

Functions, responsibilities and desired attributes of Chief Ombudsman

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Purpose of the role

The Chief Ombudsman is an Officer of Parliament, appointed by the Governor General on the recommendation of Parliament. The Chief Ombudsman is responsible to Parliament and independent of government (and the Crown).

The purpose of the role is to be a robust, independent and impartial oversight mechanism for Parliament, by providing their opinion on the use of executive powers and the exercise of administrative discretion, and making any recommendations for change they may consider necessary. The role is a personal one, and the opinion cannot be delegated to staff or others. The Chief Ombudsman operates largely through mana, persuasion and evidence-based opinion.

In New Zealand, the Ombudsman is currently asked by Parliament to provide oversight of a number of our country's key democratic and human rights measures aimed at safeguarding people's rights and promoting government accountability and transparency. This is carried out through a mixture of reactive work, including complaint handling and responding to protected disclosures, and proactive interventions through monitoring serious incidents and compliance with international conventions, self-initiated investigations, and provision of advice, guidance and learning.

The Chief Ombudsman is expected to report their own view as to whether people are being treated fairly, or that there should be changes in the way the government is operating to either remedy an individual injustice they believe has occurred or to address vulnerabilities they believe exist in the system. This role helps ensure there is a high level of public trust in the New Zealand government and our democracy.

The Chief Ombudsman is also the employer of their staff and is responsible for administering the office. They must provide leadership and strategic direction, seek from Parliament the resources needed to fulfil their functions effectively and efficiently, and meet operational objectives by ensuring staff capacity and capability are in place, building a high performing, collegial and respectful culture, and managing resource allocation and risk appropriately.

Outcomes and impacts

The desired outcomes of the Chief Ombudsman's work are that:

- there is a high level of public trust in government;
- people's rights are respected, protected, and fulfilled;
- Parliament is assured robust, independent oversight is taking place; and
- New Zealand contributes to regional stability and supports integrity institutions.

The intended impacts of the Chief Ombudsman's work are that:

- people are able to participate in government decision making;

- government is responsive, efficient, effective and accountable;
- government actions, systems, processes and legislation are open, fair and reasonable;
- people in positions of power act with integrity;
- people are treated humanely, with dignity and respect, by those in authority; and
- New Zealand is a leader in promoting good governance, anti-corruption and integrity.

Chief Ombudsman functions

The Chief Ombudsman's functions are assigned by Parliament. They currently include to:

- Resolve and investigate complaints about decision making and conduct in the public sector across central and local government,¹ under the Ombudsmen Act 1975.
- Review, investigate and resolve complaints about decisions made by Ministers and public sector agencies on official information requests, under the Official Information Act 1982 and Local Government Official Information and Meetings Act 1987.
- Contribute to wider improvement across the public sector by:
 - proactively investigating general compliance and good practice by public sector agencies in managing and responding to official information requests;² and
 - proactively identifying, resolving and investigating issues with public sector administration and decision making.³
- Provide enhanced oversight of the Oranga Tamariki system under the Oversight of Oranga Tamariki System Act 2022, including statutory requirements to:
 - have regard to the best interests and voices of children and young people;
 - resolve and investigate complaints about Oranga Tamariki and its care or custody providers, in a way which:
 - › is visible and accessible to children, young people and their family, whanāu, hapū and iwi;
 - › incorporates a tikanga Māori approach; and
 - › recognises and involves the child, young person, and their family, whanāu, hapū and iwi;

¹ Covers approximately 4,000 agencies, including some organisations providing services on behalf of government such as Oranga Tamariki care or custody providers.

² Under the Ombudsmen Act.

³ Above, n 2.

- provide guidance to Oranga Tamariki and its care or custody providers on their own complaints handling processes;
 - proactively monitor, resolve and investigate critical and serious incidents, complaint trends, and any other matters the Ombudsman considers appropriate;
 - make reasonable efforts to develop arrangements with hapū, iwi and Māori organisations, to support the Ombudsman’s complaints handling; and
 - work together with the Independent Children’s Monitor (Aroturuki Tamariki) and Mana Mokopuna (Children and Young People’s Commission), and share information as appropriate.
- Respond to requests for advice and guidance about making protected disclosures, receive protected disclosures, oversee investigations by public sector agencies of alleged serious wrongdoing, and directly investigate alleged serious wrongdoing, under the Protected Disclosures (Protection of Whistleblowers) Act 2022.
 - Monitor and examine places of detention under the *United Nations Optional Protocol to the Convention Against Torture*, to prevent torture or other cruel, inhuman or degrading treatment or punishment. The Ombudsman is the *National Preventive Mechanism* currently designated under the Crimes of Torture Act 1989 for:
 - prisons and people otherwise in the custody of Corrections;
 - public protection order residences;
 - approved immigration premises;
 - health and disability places of detention (including for mental health, intellectual disability, addiction treatment, isolation and quarantine facilities, and privately run aged care facilities); and
 - court facilities (jointly with the Independent Police Conduct Authority).
 - Protect and monitor disability rights, as part of New Zealand’s *Independent Monitoring Mechanism*⁴ under the *United Nations Convention on the Rights of Persons with Disabilities*.
 - Respond to formal consultations that assist public sector agencies and Parliament to make specific decisions, including:
 - providing comment to the Ministry for Transport on applications for authorised access to personal information on the Motor Vehicle Register, under the Land Transport Act 1998;

⁴ Together with the Human Rights Commission and Disabled People’s Organisations Coalition.

- providing comment to the New Zealand Customs Service on information disclosure agreements with private sector organisations, under the Customs and Excise Act 2018;
- providing comment to the Cabinet Office on the proactive release of information from the Ministerial conflicts of interest register; and
- providing assistance to the Petitions Committee with the consideration of petitions.
- Learn from, and assist to develop, international best practice in the areas of good governance, accountability, transparency and anti-corruption. This involves taking a global leadership role and working with other integrity institutions to build and improve tools, frameworks, methodologies, learning and resources, with a particular focus on the Pacific and Asian regions.
- Report on the Ombudsman’s work by:
 - publishing reports, where that is in the public interest or the interests of the parties involved, under the Ombudsmen Rules 1989; and
 - reporting to the Prime Minister and to Parliament.

In carrying out their functions, the Chief Ombudsman has essentially the same powers as a Commission of Inquiry. These are provided for in legislation.

An important function of the Chief Ombudsman is to give visibility to the role, and to ensure that their purpose and availability are made known to New Zealanders. The Chief Ombudsman provides targeted services to the public and agencies, including by:

- Informing the public to enable them to take constructive action to realise their rights, through:
 - providing useful and accessible information in a variety of formats;
 - ensuring the accessibility of Ombudsman services to all New Zealanders;
 - undertaking community outreach engagements; and
 - providing effective and timely responses to media and discussion in public forums.
- Improving public sector capability to do its work and make decisions, through:
 - commenting on draft legislation, Cabinet papers, and internal agency policy and procedures;
 - making submissions to international bodies;
 - providing on-line and in person learning, for agencies subject to the Ombudsman’s jurisdiction; and
 - providing advice, and publishing guidance and tools, for agencies subject to the Ombudsman’s jurisdiction.

When there is more than one Ombudsman, the Chief Ombudsman will also co-ordinate and allocate (but not oversight) their work.

Ombudsman structure

The Chief Ombudsman is currently supported in their functions by approximately 240 staff (plus a small number of contractors).

Under law, there is no 'office' or 'organisation' as such. The Ombudsmen Act provides for the Chief Ombudsman as the office holder, and under section 11 the Chief Ombudsman '*may appoint such officers and employees...as may be necessary*'. Staff are specifically stated to not be employed in the service of the Crown, and so are not public servants.

Section 11 also provides that the Chief Ombudsman has all the rights, duties and powers as an employer, and must comply '*with the principle of being a good employer*'.

The Chief Ombudsman is able to delegate all functions to their staff, except for the power of delegation and the power to make a report (form a final opinion and recommendations where the conduct of an agency is subject to criticism).

Key internal relationships

The Chief Ombudsman's key internal relationships are with members of the Senior Management Team (comprising the Deputy Ombudsman, Chief Legal Advisor, Chief Financial Officer, Senior Assistant Ombudsman and four Assistant Ombudsmen).

The Chief Ombudsman also has extensive interactions with all staff, as they work to support and assist the Chief Ombudsman across all aspects of their functions and responsibilities.

Key external relationships

The Chief Ombudsman interacts regularly with the Speaker and Select Committees.

The Chief Ombudsman engages with leaders such as the Auditor General, Public Service Commissioner and Local Government New Zealand President, and other heads of integrity organisations such as the Chair of the Independent Police Conduct Authority, Privacy Commissioner and Chief Human Rights Commissioner.

The Chief Ombudsman engages with (and where required for an investigation may formally interview) Ministers of the Crown, Mayors and Chief Executives across some of the 4,000 public and private sector agencies subject to the Ombudsman's jurisdiction.

The Chief Ombudsman presents at learning forums attended by large numbers of public sector staff, as well as at New Zealand and international conferences.

The Chief Ombudsman undertakes media interviews, for television, radio and print media.

The Chief Ombudsman engages at a high level with the public, including heads of media organisations, heads of community advocacy groups, iwi leaders, and leaders of other diverse groups such as Pasifika, Asian communities, youth organisations, disability groups, rainbow communities and older New Zealanders.

As part of New Zealand's constitutional framework, the Treaty of Waitangi/te Tiriti o Waitangi means that the Ombudsman must have a close working relationship with Māori. It is proper that the Chief Ombudsman particularly engages with Māori in a formal as well as informal fashion.

The Chief Ombudsman engages with their international counterparts, including Ombudsmen, Information Commissioners, United Nations Representatives, and other integrity institutions.

Chief Executive responsibilities

The Chief Ombudsman has all the responsibilities of a Chief Executive of a medium-sized organisation, including:

- Agreeing the annual service performance measures with the Speaker, and reporting on achievement against these measures in an annual report to Parliament.
- Maintaining a strong relationship with the Speaker, and reporting to the Speaker and members of the Officers of Parliament Committee on the Ombudsman's functions and all matters affecting the ability of the Ombudsman to meet the agreed service performance measures.
- Reporting to other Select Committees as required, including the Governance and Administration Committee, and the Finance and Expenditure Committee.
- Engaging with Parliament and Treasury on the Vote Ombudsmen appropriation, to ensure appropriate resource to carry out the Ombudsman functions.
- Developing and maintaining strategic relationships and networks at a high level with key stakeholders, within New Zealand and internationally.
- Providing high-level leadership and strategic direction for staff and contractors.
- Setting and monitoring overall business priorities and the annual work programme.
- Ensuring the effective and efficient management of people, financial, information, digital, and physical resources and assets.
- Oversight of the appointment and management of staff and contractors required for the efficient carrying out of the functions, duties and powers of the Ombudsman.
- Carrying out all duties and powers of an employer, and operating a personnel policy that complies with the principle of being a good employer.
- Promoting the Ombudsman values agreed with staff, and role-modelling a collegial and respectful culture.

- Oversight of finances to ensure prudent expenditure which facilitates achievement of business objectives and effective management of financial risk.
- Ensuring all legal obligations are met, and oversight and management of legal and reputational risk.
- Health and safety responsibilities for all staff, contractors and visitors as the *Person Conducting a Business or Undertaking* (PCBU).
- Approval of policies and procedures for staff and contractors.
- Oversight of physical, personnel and information/cyber security.
- Ensuring emergency planning and business continuity arrangements are in place.

Desired attributes

- Must be able to engender the trust and confidence of Parliament, government agencies and the public, as to their perspective, opinion and recommendations.
- Must have a sound understanding of, and strong belief in, New Zealand's constitutional framework and the unique position of an Officer of Parliament.
- Must have the ability to operate with independence and impartiality, and to display impeccable integrity.
- Must have a track record in highly regarded positions, and a reputation without blemish.
- Must have the confidence to call out demonstrable wrongdoing, both publicly and privately, to support any change they see as necessary.
- Must demonstrate a keen sense of fairness and reasonableness, and have an ability to form credible, evidence-based opinions.
- Must have an ability to explain complex matters, influence and persuade at a high level.
- Must demonstrate discretion, professionalism and an ability to meet the statutory requirements for confidentiality and secrecy.
- Must have good knowledge of tikanga Māori and how it should be considered appropriately by an independent Officer of Parliament.
- Should be able to engage with Māori and other cultures respectfully, for example by speaking Te Reo Māori, if not fluently, then correctly and reasonably.

Qualifications

- A relevant tertiary qualification is essential, preferably in public or administrative law, public administration, or a related discipline.
- Qualifications in business or management are highly desirable.

Knowledge

- Good awareness of the constitutional role of an Officer of Parliament, and of the special relationship with the Speaker and the Officers of Parliament Committee.
- Clear understanding of the role of the Ombudsman in contemporary New Zealand society.
- Clear understanding of the Ombudsman's jurisdiction and operating legislation, and international conventions.
- Sound knowledge of the machinery of government, legislative process, the policy development process, and how to influence change in the public sector.
- Good understanding of current New Zealand central and local government practice, the context in which those agencies operate, and the challenges they face.
- Good understanding of the principles of good decision making and administrative law concepts.
- Broad understanding of human rights, different cultural norms, diversity and inclusion.
- Understanding of Te Ao Māori, Te Reo, tikanga Māori, and the Treaty of Waitangi/Te Tiriti o Waitangi.

Experience

- Experience at a high level in public administration, giving an understanding of the conventions of Parliament, the current political environment and the interface between Parliament and the Executive.
- Experience in working directly with, and influencing and persuading, Ministers, Mayors, Members of Parliament, Chief Executives and Board members.
- Experience in engaging widely across the community and with diverse groups.
- Proven experience in successfully leading and managing an organisation of high performing professionals at executive level.
- Proven organisational development experience and ability to build the capability of an organisation to respond to changing circumstances and manage change successfully.

Skills and abilities

- Outstanding ability to engage, persuade and influence.
- Expertise in managing internal and external relationships with a variety of stakeholders at a high level, and in a challenging environment.
- Wisdom and a high degree of sound, practical judgement, with the capability to show common sense, ascertain the views of others, and be decisive.
- Ability to understand complex issues, including legal and financial matters, and complex fact scenarios.
- Proven analytical and problem solving abilities, including the ability to apply intellectual rigour to analysing issues and developing creative solutions which are appropriate and aligned with the objectives of the law and good practice.
- Exceptional written and oral presentation skills, ability to convey information and ideas accurately and logically, and articulate matters credibly.
- Ability to provide effective leadership at a high level, including through role modelling expected behaviours and sustaining high integrity and standards.
- Demonstrated ability to think strategically and develop and successfully implement long term strategies.
- Demonstrated ability to work as part of a high performing and collegial senior leadership team, and to delegate responsibilities effectively.
- Commitment to fairness, equity and transparency in the management and treatment of staff.
- Demonstrated ability to operate successfully and innovatively within fiscal constraints without a deterioration in service or performance.
- Resilience and willingness to engage with highly distressed and aggrieved people, and to deal with very distressing information and subject matter.
- Willingness to support staff to effectively manage unreasonable complaint conduct and security risks.
- Willingness and ability to support managers to address any staff conduct and performance issues in a timely and effective manner.
- Ability to effectively prioritise and execute work in a high pressured environment.
- Ability to engage appropriately and communicate clearly with people from a wide range of cultural and social backgrounds.

Other requisites

Security clearance

While not a legal requirement,⁵ the convention is for the Chief Ombudsman to obtain a Top Secret Special Security Clearance.

Conflict of interest

Under section 4 of the Ombudsmen Act, the Chief Ombudsman must not hold any other office of trust or profit, or engage in any other occupation for reward, outside the duties as Ombudsman, without the approval of the Prime Minister.

It is desirable for the Chief Ombudsman to not hold other roles or connections which could give rise to a real or perceived conflict of interest. For example, roles related to the public sector (central and local government), connections to private sector organisations where the Ombudsman has oversight (such as aged care facilities, care or custody providers), or connections to advocacy organisations.

Location

The Chief Ombudsman primarily works from the Wellington office where the majority of staff are based, with a smaller office in Auckland.

Travel

Availability to travel, around New Zealand and internationally.

⁵ Under section 19 of the Ombudsmen Act, the Chief Ombudsman may require '*any person*' to provide '*any... information, and to produce any documents or papers or things,*' notwithstanding any statutory requirement of secrecy or non-disclosure. This is subject only to the privileges witnesses have in court or a certificate from the Attorney-General that providing the information to the Ombudsman might cause specific prejudice.