



2014/15 Annual review of the Office of the Ombudsman

Report of the Government Administration
Committee

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Office of the Ombudsman

Recommendation

The Government Administration Committee has conducted the annual review of the 2014/15 performance and current operations of the Office of the Ombudsman and recommends that the House take note of its report.

Introduction

The Office of the Ombudsman (the Office) is an independent authority that works to ensure that New Zealanders are treated fairly when they interact with the Government. The Office handles complaints, and investigates, reviews, and inspects state sector agencies' administrative conduct and decision-making. The Ombudsmen are Officers of Parliament, independent of the Government.

There are two Ombudsmen: the Chief Ombudsman, Judge Peter Boshier, and Ron Paterson. Judge Peter Boshier became Chief Ombudsman on 10 December 2015, after Dame Beverley Wakem retired. We acknowledge Dame Beverley Wakem's exemplary service during her tenure and welcome Judge Boshier into his new role.

Income, expenditure, and performance

In 2014/15, the Office's total income was \$10.553 million (up from \$9.964 million in 2013/14). Its total expenditure was \$10.553 million. Staff and accommodation costs accounted for 80 percent of the amount spent.

The Office of the Auditor-General (OAG) rated the Office's management control environment and financial information systems and controls as "very good". It rated the Office's performance information and associated systems and controls as "good".

Last year the OAG recommended that the Office strengthen its reporting of quality measures. This year, the Office began work to address this. The OAG recognises this work and encourages the Office to continue building on it.

Managing complaint numbers, caseloads, and staff turnover

In 2014/15, the Office received 12,151 complaints and other items of new work. This was the second highest amount ever received and 10 percent higher than in 2013/14. Due to the high work volume, the Office did not meet its timeliness targets for completed complaints.

We are concerned that the backlog of complaints to be completed may have a "chilling effect" on new complaints lodged with the Office. For example, opposition members of Parliament wishing to avoid burdening the Office may be deterred from complaining about agency responses to Official Information Act (OIA) requests. The Chief Ombudsman told us that the Office wants to change this perception of its capacity. Over the last three years, the Office has reviewed and restructured its complaints handling system to increase efficiencies. This has included strengthening its early resolution process, so that staff deal with simpler requests and complaints when they come in. We heard that the Office is

improving and quickening its response to complaints and that it is doing better at meeting targets.

We are concerned that staff caseloads are too high. The Chief Ombudsman told us that the Office has reduced caseloads to 35 cases per person (down from the “inhumane” level of 50–60 cases). However, the international standard to ensure adequate attention and follow-up is 25 cases per person. In 2014/15 the Office’s rate of staff turnover increased to 21 percent, which is high for an office of its size.

Given these metrics, we asked why the Chief Ombudsman stated in the media that the Office does not need more resources. She clarified that the Office has never had enough resources, but that it must do the best with what it has and seek to increase efficiencies where possible.

We commend the Office for the difficult and important work it does, on its progress in reducing staff workloads, and on its Continuous Practice Improvement strategy to increase the quality and efficiency of its work. We also note the extensive changes, restructuring, and renewal within the Office during the past decade to modernise its operating model and practices to match its expanding mandate and functions. Nevertheless, we believe the Office is under-resourced and over-worked, and would benefit from additional resources.

Review of the OIA

On 16 December 2014, the Office launched a major review into the practices of government agencies in their compliance with the OIA. In 2015, the Office considered more than 2,500 submissions and survey responses, interviewed about 300 officials and requesters, conducted 37 visits to agencies, and analysed countless relevant agency records, articles and other documents. On 8 December 2015 the Office released its report (several days after appearing before the committee).

Politicisation of the OIA

We asked whether the Office had found any worrying trends in government agency responses to requests under the OIA. Some of us believe that the response process is vulnerable to politicisation, through unjustified delays or by withholding information.

The Chief Ombudsman emphasised that, although suspicions about politicisation of the response process may be legitimate, the Office can only work with “hard evidence”, not “mythology and hearsay”. She stressed that the review found no problems with the OIA, which is a good piece of legislation. However, it identified gaps and inconsistencies in the Act’s implementation. The Office believes that these gaps result predominantly from public servants’ lack of understanding about the Act’s proper use and operation, rather than active malevolence.

We asked the Chief Ombudsman about her comments in the media that the Prime Minister had been “cavalier” and shown “a disregard for the law” in relation to OIA requests. She told us that she had made the comments when door-stopped by reporters, and that the interview was not her “finest hour”. She assured us that the Office has not noticed timeliness problems with responses from the Prime Minister’s office to requests under the Act. She expressed her belief that the Prime Minister and his ministers are committed to the OIA and its constitutional importance.

Delays in responses to requests under the Act

The Chief Ombudsman explained that delays in responding to OIA requests often stem from systemic issues or procedural matters. She highlighted the sheer volume of requests, the lack of dedicated units in agencies that could deal with requests efficiently, and out-of-date information management systems that slow down information retrieval. We also heard that the OIA allows agencies and Ministers to consult about requests. Although consultation is good practice and should be encouraged, it can also delay responses.

Education and leadership

We asked whether the Office will conduct formal training programmes to educate government department employees on how to comply with their OIA obligations better. The Office already provides training for agencies on request, including structured workshops that seek to demystify agencies' responsibilities. The Office told us it has a mandate and budget to continue and develop this practical educative role, to talk with chief executives and staff, to identify practices and policies that could be improved, and to run workshops and training sessions with agencies on particular issues.

The Chief Ombudsman also told us that its review revealed that Ministers and chief executives have a good understanding of their agencies' responsibilities under the Act. She believes that effective leadership would involve these individuals working to spread this awareness throughout their agencies and offices, so that all staff are well-versed.

Furthermore, the Chief Ombudsman mentioned that the media, the public, and those making requests and complaints could also benefit from education about the best use of the OIA. We heard that the scope of requests could often be refined to improve the quality of responses and to avoid overburdening agencies.

We agree that increased awareness about the OIA can only be positive, although we note that robust requests are important for ensuring good governance and transparency.

Recognising good and bad practice

The Office's review revealed instances of both good and bad practice throughout the public sector in compliance with the OIA. We heard that some agencies are improving their relationships with customers, and others are running seminars to upgrade their knowledge and experience on the Act. The Chief Ombudsman especially noted departments that operate a policy of proactively disclosing information, which the Office encourages.

We asked whether the review would list those agencies that have demonstrated poor practice. We heard that the Office intended the review to be a practical, government-wide health-check, not a name and shame. However, on the back of its review, the Office hopes to focus now on encouraging good practice and stamping out bad practice. At the hearing, the Office told us that it has recommended auditing each agency and ministerial office on their compliance with the Act annually. Each audit would result in a public report card. The Chief Ombudsman believes that the announcement of this recommendation alone will improve practice.

Vexatious litigants

We asked whether the Office faces problems with vexatious litigants and what it does to ensure that they do not tie up the Office's much-needed resources. We heard that in this area the Office uses a process manual compiled by Ombudsmen throughout Australasia

and trains its staff accordingly. We also heard that some vexatious litigants highlight the need for security-consciousness and vigilance to keep staff safe. This includes ensuring that offices are secure.

The Chief Ombudsman told us that the Office is currently working with some vexatious litigants. However, although it must manage the time and resources these litigants involve, the Office must always monitor each complaint or request carefully— as it would any complaint or request—to avoid missing any legitimate or reasonable element that the Office should pursue.

Appendix

Committee procedure

We met on 2 December 2015 and 17 February 2016 to consider the annual review of the Office of the Ombudsman. We heard evidence from the Office of the Ombudsman and received advice from the Office of the Auditor-General.

Committee members

Hon Ruth Dyson (Chairperson)
Sarah Dowie
Kris Faafoi
Brett Hudson
Mojo Mathers
Mark Mitchell

Evidence and advice received

Office of the Auditor-General, Briefing on the Office of the Ombudsman, dated 2 December 2015.

Organisation briefing paper, prepared by committee staff, dated 30 November 2015.

Office of the Ombudsman, Annual Report 2014/15.

Office of the Ombudsman, Awareness of the Ombudsman presentation, June 2015.

Office of the Ombudsman, response to written questions, dated 2 December 2015.