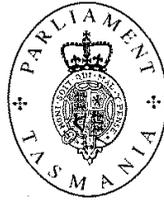


2020

(No. 14)



**PARLIAMENTARY STANDING COMMITTEE OF
PUBLIC ACCOUNTS**

**OFFICE OF THE OMBUDSMAN AND HEALTH COMPLAINTS
COMMISSIONER**

MEMBERS OF THE COMMITTEE

LEGISLATIVE COUNCIL

Hon Ivan Dean MLC (Chair)

Hon Ruth Forrest MLC
(Deputy Chair)

Hon Josh Willie MLC
(from 28 May 2019)

Hon Michael Gaffney MLC
(to 23 May 2019)

HOUSE OF ASSEMBLY

Mr David O'Byrne MP
(from 24 September 2019)

Mrs Joan Rylah MP
(from 19 March 2019)

Mr John Tucker MP
(from 19 March 2019)

Mr Adam Brooks MP
(to 11 February 2019)

Mr Rene Hidding MP
(to 25 February 2019)

Mr Scott Bacon MP
(to 22 August 2019)

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ABBREVIATIONS

IO	Investigation Officer
HCC	Health Complaints Commissioner
OPCAT	Ombudsman's inspectorate role in relation to the Protocol to the Convention Against Torture and other Cruel, Inhumane or Degrading Treatment of Punishment
OV	Official Visitor
RTI	Right to information
SIO	Senior Investigation Officer
SIRO	Senior Investigation and Research Officer
TPS	Tasmania Prison Service

CHARTER OF THE COMMITTEE

The Public Accounts Committee (the Committee) is a Joint Standing Committee of the Tasmanian Parliament constituted under the *Public Accounts Committee Act 1970*.

The Committee comprises six Members of Parliament, three Members drawn from the Legislative Council and three Members from the House of Assembly.

Under section 6 of the *Public Accounts Committee Act 1970* the Committee:

- must inquire into, consider and report to the Parliament on any matter referred to the Committee by either House relating to the management, administration or use of public sector finances; or the accounts of any public authority or other organisation controlled by the State or in which the State has an interest; and
- may inquire into, consider and report to the Parliament on any matter arising in connection with public sector finances that the Committee considers appropriate; and any matter referred to the Committee by the Auditor-General.

FINDINGS

1. The Ombudsman is an independent statutory officer appointed by the Governor pursuant to the *Ombudsman Act 1978*.
2. The Ombudsman can accept a complaint from any person who is personally aggrieved by the administrative actions of a Tasmanian public authority, and who has tried unsuccessfully to resolve his or her complaint directly with the authority.
3. The Ombudsman resolves the majority of matters by way of preliminary inquiries and uses a co-operative approach where public authorities provide information and evidence and work with him to address complaints and improve administrative processes.
4. The Health Complaints Commissioner is appointed under the Health Complaints Act 1995 and receives complaints relating to the provision of any health service by a health service provider in both the public and the private sector.
5. The Energy Ombudsman considers grievances concerning any service of, or relating to the sale and supply of gas or electricity by an energy entity;
6. The Energy Ombudsman receives complaints under the *Energy Ombudsman Act 1998* and has the power under the Act to make determinations and awards against the entities.
7. The Ombudsman is the avenue for the external review of decisions made by public authorities on applications for assessed disclosure under the Right to Information Act not to release the information sought and can make a fresh determination which the authority is obliged to implement.
8. Prison Official Visitors are appointed under the *Corrections Act 1997* which requires them to make monthly visits to authorised prisons and reception centres;
9. Prison Official Visitors are members of the community who are appointed to visit prisons and reception centres to check on the way in which prisoners and detainees are being treated;
10. Prison Official Visitors investigate complaints made to them by prisoners and detainees and operate independently from the Tasmanian Prison Service.

11. It is noted that prisoners can also lodge complaints with the Ombudsman.
12. Mental Health Official Visitors are appointed by the Governor under the *Mental Health Act 2013* and operate independently from the Department of Health.
13. Mental Health Official Visitors are members of the community who are appointed to visit approved facilities and the secure mental health unit at the Wilfred Lopes Centre in Risdon, to check on the way in which people with mental illness are being treated;
14. Either House of Parliament, or a Committee of either House of Parliament, may request the Custodial Inspector to report to Parliament on any particular issue or general matter relating to the functions of the Inspector.
15. The Office of the Custodial Inspector was established in 2016 and has oversight of all five Tasmanian adult custodial facilities and also oversight of the Ashley Youth Detention Centre;
16. The Office of the Custodial Inspector has the right to visit and examine custodial centres including areas that are related to the custodial centre.
17. The Office of the Custodial Inspector has the power to obtain information, access documents and information relating to custodial centres or persons in custody.
18. The Office of the Custodial Inspector is to provide independent, proactive, preventative and systemic oversight of custodial centres.
19. The Office of the Custodial Inspector reports to the Minister and Parliament on inspections and any issues or general matters relating to his or her functions and provides an annual report to Parliament.
20. The Office of the Ombudsman had a significant reduction in budget following the Global Financial Crisis in 2008 which led to the closure of the Launceston office.
21. The Ombudsman has a broad range of functions under a range of statutes, the number of which has grown to include the Custodial Inspectorate and the adoption of the Official Visitors program.
22. The staffing of the Office of the Ombudsman has been consistent regardless of additional responsibilities imposed by legislation on the Office.

23. The Office of the Ombudsman is not adequately resourced to enable best practice in public administration, decision-making and promoting good governance more generally to ensure public confidence.
24. The number of complaints received by the Health Complaints Commissioner over the past ten years has doubled.
25. The result of increased complaints to the Health Complaints Commissioner has caused inability to manage the volume of complaints received and an increase in the number of complaints carried forward each year.
26. The Energy Ombudsman is separately and adequately funded by the state's energy entities and funding is contributed by the entities according to the number of complaints made about the service delivery of each respective entity.
27. The Office of the Ombudsman has faced resource pressure in managing the Right to Information workload.
28. The Office of the Ombudsman received additional funding of \$245,000 per annum for RTI work in the 2019-20 State Budget.
29. The additional funding received by the Office of the Ombudsman has/will be used to recruit additional staff to work within the Right to Information area with the initial aim to clear the RTI backlog.
30. Official Visitors are not employees but are engaged on an hourly rate.
31. The overall budget of the Official Visitor program has not changed since the program transferred to the Office of the Ombudsman in 2009 and this is presenting recruitment and retention problems, particularly in the north of the state.
32. The Ombudsman stated that the resourcing of the Custodial Inspectorate does not allow him to meet his legislative mandate in this area.
33. Additional funding was requested by the Ombudsman to support the Custodial Inspectorate functions and the Official Visitor training programs.
34. The Ombudsman has sought funding to cover consultancy fees, professional development, vehicle and travel costs and IT equipment and access.
35. The budget of the Office of the Ombudsman is insufficient to enable the Ombudsman to engage the consultants needed within the Custodial Inspectorate area of his responsibilities.

36. The budget allocation for the Custodial Inspectorate remained unchanged in the 2019-20 financial year.
37. The Ombudsman has indicated he has inadequate resources to carry out his functions. This has been made more difficult through the increasing of statutory functions determined by the Parliament over time.
38. Despite receiving requests from departments and local government for training in good administration practice the Office of the Ombudsman cannot address this need with current resourcing.
39. It is noted the Health Complaints Commissioner stated with current resourcing of 4.4 full time equivalent staff members the Office cannot meet the legislative obligations of the *Health Complaints Act 1995*.
40. Significant delays continue to occur in the Ombudsman's external review of RTI decisions.
41. Additional resourcing provided in the 2019-20 Budget to the RTI area should deliver a more acceptable timeframe for review of decisions.
42. The first round of Custodial Inspectorate mandatory inspections and delivery of inspection reports is due to be completed by 31 December 2020.
43. The Ombudsman stated that failure to conduct and report upon Custodial Inspectorate mandatory inspections will be subject to unfavourable scrutiny, both internal and external to government.
44. The Ombudsman stated there is no action that can be taken by the Custodial Inspectorate to mitigate against the failure to complete statutory inspections and reports by the mandated date.
45. The OPCAT Protocol when implemented will require additional resources and funding, with the implementation date to be confirmed.

RECOMMENDATIONS

Based upon its findings from the examination of the Office of the Ombudsman and Health Complaints Commissioner, the Committee recommends:

1. The Ombudsman be consulted in relation to the impact on the office of any proposed legislative change that could impact on the office to undertake its functions and responsibilities.
2. The Office of the Ombudsman be appropriately resourced to enable it to meet all its statutory obligations and responsibilities,
3. The Office of the Ombudsman be immediately resourced to facilitate mandatory inspections and delivery of inspection reports as required by legislation.-

1 INTRODUCTION AND CONDUCT OF REVIEW

- 1.1 On 28 November 2018 the Committee resolved of its own motion to examine the Office of the Ombudsman and Health Complaints Commissioner. This followed a written request received from the Member for McIntyre, the Honourable Ms Tania Rattray MLC.

TERMS OF REFERENCE

- 1.2 The Committee's terms of reference are:

To inquire into and report upon the Office of the Ombudsman and Health Complaints Commissioner with particular reference to the:

1. Functions of the Office;
2. Resourcing of the Office;
3. Performance of the Office; and
4. Any other matters incidental thereto.

CONDUCT OF THE REVIEW

- 1.3 On 4 December 2018 the Committee wrote to the Ombudsman to invite him to make a submission to the Inquiry.
- 1.4 Parliament was prorogued on 27 February 2019.
- 1.5 The Ombudsman's submission was received 7 March 2019.
- 1.6 The second session of the Parliament commenced 19 March 2019 and Committee Members of the House of Assembly and Legislative Council were appointed.
- 1.7 The Honourable Elise Archer MP provided the Government's submission on 1 July 2019.
- 1.8 The Ombudsman provided a further submission on 15 July 2019 following the release of the 2019 State Budget.

- 1.9 On 23 July 2019 the Committee heard from the Ombudsman at a public hearing held at Parliament House in Hobart.
- 1.10 The Committee conducted an additional hearing with the Ombudsman on 9 April 2020 at Parliament House in Hobart.

2 EVIDENCE

TERM OF REFERENCE 1: FUNCTIONS OF THE OFFICE

2.1 The Ombudsman is an independent statutory officer appointed by the Governor pursuant to the *Ombudsman Act 1978 (the Act)*. In his submission to the Committee the Ombudsman stated:

The Office of the Ombudsman is responsible for six separate jurisdictions; the Parliamentary Ombudsman, the Health Complaints Commissioner, the Energy Ombudsman, the external review of decisions under the Right to Information Act 2009, the Official Visitors Programs and the Custodial Inspectorate.

The functions of each jurisdiction require slightly different skill sets with officers in RTI completing technical, legal decision-making, Ombudsman officers conducting research and investigations, Custodial Inspectorate staff undertaking inspections against a set of established standards and Health Complaints officers working to resolve complaints made by customers against health service providers.¹

The Ombudsman performs a vital role in ensuring public confidence in government and providing an oversight function to ensure good administrative decision-making, investigating public interest disclosures and personal information breaches as well as having an advisory and educative role.

The Ombudsman has responsibilities and functions under a range of statutes, the number of which continues to grow. The broad range of functions requires the diversion of considerable resources away from the more traditional complaint-handling and investigative functions under the Ombudsman Act.

The Ombudsman's responsibilities include the following:

- *general Ombudsman Act complaint-handling and investigations;*

¹ Office of the Ombudsman and Health Complaints Commissioner (2019) Submission to the Review of the Office of the Ombudsman and Health Complaints Commissioner Inquiry, p.1

- *disclosures under the Public Interest Disclosures Act 2002 (whistle-blowers legislation) – the office receives and investigates disclosures and also has an advisory function;*
- *taking complaints under the Personal Information Protection Act 2004;*
- *undertaking inspections pursuant to various police powers statutes;*
- *conducting a review of the use of the new police powers under Part II, Division III of the Police Offences Act 1935 (the consorting laws) to be undertaken within four years of the commencement of the Act; and*
- *rarely used review powers under adoption and witness protection legislation.*

The Office also has a direct telephone line on the Tasmania Prison Service’s Arunta phone system which is connected to all the states detention facilities that prisoners can use to lodge complaints. We receive many calls from prisoners each day that require additional work and follow-up.²

2.2 The Ombudsman Tasmania 2018-19 Annual Report provides the following information regarding general Ombudsman Act complaint handling and investigations:

The great majority of matters are resolved by way of preliminary inquiries made pursuant to s20A of the Act and involve a co-operative approach where public authorities provide information and evidence and work with us to address complaints and improve administrative process.

If the circumstances warrant it, I may also choose to conduct an investigation either on the basis of a complaint or, particularly where systemic issues are involved, on my own motion. At the conclusion of an investigation, whether it be of a complaint or on my own motion, a report is prepared for delivery to the authority concerned. Section 28 of the Act provides that if I have formed the opinion that the action investigated:

- (a) appears to have been taken contrary to law;*
- (b) was unreasonable, unjust, oppressive, or improperly discriminatory;*

² *ibid*, pp.1-2

(c) was taken in accordance with a rule of law or a provision of an enactment or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory;

(d) was taken in the exercise of a power or discretion and was so taken for an improper purpose or on irrelevant grounds or on the basis of irrelevant considerations;

(e) was a decision made in the exercise of a power or discretion and the reasons for the decision were not, but should have been, given;

(f) was based wholly or partly on a mistake of law or fact; or

(g) was wrong.

I can, amongst other things, make recommendations to address and rectify the subject action.

A report can also be delivered to the relevant Minister and/or Parliament. My office has no coercive power in relation to the adoption of recommendations but is dependent on constructive negotiation and persuasive argument. My recommendations are ordinarily accepted and acted upon.³

FINDINGS

1. The Ombudsman is an independent statutory officer appointed by the Governor pursuant to the *Ombudsman Act 1978*.
2. The Ombudsman can accept a complaint from any person who is personally aggrieved by the administrative actions of a Tasmanian public authority, and who has tried unsuccessfully to resolve his or her complaint directly with the authority.
3. The Ombudsman resolves the majority of matters by way of preliminary inquiries and uses a co-operative approach where public authorities provide information and evidence and work with him to address complaints and improve administrative processes.

³ https://www.ombudsman.tas.gov.au/_data/assets/pdf_file/0006/552426/Ombudsman-Tasmania-Annual-Report-2018-19-HoA-and-LC.PDF (accessed 7 April 2020)

HEALTH COMPLAINTS COMMISSIONER

2.3 The Ombudsman is also the Health Complaints Commissioner under the *Health Complaints Act 1995* and receives complaints relating to the provision of any health service by a health service provider in both the public and the private sector.

2.4 In his submission the Ombudsman stated:

The Health Complaints Commissioner performs a vital role in promoting and protecting health rights. It receives assesses and resolves complaints and feeds back into the safety and quality framework of the Tasmanian health system. The Commissioner is independent, impartial and an alternative to costly litigation.⁴

2.5 The Ombudsman Tasmania 2018-19 Annual Report provides the following detail:

The Commissioner's functions are outlined in s6 of the Act and include:

- *preparing and regularly reviewing a Charter of Health Rights;*
- *providing information, education and advice in relation to the Charter, health rights and responsibilities, and the procedures for resolving complaints;*
- *receiving, assessing and resolving complaints from health service users;*
- *identifying and reviewing issues arising out of complaints and suggesting ways of improving health services and preserving and increasing health rights; and*
- *inquiring into and reporting on any matter relating to health services at the Commissioner's discretion or on the direction of the Health Minister.*

The Tasmanian Health Complaints Commissioner acts independently, impartially and in the public interest.⁵

⁴ Office of the Ombudsman and Health Complaints Commissioner (2019), Op.cit., p.3

⁵ https://www.ombudsman.tas.gov.au/_data/assets/pdf_file/0006/552426/Ombudsman-Tasmania-Annual-Report-2018-19-HoA-and-LC.PDF (accessed 25 May 2020)

FINDINGS

4. The Health Complaints Commissioner is appointed under the Health Complaints Act 1995 and receives complaints relating to the provision of any health service by a health service provider in both the public and the private sector.

ENERGY OMBUDSMAN

- 2.6 The Ombudsman Tasmania 2017-18 Annual Report stated:

*A person who has a grievance concerning any service of, or relating to the sale and supply of gas or electricity by an energy entity may lodge a complaint with the Ombudsman for investigation and resolution under the Energy Ombudsman Act 1998. The office has the power under the Act to make determinations and awards against the entities where appropriate.*⁶

- 2.7 The Energy Ombudsman website provided the following detail:

The Energy Ombudsman seeks to achieve fair and reasonable outcomes for complainants based on current law, individual circumstances and good industry practice. We can investigate a wide range of complaints, including:

- *Disputed accounts and high bills;*
- *Debts and arrears;*
- *Disconnection or restriction of supply;*
- *Actions of a retailer or distributor that affect your property;*
- *Reliability and quality of supply (including claims for compensation);*
- *Connection or transfer issues; and*
- *Vegetation and easement issues.*⁷

⁶ <https://stors.tas.gov.au/au-7-0095-06178> (accessed 26 July 2019)

⁷ <https://www.energyombudsman.tas.gov.au/about-us> (accessed 26 July 2019)

FINDINGS

5. The Energy Ombudsman considers grievances concerning any service of, or relating to the sale and supply of gas or electricity by an energy entity;
6. The Energy Ombudsman receives complaints under the *Energy Ombudsman Act 1998* and has the power under the Act to make determinations and awards against the entities.

RIGHT TO INFORMATION

- 2.8 The Ombudsman Tasmania 2017-18 Annual Report stated:

My Office is the avenue for the external review of decisions made by public authorities on applications for assessed disclosure under the Right to Information Act not to release the information sought. If at the conclusion of a review I am of the view that the authority's decision was incorrect I can make a fresh determination, which the authority is obliged to implement.⁸

- 2.9 The 2010 Guidelines issued by the Office of the Ombudsman stated:

Under section 47 of the Right to Information Act 2009 the Ombudsman has wide powers in relation to the conduct of reviews. These powers include the power to give directions to the parties, and to promote settlement of a review application.

The Ombudsman is obliged by s47(6) to use the powers given by s 47 to resolve an application for review as soon as practicable after its receipt.

Where the application cannot be resolved, the Ombudsman is obliged by the same provision to ensure that his or her decision on the review is made as soon as practicable.

Participants in the review process should expect the-

review process will be expedited through the active use of the powers provided by s47,

⁸ <https://stors.tas.gov.au/au-7-0095-06178> (accessed 26 July 2019)

- *prospect for settlement of the review application will be explored in a timely way, through case management conferences and other means,*
- *powers provided by s47 will be used to seek to limit the matters which need to be the subject of a formal decision by the Ombudsman under s48.⁹*

FINDINGS

7. The Ombudsman is the avenue for the external review of decisions made by public authorities on applications for assessed disclosure under the Right to Information Act not to release the information sought and can make a fresh determination which the authority is obliged to implement.

OFFICIAL VISITORS PROGRAMS

- 2.10 In his submission the Ombudsman stated he is the Coordinator of the Prison Official Visitors and Principal Mental Health Official Visitor.

- 2.11 The Prison Official Visitors website provided the following detail:

Prison Official Visitors are members of the community who are appointed to visit prisons and reception centres to check on the way in which prisoners and detainees are being treated. They also investigate complaints made to them by prisoners and detainees.

Official Visitors operate independently from the Tasmanian Prison Service. Consistently with their independence, their administrative support is provided by the Office of the Ombudsman and Health Complaints Commissioner.

Prison Official Visitors are appointed under the Corrections Act 1997. The Act requires [them] to make monthly visits to authorised prisons. [Their] role is to:

- *enquire into the treatment, behaviour and conditions of prisoners and detainees;*
- and*

⁹ https://www.ombudsman.tas.gov.au/_data/assets/pdf_file/0006/180834/Guideline_1-2010_Guideline_in_Relation_to_Review_of_Decisions_Revised_1_November_2011.pdf (accessed 26 July 2019)

- *receive and investigate any complaint of a prisoner or detainee.*

[They] report to the Minister at least once a year on the enquiries that we have made.

[They] aim to resolve complaints and issues during our visits, through discussions with prison management. Occasionally, issues may be referred to the Ombudsman for investigation. Prisoners can also lodge complaints with the Ombudsman.¹⁰

2.12 The Ombudsman's submission provided further detail:

Section 10 of the Corrections Act 1997 requires that each prison is visited once a month. There are six prisons in Tasmania including the two reception prisons, the maximum-security prison, medium and minimum-security prisons and the Mary Hutchinson women's prison. Currently six official Visitors make 94 visits to the various prisons over the course of the year to meet this requirement. Each visit is followed by a report to the Coordinating Official Officer. These Visitors also meet with Director of Prisons every four months and with the Minister two or three times a year.

Official Visitors have an important role in identifying grievances and other issues that require rapid remedial action. Prisoners see Official Visitors as independent from prison management and Official Visitors are able to identify issues, which if not addressed quickly could escalate. In the past when there were disturbances in the prison, the Minister of the day requested that Official Visitors make twice as many visits to the prison each month. This was recognised as a way to resolve prisoner complaints as quickly as possible and reduce tension in the prison environment.¹¹

2.13 The Mental Health Official Visitors website provided the following detail:

Mental Health Official Visitors are members of the community who are appointed to visit approved facilities and the secure mental health unit at the Wilfred Lopes Centre in Risdon, to check on the way in which people with mental illness are being treated.

They also receive and refer complaints made to them by patients receiving care and treatment in these facilities for mental illness. They can also receive complaints from

¹⁰ <https://www.officialvisitors.tas.gov.au/prison-official-visitors> (accessed 26 July 2019)

¹¹ Office of the Ombudsman and Health Complaints Commissioner (2019) Op.cit. p.10

a representative or support person of the patient and a person who, in the opinion of the Principal Official Visitor, has a genuine interest in the patient's welfare.

The Official Visitors operate independently from the Department of Health and Human Services [sic]. Consistent with their independence, their administrative support is provided by the Office of the Ombudsman and Health Complaints Commissioner.

Role [of Official Visitors]

The Principal Official Visitor is appointed by the Governor under the Mental Health Act 2013 (the Act).

Mental Health Official Visitors are appointed by the Principal Official Visitor under the Act.

[They] visit approved facilities and the secure mental health unit at the Wilfred Lopes Centre in Risdon at least once a month to:

- receive complaints from (or concerning) patients;*
- check that patients are being informed of and accorded their rights; and*
- monitor the adequacy and quality of approved facilities, with particular regard to the recreational, occupational, training and rehabilitation facilities available to patients.*

[They] also:

- refer complaints received from (or concerning) patients to the Principal Official Visitor;*
- report suspected contraventions of this Act, or other matters that may require investigation, to the Principal Official Visitor; and*
- raise with the Principal Official Visitor any matters of particular concern that come to the Official Visitor's attention.*

Complaints can be made at any time by:

- the patient;*
- a representative or support person of the patient; and*
- a person who, in the opinion of the Principal Official Visitor, has a genuine interest in the patient's welfare.*

The Principal Official Visitor can assess and conduct preliminary enquiries into complaints and refer suspected contraventions of this Act, or any other matters that require investigation, to the Health Complaints Commissioner or Ombudsman.¹²

2.14 With regard to the Principal Mental Health Official Visitor the Ombudsman's submission stated:

The Mental Health Act 2013 requires that each approved hospital is visited once a month. There are six approved hospitals in the state for the purposes of the Act, namely: the North West General Hospital; the Launceston General Hospital; the Royal Hobart Hospital; the Roy Fagan Centre; the Millbrook Rise Centre; and the Wilfred Lopes Centre.

A team of two Visitors visits each hospital once a month and an average of 108 visits are made each year. After each visit, the team produce a comprehensive report for the Principal Official Visitor.

Mental Health Official Visitors, apart from reporting on complaints and issues that need resolution, are able to provide rapid feedback to senior staff about potentially serious issues that could affect a patient's care and treatment. Senior managers welcome the early identification of quality and safety issues...patients see Mental Health Official Visitors as objective and independent from mental health staff, and able to bring problems and issues to the appropriate senior staff member as quickly as possible.¹³

FINDINGS

8. Prison Official Visitors are appointed under the *Corrections Act 1997* which requires them to make monthly visits to authorised prisons and reception centres;
9. Prison Official Visitors are members of the community who are appointed to visit prisons and reception centres to check on the way in which prisoners and detainees are being treated;

¹² <https://www.officialvisitors.tas.gov.au/mental-health-official-visitors> (accessed 26 July 2019)

¹³ Office of the Ombudsman and Health Complaints Commissioner (2019) Op.cit. p.10

10. Prison Official Visitors investigate complaints made to them by prisoners and detainees and operate independently from the Tasmanian Prison Service.
11. It is noted that prisoners can also lodge complaints with the Ombudsman.
12. Mental Health Official Visitors are appointed by the Governor under the *Mental Health Act 2013* and operate independently from the Department of Health.
13. Mental Health Official Visitors are members of the community who are appointed to visit approved facilities and the secure mental health unit at the Wilfred Lopes Centre in Risdon, to check on the way in which people with mental illness are being treated.

CUSTODIAL INSPECTORATE

2.15 The Ombudsman's submission stated:

The Office of the Custodial Inspector was established in 2016 and has oversight of all five Tasmanian adult custodial facilities: The Risdon Prison Complex (medium and maximum security); the Ron Barwick Minimum Security Prison; the Mary Hutchinson Women's Prison; the Hobart Reception Prison; and the Launceston Reception prison, all of which are operated by the Tasmania Prison Service (TPS). It also has oversight of the Ashley Youth Detention Centre which is managed by Children and Youth Services, an operational unit of the Department of Communities Tasmania. The jurisdiction of the Inspector also includes prisoner and detainee vehicles.¹⁴

2.16 The Office of the Custodial Inspector Tasmania website provides the following information:

The purpose of the Custodial Inspector is to provide independent, proactive, preventative and systemic oversight of custodial centres.

In particular, the Custodial Inspector provides external scrutiny through an independent statutory office and the publication of reports and recommendations. The focus of the Inspector is on systemic issues relating to the management, control and

¹⁴ *Ibid*, p. 8

security of the State's prisons and youth detention centre and the care and welfare of prisoners and detainees.

The Custodial Inspector has jurisdiction over all custodial centres in Tasmania. A custodial centre is defined as a prison within the meaning of the Corrections Act 1997, and a detention centre within the meaning of the Youth Justice Act 1997.

In effect, this means that at present Tasmania Prison Service facilities, including the remand centre and holding cells at the Hobart Reception Prison and the Launceston Reception Prison, and the Ashley Youth Detention Centre are subject to the oversight of the Custodial Inspector.

Inspections may be instigated by the Custodial Inspector, or at the request of the Minister responsible for the custodial centre. Either House of Parliament, or a Committee of either House of Parliament, may request the Custodial Inspector to report to Parliament on any particular issue or general matter relating to the functions of the Inspector.

The Custodial Inspector is able to examine custodial centres at any time and make recommendations about issues of concern. The Custodial Inspector reports to the Minister who is required to table the Inspector's report in each House of Parliament.

Role [of the Custodial Inspectorate]

The functions of the Custodial Inspector are set out in the Custodial Inspector Act 2016. The Custodial Inspector's principal functions include:

- mandatory and occasional inspections and reviews of each custodial centre in Tasmania;*
- preparing and publishing guidelines in relation to the conduct of inspection and reviews;*
- reporting to the Minister and Parliament on inspections and any issues or general matters relating to his or her functions;*
- providing an annual report to Parliament;*
- providing advice or recommendations relating to the safety, custody, care, wellbeing and rehabilitation of prisoners and detainees; and*

- *providing information relating to education and programs to assist in the rehabilitation of prisoners and detainees.*

The legislation also prescribes the power of the Custodial Inspector. Broadly, these powers include:

- *the right to visit and examine custodial centres including areas that are related to the custodial centre; and*
- *obtaining information, access to documents and information relating to custodial centres or persons in custody, including obtaining information from persons in any manner.*

These legislative powers ensure that the Custodial Inspector has access to sites, information and material required to undertake his or her functions.

The Custodial Inspector's office has developed a set of Inspection Standards for both juvenile and adult custodial centres. The Inspection Standards establish the inspection benchmarks for effective, accountable and humane custodial services. The standards were developed taking into account the full range of relevant international treaties, covenants, and the Standard Guidelines for Corrections in Australia.¹⁵

¹⁵ https://www.custodialinspector.tas.gov.au/about_us (accessed 26 July 2019)

FINDINGS

14. Either House of Parliament, or a Committee of either House of Parliament, may request the Custodial Inspector to report to Parliament on any particular issue or general matter relating to the functions of the Inspector.
15. The Office of the Custodial Inspector was established in 2016 and has oversight of all five Tasmanian adult custodial facilities and also oversight of the Ashley Youth Detention Centre;
16. The Office of the Custodial Inspector has the right to visit and examine custodial centres including areas that are related to the custodial centre.
17. The Office of the Custodial Inspector has the power to obtain information, access documents and information relating to custodial centres or persons in custody.
18. The Office of the Custodial Inspector is to provide independent, proactive, preventative and systemic oversight of custodial centres.
19. The Office of the Custodial Inspector reports to the Minister and Parliament on inspections and any issues or general matters relating to his or her functions and provides an annual report to Parliament.

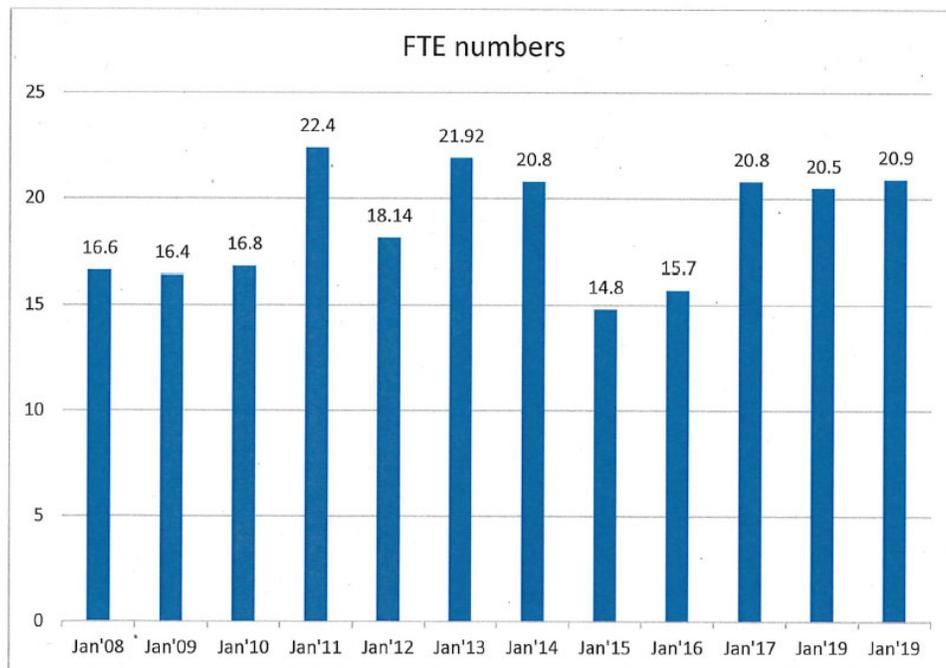
TERM OF REFERENCE 2: RESOURCING OF THE OFFICE

2.17 In his submission the Ombudsman stated:

The functions and duties of the Office have increased over recent years while at the same time, funding has been cut. A significant reduction in budget following the Global Financial Crisis in 2008 led to the closure of our Launceston office and the loss of an Investigation Officer and further cuts made in 2014 as part of a failed colocation strategy meant that another position could not be filled.¹⁶

2.18 During his later appearance before the Committee in April 2020, the Ombudsman confirmed that although he would like to, there was no intention on reopening an office in Launceston due to not having sufficient resources to do so.¹⁷

2.19 The Ombudsman provided the following graph¹⁸ of staff numbers for the Office since its establishment in response to a question on notice. The numbers include the adoption of the Official Visitors Program in 2009 and the establishment of the Custodial Inspectorate in 2017:



¹⁶ Office of the Ombudsman and Health Complaints Commissioner (2019) Op.cit. p.1

¹⁷ Hansard Transcript, Richard Connock, 9 April 2020, p.5

¹⁸ As provided by the Office of the Ombudsman

OMBUDSMAN

2.20 As detailed above at paragraph 2.1 the Ombudsman has a broad range of functions under a range of statutes, the number of which continues to grow. In his submission he stated that:

The need to perform these additional functions puts a significant strain on existing resources; staffing levels are inadequate and significant issues of public interest cannot be investigated.

...all of these functions are performed with a current staff establishment of 4.0 FTE. The present establishment is comprised of 1.0 FTE Principal Officer Band 8, one 1.0 FTE Senior Investigation Officer (SIO) at Band 6 and two Band 5 Investigation Officer (IO) positions.¹⁹

2.21 The consequence of under resourcing was discussed in the Ombudsman's submission:

The Ombudsman performs a vital service not only by promoting best practice in public administration and decision-making, but also by promoting good governance more generally. Any inability on the part of the office to adequately perform all or any of its functions may compromise the delivery of services and adversely affect public confidence in it. Under-resourcing an office such as this could also give rise to a perception that vital oversight is not a genuine priority for government, and our inability to accept and investigate matters of public interest strengthens that perception. A properly resourced Ombudsman providing effective oversight is an indicator of a robust executive government²⁰

2.22 The Ombudsman is seeking additional funding in this area:

To recruit an additional 1.0 FTE permanent Band 6 Senior Investigation Officer and 1.0 FTE permanent Band 4 Intake and Assessment Officer to address the staffing shortfall. A new full time SIO position would allow us to undertake the investigation work and the Band 4 position would assess and manage the simpler complaints and

¹⁹ *ibid.*, p. 2

²⁰ *ibid.*

deal with the bulk of the prisoner calls in the first instance. This would also free up officer hours to formulate and deliver some much-needed training to stakeholders.²¹

- 2.23 In relation to the former Launceston office, the Ombudsman advised in his submission:

A significant reduction in budget following the Global Financial Crisis in 2008 led to the closure of our Launceston office and the loss of an Investigation Officer and further cuts made in 2014 as part of a failed colocation strategy meant that another position could not be filled.²²

FINDINGS

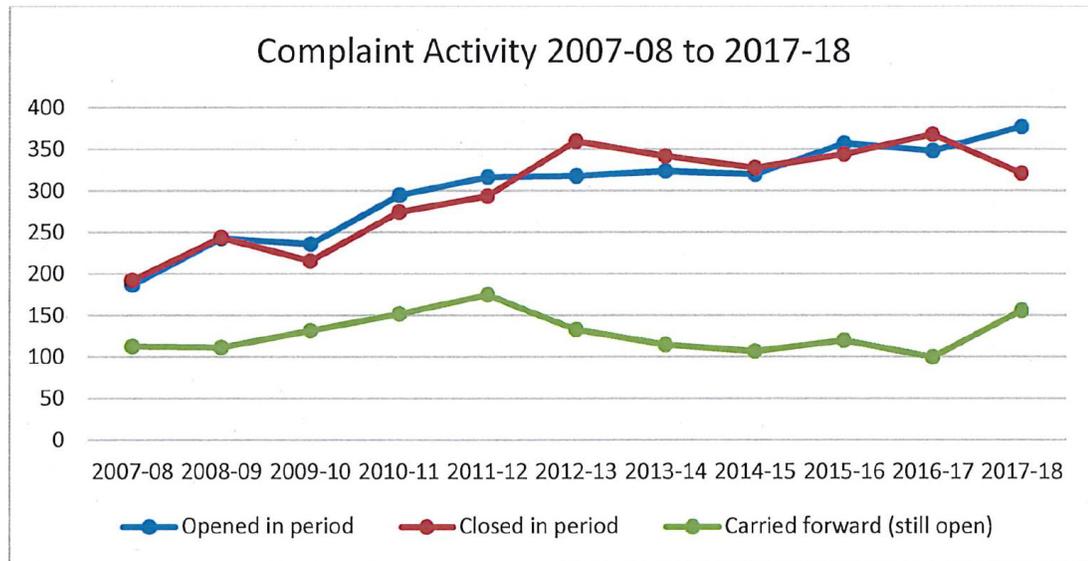
20. The Office of the Ombudsman had a significant reduction in budget following the Global Financial Crisis in 2008 which led to the closure of the Launceston office.
21. The Ombudsman has a broad range of functions under a range of statutes, the number of which has grown to include the Custodial Inspectorate and the adoption of the Official Visitors program.
22. The staffing of the Office of the Ombudsman has been consistent regardless of additional responsibilities imposed by legislation on the Office.
23. The Office of the Ombudsman is not adequately resourced to enable best practice in public administration, decision-making and promoting good governance more generally to ensure public confidence.

HEALTH COMPLAINTS COMMISSIONER

- 2.24 In his submission the Ombudsman provided a graph of Health Complaint Activity for the ten year period 2007-08 to 2017-18:

²¹ *ibid*, p.3

²² *Ibid*, p.1



2.25 In his submission the Ombudsman stated:

The number of complaints received over the past ten years has doubled. Throughout the same period, staffing levels available to manage these complaints has reduced by one third. The result is an inability to manage the volume of complaints received and an increase in the number of complaints carried forward each year.²³

2.26 The impact of the current level of resourcing on the performance of the Health Complaints Commission is detailed in paragraph 2.42. With regard to resourcing the Ombudsman stated in his submission:

Inadequate resourcing undermines [the intentions of the Health Complaints Act] and the role of the Commissioner because health service users are not always able to have their complaints and concerns dealt with in a timely and appropriate manner. There is a risk of the perception arising that government is not committed to this vital part of the Tasmanian health system, and good, affordable and timely outcomes for its users.²⁴

²³ Office of the Ombudsman and Health Complaints Commissioner (2019) Op.cit. p.4

²⁴ *ibid.*, p.5

2.27 The Ombudsman is seeking funding for staff to restore the establishment of this jurisdiction to the staffing level of 2006-07 and 2007-08. In his written submission, the Ombudsman advised:

In order to meet current legislative obligations funding to recruit an additional 0.8 FTE permanent Band 6 Senior Investigation Officer, a 1.00 FTE permanent Band 6 Conciliation Officer and a 1.00 FTE permanent Band 5 Complaint Resolution Officer. This would restore the health complaints jurisdiction to the establishment as it was in 2006/07 and 2007/08 at which time, although there were significantly less complaints, we were able to fulfil most of our statutory obligations. It would also bring the HCC jurisdiction into closer alignment with other entities with a similar mandate.²⁵

FINDINGS

24. The number of complaints received by the Health Complaints Commissioner over the past ten years has doubled.
25. The result of increased complaints to the Health Complaints Commissioner has caused inability to manage the volume of complaints received and an increase in the number of complaints carried forward each year.

²⁵ *Ibid*, pp.5-6

ENERGY OMBUDSMAN

2.28 The Ombudsman stated:

The Energy Ombudsman is separately, and adequately funded by the state's energy entities²⁶

2.29 At the Inquiry hearing held in Hobart on 23rd July 2019 the Ombudsman expanded in response to a question about the Energy Ombudsman:

Mr CONNOCK - ... that is funded by the energy entities - Aurora and TasNetworks.

...It is based on the number of complaints each one has and they fund that. It is like the industry models in other jurisdictions only we do not have an energy ombudsman. But the Energy Ombudsman Act gives me functions in relation to the sale and supply of electricity. We now have the first interstate operator down here supplying the domestic market so we have had our first taste of contestability, which is interesting.

Ms FORREST - Not necessarily because of that but it adds another level to it, if the demand increases, you have more energy complaints or inquiries coming, does that automatically then get the funding topped up by the energy entities? Is that how it works?

Mr CONNOCK - We ran out during the year and then we put in the budget based on what we've had.

Ms FORREST - So it's a retrospective -

Mr CONNOCK - Yes.

Mrs RYLAH - The interstate entity will have to contribute?

Mr CONNOCK - Yes. It has been a concern in other jurisdictions - that people pop their head up, start playing in the market and all of the rest of it and then disappear without having contributed to the scheme. That obviously hasn't happened here because we

²⁶ *ibid*, p. 1

*haven't had anybody other than Aurora and TasNetworks. Anybody about whom we take complaints contributes - the more complaints, the more they pay.*²⁷

2.30 The Ombudsman confirmed at a later hearing in April 2020 that the funding model remained in place for the jurisdiction.²⁸

FINDING

26. The Energy Ombudsman is separately and adequately funded by the state's energy entities and funding is contributed by the entities according to the number of complaints made about the service delivery of each respective entity.

RIGHT TO INFORMATION

2.31 In his submission, which the Ombudsman provided prior to the release of the 2019-20 Budget, he stated:

*The Office continues to face resource pressure in managing the Right to Information jurisdiction...in order for the RTI jurisdiction to fulfil its functions additional funding is required to recruit an additional 1.0 FTE Band 8 Principal Officer, an additional 1.0 FTE Band 4 Investigation Officer and to retain the existing Band 6 SIRO.*²⁹

2.32 In her submission to the Inquiry the Honourable Elise Archer, Minister for Justice stated:

The Tasmanian Government acknowledges and understands the critical role the Ombudsman plays in ensuring the administrative actions of public authorities are lawful, reasonable and fair. The Government has confidence in the Ombudsman's office ability to manage its workload in the most effective and efficient way possible.

This is reflected by recent Government actions which include providing the Office of the Ombudsman with additional funding of \$245,000 per annum in this year's State

²⁷ Office of the Ombudsman and Health Complaints Commissioner Inquiry Hansard Transcript (23 July 2019), pp 24-25

²⁸ Office of the Ombudsman and Health Complaints Commissioner (2020) Op.cit. p. 5-6

²⁹ Office of the Ombudsman and Health Complaints Commissioner (2019) Op.cit.p. 7

Budget, for two additional staff members to review Right to Information matters referred to the Office.³⁰

2.33 At the Inquiry hearing the Ombudsman stated:

The additional funding has allowed us now to recruit a principal officer and another band 4 to augment the existing band 6 so we actually have a team now in RTI or we will once we have recruited. We are well on the way to recruiting a principal officer and the successful applicant will then be responsible for recruiting the band 4. We hope that will all be done very soon. That is great news and obviously the first thing we will be doing is attacking the backlog, which has gotten out of hand. That was really a product of having only one person. They do the decisions, they all come to me and I have to review all of them, which means I have to go through all the documents and all the information and that creates the bottleneck because only about 10 per cent of me is dedicated to the RTI functions. I have all these other ones, as you know, spread across the board.

Now having a principal officer will be like all the other major jurisdictions we administer, such as the Ombudsman and Health Complaints, which are responsible for getting things up to the finish line as it were so by the time it comes to me, I am really reviewing rather than going over the whole thing again. That should make things a lot better...We have never had a team in RTI so we will concentrate on clearing this backlog and then looking at developing processes and approach.³¹

2.34 The Ombudsman confirmed at a subsequent hearing in April 2020, that he had received additional resourcing for positions within the jurisdiction. He provided the following update:

Mr CONNOCK - *Yes. It's not going as fast as I would've liked, but there have been improvements. We've already this year put out more than twice as many reports, I think, as we put out in the whole of last year. We are bringing the average down, but the bulk cases [inaudible] are still worryingly high in some cases, but we are targeting*

³⁰ Tasmanian Government (2019), Submission to the Review of the Office of the Ombudsman and Health Complaints Commissioner Inquiry p. 1

³¹ Office of the Ombudsman and Health Complaints Commissioner Inquiry Hansard Transcript (23 July 2019), p. 1

those. We have recruited the third band 4 position; we had thought our existing band 6 officer, who's the backbone of the jurisdiction, was moving on - he had prior calling [inaudible] position in a higher role [inaudible], and congratulations to him, but that position has now been withdrawn. So he is back with us, so we do have a team at the present time.

CHAIR - What is that team, Richard? What are the numbers?

Mr CONNOCK - We have a full-time band 8 principal officer; we have a full-time band 6 senior inspection and review officer; and we recruited, about a month ago, a band 4 investigation and review officer. We finally have the full complement; it's taken longer than I would have liked for this all to come together but now it has, and, yes, we are starting to look at handling files in different ways - not running everything to review, which has been a problem with only having one person.

As you know, Chair, we have a lot of different powers under the act - we can case conference and we can hold pseudo-directions hearings and that sort of thing. I'd like to be doing a lot more of that sort of stuff so that we avoid these formal extended review processes. I'm reasonably confident that a fairly significant proportion of applications could be devolved to that level. There will always be the ones that have to go to formal review, but I would like to be limiting it to those ones that have to go to review, not all of them.³²

FINDINGS

27. The Office of the Ombudsman has faced resource pressure in managing the Right to Information workload.
28. The Office of the Ombudsman received additional funding of \$245,000 per annum for RTI work in the 2019-20 State Budget.

³² Office of the Ombudsman and Health Complaints Commissioner (2020) Op.cit. p. 6

29. The additional funding received by the Office of the Ombudsman has/will be used to recruit additional staff to work within the Right to Information area with the initial aim to clear the RTI backlog.

OFFICIAL VISITORS PROGRAMS

2.35 In his submission the Ombudsman stated:

Official Visitors are not employees but receive remuneration of \$25.00 per hour to perform their duties. This remuneration has not changed since 2009 and it is presenting recruitment and retention problems particularly in the north of the state. It is also less than the rate paid to Official Visitors in other jurisdictions.

Visitors are recruited from interested and suitably qualified members of the public, and may be in part time employment or retired. They require training to gain a sound understanding of the functions of the role as required by the relevant act. To be an effective Visitor they must be skilled communicators and good report writers. They have to be comfortable undertaking their duties in a prison or on a closed mental health ward in a hospital.

Their role in receiving and investigating complaints from prisoners and patients requires a great deal of skill and their reports may ultimately result in an investigation by the Ombudsman or the Health Complaints Commissioner. Thus, integral to a professional and efficient Official Visitor program is a well-structured training program that provides Visitors with training when they are first recruited, and maintains and improves those skills during their period of appointment.

The overall budget of the program has not changed since 2009 when the program transferred to the Office of the Ombudsman. In the past training was funded from opportunistic savings in the operating budget, so has only occurred when these exist. Savings are not likely to exist into the future. To maintain a basic training program for Official Visitors requires additional funding.³³

³³ Office of the Ombudsman and Health Complaints Commissioner (2019) Op.cit. pp. 10-11

FINDINGS

- 30 Official Visitors are not employees but are engaged on an hourly rate.
31. The overall budget of the Official Visitor program has not changed since the program transferred to the Office of the Ombudsman in 2009 and this is presenting recruitment and retention problems, particularly in the north of the state.

CUSTODIAL INSPECTORATE

2.36 In his submission the Ombudsman stated:

The Inspectorate is currently staffed by 1.5 FTE permanent employees – one 0.9 FTE Principal Officer and one 0.6 FTE Inspection and Research Officer – and is overseen by the Inspector. The Inspector is the Ombudsman and 10% of my time is allocated to the Inspectorate. This staffing establishment is proving insufficient to fulfil the Inspector’s legislative responsibilities including completing the mandatory inspection of all custodial centres at least once every three years. The Inspectorate’s experience to date also indicates consultancy costs are a major impost on budget and the current allocation for these services is entirely inadequate.

...

Funding needs to be sufficient to recruit an additional two 1.0 FTE permanent employees, one at Band 6 and one at Band 5, and for the hours of the current Band 5 to be increased from 0.6 FTE to 0.8 FTE. This will establish an appropriate staffing infrastructure to manage the Inspector’s functions and meet the Inspectorate’s legislative mandate.

...

Additional funding is also required for other costs incurred by the Inspectorate, particularly consultancy fees and vehicle expenses.³⁴

³⁴ *ibid.*, pp., 8-9

manage to get around all the facilities in the three years required by the act as of November last year, but only just, and we still have outstanding reports that we haven't been able to prepare. This hiatus is going to be good for that because we can do other things while we are not inspecting, so hopefully that will bring us a bit up to date there.

In the budget bid we have asked that we retain obviously the two that we've got, that we'd like to increase the band 5 to 0.8 FTE, so four days a week rather than three, and another band 6 inspection officer. That would allow us to get around all the prisons and to fulfil our functions. One of the problems we have at the moment with only two is that there is no-one left.

and

The other thing we've asked for, which is not in the budget, is transport. We don't have any budget for travelling up to the north of the state, so we asked for funding to cover vehicle costs as well as IT equipment and access, and an increase in consultancy fees because we are dependent on consultants. Some of these inspections are very technical and specialised, such as the health one, which we are supposed to be doing around this time. That requires an assessment of physical and mental health and environmental health. We are not experts in any of those things so we need to bring the consultants in. The experience over the last three years has shown that the budget is just not sufficient to engage the consultants that we need.

CHAIR - *Richard, you are saying to us that you do not and cannot carry out the functions required of this office with your current budget resources.*

Mr CONNOCK - *In a nutshell, yes.*³⁵

- 2.39 The Committee wrote to the Attorney-General to clarify the funding arrangements and whether a request had been made for additional resources and funding for the Office of the Custodial Inspectorate. The Attorney-General responded by correspondence of 17 April 2020 and confirmed that:

³⁵ Office of the Ombudsman and Health Complaints Commissioner (2020) Op.cit., p.1

The current budget allocation for the Custodial Inspectorate is \$266,000.00. Additional resources have been sought by the Ombudsman to deliver and provide for these responsibilities. The Principal Officer position has recently been reclassified from Band 7 to Band 8 and additional funding has been sought to cover that change. Funding to recruit an additional full time Band 6 and to increase the existing Band 5 from 0.5 to 0.8 FTE has also been requested. Funding was also sought for consultancy fees, professional development, vehicle costs and IT equipment and access.³⁶

FINDINGS

32. The Ombudsman stated that the resourcing of the Custodial Inspectorate does not allow him to meet his legislative mandate in this area.
33. Additional funding was requested by the Ombudsman to support the Custodial Inspectorate functions and the Official Visitor training programs.
34. The Ombudsman has sought funding to cover consultancy fees, professional development, vehicle and travel costs and IT equipment and access.
35. The budget of the Office of the Ombudsman is insufficient to enable the Ombudsman to engage the consultants needed within the Custodial Inspectorate area of his responsibilities.
36. The budget allocation for the Custodial Inspectorate remained unchanged in the 2019-20 financial year.

³⁶ Attorney-General, 17 April 2020, p.1

TERM OF REFERENCE 3: PERFORMANCE OF THE OFFICE

OMBUDSMAN

2.40 In his submission the Ombudsman stated:

Although the office saw a slight reduction in the number of complaints received in the 2017-18 financial year (9%) the amount of work generated by areas outside the traditional complaint-handling function has been steadily increasing. Public interest disclosure activity has increased significantly in recent years, with many public authorities making use of the Ombudsman's advisory function, as well as reporting disclosures to us. This legislation is complex and prescriptive and its administration is time-consuming and resource-heavy.

In addition, each year we undertake inspections of documents in the possession of Tasmania Police in relation to the exercise of invasive powers and must report on these. We have already met with police to discuss the new, unfunded review function in relation to the consorting provisions recently included in the Police Offences Act.

The office has received several personal information protection complaints in the last financial year when historically this legislation has rarely been utilised. We are currently scoping a number of significant investigations, of complaints and own motion, but find it difficult to undertake any major investigation with such a small team, far less run more than one at any time. This means that significant issues that we have identified, and which are of public interest and importance, cannot be investigated due to inadequate resourcing.

We regularly receive requests for training from government departments and local government councils, particularly in relation to public interest disclosures, responding to general Ombudsman Act complaints and about principles of administrative law, but we are unable to provide training due to staffing levels. Training in good administration practice, as well as how to properly comply with

whistle-blower and information protection legislation, is a vital part of promoting good governance but we just cannot address this need with a staff of four.³⁷

FINDINGS

37. The Ombudsman has indicated he has inadequate resources to carry out his functions. This has been made more difficult through the increasing of statutory functions determined by the Parliament over time.
38. Despite receiving requests from departments and local government for training in good administration practice the Office of the Ombudsman cannot address this need with current resourcing.

HEALTH COMPLAINTS COMMISSIONER

2.41 In his submission the Ombudsman stated:

Increased complaint numbers and decreased staffing levels over the past ten years, and particularly the last four years, have resulted in an inability to meet the legislative obligations of the Health Complaints Act 1995.

More complaints are being opened than closed, assessment times are not being met, matters that require investigation are not being investigated and matters that would benefit from conciliation are not being conciliated. The Charter of Health Rights has not been reviewed since its inception and there has been no outreach or education about health rights and responsibilities. There has been an increase in the number of complaints about delays on the part of the Commissioner and the impact of those delays on both consumers and providers of health services.

... Low staff levels have not only had an adverse impact on the time taken to resolve complaints but also, with a necessary focus on complaint resolution, they have resulted in an inability to perform other functions of the Commissioner, including:

- *to undertake assessment, investigations and conciliations in a timely manner;*
- *to undertake own motion investigations;*

³⁷ Office of the Ombudsman and Health Complaints Commissioner (2019) Op.cit. pp 2-3

- *to monitor and audit outcomes from complaints and coronial investigations;*
- *to bring about changes and improvements in the delivery of health services;*
- *to undertake outreach or community education, resulting in vulnerable groups in the community, including those with low health literacy, being unaware of their rights or their [Office of the Health Complaints Commissioner] existence;*
- *complaints go unreported – people with complaints about health and disability services are often the most vulnerable, they are afraid of repercussions or lack the skill to make a complaint, they need encouragement and support but current resourcing does not allow for this; and*
- *to respond to, attend or provide input into requests for stakeholder involvement and consultation in areas relevant to our jurisdiction, for example: propose amendments to the Health Practitioner National Law; the development of guidelines for registered health practitioners; the review of the Disability Services Act 2011 and the Guardianship and Administration Act 1995; and Mental Health symposia.³⁸*

FINDING

39. It is noted the Health Complaints Commissioner stated with current resourcing of 4.4 full time equivalent staff members the Office cannot meet the legislative obligations of the *Health Complaints Act 1995*.

³⁸ *ibid*, pp. 3-4

ENERGY OMBUDSMAN

2.42 The Ombudsman stated that this area of responsibility within the Office is adequately funded and no evidence was taken regarding performance of the Energy Ombudsman.

RIGHT TO INFORMATION

2.43 The Ombudsman's submission stated:

For the [2016-17] financial year, the average time taken to complete an external review, which is the primary function of this jurisdiction, was 230 days. In 2017/18... the average time to complete an external review rose to 318 days. The 2018/19 YTD figure is approximately 881 days. This is an increase of 177% from the previous year.

The number of external reviews being requested remains static and the work required into the future is reasonably expected to compound. If the YTD figures remain steady, the 2019/20 average days can only rise further. There has been a consistent case load of approximately 53 current cases. The public, media, and Members of Parliament already complain on a regular basis.

...

It is not only the size and complexity of reviews that contribute to the delay, but also the fact that a large number of agencies are not fully aware of their obligations under the Act and what is required of them when processing and making a decision on an application for information. If the Office were adequately resourced to provide training to agencies, then agency processes and decision making is likely to improve and the number of decisions requiring external review should reduce.³⁹

³⁹ *ibid.*, pp 7-8

2.44 At the Inquiry hearing the Ombudsman stated:

The current situation is that if we get an application for external review, it goes in the queue and we deal with things chronologically, unless the applicant can make a case for expedition. If they can, we will expedite that thing. Otherwise applications are taken in turn. What happens is the current senior investigation and review officer deals with the agency and the applicant taking submissions, gathering the information, reviewing it and coming to a decision as to whether that information is exempt or not. That decision is then written up and it comes to me for review and, as I say, it sort of gets stuck there. There is a bit of a logjam in my office with that.

I anticipate in the future that what will happen is what happens in the other jurisdictions where there is a structure. That is, the senior investigation and review officer and the new investigation and review officer will conduct inquiries, gather information, make a preliminary assessment of that and then make a decision, which will then be reviewed by the principal officer who will edit that into a final form. This is largely what happens in the other jurisdictions, particularly the Ombudsman.

I am informed along the way and I contribute to the decision-making, but the teams are fairly autonomous and they produce a finished report, obviously with input from me. I am ultimately responsible for this so I need to know what's going in it. By the time it gets to me, all I do is tinker with it and edit it, because I know what the content is, and it is in a way that can be published. I don't have to rewrite or review all of the things. I'm hoping in the future that is what will happen in RTI as well, so that my role will just be a bit more supervisory and top-level management rather than having to go back and do the actual decisions myself again, because that's incredibly time consuming.

...

hopefully in the next six to nine months that jurisdiction will be cleaned up, the backlog addressed and we will be able to move forward, which I think is terrific. It is something we physically have not been able to do to date.⁴⁰

⁴⁰ Office of the Ombudsman and Health Complaints Commissioner Inquiry Hansard Transcript (23 July 2019), pp. 2-3

2.45 In response to a question on notice the Ombudsman advised that in 2018-19, the Office made eight final decisions and the average number of days from the date the application was received to the closure of review was 568 days.

2.46 In April 2020 the Ombudsman advised that a third Band 4 investigation and review officer had been appointed.⁴¹

FINDINGS

40. Significant delays continue to occur in the Ombudsman's external review of RTI decisions.

41. Additional resourcing provided in the 2019-20 Budget to the RTI area should deliver a more acceptable timeframe for review of decisions.

⁴¹ Office of the Ombudsman and Health Complaints Commissioner Inquiry Hansard Transcript (9 April 2020), p.6

OFFICIAL VISITORS PROGRAMS

2.47 At the Inquiry hearing the Ombudsman provided the following detail regarding performance of the program:

The OV is under the Corrections Act to go out and have free access to prisoners at the various prison facilities. They can take complaints about day-to-day concerns, which they generally then resolve on the spot with staff. They also report back to the manager [Manager of the Official Visitors Program which is part of the Ombudsman's Office] about other more serious issues ... They are an important source of information about what is going on at the prison on a day-to-day basis and also to alert us to perhaps more significant issues that might exist.

Mental Health OVs go in and look at the care of mental health patients. They can take complaints but largely look at things like seclusion and restraint, and just make sure that the act is being complied with. They too report back to the manager.⁴²

CUSTODIAL INSPECTORATE

2.48 The Ombudsman's submission stated:

The first round of mandatory inspections and delivery of inspection reports is due to be completed by 31 December 2020. Without additional and adequate funding, this will not be achieved. This failure will be the subject of unfavourable scrutiny both internal and external to government. There is no action that can be taken by the Inspectorate to mitigate the risk.⁴³

2.49 At the Inquiry hearing the Ombudsman provided the following detail regarding the Custodial Inspectorate:

We've established a set of standards that covers every aspect of a prisoner's time in custody, including transport and inspections into custody arrangements, and mental and physical health; there are separate standards for each of those. The inspection team goes into the facility and looks at it against those standards - is it

⁴² *ibid*, p. 24

⁴³ Office of the Ombudsman and Health Complaints Commissioner (2019) Op.cit. p 8

compliant, is it not? Because this is new to Tasmania, a lot of those standards are probably aspirational because we have an older prison, and some of the facilities are older and they are not going to comply with some of these current standards, but we nonetheless apply them and make recommendations.

...

We have just delivered the custody inspection to Justice and to Communities for comment, but since that was done 18 months ago we have done five other inspections and those reports are all in the wings as well. We have a lot of other things that come up that we have to respond to as the inspectorate which take up responsibility, and writing the reports itself is a huge impost on time. Because this has not happened before those reports are lengthy and complex. The first one contained 150 recommendations because nobody had looked at the prison before. There is an awful lot of work there and we are not going to be able to do it to the level that it needs.⁴⁴

FINDINGS

42. The first round of Custodial Inspectorate mandatory inspections and delivery of inspection reports is due to be completed by 31 December 2020.
43. The Ombudsman stated that failure to conduct and report upon Custodial Inspectorate mandatory inspections will be subject to unfavourable scrutiny, both internal and external to government.
44. The Ombudsman stated there is no action that can be taken by the Custodial Inspectorate to mitigate against the failure to complete statutory inspections and reports by the mandated date.

⁴⁴ Office of the Ombudsman and Health Complaints Commissioner Inquiry Hansard Transcript (23 July 2019), pp. 17-19

TERM OF REFERENCE 4: ANY OTHER MATTERS INCIDENTAL THERETO

ADDITIONAL RESPONSIBILITIES

A NATIONAL CODE FOR UNREGISTERED HEALTH CARE WORKERS

2.50 In his submission the Ombudsman detailed the impact on his Office of the amendment to the *Health Complaints Act 1995* to implement the National Code for Unregistered Health Workers:

The Commissioner will have the power to issue prohibition orders and make public statements about unregistered health care workers who breach the code and pose a risk to the public.

The work involved will be different to what we presently do. Given the potential to impact on a person's livelihood it will carry a high degree of responsibility... The nature of the investigation required to justify the making of prohibition orders and public statements will be more in the nature of a prosecution than an investigation.

The additional staff necessary to meet existing responsibilities referred to [at paragraph 2.26] will be inadequate to meet the additional responsibilities involved in administering the code of conduct. Additional funding for specialist staff will be required and existing staff will require additional training before entering into that process.

...The experience of the already codified jurisdictions is that the conduct of some unregistered practitioners poses a significant danger to the health of their patients, which is why the power to impose prohibition orders to avert the danger is included in the legislation. The risk of not providing additional funding and resourcing to address these matters in Tasmania is that the Office of the Health Complaints Commissioner will not be able to deal with them, with the consequent risk to the

*Tasmanian public posed by dangerous and unlawful practise not being adequately addressed or prevented.*⁴⁵

2.51 The Committee wrote to the Attorney-General to ask whether additional funding and resources will be provided to meet the additional work load related to the future enactment of the *Health Complaints (Code of Conduct) Act 2018*. The Attorney-General responded stating no additional funding has been provided at this stage and this will be reassessed if the need arises.

2.52 The Committee wrote to the Honourable Sarah Courtney MP, Minister for Health seeking the expected date of proclamation for the proposed amendment to the Health Complaints Act 1995. The Minister's response was:

The Health Complaints Amendment (Code of Conduct) Act 2018 has not yet had a proclamation date set as the Health Complaints (Code of Conduct) Regulations 2019 are still being drafted.

The Department of Health is continuing to liaise with the Health Complaints Commissioner.

The Ombudsman stated.....we have put in a detailed budget submission for the Health Complaints Commissioner around this. As I mentioned to the committee last time I appeared, this is very different to the sort of work we do in Health complaints at the present time. It is almost akin to a prosecution rather than an investigation. We would have the power to prohibit practice by an unregistered practitioner and they would then have the right to review that in a court. We effectively have to be court-ready, which is not the sort of work we are doing now. You need a fairly specialist team. I have actually some discussions with the Office of the Solicitor-General, and we agreed that it should be their office that actually does the court work. There is a lot of crossover here.

The other thing is that I speak a lot to my counterparts in other jurisdictions that have powers, particularly New South Wales and South Australia - while their numbers are fairly low, the work is very intensive because you need to move swiftly, and you need

⁴⁵ Office of the Ombudsman and Health Complaints Commissioner (2019) Op.cit. pp 6-7

to be pretty sure of what you're doing. You are affecting livelihoods and things as well as protecting public health. It is a fairly important function. My concern is that, unless it is properly resourced, you will be putting people at risk. I am not prepared to take responsibility for that unless there is commitment and resourcing because it is a question of public health. We would get fairly significant powers. The act has been amended but it hasn't been proclaimed yet. Several other states haven't done anything - for example, Western Australia hasn't even drafted legislation. I am not sure where NT is. This is supposed to be a national code, so again it's a bit like OPCAT - you don't know exactly what's happening with it.⁴⁶

OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMANE OR DEGRADING TREATMENT OR PUNISHMENT (OPCAT)

2.53 At the Inquiry hearing the Ombudsman stated:

... we have ...looming ... the implementation of OPCAT ... That requires the inspection of all facilities where people are held against their will.

...

We are not functioning at the level we should be and if OPCAT comes in that is just going to be a nightmare. I am not saying it is - I do not know what is happening with that. But we really need more people there to operate that the way it should be operated.⁴⁷

2.54 The Ombudsman provided an update for the Committee during a hearing in April 2019 and confirmed there had not been any progress on resolving his future role in relation to OPCAT:

Yes. That's another thing - in your letter to the minister [inaudible], yes, I have no idea what's happened with that, and I don't think any other state does either. There was to be a visit from the UN committee but that was obviously cancelled due to the COVID-19

⁴⁶ Office of the Ombudsman and Health Complaints Commissioner (2020) Op.cit. p.7

⁴⁷ Office of the Ombudsman and Health Complaints Commissioner Inquiry Hansard Transcript (23 July 2019), pp. 8 and 19

pandemic; they were going to visit here and Nauru. The present situation, as I understand it, is that the Commonwealth has to proceed with it now because they ratified it. I understand there might have been a 12-month extension for compliance; it was supposed to be January next year. I think it's been pushed out but don't hold me to that - I'm a bit rusty on that.

Anyway, we don't know what's happening and the Commonwealth has basically appointed the Commonwealth Ombudsman as the national preventative mechanism. Every state is also required to appoint their own NPM. The situation down here is that the preferred entity for that is the Custodial Inspector, but nobody seems to be too sure exactly what's involved. I have been having discussions with Justice, DPAC and various other people. From my point of view, there is a need for new legislation. A lot of people don't agree with me; they just think that the Custodial Inspectorate Act can be tweaked, but the inspectorate function is quite different to OPCAT, which are preventative inspections, not looking against standards and so forth. [Inaudible] trained in that.

The other thing is that they are talking about resourcing it and they are saying - and I'm not quite sure where this comes from - 'four FTE'. The problem is that I haven't in a bid because I can't quantify what might be needed to meet the OPCAT requirements because the UN guidelines are fairly strict as to the composition of an NPM inspection team. You can't just put in for four inspection officers and go. The guidelines require particular fields of expertise, including legal, medical, psychological, child-related and gender expertise. So it's not just any sort of person who can walk into this job.

The other thing is that if it is attached to an existing entity, like the Custodial Inspectorate, it still has to be completely independent and separate from the other officers of that entity. If we got four more, say, they would not only have to meet the guidelines in terms of expertise, they would also have to stand alone from other staff. They would have to be a completely independent unit, which makes it very hard to work out costs. I don't know where we would physically house them. It's all sort of still up in the air, which makes it very difficult to plan.⁴⁸

⁴⁸ Office of the Ombudsman and Health Complaints Commissioner (2020) Op.cit. p. 4-5

2.55 The Committee wrote to the Attorney-General regarding the likely timing and budget allocation for the implementation of OPCAT. The Attorney-General responded –

A budget bid has been prepared for the 2020-21 State budget process by the Department of Justice on behalf of the Office of the Ombudsman. It is expected that the Custodial Inspector will be nominated as the National Preventative Mechanism for Tasmania under OPCAT. The development of standards and guidelines for the inspection of all the relevant facilities, including the extent and frequency of inspections will need to be undertaken. These standards and guidelines will inform all future funding decisions.⁴⁹

FINDINGS

45. The OPCAT Protocol when implemented will require additional resources and funding, with the implementation date to be confirmed.



Hon Ivan Dean MLC

27 May 2020

Chair

⁴⁹ Attorney-General, 17 April 2020, p. 2