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WAKA TANGATA

APOR E-NEWS

News and views from integrity organisations in the Pacific and Australasia
ISSUE 8: NOVEMBER 2021



Ngā mihi nui kia koutou katoa, warm greetings to you all.
Welcome to this edition of *Wakatangata*.

I began the previous issue of *Waka Tangata* discussing how we entered into the new year knowing our landscape had fundamentally shifted but we were adapting. As 2021 draws to a close and the COVID-19 Delta variant has taken hold in our region, we find ourselves adapting to change once again.

How should we as leaders navigate this changing environment, where the pandemic dominates the media and public attention, health policies are being rapidly developed and implemented, and the usual business of governing has continued unabated?

My office and I have been learning about the [leadership lessons of Polynesian navigators](#). The great wayfinding tradition of these navigators, who sailed in 25 million square

New Zealand leadership expert Professor Chellie Spiller (of Ngāti Kahungunu and Pākehā lineage) [says that](#) “wayfinding requires that we become explorers of our own world, seeing to discover and shine light upon that which is not seen”. Perhaps the stories and traditions of Polynesian wayfinding may also inspire you as we ‘shine the light’ of accountability and fairness across the APOR region.

The contributions to this issue and the annual reports of our members demonstrate the hard work and excellent leadership throughout the region over the last year. Whether preventing collusion in property development or ensuring fairness in border policies, I am proud to see our member institutions ensuring that this crisis of public health does not become a crisis of governance.

I turn now to updates from our region. Firstly, warm congratulations to Penny McKay for her appointment as Australia’s Acting Commonwealth Ombudsman. I am also proud to introduce my own office’s Rōpu Māori Hononga Hapori—a new team that has been established to grow my office’s cultural capability and lead our engagement with Māori and other communities in Aotearoa New Zealand.

Finally, I wish to draw attention to some exciting developments in the region. I extend my heartfelt congratulations to the Tongan Ombudsman, whose role has now been enshrined in the Constitution on the 20th anniversary of his Office.

I also note the work of the Samoan Ombudsman | National Human Rights Institution, which is playing a critical role in developing ‘right to information’ legislation there. I also acknowledge the efforts of our Australian colleagues as they work towards the implementation of the Optional Protocol to the UN Convention Against Torture (OPCAT) in their respective jurisdictions.

These are important developments in good governance across the region and I extend my congratulations and encouragement to all involved.

Ngā mihi, kind regards

Peter Boshier
Chief Ombudsman, Aotearoa/New Zealand
Tuia kia ōrite/Fairness for all

Australian Commonwealth



Michael Manthorpe's retirement and the new Acting Commonwealth Ombudsman

On 31 July 2021 our Office farewelled Mr Michael Manthorpe PSM. Michael retired after serving as the Commonwealth Ombudsman for four years. His retirement marked the end of his 37-year career in the public service. Thank you to our colleagues in Indonesia, Samoa, Papua New Guinea, the Solomon Islands, and New Zealand for the kind farewell messages.

Ms Penny McKay has now stepped into the role as Acting Commonwealth Ombudsman. Penny previously served as First Assistant Secretary at the Department of Home Affairs, General Counsel at the Australian Commission for Law Enforcement Integrity, Director of the Royal Commission into the Protection of and Detention of Children in the Northern Territory, and Principal Legal Officer for the Commonwealth Department of Public Prosecutions before being appointed Deputy Ombudsman on 23 July 2020.

Recent international partnership activities

Our Office is proud to continue our partnership programs with Ombudsman offices and integrity bodies in Indonesia, Papua New Guinea, Samoa, and the Solomon Islands. As the COVID-19 pandemic continues to limit opportunities for in-person engagement, we continue to work alongside our partners and the Australian Government's Department of Foreign Affairs and Trade (DFAT) to identify opportunities to deliver activities and collaborate virtually. Recent projects include:

- A two-day **Intake Training for Frontline Staff** to improve the skills of the Ombudsman Republic of Indonesia's (ORI) intake officers. Team members from our Complaints Management and Education Branch delivered this training with a focus on managing unreasonable complainant conduct and handling phone complaints.

- A **Guidance and tips to produce meaningful reports** webinar, which focused on improving ORI's capacity to produce influential and detailed reports with recommendations. The webinar included a Q&A session that provided meaningful insight into the unique challenges that ORI face in their day-to-day work.
- Our **Good Decision-Making Project**—a tailor-made training package for our partners at the Office of the Ombudsman of the Solomon Islands (OOSI) and the Leadership Code Commission (LCC) that we created in collaboration with the Queensland Ombudsman Office. The OOSI and LCC presented the [Good Decision-Making Manual](#) to Solomon Islands Prime Minister Manasseh Sogavare in October.

Immigration detention

On 30 June 2021, former Commonwealth Ombudsman Michael Manthorpe PSM, published a report on the Office's activities in overseeing immigration detention. The report summarises our oversight of facilities between January and June 2020, with an overview of the number and types of complaints received about immigration detention facilities. Three recommendations were made which can be read in the [full report](#).

The International Conference of Ombuds Institutions for the Armed Forces

The [13th International Conference of Ombuds Institutions for the Armed Forces](#) (ICOAF) was held in Canberra in October 2021. The event was co-hosted by DCAF – Geneva Centre for Security Sector Governance, the Inspector-General of the Australian Defence Force, and the Commonwealth Ombudsman with some virtual attendance.

The conference examined how Ombuds institutions positively contribute to the work of armed forces and their operational effectiveness.

Acting Commonwealth Ombudsman Penny McKay spoke at the opening session, participated in Session 4: *Rule of law within the barracks: formal vs informal systems*, and introduced a breakout session on *Informal systems – contributing to the elimination of hazing*.

Hong Kong, China

Annual Report 2020/21

We are pleased to share the highlights of our [2020-21 Annual Report](#) published in July this

Our office completed nine direct investigations in the past year and resolved 179 cases through mediation. A total of 194 recommendations were made following our investigations, of which 184 (94.8%) were accepted by the organisations and 10 (5.2%) were under consideration.

We also received a record-breaking 29,814 complaints, up by 50.8% from the previous year. These included 25,155 secondary cases on topical complaints and a record high of 110 complaints about access to information. We processed 30,021 complaints in total, including those brought forward from the previous year, 27,195 cases closed after assessment, and 2826 cases pursued and concluded.

Initiation and publication of own-motion investigations

During the period, the Ombudsman declared the initiation of [seven direct \(own-motion\) investigations](#):

- [Problem of abandoned vehicles on government land](#)
- [Government's enforcement against unauthorised building works in New Territories Exempted Houses](#)
- [Transport Department's requirements for physical fitness certification of driving licence applicant/holders](#)
- [Problem of alleged illegal operation of kaito ferry service](#)
- [Operational arrangements for statutory visits under Justices of the Peace Visit Programme](#)
- [Government's regulation of illegal occupation or obstruction of streets by goods and miscellaneous articles](#)
- [Measures and usage of on-street parking spaces designated for people with disabilities](#)



We have also completed and published [four reports on direct investigations](#):

[Hygiene Department](#)

- [Management and report of public toilets by Food and Environmental Hygiene Department and Architectural Services Department](#)
- [Regulatory regime for lifts and escalators](#)



New South Wales

Recent Reports

The NSW Ombudsman has recently released four reports:

- Our [2020-21 Annual Report](#) discusses the 24,733 contacts received by our office during the year, including 13,315 actionable complaints. Our report also annexes summaries of completed formal investigations. The investigations cover diverse issues such as asbestos enforcement action, council responsibilities over potentially contaminated land, and the strip-searching of young people in custody.
- The [NSW Child Death Review Team Annual Report 2020-21](#) outlines the operations and activities of our Child Death Review Team (CDRT) from 1 July 2020 to 30 June 2021. The report outlines the team's functions, purpose, and strategic priorities; current research projects aimed at preventing or reducing the likelihood of child deaths; and agencies' response to the team's recommendations. This report follows the earlier publication of the [CDRT biennial report](#) on child deaths that occurred in NSW in 2018 and 2019.
- We published a [special report to Parliament](#) about an investigation of the Department of Planning & Environment's procurement conduct, which resulted in a contractor 'acting in' a vacant senior executive role. We found that the department had acted unreasonably by treating the initial contract (and a later extension) as "emergency procurements" and that it had acted contrary to law by not notifying them to the NSW Procurement Board. The report also raises potentially broader systemic issues for the public sector regarding the use of both contingent labour and other contractors to fill employment roles – especially senior management roles.

Disclosures Bill 2021 (NSW). The Bill implements recommendations of a 2017 Parliamentary Committee Report, and our report assesses the Bill against those recommendations.

New Zealand

Introducing Rōpu Māori Hononga Hapori – Māori & Community Engagement Team

The Chief Ombudsman wishes to introduce our newest team: Rōpu Māori Hononga Hapori, the Māori & Community Engagement Team. The team has been established to support the Chief Ombudsman in implementing his vision and the wider office in our work practices. The section below is a short introduction from the team:

*"E nga mana, e nga reo, e nga karangatanga maha, tena koutou katoa
Nau mai, haere mai and welcome to one and all.*

We would like to introduce ourselves as the 'new kids on the block' to the New Zealand Ombudsman and say it is an honour to serve under the korowai 'Tuia kia ōrite - Fairness for all'.

This journey has been 60 years in the making. In 1988, at our silver jubilee, Chief Ombudsman Sir John Robertson was gifted a te reo Māori translation of his role from Te Taura Whiri i te Reo (Maori Language Commission): Te Kaitiaki Mana Tangata. In 2020, Chief Ombudsman Peter Boshier sought to develop our office's cultural capability by building a team dedicated to improving our cultural diversity and engagement with Māori.

Earlier this year, our Rōpū Māori Hononga Hapori - Māori and Community Engagement team was established. Our team leads cultural transformation by providing Te Ao Māori and Te Tiriti o Waitangi-led advice, guidance, and expertise. We will also lead, build, and support our community outreach programme, with a focus on Māori, Pacific, Asian and youth communities.

We are currently in the throes of developing a programme of work that will complement the strategic intent of the Ombudsman."

Chief Ombudsman announces investigations into the Department of Corrections and the Managed Isolation Quarantine (MIQ) booking system

Last month the Chief Ombudsman announced a broad investigation into the New Zealand

allocation system is unlawful, unfit for purpose, unfair, and poorly managed.

The Chief Ombudsman has also expressed particular concern about whether the online booking system disadvantages disabled people, and whether suitable alternatives are being offered to those who have difficulty accessing the platform. The Chief Ombudsman may also be more responsive to this unique situation and make statements on his findings at different stages of the investigation, rather than waiting to publish them all at the end.

[Read the full media release.](#)

In May, the Chief Ombudsman announced that he would begin a self-initiated systemic investigation into the Department of Corrections. This investigation will examine why, despite repeated concerns raised by the Chief Ombudsman and other oversight bodies, some areas of treatment and conditions for prisoners are not improving.

The Chief Ombudsman will be considering the issues above through the lens of the department's Te Tiriti o Waitangi obligations and stewardship requirements under the Public Services Act. The investigation is expected to be finished by mid to late 2022. [Read the full media release.](#)

Papua New Guinea

Worker compensation paid after 15-year delay

The family of a man who died in a workplace accident has finally been paid their entitlement of K41,891.43 by the Office Workers Compensation (OWC). The compensation came after the man's son lodged a complaint that the entitlements were being unnecessarily delayed in the 15 years since his father's death.

The man died in March 2006 when he was hit by a net carrying frozen tuna . In April 2021, his eldest son lodged a complaint with us against the Department of Labour and Industrial Relations (DLIR) alleging that there was an unreasonable delay in workers compensation payments for his late father.

All correspondence to the OWC to process the claims received no favourable response. Once our office started an investigation, however, the OWC proceeded with the compensation claim.

The DLIR finally deposited a cheque worth K41,891.43 to the beneficiary's account in August 2021—125 days after the complaint was first lodged.

Probe into 'bad' contract ends well for consultant

investigation into his contract with the National Forest Authority (PNGFA).

The consultant provided his services to a former Minister of Forestry at a daily rate of K3,000. His contract was awarded informally, however, as it was not publicly advertised nor approved by the managing director of the PNGFA Board. The consultant ultimately submitted a number of invoices to PNGFA claiming up to K1.1 million, which prompted our Commission to initiate a full investigation.

Based on our advice, the PNGFA issued a K500,000 cheque to the consultant. We also advised the PNGFA Board that procurement for consultancy services must comply with the requirements of the Public Finance Management Act 1995. (Under this Act, contract values in excess of K500,000 for statutory bodies such as the PNGFA must have ministerial approval and be included in a public tender.)

Samoa



National Human Rights Institution Samoa re-accredited with 'A status'

Our Office was recently re-accredited as an 'A status' institution by the Global Alliance of National Human Rights Institutions (GANHRI).

GANHRI is a worldwide network of NHRIs that liaises between NHRIs and the United Nations. It is the only non-UN organisation with access to various committees within the UN, including the Human Rights Council.

recently—a reflection of Samoa's tremendous efforts to meet international obligations on human rights.

With an 'A' level rating, our Office retains its credibility as an NHRI, the unique ability to engage with UN human rights bodies, and our membership in the Asia Pacific Forum of NHRIs. The Office acknowledges the support of APF throughout its re-accreditation process and over the past five years.

“The [SCA's] decision is a culmination of efforts by this Office over five years ... reflecting persistence and tenacity in delivering results that are compliant with the Paris Principles against numerous challenges and meagre resources,” Samoa Ombudsman Luamanuvao Katalaina Sapolu said.

The Office is now in the process of submitting its seventh State of Human Rights Report to the Legislative Assembly on the status of freedom of opinion and expression in Samoa.

South Australia

Council's service provision to Aboriginal community found to be unlawful, unreasonable, and wrong

The South Australian Ombudsman has concluded an [investigation into the District Council of Coober Pedy](#) (the Council). The investigation concerned the Council's actions as the retailer of water and electricity to the town's Aboriginal community members.

The investigation was prompted by the Aboriginal Legal Rights Movement on behalf of a significant number of members from Coober Pedy's Aboriginal community.

Our Office concluded that:

- The Council acted in a manner that appears contrary to law, because the Council acted contrary to the conditions within the Water Industry Retail Licence and Electricity Retail and Distribution Licence;
- The Council acted in a manner that was wrong by failing to ensure customers were informed of the impact of Financial Hardship Agreements on water and electricity payments;
- The Council acted in a manner that was unreasonable, unjust and wrong by acting in a manner that appears contrary to the Hardship Policies for water and electricity customers.

In his investigation report, the Ombudsman explained:

“At the core of this investigation is the very serious concern that Aboriginal community members of Coober Pedy have been allowed to accumulate considerable debts in relation

Though many of the alleged actions of the Council occurred under a different administration, the current has expressed a commitment to implementing the Ombudsman's recommendations.

The Ombudsman has also recommended that the State Government consider alternative distribution models for water and electricity in Coober Pedy to relieve its burden on the Council. The State Government is now collaborating with the Council to explore options.

Taiwan



Conference held to understand common judicial complaints

As more than 40 percent of judicial complaints submitted to us at the Control Yuan (CY) involve fundamental human rights issues, we held a conference with the Taiwan High Prosecutors Office (THPO) to discuss the typical cases we receive.

The THPO shared a wealth of information regarding convictions, legal procedures, and common misconceptions to help inform our work:

Retrial requests THPO prosecutors advised that most retrials are based on new key evidence, such as DNA or other forensic findings. A statement that a confession is not credible, however, is generally insufficient as 'new evidence'."

Verifying case funding The THPO clarified that the purpose of case fund verification is to protect the execution and seizure of the proceeds of crime. THPO prosecutors also reminded participants that the scope of fund verification should be as transparent as possible and that other investigative methods should be used to discover perpetrators' motives. This was very enlightening for the CY considering the fund verification methods required under the Sunshine Acts.

Technical procedures The THPO introduced us to the court-authorized monitoring equipment used to enforce the Code of Criminal Procedure. At present, subjects are monitored by different technical devices that are assigned in proportion to their case

position.

The CY looks forward to arranging more informative exchanges with ministries and agencies in the future. Such interactions will be invaluable in boosting our staff's capacity to monitor and protect the rights of Taiwan's citizens.

Tonga

Ombudsman enshrined in Tongan constitution on Vicennial anniversary

On 18th August 2021—the Vicennial (20th) Anniversary of the Office of the Ombudsman Tonga— His Majesty assented to our Office's Constitutional status in an amendment to the Act of Constitution of Tonga.

Lord Fakafanua, Speaker of the Legislative Assembly and guest of honour at the Vicennial Anniversary Celebration, commended this major milestone and the importance of our role when delivering the keynote address:

“... [T]here is no doubt that the role of the Ombudsman has proven to be pivotal in the protection of the rights and interests of the citizens of Tonga and as a vital tool of democracy. The rigor with which the Ombudsman and his office have overseen the work of the government and government officials has been significant and effective, and the Ombudsman and his very capable staff should all be proud.

[...] The success of the first two decades should serve as a powerful and sobering reminder of the substantial and fundamental duties that has been given to you, the Ombudsman, to continue to lead this institution further forward and to render it more capable of serving the citizens of Tonga.”

The theme of the Vicennial Anniversary Celebration was “V. V. V. Good Governance”—three V's to promote vaccinations against COVID-19, being victorious in good governance, and the milestone of the vicennial anniversary.

Vanuatu

Leadership Code activities and report on the Members Education Support Scheme

In 2020, the Ombudsman of the Republic of Vanuatu received a new function under the

In June 2021, the Ombudsman conducted Leadership Code Awareness Training with senior Executives of Government ministries and new directors. Ombudsman Hamlison Bulu talked about the Leadership Code and the requirements to comply with it. He went on to talk about the role of the Ombudsman and the reasons why it is essential to have an Ombudsman.

The discussions included the obligations of leaders to file annual returns and the reasons behind the filing of such returns. The Ombudsman also mentioned there is an urgent need to strengthen the Ombudsman's capacity, in terms of funding and human resources to better perform its functions. Leaders must declare their assets and liabilities to ensure transparency. In September 2021, Ombudsman Bulu commenced the prosecution of 15 leaders who failed to file their annual returns.

The Ombudsman also issued a public report on his own-initiative investigation into the Establishment and Management of the Members Education Support Scheme (MESS) by the Vanuatu National Provident Fund (VNPF) Board and the Ministry of Education and Training (MOET). MESS was set up to assist parents who are members of the VNPF to finance tertiary education. Ombudsman Bulu found that:

- The Minister of Education and MOET failed to carry out consultations with stake holders on the new policy
- The Minister of Education and Training and the MOET breached the Government Act (CAP 243) by failing to take the policy to the Council of Ministers and obtaining its approval on the policy
- The General Manager of the VNPF Board failed to carry out consultations with members of the Fund and other stake holders before finalizing the policy of the MESS
- MESS was not approved by the Council of Ministers or Development Committee of Officials.
- MESS was created by MOET and the Vanuatu National Provident Fund Board outside the requirements of the law
- The MOU was in breach of the requirements of the Government Act
- No internal rules or guidelines were agreed to by the parties to the MOU to ensure the smooth implementation and administration of the scheme

The following recommendations were made by Ombudsman Bulu:

- Terminate the MESS Scheme and re-negotiate the terms and conditions. However, if the parties insist on MESS's continuation, parties must take the matter for approval to the Council of Ministers.
- VNPF to continue its support for current recipients but avoid new recipients until the scheme is properly set up.

MOET concentrates on Vanuatu Government Scholarships and leave MESS to VNPF under its commercial arrangements.



COVID impact continues

As Melbourne becomes the world's most locked-down city, COVID-19 continues to impact my workforce and the complaints we receive.

Staff continue to work from home and deal with increasingly challenging behaviour from a frustrated public. COVID-related issues now include not only complaints about lockdowns, curfews and border closures, but also vaccine mandates.

I tabled my [Ombudsman for Human Rights: a Casebook](#) report in August, which illustrated several such cases, as well as making the broader point that human rights is often a balancing act between individual freedoms and those of the community.

We do not investigate all complaints alleging human rights breaches as it is reasonable to impose restrictions on people's liberty during a global health emergency—but we have closely scrutinised more questionable decisions.

The most recent example of these is the investigation I launched into interstate border permits in September due to a number of complaints from Victorians unable to get home. Since Victoria closed its borders in July 2021, many Victorians stuck outside the border have faced homelessness and complained about an unfair system which had refused them permits.

These and a multitude of other complaints and investigations keep my staff very busy, and it is a matter of considerable pride that despite enduring the world's longest lockdown, we continue to provide a service to the public both by phone and online every business day.

Deborah Glass
Victorian Ombudsman

New investigation report

As APOR members may know, I have an important responsibility to review child deaths. Arising from this responsibility, I undertook a major own motion investigation, [Preventing suicide by children and young people 2020](#) (the Investigation), tabled in Parliament on 24 September 2020.

From my findings in the Investigation, I made seven recommendations about ways to prevent or reduce the deaths of children and young people by suicide. The Mental Health Commission, Department of Health, Department of Communities and Department of Education each agreed to these recommendations.

In 2016-17, I gave a commitment to Parliament that, following the tabling of each major own motion investigation, my Office would undertake a comprehensive review of the steps taken by government agencies to give effect to our recommendations and then table the results of this review in Parliament twelve months after the tabling of the major own motion investigation.

Accordingly, I was pleased to provide Parliament with [A report on the steps taken to give effect to the recommendations arising from Preventing suicide by children and young people 2020](#) in September 2021.

I was very pleased to report to Parliament that I have found that steps have been taken to implement the recommendations or have been proposed to be taken. In no instance have I found that *no* steps have been taken to implement the recommendations.

In undertaking this review, it is evident that there is a positive emphasis on collaboration between the agencies. This is vitally important as the tragedy of suicide by children and young people cannot be prevented by a single program, service, or agency working in isolation. My Office will continue to monitor and report on how these recommended steps are taken to see that they do not end with the tabling of this report.

Annual report

I also tabled my [2020-2021 Annual Report](#) in September, which highlights our team's past twelve months of work:

- My office finalised 96% of complaints within 3 months;
- Since 2007, my office has decreased the time to resolve complaints from 173 to 45 days and reduced the cost of resolving complaints by 36%;
- 100% of my recommendations were accepted for the fourteenth consecutive year;
- In relation to my function to review child deaths and family domestic violence fatalities, my office received 40 investigable child deaths and 9 reviewable family and domestic violence fatalities, as well as made 14 recommendations on ways to prevent or reduce these deaths and fatalities;

from the Ombudsman's *Investigation into ways that State Government departments and authorities can prevent or reduce suicide by young people 2014* and a further investigation into ways that State Government departments and authorities can prevent or reduce suicide by children and young people;

- My office undertook a range of work to implement our inaugural *Aboriginal Action Plan*; and
- My office enhanced awareness and access to the Office for children and young people through a range of mechanisms.

My office also enhanced regional awareness and access to the Office through a visit to Northam and Merredin in the Wheatbelt Region, a visit to the Indian Ocean Territories, a webinar for community service organisations across the Pilbara Region, and an information stall at the Wagin Woolorama Agricultural Show.

Chris Field
Western Australia Ombudsman

2020 – 21 APOR annual reports

Compiled below are annual reports published by APOR members for the 2020/21 reporting year.

- [Australian Commonwealth Ombudsman](#)
- [Hong Kong SAR Ombudsman](#)
- [New South Wales Ombudsman](#)
- [New Zealand Ombudsman](#)
- [Ombudsman Northern Territories](#)
- [Ombudsman South Australia](#)
- [Ombudsman Tasmania](#)
- [Ombudsman Western Australia](#)
- [Queensland Ombudsman](#)
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