. Details can be found at: www.legislation.gov.hk/.

The Ombudsman is subject to certain restrictions and limitations in the exercise of his investigative powers under the Ordinance. Section 10 restricts The Ombudsman from investigating complaints under certain conditions: for example, 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 grant.

The Ombudsman and his staff are bound by law, under penalty of a fine and imprisonment, to maintain secrecy on all matters that come to their attention 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 he thinks fit
- regulate investigation procedures
- summon complainant or any person for obtaining information during investigation
- administer oath for taking evidence in the course of investigation
- enter and inspect premises occupied, managed or controlled by an organisation
- publish anonymised investigation report in the public interest.

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 his functions.

Internal structure

The Ombudsman is assisted by a Deputy Ombudsman in overseeing the operation of his Office, organised as two Investigation Divisions, an Administration and Development Division and an Assessment Team.

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

The Administration and Development Division includes a Translation Team. This Division provides support services in resource management, accounting and general administration. The Chief Manager also processes complaints against staff.

Workload and statistics

Information on workload for the past five years is contained in the diagram appearing after contact details. Further details about the office's caseload and achievements are at the website www.ombudsman.gov.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
- Ombudsman Ordinance
- Performance Pledges
- Publicity leaflet
- Tips for making a proper complaint
- Fact sheet of The Ombudsman
- Ombudsman awards leaflet.

Avenue for review

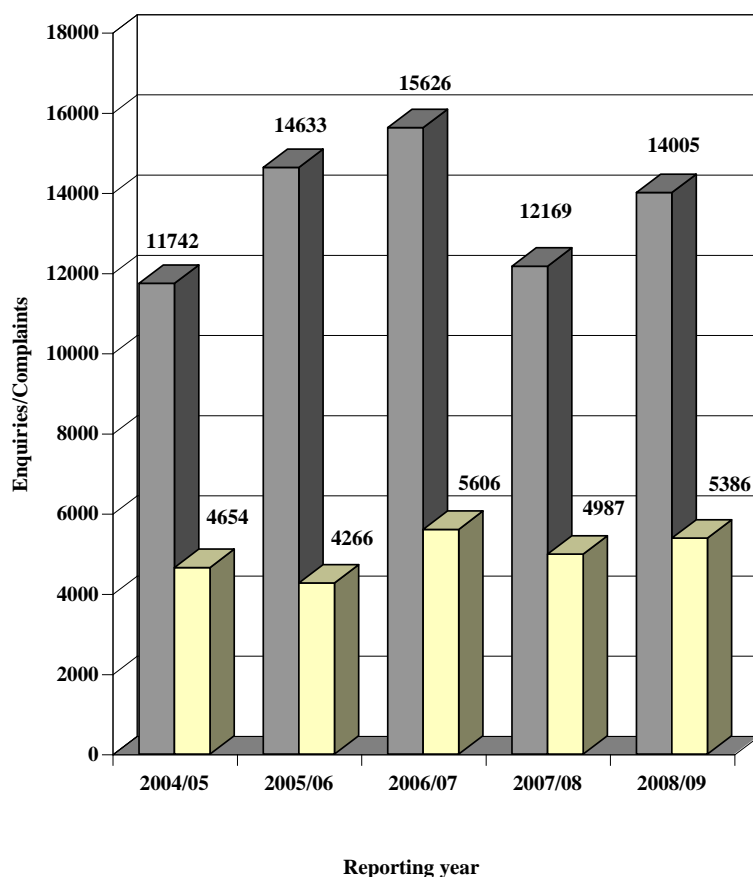
The law stipulates that the Ombudsman's decision is final. Those not satisfied with his decision may request for review or seek judicial review by the Court.

There have been a few attempts of judicial review against the Ombudsman. For instance, last year, three complainants applied for judicial review against the Ombudsman's decision. None succeeded in obtaining leave from the High Court.

Office address and contact details

Address:	30/F, China Merchants Tower, Shun Tak Centre, 168–200 Connaught Road Central, Hong Kong
PO Box:	GPO Box No. 3300, Hong Kong
Hotline:	2629 0555
Fax:	2882 8149
Complaint email address:	complaints@omb.gov.hk
Enquiry email address:	enquiry@omb.gov.hk
Mailing address:	30/F, China Merchants Tower, Shun Tak Centre, 168-200 Connaught Road Central, Hong Kong
Wed address:	www.omb.gov.hk
Email address:	complaints@omb.gov.hk / enquiry@omb.gov.hk
General enquiries:	852-2629 0555
Media enquiries:	852-2629 0565

Workload over five years



NEW ZEALAND OMBUDSMEN

Establishment

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

Ombudsmen

There have been 13 Ombudsmen since the office started operating in 1962:

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

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

Relationship to Government and Parliament

An Ombudsman is an Officer of Parliament (s 3 OA).⁷ 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

⁷ There are two other Officers of Parliament in New Zealand: the Parliamentary Commissioner for the Environment and the Controller and Auditor-General.

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 5 years (s 5(1) OA), can be reappointed (s 5(2) OA) but must retire by the age of 72 (s 5(3) OA). An Ombudsman's salary is determined by the Remuneration Authority (s 9 OA).⁸

The Ombudsmen report directly to Parliament through the Speaker of the House. The Office of the Ombudsmen is financed by a separate vote, Vote Ombudsman, the amount of which is determined by the House of Representatives. The Office is accountable for its budget to the Officers of Parliament Select Committee (which is a multiparty committee chaired by the Speaker of the House and made up of representatives from most of the political parties in Parliament). The Ombudsmen are required to report annually to Parliament on the exercise of their functions (s 29 OA).

An Ombudsman can only be removed or suspended from office by the Governor-General upon an address from the House of Representatives for inability to perform the functions of the office, bankruptcy, neglect of duty or misconduct (s 6(1) OA). At any time when Parliament is not in session, an Ombudsman may be suspended from office by the Governor-General in Council for any of the above reasons but the suspension shall not continue in force beyond two months after the beginning of the next Parliamentary session (s 6(2) OA).

Jurisdiction

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

1976	local government organisations
1983	<i>Official Information Act 1982</i> (OIA)
1988	<i>Local Government Official Information and Meetings Act 1987</i> (LGOIMA)
2001	protected disclosures under the <i>Protected Disclosures Act 2000</i>
2005	all crown entities within the meaning of the <i>Crown Entities Act 2004</i> , (other than the Independent Police Conduct Authority)
2007	designated a National Preventive Mechanism under the <i>Crimes of Torture Act 1989</i> (COTA) for certain places of detention in New Zealand.

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

- central government departments and organisations
- local government organisations, including district, city and regional councils
- Ministers of the Crown (in respect of official information complaints only)
- prisons
- other places of detention when acting as a National Preventive Mechanism
- the Police (in respect of official information complaints only)

⁸ The Remuneration Authority is an independent statutory body responsible for setting the salaries of MPs, certain statutory officers, the judiciary and elected members of local authorities.

- publicly funded school boards of trustees, universities and polytechnics
- District Health Boards
- crown entity
- the New Zealand Security Intelligence Service (in respect of official information complaints only — complaints about the propriety of the NZSIS's actions are investigated by the Inspector-General of Intelligence and Security).

There are a number of jurisdictional limitations under the empowering legislation. Under the OA, only the administrative actions of named or specified agencies can be investigated (s 13(1)). This limitation automatically excludes MPs and Ministers of the Crown (although an Ombudsman does have the authority to investigate any advice given, or recommendations made, to a Minister of Crown by an officer or employee of one of the agencies subject to jurisdiction).

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

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

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

Functions

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

- the OA
- the OIA and LGOIMA
- the Protected Disclosures Act 2000 (PDA)
- the COTA.

Complaint handling

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

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

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

Complaints may be made orally or in writing, but, if made orally, 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). Recent examples include:

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

Investigation referrals

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

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

Prisons

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

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

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

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

The Ombudsmen do not directly investigate deaths in custody due to certain statutory requirements for secrecy that would conflict with the Coroner's requirement to be able to investigate without restriction.⁹

The Ombudsmen have recently agreed to undertake an enhanced role in prisons following a request from the Government. This will primarily involve:

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

Protected Disclosures

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

National Preventive Mechanism

Under COTA, the Ombudsmen are formally designated a National Preventive Mechanism to give effect to OPCAT (the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment). The Ombudsmen were formally designated a National Preventive Mechanism on 21 June 2007 in respect of prisons, places of detention approved under the *Immigration Act 1987*, health and disability places of detention youth justice and child care and protection residences. To date over 100 separate facilities have been identified as being covered by the Ombudsmen's designation.

Education and training

The Office of the Ombudsmen has developed a training programme and is providing workshops, on request, to central and local government agencies on their statutory obligations under the OA, OIA and LGOIMA.

Powers

The powers of the Ombudsmen under the OA include:

- if, after investigating a matter under the OA, an Ombudsman forms an opinion in terms of s 22 of the OA, an Ombudsman shall report that opinion to the agency concerned, and may make such recommendations as he thinks fit
- a copy of the opinion or recommendation must also be provided to the relevant Minister, Mayor or Chairperson of the agency concerned

⁹ Death in custody for these purposes only means the death of prisoners in the custody of the Department of Corrections, and not deaths of prisoners in the custody of Police.

- 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 report to the House of Representatives (s 22(4))
- an Ombudsman may require a local authority to make a summary of his or her report available for inspection by members of the public (s 23)
- an Ombudsman may hear or obtain information from such persons as he or she thinks fit and make such inquiries as he or she thinks fit (s 18(3))
- subject to the OA and any rules made for the guidance of Ombudsmen by the House of Representatives, an Ombudsman can regulate his or her procedure as he or she thinks fit (s 18(7))
- in conducting an investigation, an Ombudsman can require a person to provide certain information or documents (s 19(1) OA) and can enter premises (s 27)
- an Ombudsman can summon and examine on oath certain persons (s 19(2))
- an Ombudsman can delegate most functions to other officers (s 28).

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

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

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

Other statutory requirements:

The Ombudsmen Act also contains the following requirements:

- every investigation by an Ombudsman is to be conducted in private (s 18(2))
- an Ombudsman shall not make any adverse comment about any person in a report unless the person has been given an opportunity to be heard (s 22(7))

- it shall not be necessary for an Ombudsman to hold any hearing, and no person shall be entitled as of right to be heard by an Ombudsman provided that, if it appears that there may be sufficient grounds for making a report or recommendation that may adversely affect any agency or person, that agency or person shall be given an opportunity to be heard (s 18(3)).

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

Internal structure

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

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

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

- a Deputy Ombudsman (based in Wellington)
- four Assistant Ombudsmen (Auckland, Christchurch, Prisons, Policy and Professional Practice).

Workload and statistics

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

Year	2005–2006	2006–2007	2007–2008
Enquiries and complaints received	9,708	9,090	8,808 ¹
Complaints resolved during, or sustained after, a formal investigation	546	547	493
Complaints not sustained after a formal investigation	339	345	340
Investigations discontinued ²	387	341	378
Investigations declined ³	386	431	389
Formal investigation not undertaken ⁴	7,900	7,490	7,174
Complaints disposed of during the year	9,568	9,166	8,791

¹ This figure includes 3,030 complaints and enquiries from prisoners and 1,637 enquiries from the general public received by our call centre and investigative staff.

² Investigations can be discontinued for a number of reasons including on the grounds that further inquiry is not warranted or the complaint is returned to the agency for reconsideration.

³ Investigations can be declined for a number of reasons including the agency is not within jurisdiction, the complainant has a right of appeal to a Court or Tribunal, the complainant has an adequate remedy under law or administrative practice that is reasonably available,

- too much time has lapsed, the complaint is frivolous or vexatious or the complainant has insufficient personal interest in the complaint.
- ⁴ These figures includes complaints that were resolved by informal inquiries, complaints that were withdrawn, complaints that were transferred to other investigation agencies and complaints that were outside an Ombudsman's jurisdiction but advice or assistance was provided.

Publications

New Zealand Ombudsmen publications include:

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

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

Litigation

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

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

comply with the public duty, it can be enforced by a Court. If an Ombudsman's recommendation is vetoed, a statutory review procedure is available to the requester (s 32B OIA and s 34 LGOIMA).

There have been three judicial review cases relating to an Ombudsman's recommendation that information should be released: *Commissioner of Police v Ombudsman* [1988] 1 NZLR 385; *Wyatt Co (NZ) Ltd v Queenstown-Lakes District Council* [1991] 2 NZLR 180; and *Television New Zealand Ltd v Ombudsman* [1992] 1 NZLR 106. In *Wyatt*, the Court observed that the Courts would only intervene and quash a decision of an Ombudsman if the decision was plainly and demonstrably wrong (*Wyatt Co (NZ) Ltd v Queenstown-Lakes District Council* [1991] 2 NZLR 180 at 191).

Special projects

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

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

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

Offices and contact details

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

Wellington	Level 14, 70 The Terrace PO Box 10152 Wellington 6143 Phone: (04) 473-9533
Auckland	Level 10, 55–65 Shortland Street PO Box 1960 Auckland 1140 Phone: (09) 379 6102
Christchurch	Level 6, 764 Colombo Street PO Box 13482 Christchurch 8141 Phone: (03) 366 8556
New Zealand wide freephone:	0800 802 602
Website	www.ombudsmen.parliament.nz
Email address	complaint@ombudsmen.parliament.nz

OMBUDSMAN COMMISSION OF PAPUA NEW GUINEA

Establishment

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

Ombudsman

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

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

Relationship to Government and Parliament

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

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

(d) To supervise the enforcement of Division III.2 (*Leadership Code*).

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

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

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

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

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

Jurisdiction

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

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

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

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

Governor-General, Prime Minister and Leader of the Opposition are covered by the Leadership Code.

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

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

Functions

Complaint handling

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

Own initiative investigations

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

Investigate breaches of the Leadership Code

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

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

The *Organic Law on the Duties and Responsibilities of Leaders* (OLDRL) and the *Organic Law on Integrity of Political Parties and Candidates* both place additional obligations on leaders. For instance, the OLDRL requires all leaders to provide a statement of income assets, at least annually, to the Ombudsman Commission. Failing to submit an accurate return on time is a breach of the Leadership Code.

Where the Commission forms the opinion that a leader has breached the Leadership Code, they are required to refer the matter to the Public Prosecutor. It is for the Public Prosecutor to decide whether to ask the Chief Justice to establish a Leadership Tribunal to adjudicate on the allegation. Tribunals normally consist of a judge of the National Court and two District Court magistrates.

A leader who has been found to have breached the Leadership Code can be removed from office, and barred from holding further public office for up to three years. Fines of up to 1000 kina per offence are also available to the Tribunal.

Since 1976, 90 investigations have progressed to Tribunal hearings. Forty leaders have been found guilty of breaching the Leadership Code, five not guilty and six matters are still pending. The 39 matters were discontinued because the Tribunal lost jurisdiction, normally because the leader resigned or were unsuccessful at election.

Issue directions to leaders (under s 27(4) of the Constitution)

The Ombudsman is empowered under s 27(4) of the Constitution to give directions either generally, or in a particular case, to ensure the attainment of the Leadership Code. This means that the Ombudsman can issue directions to prevent a Leader from breaching a provision of the Leadership Code, and in particular, protecting the integrity of leaders. Failure to comply with a direction is itself a breach of the Leadership Code.

Examples of directions issued over the past few years have included directing leaders not to:

- involve themselves in dealing with special purposes funds
- authorise or facilitate the settlement of a claim against the state
- take official overseas travel, which was unrelated to official duties.

Supreme Court references (under s 19 of the Constitution)

The Ombudsman Commission, among others, is authorised by s 19 of the Constitution to apply to the Supreme Court on a question relating to the interpretation or application of any provision of a Constitutional Law, including any question as to the validity of a law or proposed law.

In recent years the Commission has been involved in Supreme Court references on:

- whether the Constitution imposed an obligation on the Parliament to sit for a minimum of 63 days per year
- the application of Constitutional Laws concerning the process of nomination of the Governor-General by Parliament.
- the constitutionality of certain provisions of the *Forestry (Amendment) Act 2005*.

Education and training

The Ombudsman Commission also operates extensive education and training programs. Community education of the roles of the Commission is conducted through the External Relations Program, while education for governmental bodies is conducted through the Government Bodies Liaison Program.

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

Powers

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

The Commission has a 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 s 21(1) of the OLDRL).

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

The Commission can issue an oath or affirmation to a person appearing as a witness before the Commission (s 18(4) of the OLOC and s 21(4) of the OLDRL).

Where, after completing an administrative investigation, the Commission makes recommendations for change, the Commission can require the relevant agency to advise what steps, if any, it intends to take to implement the recommendations.

The Ombudsman can publish the results of any investigation by forwarding it to the list of government officials and constitutional office holders found in s 20 of the

OLOC. The Ombudsman can also require the results of an investigation to be tabled in the Parliament by providing a copy to the Speaker (s 20(1)(d)).

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

The constitutional powers include

- the power to give a direction, either generally or in a particular case, to ensure the attainment of the Leadership Code (s 27(4))
- the power to take a special reference to the Supreme Court on a matter of interpretation of a Constitutional Law or the validity of a law or proposed law (s 19(3)).

Internal structure

The Ombudsman Commission is constituted by a Chief Ombudsman and two Ombudsmen. The OLOC also provides that there will be a Secretary to the Commission, and a Counsel to the Commission. Officers of the Commission are not public servants but are employed in the Service of the Commission.

Workload and statistics

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

Year	Complaints received	Investigations commenced	Investigations completed
2002	3762	170	147
2003	4034	79	148
2004	3823	96	38
2005	3299	88	69
2006*	3087	112	145
2007*	2987	161	142

* Figures for 2006 and 2007 are from draft annual reports. It is anticipated that these reports will be published shortly.

Publications

- The Commission publishes annual reports. The most recent report was published for the 2005 financial year. The 2006 and 2007 annual reports are expected to be published shortly.
- The Commission publishes a monthly newsletter, *Wasdok*, which reports current news within the Commission. The newsletter is also distributed electronically.
- The Commission publishes and distributes two brochures as part of its community education program — *Making a complaint* and *Duties and Responsibilities of Leadership*.

Litigation

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

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

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

Commission directions to leaders under s 27(4) of the Constitution also often result in judicial review actions being taken by the leaders involved.

The Commission has also taken a number of special references to the Supreme Court in relation to Constitutional interpretation or the validity of laws; examples are given in the section on 'Function'.

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

Special projects

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

The other major project that is being undertaken is a joint review of complaint handling within the Royal Papua New Guinea Constabulary. The project arose out of a 2004 Police Review which recommended that a new accountability and review mechanism be established.

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

The project is now considering whether legislative reform is required to consolidate the gains that have been achieved under the MOA. A discussion paper is expected to be published shortly.

Office address and contact details

Street address: Ombudsman Commission of Papua New Guinea
Deloitte Tower
Douglas Street
Port Moresby

Mailing address Ombudsman Commission of Papua New Guinea
PO Box 1831
Port Moresby 121
National Capital District

Telephone (675) 308 2600

Facsimile (675) 320 3263

Email: ombudsman@ombudsman.gov.pg

OFFICE OF THE OMBUDSMAN SAMOA

Establishment

The Office of the Ombudsman (*Komesina o Sulufaiga*) in Samoa was established by the *Komesina o Sulufaiga (Ombudsman) Act 1988* (the Act).¹⁰ It came into operation on 15 March 1989 and became effective with the appointment of the first Ombudsman on 29 October 1990.

Ombudsman

There have been three Ombudsmen since the office started operating:

- 1990 to 1992 — Prof. Jack Richardson
- 1993 — Vaovasamanaia Reginald Phillips (passed away during first year of appointment)
- 1994 to present — Maiava Iulai Toma.

Prior to their appointments, each enjoyed distinguished careers. Prof. Richardson was the first Australian Commonwealth Ombudsman; Phillips was a former Member of Parliament and the first Samoan Chief Justice; and Toma has held senior government and diplomatic positions, including Secretary to Government and Samoa's Ambassador to the United Nations and the United States of America.

Relationship to Government and Parliament

The Act is administered in the Legislative Department. Initially, financial allocations for the Office formed part of the Legislative Department vote. Today, the Office of the Ombudsman deals directly with the Treasury and controls its own separate budget vote. A minister other than the Prime Minister is Minister for the Office of the Ombudsman. The ministerial portfolio does not impact on the Ombudsman's performance of his statutory functions. The Ombudsman is independent of the executive government.

The Ombudsman is an officer of Parliament appointed by the Head of State on the recommendation of Parliament. The Ombudsman is appointed for a term of three years and can be reappointed. The Ombudsman can only be removed from office by the Head of State on the advice of Parliament for disability, bankruptcy, neglect of duty, or misconduct.

There is no parliamentary select committee that examines the performance of the Ombudsman's office but the Public Accounts Committee screens the annual budget.

Jurisdiction

The jurisdiction of the office in investigating administrative complaints is restricted to government agencies (ministries, corporations, statutory boards and authorities) named in the Schedule to the Act (s 11 (1)) and does not extend to:

- private individuals, companies or other nongovernmental organisations

¹⁰ Unless otherwise noted, all references to section numbers are to the *Komesina o Sulufaiga (Ombudsman) Act 1988*

- administrative actions that are subject to a right of appeal or objection or review on the merits by the Courts and Statutory Tribunals (s 11 (6)).

Section 11 (5) of the Act allows the Prime Minister, with the consent of the Ombudsman to refer any matter, other than judicial proceedings to the Ombudsman for investigation. Several of these matters investigated pursuant to this section involved agencies and organisations outside office jurisdiction.

The Act closely follows the *New Zealand Ombudsman Act 1975* and has not been amended since its inception. A recent review of the Act suggests two possible approaches to legislative revision:

- update the current Schedule pursuant to s 28 of the Act to include all existing agencies, as most of the agencies that pre-existed the Act have either merged or have been abolished
- replace the Schedule with a simple clause to the following effect: 'all government agencies and non-government agencies carrying out functions of government'.

Functions

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 (s 11 (1)).

Own motion investigation

The Ombudsman may conduct own motion investigations that suggest possible systemic concerns (s 11 (2)).

Oversight

The Ombudsman's role in fostering good administration within the public sector is recognised by agencies listed in the schedule. The newly established Professional Standards Unit within the Police, charged with the investigation of complaints against the Police encourages complainants and the public to go to the Ombudsman should they be not satisfied with the handling of their concerns by the PSU.

Audit

A proposed Police Services Amendment Bill 2009 requires the Ombudsman to regularly review and report on the work and investigations of the PSU thus formalising a broadening role for the Ombudsman in integrity surveillance and in keeping systems under scrutiny.

General

The Office of the Ombudsman has an established reputation for neutrality, because of which, it is called upon to undertake tasks that are outside its statutory functions. The community appears comfortable with this as part of the role for the Ombudsman. Indeed, in the nature of the community and Samoan society, public awareness and expectations of the Ombudsman may be greater in this role than in conventional complaint handling. This indicates a need to develop the Office's complaint handling capacities and to promote awareness of the Office's core functions within its client community.

Education and training

The office has undertaken outreach programs to both government agencies and members of the public through public seminars and individual meetings with agencies, educating them on a range of issues from the roles and functions of the Ombudsman to the rights of the members of the public receiving services from government authorities.

Powers

The Act provides the Ombudsman with the power to investigate complaints made to the office that are within jurisdiction.

The Ombudsman may in his discretion refuse to investigate or further investigate a complaint if it appears that (s 14):

- there is an adequate remedy or right of appeal for the complaint
- 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.

Before investigating any complaint, the Ombudsman must inform the agency concerned with a notice of intention to investigate (s 15 (1)). Such an investigation must be conducted in private (s 15 (2)). The Ombudsman may hold inquiries (s 15 (3)).

Any person who in the opinion of the Ombudsman is able to provide information relating to any matter being investigated is required to furnish to the Ombudsman information, documents, papers or things under that person's control (s 16 (1)).

The Ombudsman may summon and examine on oath any person who is able to provide information on a matter being investigated (s 16 (2)).

The Ombudsman may enter and inspect any premises of agencies subject to the Act and carry out investigations within jurisdiction (s 23).

After completion of an investigation, the Ombudsman shall report his opinion and reasons to the appropriate agency and make recommendations. The Ombudsman may request the agency to advise of the steps (if any) that it proposes to take to execute the recommendations (s 19 (3)).

The Ombudsman may also table such reports in Parliament (s 19 (4)).

Internal structure

In addition to the Ombudsman, the office has one Director of Investigations, one Investigation Officer, one Office Manager/Secretary, one Accounts officer and one Office clerk/Receptionist. Officers of the Ombudsman are not subject to the Public Service Commission.

Workload and statistics

Year	Complaints subject to enquiry	Complaints subject to jurisdiction	Complaints not investigated due to an alternative remedy and other reasons	Incomplete approaches not followed up by complainant
2002	87	50	34	28
2003	69	38	29	19
2004	92	31	51	18
2005	71	43	43	27
2006*	78	38	28	32
2007*	62	31	22	17

* Figures for 2006 and 2007 are from draft annual reports. It is anticipated that these reports will later be published.

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

Publications

- The Ombudsman is required to produce Annual Reports to Parliament (s 25). The most recent report was 2005–2006. The 2007–2008 Report will be completed soon.
- The office has pamphlets that were first distributed in the mid-90s and are still being used as the information remains the same except for the current address and location of the office.

Litigation

There are no reported cases involving the Ombudsman.

Special projects

The Ombudsman is one of the leading agencies in the Samoa Law and Justice Sector Project and pursues the sector's 'Integrity & Good Governance' goals. This project is in partnership with the government of Australia through AusAID.

Office address and contact details

Office address: Office of the Ombudsman
Level 5
Central Bank Building
APIA

Mailing address: Office of the Ombudsman
PO Box 3036
Apia, SAMOA

Telephone: (685) 25394
Fax: (685) 21862
Email: ombuds@lesamoa.net

OFFICE OF THE OMBUDSMAN OF SOLOMON ISLANDS

Establishment

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

Ombudsman

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

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

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

Relationship to Government and Parliament

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

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

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

Jurisdiction

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

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

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

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

The Ombudsman cannot investigate complaints:

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

Functions

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

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

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

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

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

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

Powers

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

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

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

In pursuit of an investigation, the Ombudsman may:

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

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

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

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

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

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

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

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

Internal structure

The OOSI is headed by the Ombudsman and is divided into five work units:

- The Investigations Unit is managed by the Chief Investigation officer (CIO), and is divided into two teams. The first team deals with the complaints backlog — all complaints made prior to June 2008. The second team deals with current complaints. Each team is made up of three Senior Investigation Officers (SIO) and is managed by a Principal Investigation Officer (PIO). The PIOs report to the Ombudsman via the CIO.
- The Information and Training Unit undertakes outreach, training and public relations via the Principal Training and Public Relations Officer (PTPRO), while the IT Officer administers OOSI IT matters.
- The Legal Services Unit provides legal advice and assistance to the OOSI.
- The Secretarial Services Unit provides executive support to the Ombudsman via the Executive Personal Secretary, and also maintains the complaints register and e-database.

- The Corporate Services Unit provides administrative support to the OOSI.

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

Workload and statistics

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

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

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

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

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

Publications

Annual reports

The OOSI is required under the Constitution to make an annual report to Parliament. However, in the past some annual reports have not been completed. The Ombudsman has instructed that work commence on the 2007 and 2008 Annual Reports. It is expected that the 2009 Annual Report will be completed on schedule.

Special reports

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

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

Newsletter

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

Brochure

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

Litigation

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

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

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

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

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

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

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

Special projects

In 2009 the OOSI is commencing a number of own motion and systemic investigations. These will variously look into different aspects of administration in Solomon Islands.

It is hoped that they will lead to specific administrative improvements to the benefit of Solomon Islands residents within Honiara and the provinces. It is also hoped that they will provide impetus for the establishment of internal complaints handling mechanisms within key government agencies.

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

Office and contact details

Street Address: Office of the Ombudsman of Solomon Islands
Post Office
Mendana Ave
Honiara

Mailing address: Office of the Ombudsman of Solomon Islands
PO Box 535
Honiara
Solomon Islands

Telephone (677) 28135
(677) 28625

Facsimile (677) 28626

Email: ombudsman@solomon.com.sb

THE CONTROL YUAN

Establishment

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

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

Ombudsman

There are a total of 29 members of the Control Yuan (National Ombudsman), including a president and a vice president. Each member is nominated and appointed by the President of the ROC and confirmed by the Legislative Yuan for a term of six years. There is no limit on the number of terms a member can serve. There are currently six rules governing the qualifications required for members. These require a broad range of professional backgrounds and governing abilities while also emphasizing the need to transcend partisan politics and exercise authority independently. The incumbent members of the Control Yuan were inaugurated on 1 August 2008. The following is a list of members:

- President Wang, Chien-shien
- Member Yin, J.C. Teresa
- Member Li, Bing-nan
- Member Tu, Shan-liang
- Member Yu, Teng-fang
- Member Chou, Yang-sun
- Member Hung, Teh-shuan
- Member Ma, Sheree Shiow-ru
- Member Chen, Yung-Hsiang
- Member Cheng, Jen-hung
- Member Huang, Huang-hsiung
- Member Yang, Mei-ling
- Member Chao, Chang-ping
- Member Liu, Yuh-san
- Member Chien Lin, Whei-Jun
- Vice President Chen, Jinn-lih
- Member Shen, Mei-chen
- Member Li, Ful-dien
- Member Wu, Feng-shan
- Member Lin, Chu-liang
- Member Hung, Chao-nan
- Member Ma, Yi-kung
- Member Gau, Fehng-shian
- Member Chen, Chien-min
- Member Huang, Wu-tzu
- Member Ger, Yeong-kuang
- Member Yeh, Yao-Peng
- Member Chao, Ron-yaw (Louis R. Chao)
- Member Liu, Hsin-sun

Relationship to Government and Parliament

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

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

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

Jurisdiction

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

Furthermore, in accordance with the enforcement of the four Sunshine Laws,¹¹ the Control Yuan also reviews the assets disclosure of high-ranking public functionaries; accepts related cases of application, investigation and punishment to avoid conflict of interest; deals with permission, change and abrogation of political donation accounts by political parties, political groups and candidates; and monitors the registration, application, investigation and punishment of the government and legislative lobbying.

Functions

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

¹¹ The four Sunshine Laws are: (1) the Act on Assets Report by Public Functionaries (1993; revised in 1994, 1995, 2007 and 2008); (2) the Act on Recusal of Public Functionaries Due to Conflict of Interest (2000); (3) the Political Donations Act (2004; revised in 2008); and (4) the Lobbying Act (2007).

Acceptance of people's petitions

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

Investigation

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

Impeachment

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

Censure

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

Corrective measures

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

improvement, the Control Yuan may initiate an impeachment against the head of the agency.

Circuit supervision and inspection

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

Invigilation

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

Acceptance of assets report by public functionaries

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

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

Conflict of interest

In order to promote clean and competent politics, government ethics, and to avoid corruption and unjust profits gaining, a public functionary should recuse himself or herself as soon as he or she is aware of the conflict of interest. The term conflict of interest refers to interests obtained by a public functionary or his or her related

persons directly or indirectly through any act or omission in the course of performing his or her duties. To those public functionaries in violation of the provisions stipulated in the Act on Recusal of Public Functionaries Due to Conflict of Interest, a penalty should be imposed in accordance with the Act. To comply with the Act, the Control Yuan has carried on receiving, reviewing, investigating and publishing regulations about related cases to avoid conflict of interest. The Control Yuan has also set up operation standards to address these cases.

Political donations

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

Lobbying

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

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

Audit

According to the Constitution, the power of audit is part of the control powers. The Control Yuan has an auditor-general who is nominated and appointed by the President of the ROC with the consent of the Legislative Yuan for a term of six years. The Ministry of Audit (National Audit Office) is set up under the Control Yuan to exercise the power of audit over financial activities of government agencies, including supervising the execution of budgets of the government; examining and approving

the financial receipts and payment orders; detecting irregular and dishonest behaviours on duty; and evaluating financial efficiency. In addition, the Control Yuan should directly scrutinise the annual financial statement of the government, request the President of the ROC to promulgate the finally audited annual financial report of the government, and handle the dishonest financial cases reported by the National Audit Office.

Human rights protection

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

Powers

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

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

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

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

Internal structure

According to the Organic Law of the Control Yuan and the Organic Law of the Committees of the Control Yuan, promulgated on January 1998, the Control Yuan shall establish a department of supervisory operations, a department of supervisory investigation, a department of assets report by public functionaries, a secretariat, a

general planning office, an information office, an accounting office, a statistics office, a personnel office, an ethics office, and seven standing committees on internal and minority nationality affairs, foreign and overseas Chinese affairs, national defence and intelligence affairs, financial and economic affairs, educational and cultural affairs, communication and procurement affairs and judicial and prison administration affairs.

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

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

Workload and statistics

The information included in the table below is taken from the Control Yuan's Annual Reports, all of which are available at the Control Yuan website.

From 1999 to 2005 (period of the third mandate), the Control Yuan received 100,608 complaints and investigated 3,534 cases. After investigation, the Control Yuan proposed 118 impeachment cases against 302 officials, including seven elected officials, three political appointees, 116 high-level civil officials and 29 military generals. Most of the impeached officials came from the ministries of economic affairs, transportation and national defence. During the same period, the Control Yuan recommended 1,018 cases of policy corrective measures, mainly in the ministries of the interior, national defence, finance and economic affairs. About 70% of the recommendations drew a response of self-review and improvement from the corresponding agencies.

Because the term of the third Control Yuan members expired on January 2005 and the fourth Control Yuan members were inaugurated on August 2008, some duties and functions of the Control Yuan were not normally carried during the vacancy of Control Yuan members. During this period, the Control Yuan made a contingency plan to deal with matters and measures that could be managed by staff in advance, including complaints from the people, violation of law and dereliction of duty by civil servants, assets report by public functionaries, conflict of interest, and political donations. However, some work related to the control powers which should be exercised by members themselves could only be processed and managed by early administrative procedures. Those incomplete cases have being handled in accordance with normal procedures after the inauguration of the fourth Control Yuan members. This is why there were no statistics on investigations, corrective measures, impeachment cases and censure cases from February 2005 to July 2008.

After the fourth mandate of the Control Yuan started operations in August 2008, there was a sharp statistical rise compared with figures in the past. From August 2008 to April 2009, the Control Yuan has received 20,543 complaints and investigated 506

cases. After investigation, the Control Yuan approved 26 impeachment cases against 38 officials and one censure case against one agency and two officials. The Control Yuan also proposed 113 cases of corrective measures to the Executive Yuan and its subordinate agencies for improvement in total 183 agencies (some agencies have been corrected more than once). For cases not serious after investigation, the related committees have reviewed those cases and passed resolutions to send 162 official letters to recommend executive agencies to improve and to punish 1,531 public servants.

Period (Mandate)	Petitions received	Cases investigated	Corrective measures proposed	Impeachment cases initiated	Censure cases initiated
Feb 1993—Jan 1999 (Second mandate)	92,208	3,337	684	186	3
Feb 1999—Jan 2005 (Third mandate)	100,608	3,534	1,018	118	10
Feb 2005—Jul 2008 (Members' vacancy)	22,170	0	0	0	0
Aug 2008—Apr 2009 (Fourth mandate)	20,543	506	113	27 ¹²	1

Publications

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

File collections on the constitutional Control Yuan

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

Annual Reports

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

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

Control Yuan Gazettes

- The Control Yuan Gazette: a government gazette is published weekly to provide the most up-to-date information about exercising control powers. The gazettes published in the same year are also put into volume for readers' reference.

¹² There were 27 impeachment cases initiated during the period but one was disapproved by the review committee.

- The Control Yuan Special Gazette on the Assets Report by Public Functionaries: a quarterly gazette to disclose the assets reports of public officials who are requested by law to declare properties to the Control Yuan.
- The Control Yuan Special Gazette on the Accounting Report of Political Donations: a regular gazette to publicise the accounting reports of political donations disclosed by political parties, political groups and candidates.

General publications

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

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

E-bulletin

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

Brochures

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

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

Litigation

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

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

Special projects

In addition to special research and investigation projects completed in the past years, the Control Yuan is conducting two important projects recently.

The Organic Law of the Control Yuan has been implemented over 11 years since the previous amendment in January 1998. With the enforcement of Sunshine Laws, functions and duties of the Control Yuan have largely expanded. To comply with the increasing workload and the variety of functions, the organisation of the Control Yuan needs to be reconsidered and rearranged. The Control Yuan proposed a draft of the amendment of the Organic Law to the Legislative Yuan in late 2008. The draft will be reviewed by the legislature in the near future.

In addition, the Control Yuan bears the concept 'Filial piety among hundred goodness stands first' in mind. Therefore, the Control Yuan promotes an activity 'Respect our mother on our birthday', attempting to educate and give the whole society the concept of love and ethics. Up to date, the Control Yuan has already held three activities on this topic. In May 2009, it also invited 18 distinguished delegates from the education field to attend a seminar on the promotion of the activity. The Control Yuan, by doing this, expects to more proactively supervise and eliminate what is bad, maintain legal rights, implement moral rights, and establish a clean government.

Office address and contact details

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

Web address: www.cy.gov.tw

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

General enquiries: +886-2-2341 3183

Facsimile: +886-2-2341 0324

Media enquiries: +886-2-2356 6532

Publications enquiries: +886-2-2341 3183 ext.132

COMMISSIONER FOR PUBLIC RELATIONS OF THE KINGDOM OF TONGA

Establishment

The Office of the Commissioner for Public Relations was established with the passage of the *Commissioner for Public Relations Act 2001* on 9 August 2001.¹³ The office commenced operation in 2001.

The Office is the equivalent of Ombudsman offices elsewhere. Work is under way to review the legislation. It is possible that the office and the Act will be re-named to include the title Ombudsman when a review of the current legislation is completed in the near future.

It is important to note that the Commission role is largely that of an Ombudsman office and the *Commissioner for Public Relations Act 2001* was modelled closely on the New Zealand *Ombudsman Act 1975*. The Commission is currently a member of the International Ombudsman Institute and the Pacific Ombudsman Alliance.

Commissioners

There have been two Commissioners to date:

- 2001 — Mr Siaosi Taimani 'Aho
- 2005 — Mr Penisimani T. Fonua.

The Commissioner is appointed by the King in Privy Council for a term of up to five years and may be reappointed.

The Act requires that a Commissioner must retire at 72 years of age (s 5(3)). The position of Commissioner has been vacant since the retirement of the last Commissioner, the late Mr Penisimani T. Fonua in Nov. 2, 2006. The Office of the Commissioner of Public Relations is currently managed by Senior Investigator Mr Pilimisolo L. Tamo'ua who has the title Officer in Charge.

Relationship to Government and Parliament

Practical matters associated with the administration of the *Commissioner for Public Relations Act 2001* such as legislative amendments to the Act, fall within the portfolio responsibilities of the Minister for Justice. The office deals directly with Treasury in Budgetary matters. However the Commissioner is required to report annually directly to the Prime Minister on the exercise of his functions under the Act with the report required to be tabled in the Legislative Assembly by the Prime Minister.

Jurisdiction

The *Commissioner* investigates complaints about the administrative actions of Government agencies of the Kingdom of Tonga.

Section 11(1) of the Act specifies that it is the function of the Commissioner to investigate any decision or recommendation made, or any act done or omitted,

¹³ Unless otherwise noted, all references to section numbers are to the *Commissioner for Public Relations Act 2001*.

whether before or after the passage of the Act, relating to a matter of administration and affecting any person or body of persons in their personal capacity, in or by any department or organisation to which the Act applies or by any officer (including a Minister or Governor), employee, or member of any such Department or organisation in their capacity as such officer, employee, or member.

The Commissioner may also conduct an investigation either on a complaint made to the Commissioner by any person or on their own motion. Where a complaint is made the Commissioner may investigate any decision, recommendation, act, or omission to which s 11 (1) relates, notwithstanding that the complaint may not appear to relate to that decision, recommendation, act, or omission.

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

A number of Areas are excluded from the jurisdiction of the Commissioner. These include:

- any decision, recommendation, act, or omission in which there is a right of appeal or objection, or a right to apply for a review, available to the complainant, on the merits of the case, to any Court, or to any tribunal whether or not that right of appeal or objection or application has been exercised in the particular case, and whether or not any time prescribed for the exercise of that right has expired
- any decision, recommendation, act, or omission of any person in his capacity as a trustee
- any decision, recommendation, act, or omission of any person acting as legal adviser to the Crown or acting as counsel for the Crown in relation to any proceedings
- any matter relating to any person who is or was a member of the Tonga Defence Services or any matter relating to the Tonga Defence Services, so far as the matter relates to the terms and conditions of that person's service, or any order, command, decision, penalty, or punishment given to or affecting him in them in their capacity as a member of the Tonga Defence Services.

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

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

Functions

Central to the Commissioner's function is the provision of impartial investigations on behalf of people who feel they have suffered injustice through the action or inaction of Government, Ministries, Departments or other Government organisations.

The core function of the Commissioner is therefore to receive and investigate complaints from members of the public. However, the Commission's duties also include:

- resolution, conciliation and investigation of complaints about all Tongan government departments and organisations
- providing constructive advice and guidance to departments and organisations on issues relating to good administration and complaint handling
- assisting and referring people who visit the office to make enquiries
- providing training in conducting investigations and complaint management
- conducting customer service audits.

In its 2007 annual report the Commission stated that its key aim is to 'improve the delivery of services by government agencies to the public'.

Powers

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

Subject to the provisions of this section and of s 16 of the Act (which allows the Attorney General to exclude information that might prejudice the security, defence, or international relations of Tonga, the investigation or detection of offences or might involve the disclosure of the deliberations or proceedings of Cabinet or Privy Council) the Commissioner may hear or obtain information from persons as they think fit, and may make such inquiries as they think fit.

The specific powers of the Commissioner and the manner in which a complaint shall be heard and what actions may be taken following an investigation are detailed in ss 13, 14 and 15 of the Act. The Commissioner may require any person to give any information relating to any matter that is being investigated by the Commissioner or to produce any documents or papers or things which relate to any such matter which may be in the possession or under the control of that person. This applies whether or not the person is an officer, employee, or member of any department or organisation, and whether or not such documents, papers, or things are in the custody or under the control of any department or organisation.

The Commissioner can also summon and examine on oath:

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

The Commissioner may also refuse to investigate a complaint that is within their jurisdiction if it appears that under the law or existing administrative practice there is an adequate remedy or right of appeal to which it would have been reasonable for the complainant to resort. Complaints may also not be examined if they are trivial or vexatious or, having regard to all the circumstances of the case, any further investigation is unnecessary.

In such cases where the Commissioner decides not to investigate a complaint they are required to inform the complainant of that decision, and state the reasons.

The Act requires every investigation by the Commissioner to be conducted in private and where any person is required by the Commissioner to attend before them, the person is entitled to the same fees, allowances, and expenses as if they were a witness in a Court.

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

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

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

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

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

Requirements to maintain secrecy do not apply to hearings except in relation to an order given by the Attorney-General under s 16 and no person shall be liable to prosecution for an offence against any enactment, other than this Act, by reason of their compliance with any requirement of the Commissioner under this section. Section 21 also provides a protection for the Commissioner against civil action.

Except for the trial of a person for perjury in respect of their sworn testimony before the Commissioner, no statement or answer given by a person in the course of any inquiry before the Commissioner is admissible in evidence against any person in any Court.

Internal structure

The current structure of the Commission and its relationship to Government reflects the small size of the office and the requirement for staff to cover multiple areas of responsibility.

The Commissioner is assisted by the following staff:

- a Senior Investigations Officer (who is currently acting as Officer in Charge of the Commission)
- an Investigations Officer
- an Office Administrator
- an Account Clerk/Computer Assistant, and a
- Daily Labourer.

Workload and statistics

Year	Inquiries and complaints	Complaints (in jurisdiction)	Complaints investigated
2005	112		
2006	121		
2007	141	93	69

During 2006–2007, the Commission finalised 92 complaints against Government agencies, the majority of which were finalised by way of preliminary enquiries and investigations.

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

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

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

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

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

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

Publications

Commissioner for Public Relations publications include:

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

Litigation

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

Special projects

Recent consideration of the legislation has led to the identification of a small number of apparent inadequacies in the Act that have impacted upon the effectiveness of the Office of the Commissioner for Public Relations. At present the Office of the Commissioner for Public Relations is working towards legislative changes to remedy these perceived deficiencies. Problems that have been identified are:

- a widespread misunderstanding or lack of awareness within the Tongan community of the Commissioner's role, and
- uncertainty in the legislation as to the Commissioner's powers to remedy the community's misunderstanding or lack of awareness about their functions.

Specifically the title 'Commissioner for Public Relations' has caused some difficulties, because:

- it does not reflect the common title 'Ombudsman' which is used internationally
- it does not accurately reflect the functions of the office
- it is easily mistaken for other bodies such as the Public Service Commission, and
- it may suggest that the office lacks the independence, which is essential to the credibility of offices of this kind.

A change of name to Ombudsman would improve the public understanding of the office and its role.

There is also no express provision that permits the Commissioner to disclose information for the purpose of inquiries that may assist in deciding whether or not a complaint is one that should be investigated, or for any other purpose that may legitimately be considered to be necessary for the effective performance of the Commissioner's functions under the Act such as public awareness of the role and powers of the Office.

While such a power might be considered to be implied in the legislation, to put the matter beyond doubt it would be preferable for an express provision to be inserted into the Act.

It should also be noted that the Office of the Commissioner for Public Relations is currently working on establishing an MOU with the Tongan Police force to clarify how the Commissioner and the Police force will handle complaints.

Offices and contact details

Enquiries/complaints: Mr Pilimiso L. Tamo'ua
Officer in Charge of the Office of the Commissioner for
Public Relations.

Fax: (676) 26 982

Postal: Commission for Public Relations
Lavinia Road
NUKU'ALOFA TONGA

Phone: 00 (676) 26980 or (676) 26 981

Email: primzolta@yahoo.com.au

OFFICE OF THE OMBUDSMAN — REPUBLIC OF VANUATU

BUREAU DU MÉDIATEUR OFIS BLONG OMBUDSMAN

Establishment

At independence, Vanuatu adopted the parliamentary system of representative government based on universal suffrage. It has one legislative house. The legal system derived its origin not only from the English legal system, but also incorporates French laws formerly enforced by the French colonial power. The court system is made up of the Customary Land Tribunals 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 Customary Land Tribunals Act No. 7 of 2001 provides a procedure for resolving disputes about customary land which varies depending on whether the land is situated wholly or partly within a custom area or a custom sub-area. The Island Courts¹⁴ 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*, the Act currently in force.

Ombudsman

The qualities sought in the person who takes on the position of Ombudsman have been set out in the Constitution and the *Ombudsman Act 1998*. The Ombudsman must have a knowledge, understanding and appreciation of the culture, traditions and values of Ni-Vanuatu people; be of high integrity and competence; have appropriate qualifications and experience; be politically independent and capable of discharging the duties without fear or favour; and be of high standing in the community.

There have been three Vanuatu Ombudsman and one Acting Ombudsman.

- 1994 —Marie-Noelle Ferrieux-Patterson
- 1999—Hannington G Alatoa
- 2004 —Iolu Abbil (Acting Ombudsman)
- 2005 to present—Peter Taurakoto.

¹⁴ 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. Often, the Prime Minister may delegate all or any of his or her responsibilities to any other government Minister.

If there have been any actions to give effect to any findings or recommendations made by the Ombudsman following an enquiry into the conduct of a leader or government agency, the Prime Minister is required under s 39 of the Ombudsman Act to report this to Parliament as soon as he or she can.

There is no legal impetus for Government or Parliament to implement the Ombudsman's recommendations stemming from enquiries. Further, there is also no legal requirement for the Prime Minister to table the Ombudsman's yearly reports within a certain time frame.

Jurisdiction

The Constitution allows the Ombudsman to enquire into the conduct of public servants, public authorities and ministerial departments, with the exception of the President of the Republic, the Judicial Service, the Supreme Court and other Judicial bodies. This enquiry may follow a complaint from a member of the public, at the request of a Minister, Member of Parliament, the National Council of Chiefs or Local Government Council or at the Ombudsman's own initiative.

The *Ombudsman Act 1998* forbids the Ombudsman from enquiring into certain matters: a matter that has previously been the subject of an enquiry by the Ombudsman; the reasons a recommendation of the Ombudsman has not been followed; and the action taken by a leader or person in charge of a government agency to give effect to a recommendation of the Ombudsman.

The Constitution includes a Leadership Code. The *Leadership Code Act 1998* states that:

.. the Ombudsman must investigate and report on the conduct of a leader (other than the President) if the Ombudsman receives a complaint from a person that a leader has breached this Code, or the Ombudsman has formed the view on reasonable grounds that a leader may have breached this Code.

Section 64 of the Constitution enshrines the right of a citizen of Vanuatu to obtain government services in the official language that he or she uses. Vanuatu has three official languages, Bislama, French and English. A citizen may make a complaint to the Ombudsman if he or she feels that this right has not been fulfilled.

Functions

The Vanuatu Ombudsman may enquire into any conduct on the part of any government agency; any defects in any law or administrative practice; or any case of an alleged or suspected discriminatory practice by a government agency. The Ombudsman may also make enquiries in respect of conduct of a leader. The Ombudsman has also been given the authority to undertake mediation between the complainant, the person in charge of the government agency complained about and any other person directly affected by the enquiry. If the complaint relates to the conduct of a leader, the Ombudsman may also mediate between that leader and the complainant.

Following an investigation, if the Ombudsman is satisfied that the conduct was contrary to law, based on error of law or of fact, delayed for unjustified reasons, or unjust or blatantly unreasonable and that, consequently, any decision taken should be annulled or changed or that any practice followed should be revised, he or she is required by Article 63(2) of the Constitution and s 29 (1) and (2) of the Ombudsman Act to forward his findings to the Prime Minister, if the Prime Minister is the head of the agency, and in any other case, to the Prime Minister and the head of the public authority or department directly concerned.

Section 29 (4) of the Ombudsman Act provides that in the event that the Ombudsman concludes that a complaint is unfounded or does not give rise to any findings, he or she must give a written copy of his or her conclusions to the complainant (if any) and any person notified of the enquiry. The Ombudsman must do this as soon as reasonably practicable after making his or her conclusions.

In the case of inquiries into the conduct of leaders, s 30 of the Ombudsman Act states that if the Ombudsman is satisfied that the leader has failed to carry out any of the duties or responsibilities of office imposed on him or her under Article 66 (1) or (2) of the Constitution, or he or she has breached any of those duties or responsibilities, or he or she has breached the Leadership Code Act, the Ombudsman must forward a copy of his or her findings with appropriate recommendations to the President, the Prime Minister and the leader concerned if that leader is a government member. If the leader is a member of the Opposition in Parliament, the Ombudsman must forward a copy of his or her findings with appropriate recommendations to the President, the Prime Minister, and the Leader of the Opposition. In the case of any other leader, the Ombudsman must forward a copy of his or her findings with appropriate recommendations to the President, the Prime Minister, the leader concerned and the person or body by whom the leader was appointed, or reports to.

If the complaint is unfounded or does not give rise to any findings, as with other complaints, the Ombudsman must in writing inform the complainant and any other person notified of the inquiry on his or her conclusions as soon as is reasonably practicable for him or her.

Powers

The powers of the Ombudsman to investigate into a complaint against any person or body or any leader are contained in Articles 62 and 63 of the Constitution and s 34 of the Leadership Code Act. The latter section further specifies that the Ombudsman must give a copy of the report to the Public Prosecutor and another copy to the Police Commissioner if the complaint involves criminal misconduct.

The 1995 Act enlarged upon the general provisions of the Constitution. The Act gave the Ombudsman the power to summons witnesses, and compel the production of documents. The Ombudsman was given the power to publish reports following enquiries and in certain circumstances, was obliged to forward the report to the relevant authority, which was, in turn obliged to notify the Ombudsman of what steps were proposed to deal with the findings of the Ombudsman. A lack of response could trigger a court application by the Ombudsman to enforce the recommendations contained in the report.

The *Ombudsman Act 1998* contains several significant differences. The staff of the Ombudsman's office are now regulated in the same manner as the other members of the Public Service. Under the 1995 Act staff were directly employed by the Ombudsman. The 1998 Act prohibits allegations of criminal wrong-doing without stating the alleged offence and providing evidence to support the allegation. A further significant change is the absence in the new 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 inquiry.

The Ombudsman's access to 'restricted or prohibited information' is outlined under s 27 of the new 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 new 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, a Legal Counsel, the Director of Investigations, the Director of Leadership Code and other investigation, legal and administration staff. Most staff work in the head office which is based in Port Vila, Efate. A small branch office in Luganville, Santo is structured to cater for a Principal Investigator (who is also an officer-in-charge), as well as a small number of investigation and support staff.

The Government is obliged under the Ombudsman Act to provide sufficient budgeting and staff for the Ombudsman to carry out his or her functions.

Workload and statistics

The following statistics are obtained from the Ombudsman's annual reports. Unfortunately, the annual reports dating from September 2003 to August 2008 are not accessible at this stage due to technical difficulties. 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.

Year	Complaints received in the period	Investigations opened in the period	Investigations concluded and closed within this period
September 1998 to August 1999	618	542	538
September 1999 to August 2000	224	195	279
September 2000 to August 2001	256	233	68
September 2001 to August 2002	157	151	69

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 2006 can be accessed at www.pacii.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 appellant refused to disclose the names of persons known to him who allegedly made complaints about Mr X (the name of the person complained about was not publicly disclosed because of confidentiality attaching to an enquiry being conducted by the Ombudsman).
- *Ombudsman v Kalsakau* [1997] VUSC 30; Civil Case 072 of 1997 (25 August 1997): 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 Procedure) Rules of 1964 of the Blue Book?
- *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 are all Members of the Board of Directors of Air Vanuatu denied the jurisdiction of the Ombudsman and sought confirmation from the Ombudsman that she would terminate her enquiry. On 30 January 1997, the Ombudsman, through her legal Counsel confirmed her jurisdiction and refused to terminate her enquiry.
- *Ombudsman v Kombe* [1998] VUSC 2; Civil Case 180 of 1997 (10 March 1998): An application under s 17(7) of the Ombudsman Act requiring

attendance of witness summonsed by Ombudsman to attend Court to furnish information.

- *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.

Special projects

To date, there are no special projects being undertaken by the Ombudsman.

Offices and contact details

Port Vila office:

Street address Office of the Ombudsman
Top Floor
Pilioko Building
Lini Highway
Port Vila
Vanuatu

Mailing address Office of the Ombudsman
Private Mail Bag 9081
Port Vila
Vanuatu

Telephone +(678) 27200
Facsimile +(678) 27140
Email: ombud.vt@vanuatu.com.vu

Luganville office:

Street address Office of the Ombudsman
Luganville Commercial House
Luganville
Santo
Vanuatu

Mailing address Office of the Ombudsman
Luganville Office
PO Box 378
Luganville
Santo
Vanuatu

Telephone +(678) 36364
Facsimile +(678) 36584
Email: ombudluganville@vanuatu.com.vu

