



Statement of Intent

OFFICE OF THE OMBUDSMEN

Te Tari-o-Ngā Kaitiaki Mana Tangata

for the period 1 July 2008 to 30 June 2011

Presented to the House of Representatives pursuant to section 39 of the Public Finance Act 1989

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DIRECTORY

Legal Authorities for Establishing the Office of the Ombudsmen

The Ombudsmen are appointed pursuant to sections 3, 7 and 8 of the Ombudsmen Act 1975 and report annually to Parliament pursuant to that Act and the Public Finance Act 1989. The Ombudsmen are Officers of Parliament and Commissioners for Investigations pursuant to section 3 of the Ombudsmen Act 1975.

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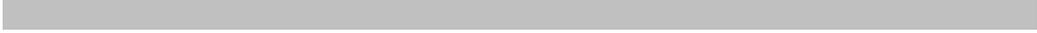
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Vote Minister: The Speaker

Administering Organisation: Office of the Ombudsmen^{1,2}

Responsible Minister for the Office of the Ombudsmen: The Speaker



¹ The Office of the Ombudsmen is an Office of Parliament under the Public Finance Act 1989.

² Ombudsmen are Officers of Parliament under section 3 of the Ombudsmen Act 1975.

INTRODUCTION

This Statement of Intent provides information about the role, goals, strategy and general environment in which the office works so that the office's plan for the medium term future to 2011 can be seen in context. It provides background information on:

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In preparing this Statement of Intent, I have consulted the Speaker of the House of Representatives in her capacity as the "Responsible Minister" for Vote Office of the Ombudsmen. The Officers of Parliament Select Committee has also been provided with opportunity to comment.



Beverley Wakem
Chief Ombudsman

PART A - THE OMBUDSMEN AND THEIR PURPOSE

The New Zealand Parliamentary Ombudsmen are Officers of Parliament. Their purpose is to provide Parliament (and the New Zealand public) with an impartial, independent check that the New Zealand government's administrative practice, and exercise of decision-making, at central, regional and local level, is robust, fair, transparent and accountable. They also have responsibilities under the official information legislation that assist and encourage the public to participate in the making and administration of policy and laws.

Parliament has implemented special initiatives to strengthen and protect the Ombudsmen's independence and to assist the Ombudsmen maintain credibility with the public for this role. These are:

- a) By statute, Ombudsmen have the special status of "*Officers of Parliament*".
- b) Ombudsmen are appointed by the Governor-General on the recommendation of the House of Representatives. They are not appointed by the Government.
- c) Ombudsmen and their staff are not public servants.
- d) An Ombudsman may report directly to Parliament; and
- e) A special bi-partisan committee of Parliament (Officers of Parliament Committee) has been established to consider and recommend directly to Parliament the names of prospective Ombudsman appointees, and the financial requirements of the Ombudsmen's office.

The Ombudsmen's key functions and outputs are:

- a) Under the Ombudsmen Act 1975, to investigate, form opinions, report and where appropriate, make recommendations on:
 - i. Any act, omission, decision or recommendation relating to a matter of administration and affecting any person or persons in their personal capacity, by any central regional or local government department or organisation either on complaint made to an Ombudsman or of their own motion;
 - ii. Any matter referred to an Ombudsman by any committee of the House of Representatives relating to a petition the committee is considering;
 - iii. Any matter, other than a matter concerning a judicial proceeding, referred to an Ombudsman by the Prime Minister.
- b) Under the Official Information Act 1982 and Local Government Official Information and Meetings Act 1987 to investigate and review, form opinions, report and where appropriate make recommendations on any decision by which a

Minister of the Crown, central, regional or local government organisation or department:

- i. refuses in part or full, requests for access to official information;
 - ii. decides to provide the requested official information in an alternative form, with deletions or subject to a charge;
 - iii. imposes conditions on the use, communication or publication of information made available;
 - iv. gives notice that they will neither confirm nor deny the existence of the official information requested;
 - v. extends the maximum statutory time limits for deciding and communicating a decision.
- c) Under the Protected Disclosures Act 2000 to provide an employee who has made, or is considering making, a protected disclosure, with information and guidance on the application of the legislation, and where a protected disclosure is made to an Ombudsman in the capacity of an “*appropriate authority*”, to take such action on the matter as prescribed in the Act.
- d) Under the Crimes of Torture Act 1989 to regularly examine the conditions of detention and the treatment of detainees, make recommendations and report on the exercise of its functions under the Act as a “*National Preventive Mechanism*” for prisons, premises approved or agreed under the Immigration Act 1987, health and disability places of detention and youth justice residences established under section 364 of the Children, Young Persons and Their Families Act 1989.
- e) The Ombudsmen also review proposed legislation to ensure the Ombudsmen Act and the official information legislation have been given proper consideration. The purposes of official information legislation at a national and local level include:
- i. To increase progressively the availability of official information to the people of New Zealand, and to promote the open and public transaction of business at meetings of local authorities in order:
 - To enable their more effective participation in the making and administration of laws and policies; and
 - To promote the accountability of Ministers of the Crown and officials, —and thereby to enhance respect for the law and to promote the good government of New Zealand;
 - ii. To provide for proper access by each person to official information relating to that person; and
 - iii. To protect official information (and the deliberations of local authorities) to the extent consistent with the public interest and the preservation of personal privacy.

If the Ombudsmen consider insufficient attention has been given to those statutes, they may consult with departmental officials or the Minister sponsoring the legislation or make a formal submission to the appropriate Parliamentary Select Committee advising it of their concerns.

- f) With both the Ombudsmen Act and official information legislation the Ombudsmen have a strong interest in promoting good governance, sound and fair decision-making and greater transparency and accountability within the public sector. This extends to providing guidance and support to agencies in improving their understanding and application of the official information legislation and the development and implementation of sound administrative practices and appropriate and robust complaint management and monitoring mechanisms.

How the Ombudsmen contribute to New Zealand society

In any democracy it is important that the general public have an accessible avenue through which they can pursue any issues – or voice any concerns they may have about matters of administration exercised by their Government that have an impact on their lives. In New Zealand, the Ombudsmen provide one such avenue.

The Ombudsmen provide a mechanism through which the workings of Government (including the many small administrative decisions that can have a significant impact on citizens lives) can be the subject of impartial, independent and considered scrutiny. They do this either after receiving a complaint from a person affected by the decision or by deciding themselves to look into a matter.

Parliament has provided the Ombudsmen with the necessary powers to examine the decisions, recommendations, actions and omissions of agencies and to recommend remedial action where appropriate, to resolve complaints. In addition, the extensive investigation, review and monitoring powers given to the Ombudsmen, coupled with their broad ability to report and make recommendations, encourages higher administrative performance by the Government and its agencies, thereby improving the quality of public service delivery and promoting the impartial and fair treatment of people in New Zealand.

It is also important that the state sector maintains efficient and effective standards at all times. The existence of the Ombudsmen reinforces Governments desire that its actions, decisions and recommendations and those of its agencies:

- a) are not subject to administrative error;
- b) are not made contrary to law;
- c) do not deny people natural justice;
- d) do not breach parliamentary convention; or
- e) do not undermine public service values such as fairness and reasonableness.

By doing so, they help to provide a check on a public sector that operates in an environment of increasing policy complexity, coalition government, shifting mechanisms for delivery of public services and continual challenge to its record-keeping from shifts in technology. Without this scrutiny, and that of other independent review agencies such

as the Controller and Auditor General and the Privacy Commissioner, it is likely that 'open' government would be at risk and less robust policy development and public administration would develop.

The publication by the Ombudsmen of guidelines, case notes and quarterly newsletters as well as the provision of advice and comment on proposed legislation, internal guidelines and proposed complaint management systems assist in ensuring efficient and effective standards are maintained within the public sector.

Scrutiny by an Ombudsman therefore provides an avenue through which the public can pursue their concerns and seek remedy for an administrative practice that adversely affects them in a particular instance, and serves as a means of encouraging the New Zealand government and its agencies to operate efficiently, fairly and openly. The review of requests for information that have been declined in whole or part or subject to content deletion or conditions of release encourages open and accountable government and the public's participation in a free and democratic society.

The Ombudsmen process

The processes followed by the Ombudsmen have been developed and refined over many years to encourage confidence of the public and agencies within Ombudsmen jurisdiction that all the circumstances giving rise to a complaint will be reviewed fully and in an impartial and fair manner.

An Ombudsman's consideration of a complaint or matter may have one or more of the following outcomes:

- a) A changed outcome for individuals in a particular case;
- b) Identification of a systemic failing ;
- c) Identification of a gap or unintended consequence in the legislative framework used to govern New Zealand.

The Ombudsmen are not an advocate for either the individual or the government agency that are party to a complaint, but use their powers of review and recommendation to promote open, transparent and accountable government.

What the Ombudsmen cannot investigate

The Ombudsmen have broad powers of investigation but there are limitations. Under the Ombudsmen Act Ombudsmen are not permitted to investigate any decision, recommendation, act, or omission:

- a) Made by a committee of the Whole;
- b) Where the complainant has a statutory right of appeal on the merits of the case to a Court or tribunal, irrespective of whether it was exercised or any time prescribed for the exercise of that right has expired unless, because of a special circumstance, it would be unreasonable for the complainant to have invoked that right;

- c) Taken by a Trustee acting under the Trustee Act 1956;
- d) Of any person acting as legal adviser to the Crown pursuant to the rules for the time being approved by the Government for the conduct of Crown legal business, or acting as counsel for the Crown in relation to any proceedings;
- e) Of any member of the Police, other than any matter relating to the terms and conditions of service of any person as a member of the Police;
- f) Of any matter relating to the terms and conditions of service or any order, command, decision, penalty or punishment of a person who is or was a member of the armed services; and
- g) Of a Minister of the Crown.

The foregoing list identifies the principal areas of restriction upon the Ombudsman jurisdiction under the Ombudsmen Act.



PART B– OUTCOMES SOUGHT

The overall desired outcome sought by Parliament in establishing the Ombudsman function in New Zealand is to improve government administration and accountability at local, regional and central government levels so as to strengthen the public's ability to participate in the New Zealand system of democracy.

The following figure depicts the process by which the Ombudsmen contribute to the desired outcomes.

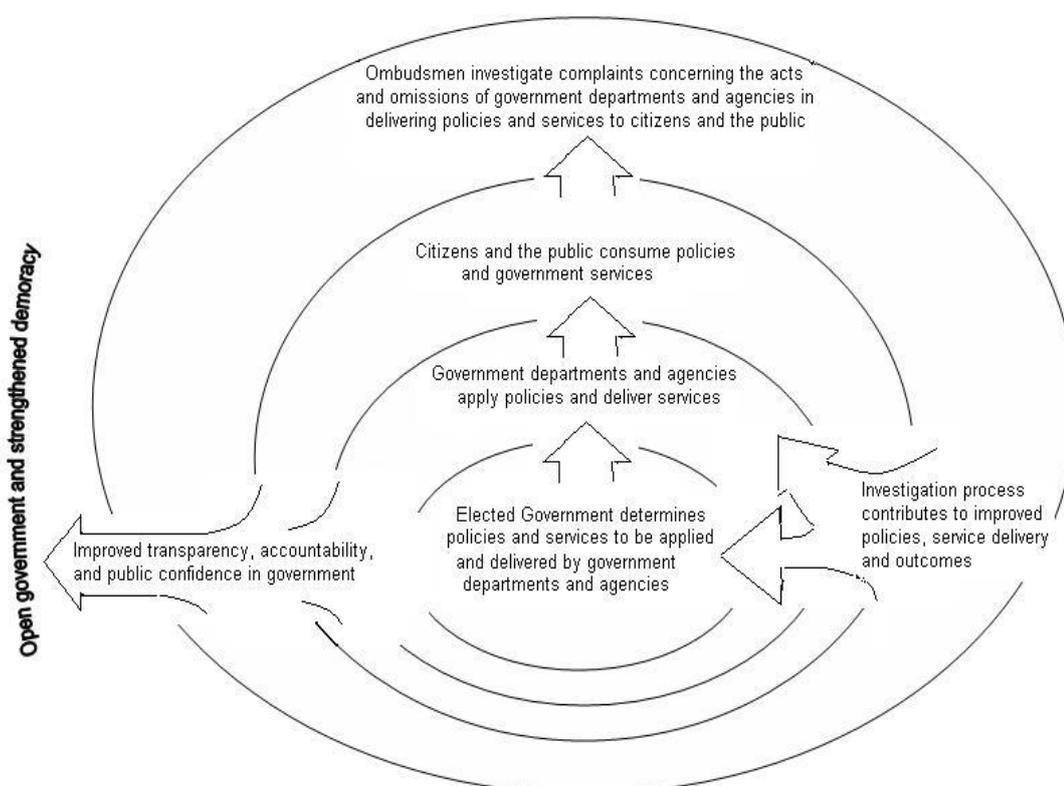


Figure 1

How the Ombudsmen will achieve the desired outcomes

The Ombudsmen promote robust, fair, transparent and accountable administrative practice and decision-making by:

- a) Investigating acts, omissions, decisions, recommendations of public sector agencies on complaint or of their own motion, reporting on their findings and making recommendations for remedy or change where appropriate pursuant to:

- i. The Ombudsmen Act 1975;
 - ii. The Official Information Act 1982; and
 - iii. The Local Government Official Information and Meetings Act 1987.
- b) Providing information and guidance under the Protected Disclosures Act 2000;
- c) Inspecting places of detention the Ombudsmen have been gazetted to examine and monitor under the Crimes of Torture Act 1989, and reporting on same;
- d) Publishing guidelines, case notes and quarterly newsletters explaining the Ombudsmen's findings and current approach to best practice on various issues;
- e) Advising Parliament and its committees of how proposed legislation may undermine or otherwise alter the checks and balances provided by the Acts the Ombudsmen operate under;
- f) Advising and commenting on areas where the Ombudsmen has developed significant experience, including:
 - i. Complaint handling and associated support systems;
 - ii. In-house guidelines for processing requests for official information;
 - iii. Good record-keeping and other administrative practices.
- g) Assisting public sector agencies in the provision of in-house training for their staff to facilitate understanding of the requirements of the Ombudsmen Act and official information legislation and to develop best practice in the handling of complaints;
- h) Undertaking speaking engagements explaining the role and functions of the Ombudsmen;
- i) Visiting smaller communities to hear complaints and to explain the purpose of the Ombudsmen as well as to meet with local officials to discuss matters of common interest including assisting with improving their understanding of the Ombudsmen Act and Local Government Official Information and Meetings Act;
- j) Keeping abreast of international standards of best practice for Ombudsmen (and those charged with supervising official information legislation) by hosting or attending regular meetings of Australian and Pacific Ombudsmen, the International Ombudsmen Institute and the Information Commissioners Conference, amongst others;
- k) Reporting annually to Parliament on the exercise of their functions;
- l) Working with the Privacy Commissioner, Human Rights Commissioner, Health and Disability Commissioner, Controller and Auditor-General and other review or control agencies on issues of common interest;

- m) Responding, as appropriate, to requests from Pacific Island Ombudsmen for professional training and technical advice and for the development of Ombudsman services.

PART C – STRATEGIC DIRECTION, WORK ENVIRONMENT AND MAINTAINING CAPABILITY

Strategic Direction

While much of the Ombudsmen's work and resources are committed to the investigation and review duties required of them by the statutes previously mentioned, the Ombudsmen have a longer term interest of contributing to improved governance and greater confidence by the public, in government administration.

The investigation and resolution of complaints referred to the Ombudsmen contributes to the longer term goal but more is required to achieve the desired outcome. Maintaining and enhancing confidence in public administration requires:

- a) Government agencies and Ministers displaying a sound understanding of the access and withholding provisions of the official information legislation and clearly explaining to requesters the reasons for withholding when a request has been declined in part or full; and
- b) Reasonable access to government policies, procedures and systems, and
- c) Those same policies, systems and procedures being delivered error free, or
- d) When they do go wrong, there are strong and impartial review systems within departments and agencies to review complaints and put matters right as appropriate.

The Ombudsmen plan to contribute to improving governance and public confidence in government administration through:

- a) Undertaking investigations of complaints and requests for review referred to them in a professional and timely manner.
- b) Investigating deaths in custody and selected serious incidents that occur in prisons.
- c) Assisting departments and agencies to develop or provide adequate complaint review systems;
- d) Strengthening agencies knowledge of the Ombudsman methodology to complaint resolution;
- e) Enhancing and providing training as required in respect of the official information legislation and its withholding provisions;
- f) Being pro-active (as resources permit) in undertaking investigations of our own motion in areas of government administration where there is evidence of a systemic problem;

- g) Agreeing Memoranda of Understanding with selected agencies that include agreed performance measures and the routine provision of information that is intended to assist departments and agencies to improve systems, procedures and processes and to identify areas where more staff training might be beneficial.
- h) Taking the Ombudsmen to the people through our outreach programme of visits to smaller communities and improved communication with all sectors of the New Zealand public.
- i) Undertaking random surveys of persons who have requested guidance or assistance from the Ombudsmen and agencies covered by the Ombudsmen Act and official information legislation to determine their view of the office professionalism and timeliness of response.
- j) Monitoring legislation to ensure proper consideration is given to the operation of the Ombudsmen Act and the official information legislation. In this regard the office has commenced an internal review of the Ombudsmen Act 1975 to determine whether any amendment is required to ensure the role fulfilled by the Ombudsmen continues to be relevant within New Zealand society.

Essentially, if transparent, well reasoned, sound and fair decisions are made, then fewer complaints tend to arise. If when transactions do go awry, departments and agencies have in place robust and impartial review systems to explain and/or rectify problems, public confidence in that department or agency and in government generally will be enhanced. There should also be the added benefit of fewer complaints being referred to the Ombudsmen for investigation and of those that are, fewer complaints being sustained.

Additional resources have been provided as part of the 2008/09 Estimates to assist with implementing the strategic plan.

The environment in which the Ombudsmen operate

Work levels for the Ombudsmen are determined by the statutory right of certain persons to complain pursuant to the Ombudsmen Act 1975, the Official Information Act 1982, and the Local Government Official Information and Meetings Act 1987, with an obligation upon an Ombudsman to investigate that complaint if it falls within jurisdiction. In addition, the Protected Disclosures Act 2000 established a requirement that the Ombudsmen provide information and guidance to any employee who contacts the office and advises that he or she has made or is considering making a protected disclosure pursuant to the legislation. The Ombudsmen are also named as an "*appropriate authority*" pursuant to the Act.

To date, there has been only very light demand for investigations or advice to be provided under the Protected Disclosures Act and it has not been necessary to seek any resources for this work. However, this may change with the Protected Disclosures Amendment Bill currently being considered by the House.

Most recently Parliament has approved two significant extensions to the Ombudsmen's work environment. They are:

- a) Under the Crimes of Torture Act 1989 the Ombudsmen have been gazetted as the “*national preventive mechanism*” for prisons, premises approved or agreed under the Immigration Act 1987, health and disability places of detention and youth justice residences established under section 364 of the Children, Young Persons and Their Families Act 1989.

There appear to be 67 institutions that fall within the Ombudsmen’s jurisdiction as a “*national preventive mechanism*”. However, because of the way the health sector operates, there are often multiple facilities on an Area Health Board’s campus which:

- i. operate autonomously;
- ii. have different reporting structures and requirements; and
- iii. are subject to different compulsory care legislation.

Thus the actual number of institutions the Ombudsmen are required to examine and report on regularly is likely to be closer to 100 rather than the 67 mentioned. Work continues to determine precisely the extent of this new role.

The Ombudsmen’s work as a “*national preventive mechanism*” requires that they regularly inspect each institution for compliance with the provisions of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as ratified by New Zealand and implemented by the Crimes of Torture Act 1989 and report their findings and make recommendations to the person in charge of a place of detention for:

- i. improving the conditions of detention;
- ii. improving the treatment of detainees; and
- iii. preventing torture and other cruel, inhuman or degrading treatment or punishment.

The Ombudsmen must also provide Parliament (and the Human Rights Commission as the designated Central Preventive Mechanism) with at least one written report annually on the exercise of its functions under the Crimes of Torture Act. Members of the United Nations Subcommittee on the Prevention of Torture are expected to audit New Zealand’s compliance with the Protocol on a four or five yearly basis. The date of the first audit is not yet known.

- b) The Ombudsmen will take primary responsibility for the investigation of selected serious incidents that occur within prisons. Serious incidents include deaths in custody, alleged assaults and riots. Previously this work was the responsibility of the Department of Corrections Prison Inspectors.

There is a significant forensic element associated with the new work that is not found in standard Ombudsmen investigations.

The workload associated with both extensions is significant and has required the provision of additional staff and financial resources in the year commencing 1 July 2008.

Take up of the new work responsibilities will be staged over the coming year as additional staff are recruited and trained and infrastructural systems and resources become available. The office expects to be operational in both areas of new work before the completion of the 2008/09 reporting year.

The Government is considering the establishment of an On-Line Authentication Agency to aid the conduct of business between the public and government agencies over the Internet. Our understanding is that the regime is proposed to be a "buy in" one where a citizen would request the issue of a unique personal identifier for use as proof of identity when dealing with government agencies. The Ombudsmen have been identified as one agency capable of considering complaints that might arise from this new activity. Lead agencies have been advised of the additional resources likely to be required if the Ombudsmen are tasked with this additional work. Our most recent advice is that stage 2 implementation is some 12 months away. Stage 2 involves the issue of identity keys to citizens. At this stage no formal request for additional funding has been made.

No other major change is anticipated to the Ombudsman role in the foreseeable future but there may be changes in the complexity and quantity of work referred to the Ombudsmen which will likely impact on the future resource requirements of the office.

More generally, experience has shown a reasonable caseload for each investigator is in the region of 150 complaints per annum. The number able to be allocated to each investigator is tending to reduce as the complexity of the complaints increases. A larger caseload generally leads to deterioration in the timeliness with which complaints are resolved. A relatively small increase in the number or complexity of complaints referred to the Ombudsmen has the potential to disproportionately affect office performance.

Although most government agencies have a good general understanding of the Ombudsmen's statutory role, there are times where the investigation process can become more adversarial than necessary. This can arise either through misunderstanding of the inquisitorial nature of an Ombudsmen's investigation functions or, more fundamentally, through lapses in agency understanding of their statutory obligations, particularly in relation to the Official Information Act and Local Government Official Information and Meetings Act. Incidental to and arising out of the Ombudsmen's investigation, monitoring and reporting functions, the Ombudsmen continually encounter the need to also take an educative and training role to ensure their functions are more effectively achieved.

Section 13 of the Ombudsmen Act 1975 provides a power for an Ombudsman to initiate an investigation of his or her own motion. Until recently the power had been used sparingly because of the heavy caseload of investigations under consideration at any time and also because of the very significant time and resource implications associated with investigations of systemic issues. In 2005 and 2006 two own motion investigations into the Department of Corrections were conducted. The first concerned the detention and treatment of prisoners and the second, prisoner transport. As issues arise more own motion investigations may follow.

Section 13 also provides a power for the Prime Minister to request that an Ombudsman undertake a particular review and for a Select Committee of the House to refer a petition to an Ombudsman. These powers are seldom invoked but in March 2007 the Prime Minister requested that Ombudsman Mel Smith undertake a review of the Criminal Justice sector. A report was tabled in Parliament in December 2007. Chief Ombudsmen

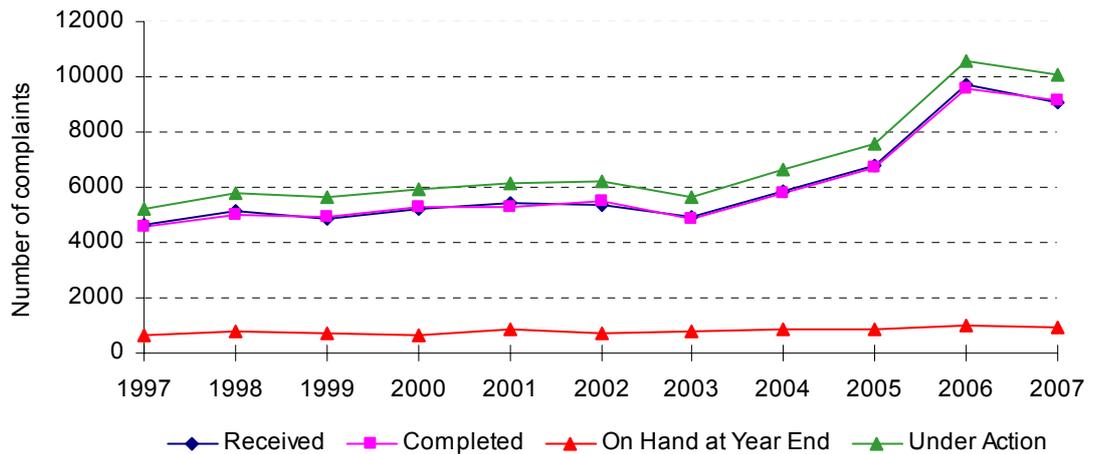
John Belgrave was considering a petition referred to him by the Commerce Committee in 2007.

Parliamentary agreement exists for the appointment of a third Ombudsman during 2008. The appointment of a third permanent Ombudsman is necessary to ensure the timely consideration of complaints referred to the Ombudsmen and successful implementation of the office strategic plan.

Quantity and Quality

Demand for investigations under the Ombudsmen Act and official information jurisdictions has been reasonably steady. However, with 2008 being an election year an increase in demand is expected for review requests under the Official Information Act. Overall we expect to action between 10,000 and 11,000 complaints or requests for review in the year ending 30 June 2009. Staff resources are being managed to absorb the anticipated moderate increase in workload.

Figure 2 - Throughput - All complaints



Source: Source: 2007 Annual Report of the Office of the Ombudsmen

	2003/04 Actual	2004/05 Actual	2005/06 Actual	2006/07 Actual	2007/08 Forecast	2008/09 Forecast
Complaints on hand 1 July	763	840	854	994	800-900	800-900
Complaints Received	5,878	6,757	9,708	9,090	9,800 ³	9,800
Complaints Completed	5,801	6,743	9,568	9,166	9,800 ¹	9,800
Working days (average) to complete:						
Ombudsmen Act						
- General complaints	41	44	50	64	58 ⁴	62
- Prisoner complaints	-	-	-	13	10 ²	10
Official Information Act complaint	64	73	84	79	72	72
Local Government Official Information and Meetings Act complaint	45	69	62	64	54	54
Protected Disclosures Act request	42	119	39	19	39	39
Staff numbers (FTE)	41.4	45	46.8	47.3	49.6 ⁵	61.6 ⁶

There is an established pattern of an increased demand for Ombudsman review of about 4,000 complaints per annum over the past 5 years. A major portion of the increase in recorded caseload results from more accurate recording of complaints and enquiries received by telephone from the public and prisoners. Many of these are minor in nature and open to being resolved by informal process and with minimal delay by the office "call centre" that was established in 2005.

³ From 1 April 2001 the Ombudsmen adopted a higher profile in taxation matters and from 1 January 2002 a heightened presence in tertiary institutions. A significant proportion of the increased work level recorded since 2004 results from improved recording of complaints and contacts made by prisoners by telephone.

⁴ Since 1 July 2006 prisoner complaint investigations have had a separate performance measure. Previously prisoner complaints have been included within "general complaints". The new responsibilities of the Ombudsmen to directly investigate selected serious incidents is expected to increase the average time required to complete prison investigations.

⁵ Includes 2 additional staff to assist the Ombudsmen as the "national preventive mechanism" for prisons, mental health, child and youth and immigration detention centres under the Crimes of Torture Amendment Act 2006 and an investigating officer to assist with the general caseload of complaints.

Excludes the Ombudsmen

⁶ Includes 9 additional staff for prison investigations, 1 additional staff engaged on Convention Against Torture inspections and 2 additional staff on policy, review and training work.

A training plan is in development that will support extending the scope of the call centre's activity to include enquiries made by the general public by telephone. Diverting general enquiries to the "call centre" is expected to contribute to general investigating staff being interrupted less frequently and to improved work throughput.

More significant than the growth in the number of complaints received, is the increasing complexity of matters now being referred for Ombudsman review. Some agencies that in the past featured more frequently in complaint statistics have established or improved internal review systems that appear to contribute to many straightforward complaints being resolved locally and without direct Ombudsman participation in the process. While that development is very good and is in fact encouraged, it also means that a greater proportion of requests referred to the Office of the Ombudsmen are either complex or sensitive or both.

The quality of Ombudsmen investigations has been assured by the Ombudsmen being personally involved in investigations. Only Ombudsmen may form a view and report on the outcome of an investigation. The office budget for 2008/09 provides resources to strengthen the quality of the Ombudsmen output by the appointment of 2 additional staff to, amongst other matters, assist in maintaining quality assurance systems supporting the exercise of the Ombudsmen's statutory functions.

Developing trends and risks to performance

The following trends and emerging issues are likely to impact on the office in the foreseeable future

a) Caseload – short term future

A caseload in the region of 9,300 investigations is anticipated for the year to 30 June 2009. This excludes approximately 800 to 900 incomplete complaint investigations carried forward from the previous reporting period. A further approximately 500 complaints are expected to be received that will require preliminary consideration and/or investigation but will later be found to be outside jurisdiction.

There is an established pattern of an increase in the number of Official Information Act reviews being requested in the lead up to a General Election. With 2008 being a General Election year we expect the pattern to continue.

The office anticipates meeting this additional demand for investigations from within its approved resources level. However, new initiatives approved by Parliament such as further extending the Ombudsman role in prisons and designation of the Ombudsmen as a National Preventive Mechanism under the Crimes of Torture Act 1989, have both required the provision of additional resources. The demand is likely to be highest with the Ombudsmen's responsibilities as a National Preventive Mechanism. The scope of the institutions, particularly in the health and disability and Immigration Act areas, to be inspected and reported on by the Ombudsmen has still to be accurately sized. Time will be required to assess whether the additional resources provided so far are sufficient to undertake the new work and increased workload.

The Ombudsmen have a long established policy generally to decline to investigate a complaint unless the complainant has first attempted to resolve the grievance with the organisation concerned.

At meetings with Chief Executives and other senior officials of local and central government agencies the Ombudsmen actively encourage agencies to establish robust internal complaint resolution systems so that as many complaints as possible are resolved by the parties concerned without direct Ombudsmen participation in the process. Staff resources have been allocated to assist and promote this. The outcome of such an approach ought to be beneficial to all parties with a greater proportion of complaints being resolved in a more timely manner, the professionalism of the public sector enhanced and public confidence in government administration strengthened. Logically, this ought to also contribute to fewer complaints being referred to the Ombudsmen for review, and of those that are, fewer complaints being sustained by the Ombudsmen.

Regardless of the initiatives implemented to manage the office investigation caseload and the additional resources approved by Parliament in support of the Ombudsmen's enhanced role in prisons and as a National Preventive Mechanism, any notable growth in the quantity or complexity of the general workload referred for review will likely result in less timely outcomes in investigations and a request for additional resources. The annual budgetary provision for the office is small and largely committed to fixed costs. There is little flexibility to absorb increased work pressures and cost increases.

b) Technological developments – medium and longer term future

Previously the office has commented that members of the general public and public sector agencies are increasingly using the internet to conduct government business and that there is little consistency in the delivery of government services using the internet. There is potential for significant numbers of new complaints to arise under the Ombudsmen and official information legislation from business transacted with government agencies over the internet. Presently the office is not resourced for this work and no additional resources have been sought for the 2008/09 financial year. Developments in this area will continue to be monitored.

c) Demographic changes to the New Zealand population

Few resources have been available to increase public awareness of the role of the Ombudsmen and how they might assist individuals and groups in their dealings with government agencies. Explanation of the Ombudsman purpose has been through the publishing of information pamphlets on the role of the Ombudsmen, speaking engagements at university law faculties and service clubs, consumer groups or similar. This has been aimed largely at an English speaking audience. In addition the Ombudsmen have maintained a minimal programme of visits to smaller population centres.

There is an identified need for complainants who are not fluent English speakers but who none-the-less, should have equal opportunity to seek review and redress of Government actions that adversely affect them. The office has published information pamphlets explaining the Ombudsman role in various mainstream languages and have agreed a Memorandum of Understanding with the Department of Internal Affairs Interpreter Service for the provision of on-line

interpreters who are able to join telephone discussions as a third party to assist callers with advising the nature of their complaint.

The office continues to review its own communications with the intent of applying a more “plain English” style of writing wherever feasible.

d) More complex complaints

The Ombudsmen reported previously that a more legalistic and adversarial element was entering the investigation process of complaints referred to them for review. This frequently leads to investigations being more consuming of time and staff resources. The development appears to have many causes:

- (i) increased use by complainants of private sector law firms or consultancies to pursue their grievances and by government agencies in responding to Ombudsman requests for official information and in respect of complaints made under the Ombudsmen Act;
- (ii) an ongoing need for public sector agencies in general to improve their understanding of the role of the Ombudsmen and the purpose and administration of the official information legislation in particular; and
- (iii) the general public more often requesting agencies to provide source information to enable the formation of a personal view on a government policy or initiative rather than accepting government decisions or advice from officials. Complaints of this kind often involve a greater volume of information (both written and electronic) and have required consultation with other parties before making a decision. By their nature they can be complicated to resolve. While access to advice tendered by officials assists participation by the public in the formulation of government policy, this needs to be balanced with the need for government to function effectively and in an orderly manner, and to be able to receive free and frank advice as policy is developed.

The Office is countering this trend by enhancing and more widely disseminating information designed to assist requesters in better framing their requests and supporting agencies training of their staff so that they may respond appropriately to more complex and sensitive complaints.

Maintaining capability

It is essential that the Ombudsmen develop and maintain an awareness of issues affecting the state sector and public generally. That awareness augmented by information from the office case management system, assists with identifying new trends and the development of initiatives to ensure the Ombudsman role continues to be relevant within New Zealand society. The information assists with recruiting appropriately skilled and experienced staff and identifies potential staff training requirements. All of the Ombudsmen investigating staff are legally qualified or hold an alternative tertiary qualification. Many staff have significant experience in public sector administration at a senior level.

The office is conscious of private sector law firms establishing public law groups and of the attractive terms and conditions of employment offered to prospective employees by both private and public sector agencies. The office has endeavoured to establish a harmonious work environment in which staff are fairly rewarded for their skills and experience and that recognises their contribution to the success of the Ombudsman role. In the recent past, staff turnover has been relatively low but the staff are highly skilled and experienced professionals and not easily replaced. Maintaining a competitive employment environment is very closely linked to the successful performance of the office. Staff who have left the office generally do so to pursue a new career opportunity or for other similar good reason.

The office has a staff performance assessment system that aims to identify staff training and development needs. It also provides a formal process whereby staff may gain a good appreciation of their contribution to the success of the Ombudsman role.

Vote Ombudsmen is small and comprised of largely fixed costs. Over the past decade the Vote has been examined in detail to identify potential savings and performance improvements. There is no scope for further significant savings or performance gains which would not adversely affect the ability of the Ombudsmen to deliver effective and timely outcomes. Generally, the situation now is that where there has been a significant growth in work demand, a need for a new or additional capability identified or a request from the Officers of Parliament Committee that the Ombudsmen heighten an existing role or take up a new task, this must be accompanied by the provision of additional resources. Considerable effort is committed to improving performance wherever possible.

Assessing performance and maximizing use of available resources

A major objective of the Ombudsmen is to encourage improved decision making and administration within government agencies so that complaints are less likely to arise. Where complaints do arise, we encourage the implementation of robust mechanisms for review and where appropriate, providing the organisation concerned with the opportunity to consider the complaint in the first instance and provide remedy if appropriate without direct Ombudsman participation. It is not possible to determine how many complaints have been prevented from arising as a consequence of a change in process or procedure introduced following or during the course of an Ombudsman investigation or following Ombudsman guidance to government agencies. However we are conscious that the complaints referred to us for review are now generally more complex than in the past. This suggests that agencies are more often resolving straightforward or less complicated complaints without an Ombudsman participating in the process.

In May of 2008 a survey will be conducted of individuals who have contacted the office by telephone and who have been initially referred back to departments and agencies for review. The survey will determine whether in fact the complainant pursued the matter with the agency concerned and if so, whether the agency was responsive to the request for review. Information derived from the survey will be used to assist departments and agencies to strengthen their complaint handling systems, improve training and potentially increase the number of complaints resolved without direct Ombudsman participation. A survey of the perceived professionalism and timeliness of the Ombudsmen investigation process will also be conducted.

The office case management system is the primary "tool" used to inform the management of the office investigative caseload and with maximising use of the resources allocated to

the office by Parliament. A central component of the system is a range of performance measures agreed with the Officers of Parliament Committee at Estimates time that encourage a high level of performance and accountability. The measures are routinely reviewed to ensure they remain relevant. The measures enable reporting at organisation, office and individual investigator levels. Management information reported each month by the system is used to assist with allocating Ombudsmen and staff resources and balancing work distribution among the three Ombudsmen offices. A comparison of actual and forecast performance is undertaken each month and is reported annually to Parliament. The performance measures for 2008/09 are detailed in the Estimates documentation specifically "Performance Information for Appropriations in Vote Ombudsmen" "Part 2 - Details and Expected Performance for Output Expenses".

Since the 2006/07 reporting year separate timeliness measure for complaints from prisoners made under the Ombudsmen Act have been included. Previously the timeliness with which prisoner complaints were resolved was included as part of the general Ombudsmen Act timeliness measure. The relatively high number of simply resolved complaints received from prisoners had led to performance statistics for the Ombudsmen Act jurisdiction being distorted and presented an understatement of true performance in the jurisdiction. Additional performance measures are being developed in support of the further extension of the Ombudsmen role within prisons from 1 July 2008

Cost Effectiveness

Section 40(d)(ii) of the Public Finance Act 1989 requires that the office provide information on the cost effectiveness of the interventions that the Ombudsmen deliver.

There is presently no empirical information available to support any assessment of the cost effectiveness of the Ombudsmen's interventions except in regard to complaints that are referred to the Ombudsmen for investigation. The office does include in its Annual Report to Parliament an average cost for investigations undertaken in each jurisdiction during the reported year. The cost of investigation is a factor of complexity and the issues raised. Each case is unique and is considered on its own merit. An Ombudsman investigation may have an outcome that affects only the person or persons who made a complaint; alternatively it may be a complaint of broad interest and result in changed behaviours by the public and agencies, or broad impact and result in changed systems and processes within government agencies or a change in the law. It is impossible to know how many transactions between the public and government agencies are completed successfully or become subject to a complaint but which are quickly resolved because of an earlier intervention by an Ombudsman or the provision of Ombudsman assistance or guidance.

The office has discussed with Victoria University School of Government and the Treasury how the s.40(d)(ii) requirement might be achieved. There was general agreement that the nature of the Ombudsmen's work, with each complaint being unique to its own circumstances and in its resolution, does not easily lend itself to such a calculation. The outcome of the discussions was that the office consider alternative processes for assessing its effectiveness and contribution to governance in New Zealand.

The office plans to survey a sample of complainants to determine amongst other matters their view concerning the professionalism and timeliness of the Ombudsman investigation process, and whether their confidence in government administration and accountability has improved or decreased. The first such survey will be undertaken in May 2008.

The office will also undertake regular surveys of agencies to determine the quality of engagement with the Ombudsman process and to assist with identifying any changes or improvements which the office may need to make to its work methods .

Infrastructure – policies, procedures and support systems

The office management structure will be reviewed during 2008 to ensure it continues to contribute effectively to the purpose of the Ombudsmen and to achieving best performance.

Practices, procedures, internal manuals and guidelines applied in our work are reviewed on an ongoing basis to ensure they remain relevant and support the best possible performance of the office. However, limited staff resources coupled to the pressure of our investigative workload frequently requires that priority be given to progressing the investigations before us. Resources for two additional staff have been approved as part of the 2008/09 Estimates to strengthen the office internal review systems. Part of the role of these new positions is assisting the review of, and where appropriate recommending of improvements to, the office's internal systems and procedures and, the internal review of selected cases with policy implications or that are particularly complex.

After staff, the next most important physical resource used by the office is its computer systems. Computer hardware is replaced as each machine or system component reaches approximately 4 years of age. Computer software is maintained at near current version standard.

The office case management system was developed in 1992. Although the system continues to meet the needs of the office, its replacement in the short term future is becoming increasingly important. The office has an arrangement with a private supplier to assist with the development and trial of a system that if successful will provide a suitable replacement at no cost to the taxpayer. The first module of the system, relating to the recording of enquiries, has been in use since January 2006. It has worked well over the past period with no down time experienced. The full system inclusive of the complaints and reporting modules is expected to be in use before 31 December 2008.

PART D – FORECAST CAPITAL EXPENDITURE
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	Budget 2007/08	Estimated Actual 2007/08	Forecast 2008/09	Estimated 2009/10	Estimated 2010/11	Estimated 2011/12
	\$000	\$000	\$000	\$000	\$000	\$000
Computer Equipment	105	105	111	111	111	111
Plant & Equipment Other	218	218	-	-	-	-
Furniture and Fittings	40	40	8	8	8	8
Intangibles - Computer Software	14	14	4	4	4	4
	<u>377</u>	<u>377</u>	<u>123</u>	<u>123</u>	<u>123</u>	<u>123</u>

The forecast capital expenditure for the 2007/08 financial year includes setup costs associated with the Ombudsmen's enhanced role within prisons (\$0.238 million) and equipment and accommodation alterations at Wellington associated with the Ombudsmen's role as a National Preventive Mechanism under the Crimes of Torture Act 1989 (\$0.073 million). The remainder of capital expenditure in the 2007/08 financial year is to be used primarily to replace existing computer hardware. A small provision is made for the replacement of other office equipment and upgrades to computer software.

For 2008/09 and out years to 2011/12, the capital expenditure will be used to replace existing plant and equipment and furniture and maintain software at near current versions.