

Roles and functions of Ombudsman and current complaint mechanisms in Pacific Islands

This paper details of how Ombudsman and non-Ombudsman complaint handling mechanism varies between different Pacific Islands. Key themes for consideration include:

- Avoiding having multiple avenues of complaint by having a hierarchy or tiers of complaint handling. The agency/ministry concerned has the opportunity to deal with a complaint first. If a complainant is still dissatisfied they can go to an Ombudsman or other non-legislated complaint mechanism.
- Under the classic Ombudsman model, an Ombudsman has no power to coerce or enforce decisions or recommendations. Rather they rely on persuasion, good faith and reason to achieve compliance with recommendations.
- The benefits of a well publicised complaint mechanism where members of the public can make complaints about government services.
- The usefulness of having nominated staff in ministries who deal with complaints.
- Using information from complaints to improve government services.

The paper is organised as follows:

1. Overview of why complaints are important
2. Different structures for complaint handling systems
3. The key principals of the classic Ombudsman model
4. Summary of the key features of current complaint mechanisms in other Pacific Islands
5. References.

1. Overview: Why are complaints important?

The ability of citizens to hold their government to account is fundamental to a working democracy. The rule of law requires that parliament is ultimately accountable to the voters, and one of the important ways to do this is by voters having access to the services that governments promised to deliver. Citizens should also be able to see that government money is being spent lawfully and on the priorities that were agreed by the citizens when they elected that government. A way of complaining about services or misuse of government funds, and a mechanism for using those complaints to change operations, is an important way for the public to control government actions on a day-to-day level.

2. Different structures for complaint handling systems

There are five fundamental principles that a good complaint system should have, regardless of its structure:

- fairness
- accessibility
- responsiveness
- efficiency
- integration.

In theory an effective complaint handling system does not need a legislative basis. An officer in a central government agency can be empowered to deal with complaints. It is also hard to compare complaint handling systems. Community expectations and government acceptance will vary greatly between countries. Even processes and systems set up at the same time in a similar way can operate differently in different countries.

3. The key principals of the classic Ombudsman model

The following key principles underpin an Ombudsman Office:

- independence and impartiality
- promotion of fairness, transparency, accountability
- resolution of maladministration in the public interest (rather than being an advocate)
- fostering procedural fairness
- encouraging and helping agencies to set up and maintain effective complaint handling systems to better handle complaints about themselves and use the feedback to improve the way they do things.

Under the classical model, an Ombudsman deals with maladministration in the public domain.

An Ombudsman has no power to coerce or enforce decisions or recommendations and relies on persuasion, good faith and reason to achieve compliance with recommendations.

The classical Ombudsman is a supplement to existing ways of getting remedies - for example courts, tribunals or Parliament.

The following factors are important for an Ombudsman to operate effectively:

- independence – often done through establishing the office in the constitution or superior law
- bi partisan appointment process to ensure it is not a political appointment
- protection from dismissal
- powers to investigate effectively
- persuasion and publicity to implement recommendations

- personal qualities of the Ombudsman.

What do you need to set up an Ombudsman?

Legislation

The following table sets out the essential elements of any Ombudsman legislation.

Description	Objective
Creation of office	To give the office a status for the purpose of the legislation and other legislation
Appointment	To provide a clear process for a person to become Ombudsman
Term	To provide certainty and confidence to the Ombudsman and those dealing with the Ombudsman
Early end	To set the conditions for Ombudsman to lose office
Functions	What the Ombudsman does
Jurisdiction	Things and events in relation to which the Ombudsman may or may not act
Powers	What the Ombudsman can do
Process	How the Ombudsman is to act
Protection	Enabling comprehensive investigation without reprisal
Reporting	The Ombudsman's power to report
Annual reports	The Ombudsman's duty to report
Offences	Creating criminal offences to encourage cooperation and complaints
Relationship to courts	Extent to which Ombudsman is answerable to courts and tribunals
Secrecy	Liability for disclosing information

The following table sets out the desirable elements of Ombudsman legislation:

Object	To set out why the Ombudsman exists
Assertion of independence	To spell out the Ombudsman's independence
Acting appointment	To fill the office of Ombudsman during vacancies
Resources	To ensure the Ombudsman has adequate resources
Standards	To enable the Ombudsman to set standards
Statements	To enable the Ombudsman to publicise matters in the public interest
Support	To enable the Ombudsman to be assisted
Delegation	To enable the support staff to take action

Ceasing investigation	To enable the Ombudsman not to investigate every matter
Minor issues	To deal with matters not warranting a report
Consultation	To facilitate resolution
Information gathering	To facilitate informal investigation
Delay	To compel action
Advisory opinion	To clarify difficult areas
Non compliance mechanism	To enable recommendations to be achieved

4. Summary of the key features of current complaint mechanisms in other Pacific Islands.

Who deals with complaints in other Pacific Islands (based on POA member organisations):

Country	Complaint mechanism
Cook Islands	Ombudsman
East Timor	Provedor
Nauru	Audit Office
Niue	Secretary, Department of Lands and Justice under the Complaint Handling Ombudsman Backed Services (CHOBS)
Palau	Ombudsman
Papua New Guinea	Ombudsman
Republic of the Marshall Islands	Auditor-General
Samoa	Ombudsman
Solomon Islands	Ombudsman
Solomon Islands LCC	Leadership Code Commissioner
Tonga	Commissioner for Public Relations
Tuvalu	No official institution deals with complaints

Vanuatu	Ombudsman
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Overview of mechanisms in other Pacific Islands

Cook Islands

The office of the Ombudsman of the Cook Islands was established after the Ombudsman Act was passed in 1984. The Ombudsman is appointed by the Queen's Representative on advice of the Prime Minister. The Ombudsman is an officer of, and responsible to, Parliament.

The *Ombudsman Act 1984*, the *Official Information Act 2008* (OIA) and the *Disability Act 2008* (Disability Act) determine the jurisdiction of the Ombudsman. As well as dealing with complaints from the public and own motion investigations, the office may also have matters referred to it by the Prime Minister or Parliamentary Committees.

The Ombudsman takes complaints from members of the public about a range of issues of concern. All complaints to the Ombudsman must be made in writing. Some are referred to more appropriate agencies, some are resolved without investigation and the remainder are investigated by the office.

The Ombudsman may decide not to investigate matters that the complainant has had knowledge of for more than 12 months before approaching the Ombudsman, when the subject matter is trivial, frivolous, vexatious, vindictive or not made in good faith, or where the complainant has insufficient personal interest in the matter.

The Ombudsman may take evidence on oath. Following an investigation the Ombudsman can report his or her findings and make recommendations. If, in the Ombudsman's opinion, the department's response to the recommendations is inadequate, the report may be made available to the Prime Minister and Parliament.

Nauru

Complaints are dealt with in a number of ways including by the Audit Office which deals with complaints about fraud. Public servant grievances are dealt with by the Public Service Commission and forwarded to the Chief Secretary with recommendations.

Niue

The Complaint Handling Ombudsman Backed Services (CHOBS) mechanism was started in 2010 and established under a government directive, with a part-time officer in the Ministry for Justice dealing with complaints about other government departments. It is limited to administrative decisions, not those of Parliament or the Public Service Commission which has its own appeals process. CHOBS is not an advocate for either the complainant or government, rather it works to provide even-handed investigations to assure citizens that departments are acting properly or in the case where this is not happening, provide recommendations to remedy the situation. The New Zealand Ombudsman provides external support. The aim of CHOBS is to improve public administration through recommendations for better procedures, training, management and individual complaints from the public.

Papua New Guinea

The independent Ombudsman Commission of Papua New Guinea was established by the Constitution on independence in 1975. An Ombudsman can only be removed from office for: inability to performance their functions, misbehavior, misconduct, as defined by the Leadership Code, or breach of any Organic Law that sets out their employment conditions. The Ombudsman Commission is required to report to the Parliament on the operation of the Commission every 12 months.

The Commission can investigate administrative conduct by national and provincial government bodies, a Minister or the Leader or Deputy Leader of the Opposition. It can also investigate discriminatory conduct and the conduct of leaders under the Leadership Code.

As well as dealing with complaints from members of the public, the Commission conducts investigations on its own initiative into administrative conduct that may be of concern, These investigations often arise from trend analysis of complaints that identify particular areas of concern, or when the Commission becomes aware of an administrative issue by means other than a complaint. The focus is usually on systemic problems, such as the agencies' procedures or defects in legislation. The Commission also operates extensive education and training programs including community education of the roles of the Commission and education for governmental bodies.

The Commission has a discretion not to investigate if the complaint is trivial, frivolous, vexatious or not made in good faith, is not within jurisdiction, the complainant has available to him another remedy or channel of complaint that he could reasonably be expected to use, they do not have sufficient interest in the subject of the complaint or the complaint has been too long delayed to justify an investigation, it has before it matters more worthy of its attention or it has insufficient resources.

The Commission has powers to require information be given on oath. The Commission is a recommendation body and can publish the results of any investigation by forwarding it to specified government officials. The Ombudsman can also require the results of an investigation to be tabled in the Parliament. The Commission may refer a leader to the Public Prosecutor if satisfied that a leader is guilty of misconduct.

Samoa

The Office of the Ombudsman in Samoa was established by the *Ombudsman) Act 1988* and became effective with the appointment of the first Ombudsman on 29 October 1990.

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

The Ombudsman can investigate administrative complaints about government agencies but not administrative actions that are subject to a right of appeal or objection or review on the merits by a court or tribunal. The Ombudsman may conduct own motion investigations that suggest possible systemic issues. The office delivers education programs to government agencies and members of the public on the roles and functions of the Ombudsman.

The Ombudsman may refuse to investigate a complaint if it appears that:

- there is an adequate remedy or right of appeal for the complaint
- the complaint is trivial, frivolous, vexatious or is not made in good faith
- the complainant has no sufficient personal interest in the complaint
- the complaint is more than 12 months old
- the complaint is outside jurisdiction.

The Ombudsman can require the production of information and can summon and take evidence on oath. The Ombudsman may enter and inspect any premises of agencies subject to the Act. After completion of an investigation the Ombudsman reports his opinion and reasons to the agency and makes recommendations. The Ombudsman can also table such reports in Parliament.

Solomon Islands

The Office of the Ombudsman of Solomon Islands (OOSI) was established as an independent body under the Constitution of 1978. The OOSI commenced operation on 1 July 1981.

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

The Ombudsman cannot investigate complaints in certain circumstances including:

- where there is still another way of settling a complaint such as appealing to the Minister or by going to court
- about private persons, companies or organisations
- where the complaint is merely frivolous or vexatious
- where the subject-matter of the complaint is trivial
- where the person aggrieved has no sufficient interest in the subject-matter of the complaint
- where the making of the complaint has, without reasonable cause, been delayed for more than 12 months.

The Ombudsman can summon any person and hear evidence on oath, compel the provision of documents and enter premises at any time in order to carry out an investigation. If the Ombudsman considers that remedial action is needed, the Ombudsman must report his opinion and reasons to the agency concerned, including recommendations, and send a copy of to the Prime Minister and to any Minister concerned. If no action is taken in a reasonable time the Ombudsman can make a report to Parliament.

Kingdom of Tonga

The Office of the Commissioner for Public Relations was established by the *Commissioner for Public Relations Act 2001*. The Commission role is largely that of an Ombudsman office and the *Commissioner for Public Relations Act 2001* was modeled closely on the New Zealand *Ombudsman Act 1975*.

The Commissioner investigates complaints about the administrative actions of Government agencies excluding matters where there is a right of appeal to a court or tribunal, conduct of any person acting as legal adviser to the Crown and certain matters relating to the Tonga Defense Services.

The core function of the Commissioner is to receive and investigate complaints from members of the public as well as providing advice and guidance to departments and organisations about good administration and complaint handling, providing training in conducting investigations and complaint management and conducting customer service audits.

The Commissioner can require evidence to be given on oath and the production of documents. The Commissioner may also refuse to investigate a complaint if there is another remedy available. Complaints may also not be examined if they are trivial or vexatious.

At the conclusion of an investigation the Commissioner must report their opinion and reasons to the appropriate department, making recommendations. If within a reasonable time appropriate action has not been taken, the Commissioner may send a copy of the report and recommendations to the Prime Minister who is required to table the matter in the Privy Council.

Republic of Vanuatu

The first Ombudsman was appointed in 1994 and the *Ombudsman Act 1995* was enacted a year later. This Act was repealed in 1998 and replaced by the *Ombudsman Act 1998*.

The Ombudsman can inquire into the conduct of public servants, public authorities and ministerial departments, with the exception of the President and courts. This can be as a result of a complaint from a member of the public, at the request of a Minister, Member of Parliament, the National Council of Chiefs or Local Government Council or at the Ombudsman's own initiative. The Ombudsman also investigates complaints under the Leadership Code.

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

The 1998 Act placed some limitations on the Ombudsman's powers compared to the 1995 Act, for example, the staff of the Ombudsman's office are now regulated in the same manner as the other members of the public service. Under the 1995 Act staff were directly employed by the Ombudsman. The Ombudsman had the power to publish reports following enquiries and a lack of response could trigger a court

application by the Ombudsman to enforce recommendations. The 1998 Act does not contain a mechanism to enforce recommendations.