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Phone: xx xxx xxxx

The Rt Hon David Carter
Speaker of the House of Representatives
Parliament
Private Bag 18 888
Parliament Buildings
Wellington 6160

xx May 2015

Re: **Request for an inquiry into the Office of Ombudsmen's handling of complaints against the Health and Disability Commissioner (Ombudsman's reference # xxxxxx); and request also for your support for a wider inquiry and special performance audit into the Ombudsman's Office by the Office of the Auditor General (OAG)**

Dear Right Honourable Mr Speaker

[1] It is with some regret that I have no alternative but to approach your Office about a matter of greatest concern. As you do as Speaker of the House of Representatives hold the ultimate authority and an oversight responsibility over the Officers of Parliament, I must seek your assistance and guidance in resolving a sensitive, yet very important issue I have with the Office of the Ombudsmen. Please accept my request to your Office to launch a special inquiry into the handling, the assessment and decision making by investigating officer Xxxxx XXXXXXX at the Office of the Ombudsmen, in the case of two complaints I had filed against the Health and Disability Commissioner, which were combined under the Ombudsman's reference number xxxxxx. I must ask your Office to have fully investigated all relevant aspects of the professional conduct and performance of the mentioned investigating officer in relation to her processing of the mentioned two complaints. I ask you to establish, whether Ms XXXXXXX complied with all relevant procedures, processes and standards that must be followed at the Ombudsman's Office, and whether she also complied with the provisions of the Ombudsmen Act 1975 and other relevant law. Furthermore I must express my great concern about the way Chief Ombudsman Beverley Wakem refused to review the assessment and decision made by Miss XXXXXXX in relation to the mentioned complaints. It is my view that in this case the Chief Ombudsman regrettably failed to sufficiently fulfil her responsibilities as Ombudsman and as Miss XXXXXXX's employer, by not thoroughly examining my request for a review that I filed with her Office after receiving Miss XXXXXXX's response. While I make this request, I must also stress the following ongoing issues that appear to persist at the Office of Ombudsmen:

- unacceptably long complaints-assessment, processing and resolution times
- long delays in the Office's responses, even after repeated contacts seeking updates
- serious mistakes and omissions made by investigating officer(s) during assessments of complaints, affecting quality and standards of service the Office is meant to provide
- an investigating officer's apparent misrepresentation of complaint related details to the Chief Ombudsman; i.e. not admitting own mistakes and/or negligence
- poorly formed decisions made by the Chief Ombudsman to not investigate complaints, while failing to acknowledge or accept presented clear, compelling evidence
- stream-lining, reorganisation and restructuring leading to too many complaints being dismissed or treated as needing no (further) investigation
- questions about the appropriate allocation of financial and human resources in areas of need within the Office, which have only been increased insufficiently
- apparent non-compliance with provisions of the Ombudsmen Act 1975

- [2] I consider that the above mentioned, requested measures need to urgently be taken, and that they are in the public interest. The present situation at the Office of Ombudsmen is extremely unsatisfactory, as complainants are being denied justice. The stated concerns are aggravated by the fact that the Office of Ombudsmen appears to have been seriously under-funded for a number of years since well before 2012, while the Office's workload has increased substantially and disproportionately to available resources over the years. This has become evident from the annual reports the Office of Ombudsmen has released, as well as from many media reports. Public trust in the performance and quality of service by the Office of Ombudsmen are at risk of being seriously damaged due to the above stated issues (see [1]). I must also report to you, that I have made three requests to the Office of the Auditor General (OAG), dated xx August, xx November and xx December 2014, to conduct an inquiry into and a special performance audit at the Ombudsman's Office, but regrettably the Auditor General has decided to not proceed with this, as it appears it is her view that my concerns are more appropriately dealt with by your Office.

Own disturbing experiences with Office of Ombudsmen's complaints handling

- [3] Following two separate complaints to the Office of Ombudsmen (filed under their reference number xxxxxx), which related to two disputed decisions by the Health and Disability Commissioner (HDC), and which I filed with the Office on xx November and xx December 2013, I received two responses from Chief Ombudsman Beverley Wakem, that raise major, serious concerns about the quality, effectiveness, efficiency and appropriateness of internally followed operational procedures and processes. Crucial relevant evidence appears to not have been considered during an assessment of my complaints, and again also not upon a review I sought. Already a couple of years ago I had received at least one earlier decision from the Chief Ombudsman in another matter, which showed, that staff at the Office do at times make mistakes and may fail to consider relevant information, which appears to be due to rushed decisions being made, while working under extremely high work load pressures. My concerns were substantially heightened by another letter I received from the Office on behalf of Ombudsman Ron Paterson in yet another, separate complaint matter (ref. xxxxxx), which was dated xx May 2014. In that letter Mr Xxxxx Xxxxxx (Manager - Investigations and Resolution) wrote: *"Limited investigative resources to date have meant that this Office has been unable to progress your complaint as quickly as we would like"*. It relates to an Official Information Act 1982 (OIA) request based complaint that has been before the Ombudsman for nearly two years now. That letter, more recent correspondence and substantial other information confirm my sincere, justified concerns that were also reported on by various media outlets since already 2012. In a number of those reports, including even her own Offices Annual Reports, Chief Ombudsman Beverley Waken stated repeatedly herself that her Office was unable to cope with an increased work-load, while working with very limited funding.

Background

- [4] Upon sending the Ombudsman two separate complaints about the unacceptable handling of two earlier complaints by the Health and Disability Commissioner (HDC) on xx November 2013 and on xx December 2013, I did for four to five months receive no proper response at all from the Office of Ombudsmen. The two rather complex complaints (one being about 2 xxxxxxxx counsellors, and another about Work and Income 'designated doctor' xxxx xxxxx) had been handled by the HDC under their reference numbers C11HDCxxxxx and C12HDCxxxxx. A further email request for an update on my complaints, sent in on xx February 2014 was also not responded to. Only after repeated phone calls to the Office of Ombudsmen on xx and xx April, and again on xx May 2014, did I finally get assurances that my complaints had been received, and that they were now being progressed. Delayed by yet over another month after my first phone contacts in April last year, I eventually received a report and decision that had been formed and prepared by their investigating officer Xxxxx Xxxxxxx, but which was signed by Chief Ombudsman Beverley Wakem, and dated xx May 2014.
- [5] The decision from xx May 2014, prepared by Miss Xxxxxx, was not to investigate either of my two complaints. Some of her considerations in her assessment of my complaint were actually based on clear misunderstandings, and she even ignored very relevant evidence, that I had presented with my complaints. It appeared that Miss Xxxxxxx incorrectly thought I simply wanted to "appeal" the HDC's decisions, and expected her to review and overturn these decisions, by making determinations about my treatment by the xxxxxx counsellors and Dr Xxxxxxx. In any case she firmly and fully relied on comments made by Deputy Health and

Disability Commissioner Theo Baker and those by certain other staff members at the HDC Office. The Deputy HDC had herself fully relied on statements made by the Chief Executive of Waitemata DHB, and in the other HDC complaint matter also on Dr Xxxxx Xxxxxxx, which were though at least in part completely incorrect, irrelevant, flawed and unacceptable. It appears that Miss Xxxxxxx conducted her assessment of my complaints to the Ombudsman Office only on paper, without considering all relevant evidence that had been provided by me.

- [6] I was prompted to respond to the decision prepared by Miss Xxxxxxx, and signed by Miss Wakem, by way of further written submissions, in which I expressed my objections to the way my complaints had been handled. By way of 3 emails, sent on xx June 2014, I presented and explained my serious concerns. Also did I provide further detailed evidence, which proves that staff at the HDC Office had actually given untrue information to me and in the process also to Miss Xxxxxxx. They had claimed that an original complaint I had made on xx xxxxxxxx 2011 (under HDC ref. C11HDCxxxxx) couldn't be processed, as my emails allegedly "*froze*" their computer system. Authentic emails and other evidence presented to the Office of Ombudsmen on xx June 2014 proved that staff at the Office of the Health and Disability Commissioner had lied about the emails that I initially sent to them. I did also point out once again, that certain considerations by the HDC in the handling of my complaints were not at all relevant, and that other relevant information had not been considered by them. As Miss Xxxxxxx and Miss Wakem had earlier considered that the Deputy HDC had made the appropriate decision, I pointed out and explained to her, that she was wrong with her considerations. I must refer you to the contents in my letter to the Ombudsman from xx June 2014, to read and assess all details.
- [7] Despite of my stated objections and concerns, and despite of the further evidence provided by me, Chief Ombudsman Beverley Wakem again fully relied on Miss Xxxxxxx's account of her earlier handling of my complaints, which she stated in a letter with her final decision, that was dated xx July 2014. She strongly defended Miss Xxxxxxx's supposedly appropriate considerations of the earlier evidence I supplied, and also her reasoning behind her decision. Miss Wakem simply reiterated earlier statements, that she saw no reasons to investigate my complaints. She also referred me back to the letter sent earlier, without giving any consideration to further new, very crucial and revealing information that I supplied on xx June. That information proved that emails carrying my original complaint from xx Xxxxxx 2011 had actually all been received, and had internally been passed on to another staff member for assessment at the HDC Office. I furthermore had made clear, that all emails sent to the HDC Office in that complaint matter were of ordinary, common types and sizes, and had standard size PDF attachments, which were easy to open by any normal system. Similar types and sized emails could strangely be opened by the HDC when receiving my second complaint.
- [8] Given the very uncompromising position by Chief Ombudsman Beverley Wakem, where she stated in her last letter, that her Office would not enter into further communications regarding my complaints to the HDC, I am left in a situation where I have no way to raise any further concerns and considerations re the handling of my complaint by the Office of Ombudsmen. I have been given the signal that any further attempt by me, to seek to resolve the totally unsatisfactory situation with their Office, is unwelcome. The only remaining option would be to apply for a judicial review at the High Court. But I neither have the financial resources, nor the mental and physical strength, to pursue with such a proceeding. Indeed it seems unreasonable to me, to be forced to take legal steps. This has left me with an extremely unsatisfactory outcome, where I have been denied justice, which is causing me great distress.
- [9] While I am aware that the Ombudsman can under section 17 (1) (b) of the Ombudsmen Act 1975 refuse to investigate a complaint, it is clear to me that **in the case of my complaints the Ombudsman did not have regard to all the circumstances of the matter**. Relevant evidence, and the impact of any decision, must be considered as important to have regards to, as part of all the circumstances. Apart from that, it is also my impression that the staff members at the Office of Ombudsmen are now expected to work under extremely high work-loads, performance, time and target pressures, which are unreasonable, and which are the result of constant reviews, cost saving measures, streamlining and restructuring. This has led to assessments and investigations not being done up to expected standards, to mistakes being made, to cases being left unattended for unacceptably long periods, to short-cuts apparently being used, and to cases being re-prioritised. It seems that staff members even have to resort to prematurely dismissing complaints as not being serious enough, to deserve being investigated. It also appears that the Chief Ombudsman has in this case not been

honestly and correctly informed by her staff about crucial details of my complaints, and it must be presumed that this has happened, and continues to happen, to many other complainants.

[10] Given the very poor outcome of the handling of my complaints, the refusal by the Chief Ombudsman to review the decision made on xx May 2014, and having read various official and media reports about serious problems at the Office, I am very concerned about the situation at the Office of Ombudsmen. It is my impression that the financial and other resources available to the Office are not appropriately placed in the particular areas, where they are needed, in order to ensure that service quality and standards, same as necessary compliance with legal provisions in their service delivery aren't compromised. While the Office of Ombudsmen appears to put many resources into various high priority areas, projects and cases it deals with, there are insufficient resources put into other areas that are also important. This has resulted in deterioration in the standard and quality of certain less prioritised services that the Office's workforce is supposed to deliver under the Ombudsmen Act 1975 and other statutes. Unlike the Office of the Privacy Commissioner, the Office of Ombudsmen does not appear to seek regular, conclusive feedback from all complainants it deals with. The Privacy Commissioner does nowadays request complainants to at least respond to an online client satisfaction and feed-back survey. The Ombudsman has never asked me or many other complainants I am aware of, to provide comprehensive feedback or a survey on their services. In their 'Statement of Intent 2014-2018' (see page 13) the Ombudsmen state that they only conduct bi-annual surveys of stakeholders, and that is only for investigated complaints. According to that report, this survey was apparently only started in the year 2008/09 and repeated in 2011/12. This hardly provides enough data to establish the overall satisfaction of persons dealing with the Office of Ombudsmen, as complainants, enquirers or otherwise.

[11] Although Parliament has this year approved another moderate increase of funding for the Office of Ombudsmen, it appears evident, that this funding is insufficient to meet the growing needs of the Office, to perform all its functions and deliver the various important services expected. Work load increases have continued to be disproportionately high, when compared to the limited resources available. Staff numbers (including the two Ombudsmen themselves) have remained virtually unchanged for many years. I am unconvinced that the moderate increase in funding of the Office will resolve the many internal issues and challenges, and will bring the needed improvements that are necessary to enable the Office to operate effectively to fulfil its functions. In any case a review of the whole operational, administrative and managerial procedures and processes, and the quality of decision making at the Office of Ombudsmen appears overdue. This might be preceded by a special, thorough, independent, external inquiry and a more comprehensive performance audit than usual. The regular yearly audits conducted so far focus on balance sheet type financial information, and on standard output data based on a narrow scope of performance indicators. There is little or no information made available about how various staff members working at the Office are coping with an ever increasing workload. There were though worrying signs in a table in the Annual Report of the Ombudsman for 2011/12, showing a significant increase in staff sick and family leave, which seems to indicate negative effects through excessive stress on workers' health. As already mentioned, there is also very insufficient data on client or complainant satisfaction with the Office's service. This all should also justify a special inquiry and audit to be conducted by the Office of the Auditor General. I did between late August and late December 2014 approach their Office to conduct an inquiry and audit, but regrettably in each case, they decided not to conduct a special investigation and audit, stating a number of reasons.

The Office of Ombudsmen and its statutory functions

[12] The Office of Ombudsmen does under the Ombudsmen Act 1975 and a number of other statutes fulfil the following functions, which are also listed on page 5, under '**Nature and Scope of Functions**' in the '**Statement of Intent 2014-2018**' (SOI):

- **investigate state sector administration and decision making - under the Ombudsmen Act 1975 (OA);**
- investigate and review decisions made on requests to access official information - under the Official Information Act 1982 (OIA) and the Local Government Official Information and Meetings Act 1987 (LGOIMA);
- deal with requests for advice and guidance about alleged serious wrongdoing - under the Protected Disclosures Act 2000;

- monitor and inspect places of detention for cruel and inhumane treatment - under the Crimes of Torture Act 1989;
- provide comment to the Ministry of Transport on applications for authorised access to personal information on the motor vehicle register - under section 249 of the Land Transport Act 1998.

[13] In the 'Statement of Intent' it also says:

"In carrying out our functions, we provide Parliament and the New Zealand public with an independent and impartial check on the quality, fairness and integrity of state sector administrative conduct. By contributing to wider administrative improvement in the state sector, we can help to reduce overall downstream costs caused by poor decision making and ineffective administrative processes." The SOI states **two international responsibilities** the Office has. It carries out its function to monitor and inspect places of detention under the Crimes of Torture Act 1989 as a "*National Preventive Mechanism*". That Act fulfils New Zealand's responsibilities under the "*United Nations Optional Protocol to the Convention Against Torture*". The Office also performs an "*Independent Monitoring Mechanism*" while protecting and monitoring the implementation of the '*United Nations Convention on the Rights of Persons with Disabilities*' (commonly known as the 'Disabilities Convention'). The Office carries out this role by investigating administrative conduct within the state sector.

[14] Under 'Other functions' the SOI furthermore states:

"To complement and support our main functions under legislation, we are increasingly taking steps to:

- *provide advice and guidance to state sector agencies in order to improve state sector capability in areas relevant to our role; and*
- *improve public awareness and accessibility of our services."*

[15] The Office is legally constrained to perform its functions and can only conduct investigations, reviews and inspections, and offer advice, guidance and recommendations. The Ombudsmen can only make comments on matters that come to their attention and present reports.

On page 7 of the Statement of Intent it says: *"Given the constraints on our role, most of our interventions to improve state sector administrative conduct are carried out through persuasion and reporting, rather than compulsion. To do this effectively, we need to be relevant, fair and accessible. We need to provide well-reasoned and independent opinions, and our interventions need to be proportionate, taking into account the impact on the agency and the costs and benefits of any proposed remedies."* This is further qualified by comments under the heading 'Strategic Direction' in the SOI (see page 8), where the Ombudsmen concede: *"Our strategic direction is:*

- ***guided by the legislative functions*** assigned to us by Parliament; and
- ***informed by the current environment and the Government's strategic direction."***

The Ombudsmen's core functions under the Ombudsmen Act 1975

[16] According to **section 10** under the Ombudsmen Act 1975 (the Act) the Ombudsman has taken an Oath as an Officer of Parliament, ***"that he will faithfully and impartially perform the duties of his office, and that he will not, except in accordance with section 21, divulge any information received by him under this Act."***

[17] Under **section 13** of the Act the functions of both Ombudsmen are stated as:

"(1) Subject to section 14, it shall be a function of the Ombudsmen to investigate any decision or recommendation made, or any act done or omitted, whether before or after the passing of this Act, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by any of the departments or organisations named or specified in Parts 1 and 2 of Schedule 1, or by any committee (other than a committee of the whole) or subcommittee of any organisation named or specified in Part 3 of Schedule 1, or by any officer, employee, or member of any such department or organisation in his capacity as such officer, employee, or member.

(3) Each Ombudsman may make any such investigation either on a complaint made to an Ombudsman by any person or of his own motion; and where a complaint is made he may investigate any decision, recommendation, act, or omission to which the foregoing provisions of this section relate, notwithstanding that the complaint may not appear to relate to that decision, recommendation, act, or omission."

[18] Section 17 of the Act allows the Ombudsman to refuse to investigate a complaint:

“(1) An Ombudsman may—

(a) refuse to investigate a complaint that is within his jurisdiction or to investigate any such complaint further if it appears to him that under the law or existing administrative practice there is an adequate remedy or right of appeal, other than the right to petition the House of Representatives, to which it would have been reasonable for the complainant to resort; or

(b) refuse to investigate any such complaint further if in the course of the investigation of the complaint it appears to him that, having regard to all the circumstances of the case, any further investigation is unnecessary.

(2) Without limiting the generality of the powers conferred on Ombudsmen by this Act, it is hereby declared that an Ombudsman may in his discretion decide not to investigate, or, as the case may require, not to investigate further, any complaint if it relates to any decision, recommendation, act, or omission of which the complainant has had knowledge for more than 12 months before the complaint is received by the Ombudsman, or if in his opinion—

(a) the subject matter of the complaint is trivial; or

(b) the complaint is frivolous or vexatious or is not made in good faith; or

(c) the complainant has not a sufficient personal interest in the subject matter of the complaint.

(3) In any case where an Ombudsman decides not to investigate or make further investigation of a complaint he shall inform the complainant of that decision, and shall state his reasons therefor.”

The Ombudsman’s failures in appropriately processing my complaints

[19] In the handling of my complaint the Office of Ombudsmen staff and the Ombudsman failed to:

- Apply due professional care in performing their duties - when assessing and deciding upon my complaints, and thus acted carelessly or negligently due to work pressures;
- apply natural justice, by not fairly considering all relevant evidence, and by failing to reasonably take the necessary steps to properly assess and investigate my complaint;
- correctly adhere to and follow the provisions of the Ombudsmen Act 1975 (i.e. sections 10, 13 (1) and (3) and section 17 (1) (b));
- provide me justice, by unfairly deciding that my complaints did not require to be formally investigated, and by refusing to review their decision from xx May 2014;
- treat two distinct complaints equally, by apparently giving complaint C12HDCxxxxx to the HDC even less attention to detail, than in the case of complaint C11HDCxxxxx;
- hold staff to account for mistakes and/or misrepresentations made in the assessment.

[20] In making this written request for an inquiry by your Office I will in this letter not repeat all the detailed arguments about the rights and wrongs of the judicially formed decisions made by the investigating officer at the Office of the Ombudsmen. I will refrain from again referring to all the evidence to prove in detail the failures by Miss Xxxxxxx at the Office of Ombudsmen. Instead I ask you to please examine and consider my letter and the further evidence that I sent to the Office of Ombudsmen by emails on xx June 2014, to establish the veracity and facts in the compliant matters. You will also need to consider the initially sent emails and attached evidence to the Office of Ombudsmen, to properly assess and consider all details in regards to those failures. I trust that the Office of Ombudsmen will make the file with all relevant correspondence and presented evidence available for your inquiry. I would be happy to send you the complete original complaint information, if the Office does not have on record all relevant submissions (including correspondence and evidence documents).

[21] As for the Ombudsman Office’s failings to apply due professional care in processing, assessing and investigating my complaints, my letter from xx June 2014 to their Office does also partly cover this. It appears that Miss Xxxxxx Xxxxxxx did not progress the complaints I made about the HDC for months, until I finally phoned her Office in late April 2014, having received no proper reply. The letter from the Ombudsman from xx May 2014 (prepared by her) also indicates that she did not consider all the issues I raised in relation to my complaints to the HDC. She clearly failed to examine and assess all relevant evidence presented to her as an investigator. That led to her drawing the wrong conclusions, like claiming emails I sent to the HDC Office “froze” their system. In that matter she erred and relied on staff at the HDC Office having misrepresented the truth (i.e. lied). Presented emails should have convinced her of the opposite. Also did Miss Xxxxxxx follow the poor example of the HDC Office staff by not

giving consideration to relevant evidence, and instead relied on summarised reports and statements by the respondents to my complaints to the HDC Office. She simply accepted the HDC's statements and reasoning, without further examining facts. She ignored conflicts of interest by the respondents' employer in the first complaint, and she relied on considerations in the second complaint, which were totally irrelevant, namely that my complaint about Dr Xxxxxxx was more appropriately dealt with by a Ministry of Social Development (MSD) appointed Medical Appeals Board, which though has no jurisdiction over issues I raised with the HDC. I will here refrain from elaborating further on other valid arguments and aspects, as my letter from xx June 2014 covers them in more detail. Unless there was intent by Miss Xxxxxxx to not bother following natural justice, in the least she failed to provide due professional care, or was negligent.

[22] In the case that Miss Xxxxxxx intentionally ignored relevant evidence, and rather relied on irrelevant information, and where she did not consider what was important and necessary to consider, she certainly breached principles of natural justice. I will certainly not allege that Miss Beverley Wakem as Chief Ombudsman did intentionally ignore relevant evidence in the matter, like the crucial email evidence for emails sent to the HDC on xx Xxxxxxx 2011, but I must conclude that Miss Xxxxxxx did intentionally or unintentionally misinform Miss Wakem on some crucial information in relation to my complaints. This appears to have been the case with my letter from xx June 2014, which I suspect was again first read by Miss Xxxxxxx, as there is no indication that it was processed and assessed by another investigator, nor by Miss Wakem herself. The text in the letter by Miss Wakem from xx July 2014 implies that she did not even look at the new evidence I provided, and simply relied on Miss Xxxxxxx's earlier assessment and decision. I must therefore assume that Miss Xxxxxxx may have withheld the new evidence from Miss Wakem, in order to protect herself and her former, flawed decision in the complaint matters. This would be a very serious matter and cannot be accepted conduct by any staff member working at the Office of Ombudsmen. Therefore I must conclude that this would result in a breach of sections 10, 13 (1) and (3), and also section 17 (1) (b) of the Ombudsmen Act 1975. In all certainty, the decision made by the Ombudsman does in the end deny me justice, as I have been given no option to further resolve the matters at issue in relation to the complaints against the HDC Office and now the Office of Ombudsmen. The letter dated xx July 2014 and signed by Beverley Wakem makes this clear. The decision from xx May 2014, prepared by Miss Xxxxxxx and signed by Miss Wakem, does also reveal how Miss Xxxxxxx treated my second HDC complaint with less attention, as I made clear in my letter from xx June 2014. By defending Miss Xxxxxxx for her handling of my complaints, there is no indication that internal measures were taken by the Ombudsman to correct any failures by Office staff, due to errors, neglect or misconduct.

[23] Besides of the above summarised information, it will be more than evident from the further information I provide in this letter, that the ongoing reviews, reorganisation, restructuring and stream-lining of work procedures and processes at the Office of Ombudsmen must clearly have had negative effects, which have impacted on the quality of services being delivered by the staff at that Office. While the work-load at the Office has continued to increase substantially over recent years, the insufficient additional financial resources, and largely unchanged, available human and other resources, must logically result in a situation where complaints, enquiries and other work done by the Office's staff could not be dealt with by applying the same level of scrutiny, care and attention as was being done in earlier years. Internal efficiency and performance improvements will have reached their limits, and by simply measuring increases in output numbers, nothing in regular audits will give sufficient and clear information on the actual quality of services delivered by the Office. Also will there be no conclusive information about how the staff are coping with increasing work-loads and targets.

Ombudsman Annual Reports reveal growing imbalance between workloads and available resources

Ombudsman Annual Report 2010/11

[24] The Ombudsman's Annual Report for the year 2010/11 did actually register a moderate decrease in complaints and enquiries, compared to the year earlier, as it received 8,706 then. It was able to reduce a back-log while completing 9,077 complaints and enquiries. 6,163 complaints under the Ombudsmen Act (OA) and 992 Official Information Act (OIA) complaints

(the highest since 2000/01) had been received. Furthermore 256 LGOIMA complaints had been received. 617 OA cases were resolved informally, and 302 OIA and LGOIMA cases were resolved informally. The Office formally investigated 570 OA cases and formally investigated 713 OIA and LGOIMA cases. The Office had close to 1,000 OA complaint cases outstanding to deal with from the year before. This was besides of much of the other work the Office did. Since 2010 the Office of Ombudsmen has also taken on new work loads by taking over responsibilities like the maintenance, monitoring and dealing with complaints in regards to the implementation of the 'UN Convention on the Right of Persons with Disabilities'.

- [25] In the Introduction of the Annual Report 2010/11 Beverley Wakem mentioned a **"spike in the number of complaints received over the past two years"**. She also mentions a consolidation of efforts by her Office to improve work practices, in order to improve services. She furthermore states: **"The substantive cases on hand, and the work on some of the longstanding and apparently intractable matters continues to stretch our investigators."** She continues: **"We have engaged a small number of highly experienced former and retired staff to assist with the very complex cases, but that is not financially sustainable over the medium term given current constraints on our budget. Like other agencies we also face high and increasing charges for what one might call the basic housekeeping costs. Unlike other agencies we are reliant on temporary funding to meet these costs and have been for several years. Our budget has no capacity to absorb these without the temporary funding."** On page 12 under 'Operational developments' the Chief Ombudsman states: **"This year's numbers have provided some respite, with a total of 8,706 complaints and enquiries received. However, in the absence of any significant resource increase, it has been necessary to try and identify operational improvements in order to seek to manage the greater workload."**
- [26] On page 59 of the same Annual Report 2010/11 it says under 'Organisational Health and Capability': **"The Office of the Ombudsmen has always operated within an environment of fiscal restraint."** It also says: **"The Vote, always minimalist, is now so restricted that potential temporary savings arising from staff vacancies must be relied upon to pay some staff and fund core operating expenses such as electricity."** Furthermore the report states: **"We appreciate the support of the Officers of Parliament Committee in securing some temporary financial assistance through to 30 June 2014 but we continue to be concerned that the assistance is of a temporary nature and is less than required."** On page 60 of the same report and under the sub-heading 'Financial and asset management', it says: **"Vote Ombudsmen is presently reliant on temporary funding and ad hoc one-off savings to fund core expenses such as rent, power, communications and some staff positions. Even in the current economic climate that is not a proper way to fund the Office and risks jeopardising its independence. The current arrangement undermines the ability of the Office to apply resources to best advantage and restricts its ability to achieve the desired outcome for the Vote."**

Ombudsman Annual Report 2011/12

- [27] The Ombudsman's report 2011/12 states (see page 5) that during the year it covers the Office received **10,636 complaints** and other contacts, **an increase of 22% on the year before**. 8,950 of those were complaints and other contacts under the OA, and **1,236 were complaints under the OIA (25% up on year before)**, and 268 were complaints under the LGOIMA. The Office completed 8,784 OA complaints and other contacts, an increase of 19 per cent from the previous year. The Office formally investigated 452 OA cases, and formed final opinions in 221 OA cases. The Office investigated 797 cases, and formed final opinions in 362 cases, in relation to OIA and LGOIMA complaints. The Office of Ombudsmen finished the year with **1,746 complaints and other contacts on hand, up from 1,359 the previous year**. This was work it did besides of its other areas of responsibility. The Office struggled to meet some timeliness targets, given the volume of work on hand, and **only 55 percent of complainants were satisfied with the Office's service**.
- [28] In the Introduction to the 2011/12 report Beverley Wakem and Dr David McGee state: **"In many ways, 2011/12 was a watershed year for us. We received and completed the highest ever number of complaints and other contacts concerning state sector agencies. In particular, we managed a significant increase in official information complaints and complaints relating to the Earthquake Commission."** **"We also finalised a major review of our purpose and strategic direction, establishing a strong outcomes framework to direct and focus our work towards the outcomes and impacts we are seeking to achieve. The results of this work can be**

seen in our 2012/15 Statement of Intent.” Furthermore the Ombudsmen wrote: “In 2011/12, we completed our **second survey of the complainants and agencies** that we interact with, enabling us for the first time to compare feedback over time on the service we provide.”

- [29] On page 9 of the report it says: “We also continued work on a **major consolidation of our human resources policies and procedures, and progressive implementation of a revised performance review and professional development system** for staff.” Also do the Ombudsmen state: “We have improved our data collection this year. We treat matters as formal “complaints” once they have been put in writing. However, we also deal with a large number of oral complaints and enquiries from members of the public, mainly over the telephone or by prison visit, prior to a complaint being made to us in writing. While we term these matters “other contacts”, our staff spend a significant amount of time providing advice and assistance, and resolving these matters.” On Page 10 the report says: “**However, we are still significantly under resourced. Whilst we have managed to increase our throughput to deal with the increasing number of complaints and other contacts we are receiving, we are struggling to meet some of our timeliness targets and there has been an impact in terms of the work we have on hand at any one time.**” “**The current work pressure we are facing has led to a declining satisfaction with our service in survey results.**”
- [30] Under the heading ‘Organisational health and ability’ the 2011/12 report states at the top of page 70: “In our annual report last year we commented that **the Office was underfunded on an ongoing basis by approximately 12 per cent or \$1 million per year.** The publishing of our 2010/11 annual report in September 2011 was too late in the budget setting cycle for Parliament to address our funding concerns for the 2011/12 year. In the event we completed the year with a surplus of \$100,476, of which \$100,000 was a partial insurance recovery post the February 2011 Canterbury earthquake.” “Subsequently, Parliament has approved a budget increase of \$300,000 for 2012/13 and the ongoing provision of \$370,000 that had previously been provided on a temporary basis. Together these sums go some distance towards alleviating our immediate concern about being able to pay the bills, but while appreciated, **the sum is not sufficient to enable recruitment of the additional staff required to address our burgeoning workload** or secure the ongoing longer term financial sustainability of Vote Ombudsmen.”
- [31] On page 74 of the Annual Report 2011/12 a table shows the numbers of **total sick and family leave days** that staff at the Office of Ombudsmen have taken **over the years 2007 to 2012**, and it reveals a very worrying trend. There has been a **steady increase from year to year from 204 in 2007 to 471 in 2012. It increased from an average of 3.93 days per employee to 6.73 in 2011/12.** The chapter below mentions “**increased absence through illness and potentially work related stress**”. There is no such table in the report for the following year 2012/13. On page 77 of the 2011/12 report I read with great concern: “*The Ombudsman must be seen by Parliament, the public and agencies to provide relevant, timely and appropriate responses to complaints, and to conduct effective inspections and investigations of significant and systemic issues. There is a potential risk that we may be seen as too remote from every day realities, leading to inappropriate or irrelevant responses and guidance.*”

Ombudsman Annual Report 2012/13

- [32] The Annual Report of the Ombudsman for 2012/13 states the following: “The Office received a **total of 13,684 complaints and other work** for that year, which represents a **large increase of 29 % on the year before.** Of these the Office completed 13,358 complaints and other work, an increase of 30% 2011/12 numbers. **It finished the year with 2,072 complaints and other work on hand, up from 1,746 the previous year.** The Office struggled again to meet some timeliness targets, given the volume of work on hand. Of that total 11,008 OA complaints and other contacts were received, and 2,374 OIA complaints (up 92 % on 2011/12), as well as 271 LGOIMA complaints. It registered a significant increase in delay complaints. 2,878 OA complaints were completed that year, an increase of 21% from the previous year, and 2,158 OIA and LGOIMA cases were completed, an increase of 67% from 2011/12. The Office formally investigated 379 OA cases, and formed final opinions in 174 cases. It investigated 637 OIA and LGOIMA cases, and formed final opinions in 337 cases. This is again besides of other important work the Office of Ombudsmen performed that year.
- [33] In their Introduction to the 2012/13 Annual Report Dame Beverley Wakem and newly appointed Ombudsman Prof. Ron Paterson stated (page 10): “*This year, we celebrated the*

50th anniversary of the Ombudsman in New Zealand. We also observed the 30th anniversary of the Official Information Act 1982, and the 25th anniversary of the Local Government Official Information and Meetings Act 1987. Our anniversary year has been a period of growth and consolidation.” Under the heading ‘**Growing workload**’ they also wrote: “Our services are clearly in demand. For the second year in a row, we received and completed the **highest ever number of complaints and other contacts** concerning state sector agencies. In particular, we managed significant increases in both official information complaints (92%), and complaints and other contacts relating to the Earthquake Commission (89%).” “We continued the structural and procedural changes needed to direct and focus our work towards our **new strategic direction**, which was established in the previous reporting year. These changes enabled us to apply a **systematic approach to addressing the large increase in our incoming work**, while still catering for the individual circumstances of each case.”

- [34] On page 11 of the same report they continue with the comments: “In particular, we have completed the establishment of **new workflow structures** intended to allow us to more easily move staff resource to an area of identified need. We have set **up formal early assistance and early resolution processes** within dedicated teams, which have enabled us to deal with the large influx of new complaints more effectively and efficiently.” Furthermore they state: “However, the large increase in work has affected the timeliness of our interventions. **Our performance this year has not met our expectations for the timeframes** within which some types of work should be completed.” “Parliament has taken steps to begin to address the growing pressures on our Office. **During the reporting year, we were able to secure an increase in overall funding for the 2013/14 year onwards**, which will enable us to appoint additional investigating staff to progress the growing number of complaints on hand at any one time.” With scepticism I then read the Ombudsmen’s rather ironic comments on page 12: “Following the review of our strategic direction, we also continued work to reposition the Ombudsman as a **“modern, independent New Zealand authority, that is agile, proactive and approachable”**. This is regrettably not the experience I have recently had with the Office.
- [35] On the “outcomes” of Ombudsmen Act (OA) 2,745 complaints (after deducting 8,263 “other contacts” from total cases) the following data is made available (see pages 24 to 28): 985 cases (36% of total completed) required only an explanation, advice or assistance to complainants to address their concerns. In 612 of those cases (22%) the Office simply advised complainants to take their concern to the relevant state sector agency. In 165 cases (6%) the Office declined complaints as there were supposedly other remedies available. 373 complaints were considered to not be within the jurisdiction of the Office. 216 complaints (8 % of cases) were “resolved” by the Office, 127 before an investigation and 89 during an investigation. In 379 cases (14%) formal investigations were commenced, and “final opinions” were formed in 174 cases. On page 28 the Ombudsmen reveal: “*In only 44 cases (25% of all those formally investigated), did we identify administrative deficiency by the state sector agency that was the subject of complaint. We made formal recommendations in 4 cases. All recommendations were accepted.*”
- [36] On page 39 of the 2012/13 report the Ombudsmen state that they **received 2,374 OIA complaints, 92 per cent up from the year before**, and the highest number ever. The 271 LGOIMA complaints were more in line with historic figures. 1,012 OIA complaints were from one complainant, concerning delays in responses from school Boards of Trustees. But even without that increase, the **remaining 1,361 complaints were up 26 % on 2011/12**. The Office finished the year with 1,129 OIA complaints and 162 LGOIMA complaints on hand. On page 42 the Ombudsmen inform on the “outcomes”: “*Traditionally, we have formally investigated most official information complaints. However, this year 926 complaints were resolved without formal investigation.*” “*We commenced formal investigations in 30% of all completed official information cases (637 out of 2,158). We managed to resolve 152 of these without needing to form a final opinion. We formed final opinions in 337 official information cases. In 167 of these cases²⁹ we identified an administrative deficiency by the agency concerned in its official information decision making.*” On pages 55 to 57 the Ombudsmen describe their Offices work in relation to their new responsibilities and work under the UN Convention on the Rights of Persons with Disabilities.
- [37] Under the heading “Organisational health and capability” the report states on page 66 (‘Overview’): “*Our work in 2012/13 was informed by a further refinement of our Statement of Intent for 2012/15, following the major review of our overall strategic direction and performance measures which we undertook for the 2011/12 reporting year. We continued*

*the structural and procedural changes needed to direct and focus our work towards our new strategic direction. These changes enabled us to apply a systematic approach to addressing the large increase in our incoming work, while still catering for the individual circumstances of each case. In particular, we have completed the **establishment of new workflow structures** that allow us to more easily move staff resource to an area of identified need. We have set up **formal early assistance and early resolution processes within dedicated teams**, which have enabled us to deal with the large influx of new complaints more effectively and efficiently. We have also reviewed the strategic services provided by our staff who guide and support our investigators and inspectors in their work, to ensure we have an overall structure in our Office that is efficient and allows us to effectively implement our new strategic direction.”*

- [38] Further down on page 66 the Ombudsmen state somewhat familiar information: “A number of factors contributed to our **receiving this year the highest ever number of complaints and other contacts since the role of the Ombudsman was established**. These factors include **the current social and economic climate**, the **disruptions** caused by the **Canterbury earthquakes**, and the **increased levels of recourse by members of the public** to the official information legislation. We believe the level of work now being received will not diminish significantly even when the economy has strengthened and there is less demand for public sector services. The increase in work is broadly based across many agencies and deals with many diverse issues. **While we have achieved a 30% increase in our overall work completed this year, we are still not keeping pace with demand and the timeliness of our interventions is suffering. In addition, we consider our Office has been underfunded on an ongoing basis.**”
- [39] Under ‘Managing performance and capability development’ the report states on page 68: “*This year we continued implementation of our **continuous practice improvement initiative**, which **improves how we assess, allocate and process our work**. Together with the use of **more meaningful Office performance measures**, this is proving very helpful in managing our work flow. We are already seeing the benefit of new and more useful information being available, which helps us to better understand our business and manage the pressures we face. An **annual review of staff performance is undertaken for each financial year**, and we have begun to trial a **new performance review and professional development planning process**. Further improvements to managing staff performance are anticipated during the 2013/14 year. These will include a particular focus on **completing the development of key performance indicators at individual and team levels** that reflect our overall Office performance measures.”* While this may sound aspirational and “positive”, NO survey data is given in a ‘Performance Measures’ table on page 77 of the report, on complainants’ and state sector agencies’ satisfaction with the performance of the Office of Ombudsmen. **Surveys are apparently conducted bi-annually**, but I have not noticed that such are very detailed and comprehensive, or include all complainants. The tables show that **most “proactive measures data” for the completion (%) rates for complaints are missing their budget standard targets**, some significantly (see pages 76 to 77). Also does the Annual Report 2012/13 show **no table with total staff sick and family leave**, which was included in the earlier report(s). Page 68 only shows a table with “staff numbers and demographics”.
- [40] The more recent ‘**Statement of Intent 2014-2018**’ by the Ombudsman already appears to contain data from a **new stakeholder survey** on page 13, where a table is showing the anticipated “**success**” in providing outputs A and B for 2013/14 and the **ACTUAL** rate for this. **The target for 2013/14 was set at 55%, but the actual figure achieved is only 49% of complainants being satisfied with the overall quality of their service delivery**. This indicates that the **service quality of the Office has actually worsened even more since an earlier survey two years before** that. The high actual satisfaction rate for the state sector agencies with the communication with the Office of Ombudsmen at 94 percent must be rather worrying, as this means, fewer complainants appear to be successful with complaints, which leaves the agencies “off the hook”, so to say. This is confirmed by the higher than expected satisfaction rate for state agencies for the Office’s decisions (2% above target).

Other reports describing the problems at the Office of Ombudsmen

‘New Zealand National Integrity System Assessment 2013, Chapter 5: Ombudsman’

- [41] The document '*New Zealand National Integrity System Assessment 2013, Chapter 5: Ombudsman (pillar 7)*' also reveals how the Office of Ombudsmen is unable to keep up with growing numbers of complaints and other responsibilities. On page 214 in that document it says: "*The Chief Ombudsman is of the view that since about 2009, the Ombudsmen have been seriously under-resourced and a substantial backlog of complaints is awaiting investigation. In addition, they have not been in a position to compete in the market for staff, and staff salaries are about 14 per cent below market rate. Staff turnover is low, but increased from 6 per cent in 2010 to 14 per cent in 2011.*" It also states: "*From 2008/09 to 2011/12, the number of complaints on hand at any one time increased from about 1,000 to about 1,700, a 59 per cent increase. In contrast, the Ombudsmen's annual appropriation from Parliament increased only 6.3 per cent, from NZ\$8.33 million to NZ\$8.86 million over the same period. At 31 December 2012, 465 requests for assistance had not been allocated to a case officer.*"⁷²⁷ In 2011/2, only 53 per cent of complainants considered the ombudsman process to be timely and **overall satisfaction with their standard of service has dropped, from 66 per cent in 2008/09 to 55 per cent in 2011/12.**"⁷²⁸
- [42] On page 215 of that document it also says: "*Senior lawyers say that although the Ombudsmen's investigations are thorough and fair, they are no longer referring clients to the Ombudsmen if there is an alternative.*"⁷²⁹ **The process takes too long and irreparable damage may be done to their clients' interests before the investigation can be completed.**" It furthermore says: "*The Ombudsmen sometimes have insufficient resources to perform new functions allocated to them, or at least to perform them to an acceptably high standard.*"⁷³¹ While that report prepared by two lawyers does generally present a positive image of the performance, independence and integrity of the Ombudsmen, major concerns remain about future performance quality and standards, especially since case loads are bound to increase, while the Office's resources remain below of what is needed to deliver services.
- [43] Of legal interest, in regards to the Ombudsman's independence, integrity and authority, the following may be worth noting, while not serving to alleviate my stated concerns: "*In general, the courts support the independence of the Ombudsmen. In one of the few cases where an Ombudsman's decision has been before a court, the judge said, "Parliament delegated to the Chief Ombudsman tasks, which at times are complex and even agonising, with no expectation that the Courts would sit on his shoulder about those judgments which are essentially balancing exercises involving competing interests. The Courts will only intervene when the Chief Ombudsman is plainly and demonstrably wrong, and not because he preferred one side against another."*"⁷⁴⁵ (see page 217 of that document).

'SUPPLEMENTARY STANDARD FINANCIAL REVIEW QUESTIONS – 2012/13'

- [44] The document '*SUPPLEMENTARY STANDARD FINANCIAL REVIEW QUESTIONS – 2012/13*', which can be downloaded from the website of the New Zealand Parliament, reveals that the Office of Ombudsmen expects continued growth in the number of complaints, and other work they do. In question 65 the Ombudsman was asked about how many OIA requests it received. The answer to that question was that the Office is not subject to OIA requests about itself, but **figures were given re OIA related complaints it handled over recent years** (up to 30 June 2013), and what it projected for the following year 2013/14. For 2013/14 **it is estimated that OIA complaints will be about 1326 for the year ending 30 June 2014**, which is only a reduction on the year earlier due to the 2012/13 year having had an unusual increase of 92% on the year earlier, which was by one complainant having presented a very large number of new complaints. But **based on 2008/09 the estimated number would represent an increase of 161%**, while these kinds of complaints, same as OA complaints have generally increased steadily over the years. In any case, also other reports indicate that it must be expected that the workload of the Office will inevitably continue to increase, based on historic trends.

Office of the Ombudsman - Statement of Intent 2014-2018

- [45] The '*Statement of Intent 2014-2018*' (SOI) published by the Office of Ombudsmen does not appear to provide for an increase in complaints to assess, process and resolve, as for instance a table on 'Operating Intentions' on page 12 shows. Despite of the substantial historic increases in complaints and other contacts for 2011/12 and 2012/13 (8,784 and 11,161 correspondingly), the "Budget Standard" and "Estimated Actual" figures for 2013/14 show lower figures, being together 9,500 and 7,900 correspondingly (see "*demand driven*

measures). For unclear reasons for the following 4 years the “Budget Standard” figures total only 8,000 for both categories (being 2,500 for complaints - and 5,500 for other contacts completed). This is very concerning, as the Office may either be contemplating a new piling up of not progressed, unresolved complaints, or the Ombudsmen are intending to apply a more stringent criteria for accepting complaints to be dealt with and investigated, which could mean dismissing more complaints as being outside of the Ombudsmen’s jurisdiction, or by passing complainants on to other authorities, or by not accepting complaints at all, for whatever other reasons. Given past, steady increases on the demand side, the figures stated make no sense, as they also contradict other previous statistics and projections by the Ombudsmen.

- [46] As already mentioned further above (see also at the bottom under ‘Annual Report 2012/13’ and the ‘New Zealand National Integrity System Assessment 2013’), **the Office of Ombudsmen is expecting a lower satisfaction rate for the quality of services provided** to complainants, as the table on page 13 of the Statement of Intent shows! **The targeted 55 % satisfaction rate for 2013/14, which was the same as for the year before, is contrasted by the actual figure of only 49 %!** Targets for the two following years have also been set low at only 55 %, which indicates that the Office does not anticipate or expect better quality in service delivery outcomes. State sector agencies’ satisfaction rates are though set within conventional ranges, higher than the complainants’ ones. It is of significance that the surveys the Office conducts only every two years (since only about 2 years ago) are only prepared and done “in house”, and may therefore lack sufficient independent scrutiny.
- [47] The ‘Operating Intentions’ data and table on page 16 of the ‘Statement of Intent’ does also not show much real projected improvement in the processing of OIA request related complaints. “Budget Standard” targets remain steady for the coming years, but for 2013/14 the “Estimated Actual” number of complaints completed sits at now 1,600, twice the “Budget Standard” for that year. The other data and information in the SOI does basically tell me that the Office will continue to struggle, and make little real progress in improving service delivery, despite of the aspirational statements and ambitious goals for improved performance and service delivery.
- [48] Re human resources planning, the Statement of Intent says under ‘People’ (see page 31):
“We aim to recruit and retain quality staff who adhere to high standards of professional conduct. We also aim to enhance the capability of our staff so that everyone can aspire to higher levels of performance. Measures to attract, develop and retain staff include:
- *providing fair and consistent terms and conditions of employment;*
 - *providing learning and professional development opportunities to enhance capability and performance; and*
 - *providing opportunities for participation in health and wellness programmes that support the general wellbeing of staff.*
- [49] *The specific projects we are undertaking in this area include:*
- *progressive implementation of a revised performance review and professional development planning system, including the introduction of key performance indicators for staff linked to our outputs and output performance measures;*
 - *progressive implementation of our training and development strategy, which provides for targeted core training and professional development for all staff;*
 - *completing the roll out of consolidated human resource policies and procedures; and*
 - *continuing regular internal surveys to gauge staff satisfaction and identify areas for improvement.”*
- [50] The Statement of Intent 2014-2018 may sound as if the Office of Ombudsmen has room to improve efficiencies through further internal reviews and system changes, to achieve higher performance and output targets. There is talk of more personal development, training and measurement of staff performance indicators, and of recruiting and retaining quality staff. But like with any organisation, it is clear that there will be human and other resource limits that will constrain what can be achieved by frontline investigating and other staff, unless further financial resources are made available to meet ever increasing demands in the form of growing numbers of complaints, enquiries and other requests to the Office. It appears that the Office’s staff continue to be employed under individual employment contracts, which will most likely discourage any staff member raising any grievances about working conditions, which would be easier to do if the staff were collectively represented and had a collective agreement.

Media reports showing very large increases in complaints and funding issues

- [51] Since at least 2012 there have been many news media reports about a crisis at the Office of Ombudsmen. For instance did the **'New Zealand Herald'** report on **15 February 2012** that **"the Office of the Ombudsman is in "crisis", with a bulging backlog of cases due to lack of investigators and existing staff underpaid and in some cases being worked to death, Ombudsman Beverley Wakem says."** It was stated that the office had about 300 cases it was unable to work on, because of a lack of available investigators. Figures given indicated that the case load per investigator had about doubled. The article also revealed: *"Ms Wakem said she had asked for the office's baseline budget to be increased from its current level of \$ 8.6 million by about \$1 million, which would allow it to meet its operating costs and employ two more investigators."*
- [52] **'Scoop'** reported on **27 September 2012** **"Ombudsman's Office Workload Doubles"**, and **"The Office ended the 2011/2012 year with 10,636 complaints and other contacts received, up 22% on the previous year. Cases on hand at any time have grown from an average of 800 to over 1700."** Mention was made of the Office working "vigorously" and on "streamlining" its processes to cope with the workload. **"However, Dame Beverley says there is an increasing demand for the Ombudsmen's help". "There is significant pressure on staff and regretfully we are missing targets for timeliness in responding to some people asking for help."**
- [53] On **13 September 2013** the **'Auckland District Law Society'** (ADLS) reported on their website under the title **"Chief Ombudsman discusses challenge and change"**, how Beverley Wakem saw the challenges her Office faces. Matthew Lark wrote: *"The annual reports and statements of intent produced by the Office of the Ombudsman over Dame Beverley's time make heavy reading. A marked increase in Ombudsmen Act and Official Information Act complaints is a worrying trend for an office which has long been under-resourced."* *"We've gone from something like seven and a half thousand complaints a year when I first started, to nearly 14 thousand complaints this year,"* Dame Beverley remarks. *"If you take out the earthquake and prisons, the underlying trajectory is still rising."* *"We're trying to triage a great many more of the minor complaints early without the necessity to formally notify them with the agency being complained about,"* she says. *"What this means is about 900 of those are being dealt with on this basis any month. What it leaves you with are the more complex cases."*
- [54] In the same article the author writes that the Vote Ombudsmen is receiving a boost in 2013-14, and that Dame Beverly expected to recruit six new investigators in the coming year. The article continues: *"Dame Beverley wants to see new investigators helping with some additional functions which her office has taken on during her term. These include investigating complaints about the government's adherence to the UN Convention on the Rights of Persons with Disabilities."* *"Her overall aim is to get her complaints backlog down". "The case load which individual investigators have been carrying in this office has been inhumane by any international standard"*, that media article further revealed.
- [55] On **15 October 2013** **'Scoop'** reported (upon a press release from the Office of Ombudsmen): **"Highest ever number of complaints for Ombudsman"**. *"In its annual report to Parliament for the year ending 30 June 2013, the Office says it received and completed the highest ever number of complaints and other contacts about state sector agencies."* *"Chief Ombudsman Dame Beverley Wakem says the Office completed more than 13,000 pieces of work and provided advice and assistance in over four thousand cases. Just over 1, 000 complaints were investigated."* *"Dame Beverley says despite the rise in volume, the Office has worked effectively. Changes have been made in the way the Office works to address the workload and it achieved a 30 percent increase in overall work completed despite a 29 percent increase in work coming in."* That article stated in more detail, the Office received 13,684 complaints and other contacts. It continued with: *"The Office says that official information complaints increased overall by 92 % this year. There was a significant increase in delay complaints, continuing a worrying trend from the previous year."*
- [56] On **15 May 2014** the **'New Zealand Herald'** reported under the headline **"Budget 2014: Funding crucial as busy watchdogs feel the strain"**, that the Office of Ombudsmen received **"a small increase in funding in the last Budget which helped it keep up with a record number of complaints about state sector agencies, including a near doubling in Official Information Act and Earthquake Commission complaints"**. It also quoted Dame Beverley as saying: **"However the large increase in work has affected the timeliness of our interventions"**.

[57] The Herald reporter Adam Bennett continues in that article with: *“The Ombudsman and Auditor-General make their case for more funding to the officers of Parliament committee and if it is persuaded the Government usually implements it. The committee released its recommendations for funding of organisations in March.”* *“The Office of the Ombudsman’s baseline budget goes from \$9.9 million to 10.3 million in 2014-15, rising to \$10.46 million thereafter.”* ***“With last year’s increase the office’s budget will have expanded in two years to a figure approaching that sought by Dame Beverley two years ago.”***

[58] **Summary of performance challenges and issues at the Office of Ombudsmen**

1. Staff at the Ombudsmen’s Office appear to be unable to maintain the needed standard of professional care and diligence, due to ever increasing case work-loads and performance target expectations (see paragraphs [3] to [11], [19] to [23], [26], [29], [38], [41], [42], etc.);
2. staff are put into situations where adherence to statutory obligations, mandatory standards and to natural justice can be compromised (see [19] to [23], [26], [29], [41], [42], [54] etc.);
3. complaint case loads on hand increased from 2008/09 to 2011/12 by 59 percent, while Parliament’s appropriation increased by only 6.3 percent (see [41], [55] etc.);
4. staff turnover figures increased from 6 percent in 2010 to 14 percent in 2011 (see [41]);
5. sick and family leave days taken by staff increased from 204 hours per annum for 2007 to 471 in 2012, while staff numbers have largely remained unchanged (see [31] etc.);
6. complainants’ overall satisfaction with the Office’s standard of service has dropped from 66 percent in 2008/09 to 55 percent in 2011/12, and now apparently only 49 per cent for 2013/14 (see [27], [29], [40], [41] and [46]);
7. surveys of complainant’s and stakeholders’ satisfaction have only been conducted bi-annually and on selected investigated cases, and are therefore not sufficiently comprehensive, representative and conclusive (see [28], [39], [40], [41], etc.);
8. existing audit data is primarily gathered for balance sheet purposes and includes only certain key performance indicators, which does say too little about staff competence, satisfaction and quality of services delivered (see audit data provided in annual reports).

Actions requested to be considered and taken by the Office of the Speaker

[59] I request that your Office firstly considers conducting an inquiry into the assessments made, and the decision making processes followed, by the investigating officer Xxxxx Xxxxxxx when handling my complaints under the Ombudsman’s reference number xxxxxx. I ask that you inquire and investigate whether she complied with all the internal procedures, processes and standards set by the Ombudsman, and whether she appropriately adhered to the provisions of the Ombudsman Act and other applicable law. In regards to this, I must also ask you to establish, whether Miss Xxxxxxx did actually read, analyse and correctly assess all the relevant evidence in the complaint matters, which she has according to my information failed to do.

[60] Further to the above, I also request that you very carefully consider the actions by Chief Ombudsman Beverley Wakem in handling my request for a review from xx June 2014. It is my view that Miss Wakem did in this case fail to take the necessary steps to have the complaints handled by Miss Xxxxxxx reviewed by another investigator, after she refused to look at all relevant evidence that I presented, which was in my view the action one should reasonably have expected her to take. In her letter dated xx July 2014, Miss Wakem firmly refused to even properly look at my whole complaint and request for a review from xx June 2014. She chose to protect her staff member from any allegations, without examining all the evidence I put forward. She therefore appears to have failed at least in her duties as an employer under section 11 (2) under the Ombudsmen Act 1975. In blindly relying on her investigating officer, who very poorly handled my two complaints against the Health and Disability Commissioner (HDC), the Chief Ombudsman also failed to perform her functions under section 13 (1) of the Ombudsman Act, to investigate clearly obvious professional misconduct by staff at the HDC Office, who were apparently lying about email evidence they received. The mentioned failures consequently also raise concerns as to whether the oath given by the Chief Ombudsman under section 10 (1) of that Act had been sufficiently honoured by failing to take due actions.

- [61] While I understand that your Office may have limited powers and resources to conduct an inquiry by itself, and that this may also only be done in your own discretion, I would suggest that you do in any case make a formal request to the Office of the Auditor General to also conduct a wider inquiry and special performance audit into the Office of Ombudsmen. From the information I provided above, it must be concluded that there are potentially hundreds of complainants and enquirers affected by poor outcomes due to the mentioned problems that exist at the Office of Ombudsmen. I therefore consider that in this case also a special independent, thorough inquiry and audit of the Ombudsman's Office by the Auditor General is more than warranted. Such a special inquiry and audit should be possible under sections 18 (1) and 16 (1) (a), (b) and (d) of the Public Audit Act 2001. It needs to take a closer look at the Office of Ombudsmen than the regular annual audits by Audit New Zealand do. These have largely been gathering and presenting balance sheet type financial data, and only rather limited other performance data.
- [62] A special inquiry and audit should have a stronger focus on the effects an ever growing case- and work-load has had, and on the impact that the implemented internal reviews, streamlining, reorganising and restructuring have had, on staff working at the Office. A closer look deserves to be taken at the usefulness and appropriateness of the so-called 'Continuous Practice Improvement Strategy', apparently guided or supported by a "policy and professional practice advisory group", and how this has assisted - or otherwise affected - each staff member in their particular work area. Staff should be asked to provide anonymous responses on views in relation to: Work-load allocation, on performance targets, on standards to comply with, and on personal experiences with clients' complaint assessments and investigations, and whether the feedback they personally get from outside stakeholders are positive or negative in regards to their performance at the Office. An inquiry and audit should try to establish whether staff members feel they are under the existing work pressures and conditions able to provide fair, just and objectively delivered services and decisions. It must be established, whether and to what degree staff members may suffer excessive stress and other ill health, due to too high work loads and increased responsibilities, while expected to achieve ever higher performance and output results, without compromising quality of service delivery. Data should be sought on health issues staff have suffered, and whether staff members do perceive these to be the result of work based pressures and expectations.
- [63] I do request and would recommend that the first and separate inquiry by your own Office should endeavour to establish, whether in the particular complaint cases I presented to the Office of Ombudsmen, the investigating officer Xxxxx Xxxxxxx did follow all mandatory work processes and procedures, met the applied quality standards, and adhered to her legal obligations under the Ombudsmen Act 1975, and also according to other applicable statutes and law, while executing her duties. It should try to establish whether she intentionally or unintentionally misled the Chief Ombudsman upon her assessment of my submissions (including provided evidence), and whether she acted in negligence and/or failed to apply due professional care. I ask your Office to inquire and establish whether any advice or corrective action was served on Miss Xxxxxxx upon my request for a review on xx June 2014. In this same regard, I also request an examination, whether my complaint from xx June last year was handled appropriately by the Ombudsman, in line with provisions referred to on page 219 of the 'New Zealand National Integrity System Assessment 2013; Chapter 5: Ombudsman (pillar 7)' (see chapter 7.2.3 'Accountability (law)'). The following reference is made there: *"The Office of the Ombudsman has a formal, documented process for ensuring complaints about the Ombudsmen and their staff are taken seriously and handled appropriately."*⁷⁶⁰
- [64] An inquiry and audit by the Auditor General's Office should establish levels of staff satisfaction or dissatisfaction with present working conditions, whether they feel satisfied with working under individual employment contracts, or would prefer alternative employment agreements, possibly in the form of a collective agreement. Quality control measures should be examined, such as checks and balances used to avoid mistakes, or the oversight of relevant evidence information. An inquiry should establish, whether unacceptable "short-cuts" are used to progress and process cases, and whether re-prioritising is used, to discharge complaints deemed as "less important". Feedback should be sought on suggested improvements to applied processes, procedures, work and resources allocation, quality assurance, same as general working conditions.
- [65] I may last not least suggest also that either your Office, or the Office of the Auditor-General, considers making a recommendation that the Office of Ombudsmen should conduct ongoing,

comprehensive feedback surveys on all complainants and enquirers it deals with, inviting them to do them anonymously via their website, by sending them a link with information to a survey by way of email or postal letters, same as the Office of the Privacy Commissioner is presently doing. Only that way will the Office be able to gather reliable information on the satisfaction or dissatisfaction of any stakeholders it deals with. Such a recommendation should be considered irrespective of any decision made in this request matter.

Closing comments and concerns

[66] I am aware that a decision about this request may take some time. As stated, this is a matter of concern not only to me, given my personal experiences with the Office of Ombudsmen and their performance, but a matter of concern to the general public. The wider public does have daily interactions with state sector and similar agencies, which are open also to the scrutiny by the Ombudsmen and their staff. It is the fact that with a “leaner” public service there has been ever growing pressure on staff working in state sector offices, which can lead to more mistakes and wrong decisions being made. That is to my understanding also part of the reason for increasing numbers of enquiries and complaints to the Office of Ombudsmen. It is in the public interest that the requested inquiries and an audit will be conducted sooner rather than later, as otherwise too many members of the public will face similar disappointing experiences as I and others have recently. An inquiry initiated by your own Office, and a separate one, combined with an audit, followed by a report and recommendation by the Office of the Auditor General, may give us a clearer picture of the situation at the Ombudsmen’s Office, and perhaps raise necessary awareness and send necessary signals to review the operations at the Office of the Ombudsmen, so improvements may be made.

Your respected decision and response in this matter - in due - course will be highly appreciated.

Yours thankfully and sincerely

Xxxxxxxx Xxxxxxxx

References

1. ‘2010/2011 Report of the Ombudsmen for the year ended 30 June 2011’;
2. ‘2011/2012 Report of the Ombudsman for the year ended 30 June 2012’;
3. ‘2012/2013 Report of the Ombudsman for the year ended 30 June 2013’;
4. ‘SUPPLEMENTARY STANDARD FINANCIAL REVIEW QUESTIONS – 2012/13’ (Office of Ombudsmen, previously downloaded from Parliament’s Website);
5. ‘New Zealand National Integrity System Assessment 2013; Chapter 5: Ombudsman (pillar 7)’;
6. ‘The New Zealand Herald’, “*Bulging backlog creating a ‘crisis in Office of the Ombudsman’*”, Adam Bennett, 15 Feb. 2012;
7. ‘Scoop’, “*Ombudsman’s Office Workload Doubles*”, press release article, 27 Sept. 2012;
8. ‘ADLS’ (‘Auckland District Law Society’ website), “*Chief Ombudsman discusses challenge and change*”, by Matthew Lark, 13 Sept. 2013;
9. ‘Scoop’, “*Highest ever number of complaints for Ombudsman*”, press release, 15 Oct. 2013;
10. ‘The New Zealand Herald’, “Budget 2014: Funding crucial as busy watchdogs feel the strain”, by Adam Bennett, 15 May 2014.

Attachments to email 1 carrying this request letter:

- a). ‘*The Speaker, Parliament, request for inquiry into Ombudsman’s Office, unsigned ltr, xx.05.2015.pdf*’ (letter seeking a special inquiry and separate audit into performance and other related matters at the Office of Ombudsmen, by X Xxxxxx, dated xx May 2015);
- b). ‘*Ombudsman, complaint, HDC, C11HDCxxxxx, breach of nat. justice, X.X., unsigned ltr, xx.11.13.pdf*’ (first complaint letter against the HDC sent to the Ombudsman, xx.11.2013);

- c). **'Ombudsman, complaint, HDC, C12HDCxxxxx, failure to follow nat. justice, law, unsigned ltr, xx.12.13.pdf'** (second complaint letter against the HDC sent to the Ombudsman, xx.12.2013);
- d). **'Ombudsman, complaints xxxxxx, C11HDCxxxxx, C12HDCxxxxx, decision, X. Xxxxxxx, xx.05.2014.pdf'**, (first decision on my complaint, prepared by X. Xxxxxxx, signed by Beverley Wakem);
- e). **'Ombudsman, B. Waken, ref. xxxxxx, C11HDCxxxxx, C12HDCxxxxx, HDC, fin. decision, xx.07.14.pdf'**, (final decision by Chief Ombudsman Beverley Wakem);
- f). **'Ombudsmen Office, complaint yyyyyy, MSD, O.I.A. requests, incl. new, response ltr fr. xx.05.14.pdf'** (letter from Ombudsman Ron Paterson, dated xx May 2014, mentioning limited resources and performance limitations the Office of Ombudsmen faces);
- g). **'NZ Parliament, Suppl. Std. Fin. Rev. Qs 2012-13, Ombudsman, d-load, high-lit, 14.08.14.pdf'**,
'SUPPLEMENTARY STANDARD FINANCIAL REVIEW QUESTIONS – 2012/13' (PDF file, Office of Ombudsmen, previously downloaded from Parliament's Website);
- h). **'Ombudsman, Integrity-Plus-2013-Pillar-7-Ombudsman, transparency.org, Dec. 13, 14.08.14.pdf'** (containing 'New Zealand National Integrity System Assessment 2013, Chapter 5: Ombudsman (pillar 7)').
- i). **'Ombudsman, Office of, Statement of Intent, soi14-18, d-load, 14.08.14.pdf'**, Office of the Ombudsman, Statement of Intent 2014 – 2018.

Attachment to email 2 carrying this request letter:

- j). **'The Speaker, Parliament, request for inquiry into Ombudsman's Office, ltr, p. 1-9, xx.05.2015.pdf'** (scan copy of signed original letter in this matter, see also a). and k).).

Attachment to email 3 carrying this request letter:

- k). **'The Speaker, Parliament, request for inquiry into Ombudsman's Office, ltr, p. 10-18, xx.05.2015.pdf'** (scan copy of signed original letter in this matter, see also a). and j).).

Emails that will also be on-forwarded following above initial emails (with attached evidence) – to be sent with emails 4, 5, 6, 7 and 8 in this matter:

- 1). Email number 1, xx June 2014, 05.02 h (with 1 PDF file attached);
- 2). Email number 2, xx June 2014, 05.36 h (with 8 PDF files w. relevant evidence attached);
- 3). Email number 3, xx June 2014, 05.47 h (with 7 PDF files w. relevant evidence attached);
- 4). Email number 4, xx June 2014, 20.30 h (with 3 more PDF files attached);
- 5). Earlier email enquiry sent xx Feb. 2014 14.25 h, re complaint sent xx Dec. 13 (*which had 16 PDF attachments, but which won't be sent, as they should be on file at the Ombudsmen's Office*).

Attachments to a final email 9 in this matter (correspondence with the OAG):

- l). **'OAG, reqst f. special inquiry + audit, into Ombudsmen Office, ref. xxxxx, ltr, X. Xxxxxxxx, xx.xx.15.pdf'**;
- m). **'OAG, Reqst f. Inquiry into Office of Ombudsmen, ref. xxxxx, reply, xx.xx.15.pdf'**;
- n). **'OAG, reqst f. special inquiry + audit, into Ombudsmen Office, ltr, X. Xxxxxxx, xx.12.14.pdf'**;
- o). **'OAG, Letter to Mr Xxxxxx Xxxxxxx_xx December 2014.pdf'**;
- p). **'OAG, CAG, request f. special inquiry + audit, into Ombudsmen Office, new ltr, X. Xxxxxxxx, xx.11.14.pdf'**;
- q). **'OAG, request f. spec. inquiry + audit, Ombudsman, Letter to Mr Xxxxxx Xxxxxxxx, recd xx.xx.14.pdf'**;
- r). **'OAG, CAG, request f. special inquiry + audit into Ombudsmen Office, unsigned ltr, xx.08.2014.pdf'**.

P.S.:

PLEASE TAKE NOTE THAT THE EVIDENCE PRESENTED TO THE OFFICE OF OMBUDSMEN IN RELATION TO COMPLAINTS UNDER THEIR REFERENCE xxxxxx INCLUDES MORE THAN IS BEING PRESENTED TO YOUR OFFICE WITH THIS CORRESPONDENCE! IT SHOULD BE AVAILABLE FROM THE RELEVANT FILES HELD AT THE OFFICE OF OMBUDSMEN.