

PACIFIC OMBUDSMEN NETWORK NEWS

ISSUE 14 – JUNE 2008



The Port Vila meeting of the Pacific Ombudsman Network (12 to 14 May) brought together some of the Pacific's key advocates for better complaint handling in public services. Pictured are: (front row, from left), Stephen Ranck, Heather Lini Leo, Patricia Kalpokas, Emmanuel Kouhota, John McMillan, Ila Geno, (middle row, from left) Kaipeti Talie, Lenka Tucek, Agnes Tarai, Joe Poraiwai, Janet Tiningkon, Beverley Wakem, Olga Tariweu, Peter Taurakoto, Vanessa Hegarty, Pauline Fowlie, (back row, from left), Raakook Singeo, Simon Pentanu, Hila Asanuma, Sanjesh Naidu, Kahealani Sariah Sinahemana Hekau, Pilimisololo Tamoua, Julius Sapelalut, Ernesto Bautista, Janet Maki, Charmaine Rodrigues, Maiava Iulai Toma, Henry Ivarature, Greg Andrews, Bruce Barbour, Taam Biribo, the Hon. Ryke Solomon MP, Charley Johnston (absent from photograph: Filimon Manoni).

UPDATE FROM THE COMMONWEALTH OMBUDSMAN

The strength of the Pacific Ombudsman Network was demonstrated once again by the successful meeting in Port Vila. There is a firm plan to develop the Network into a Regional Ombudsman Mechanism. Collaboration among our offices provides a strong basis for strengthening governance in our region.

This edition of Network News continues the discussion of regionalism, with examples of regionalism in practice, and news from within our Network and from other Pacific Networks.

Another item discusses the policy of my office on administrative deficiency. This is a key concept in Ombudsman work that enables us to highlight common administrative problems that disadvantage the public.

An item on the relevance of the rule of law to the challenge of tackling poverty provides essential context to the work we do every day.

I hope you find much to interest you in this edition of Network News. We look forward to continuing these discussions with you over the coming months.

Prof. John McMillan
Commonwealth Ombudsman

UPDATE FROM THE VANUATU OMBUDSMAN

In a race against time the Vanuatu Ombudsman's Office Team Leaders are working to take their current awareness program to every provincial center before the next national general elections on Tuesday 2 September 2008.

Under the banner of '**The Right to Choose the Right Leaders**', the visits aim to raise awareness of the issues of corruption and poor administration and to encourage people to use their constitutional freedom of choice to elect good leaders.

By promoting the role and function of the Ombudsman, the visits will also promote transparency, accountability, integrity and good governance in the Republic of Vanuatu, and will remind the government and public sector of the importance of having a good working relationship with the Ombudsman.

Thank you to Mr Peter K. Taurakoto, Ombudsman of the Republic of Vanuatu, for this item.

UPDATE FROM THE SOLOMON ISLANDS

The Leadership Code Commission, with the assistance of other key Solomon Islands accountability institutions including the Office of the Ombudsman, conducted an Anti-Corruption and Integrity workshop in Gizo, Western Province from 27-29 May 2008.

The workshop was attended by 40 participants including the Premier of Western Province, the Hon. Alex Lokopio, eighteen other members of the Western Provincial Assembly, and a number of Heads of Government Departments in the province.

Aimed at giving leaders a comprehensive introduction to their obligations under the Leadership Code, the workshop emphasised the importance of strong leadership to combating corruption.

Participants heard presentations from the Offices of the Ombudsman, the Auditor General, Director of Public Prosecution, and the Accountant General, as well as from the Public Service Department

The Leadership Code Commission hopes to conduct another workshop for political leaders and senior public officers of Choiseul Province in September this year.

Thank you to Mr Emmanuel Kouhota, Chairman, Solomon Islands Leadership Code Commission for this item.

UPDATE FROM NEW ZEALAND

Records, Information and Knowledge Management Project

The NZ Ombudsmen have started work on a project to scope the records and information management needs of the office. Part of this project is to ensure the office is fully compliant with the requirements of the Public Records Act 2005. Archives New Zealand will commence auditing public sector agencies for compliance with the Act in 2010 and the Ombudsmen's office is likely to be one of the first audited by Archives. The Office also wants to make sure that the office is as near 'gold' standard as possible, because of the nature of the Ombudsmen jurisdiction: good public administration and effective freedom of information laws rest on the quality of record keeping.

The second element of the project is that of information and knowledge management as a whole. There is a need to ensure that the information systems within the office support and encourage the Ombudsmen achieving their purpose. Experienced staff hold huge amounts of 'tacit' knowledge, and the project will also look at how this can best be accessed and used.

For further information on the project, contact Andrew Ecclestone, andrew.ecclestone@ombudsmen.parliament.nz.

OPCAT responsibilities

The New Zealand Ombudsmen have been tasked with new responsibilities following NZ ratifying the United Nations Optional Protocol Against Torture. This has been given effect by amendment to the Crimes of Torture Act 1989 (COTA) which amongst other matters establishes a process for the appointment of National Preventive Mechanisms (NPM). NPMs are charged with inspecting, monitoring and reporting on various requirements in support of the protocol. The Ombudsmen have been gazetted as the NPM for prisons, health and disability, child/youth justice and immigration detention centres. To date most Ombudsmen office effort has been focused on identifying the size and scope of the task that has been given the Ombudsmen. It is considerable and involves the inspection and reporting of almost 100 (mainly health and disability) institutions on roughly a four yearly cycle. The office has been funded for two new positions of Inspector in order to undertake this work.

For further information on this new responsibility of the New Zealand Ombudsmen, contact Bridget Hewson, bridget.hewson@ombudsmen.parliament.nz.

EXECUTIVE DEVELOPMENT PROGRAM PILOT - PNG

Thank you to Vanessa Lala'o, of the Australian Government Department of Health and Ageing (Vanessa.Lala'o@health.gov.au), and Angori Wewerang (angoriwidi1@online.net.pg) of the PNG Public Sector Workforce Development Programme, for sharing with us the status of the Executive Competency Framework under development in Papua New Guinea.

Currently before the PNG Government's Advisory Body, the Central Agencies Coordinating Committee (CACC), for approval, the programme is expected to commence in July 2008.

The pilot targets four agencies including the National Departments of Health, and Agriculture and Livestock, and two Provincial Administrations, in New Ireland and Madang.

An interim Competency Framework has been developed for the next three years and will be reviewed after the pilot programme.

Four short-term (one to five day) competency modules have been developed: routine workplace communication and time management, supervising people and teams, supervising performance, and public service induction programs.

Another seven modules will be available by the end of the year, including: human resource management, assets management, records management, values and ethics, and project management.

Please contact Angori on her email address (above) for more information on the programme.

EVERYBODY'S TALKING ABOUT ... REGIONAL INITIATIVES

REGIONAL OMBUDSMAN MECHANISM UPDATE

Thank you to all those who attended discussions in Port Vila from 12 to 14 May on the topic of a Regional Ombudsman Support Mechanism, as proposed in the Pacific Plan.

The meeting brought together the foremost proponents of public service governance in the Pacific and a wide range of views were canvassed, culminating in the shared determination to build a stronger Ombudsman Mechanism, able to meet the diverse needs of Forum Island Countries as these evolve over the next ten years.

The Ombudsman Mechanism Report is out now for discussion. For extra copies or to send your feedback please email stephen.ranck@ombudsman.gov.au.

Comments on the draft will be considered with the intention to submit the Pacific Island Ombudsman Regional Support Mechanism document to the Pacific Island Forum Secretariat for the July 2008 meeting of the Pacific Plan Action Committee. This is the major preparatory meeting for the Pacific Island Forum Leaders' meeting in Niue in August 2008.

In the lead up to the meeting, seven reports were produced on the current complaint handling systems and options for the future in the seven non-Ombudsman Forum Island Countries. These will shortly be uploaded to www.ombudsman.gov.au and are now available on request from Stephen.ranck@ombudsman.gov.au.

The Pacific Island Forum Secretariat

The Pacific Plan Good Governance Work Program 2008 to 2010, prepared by Dr Henry Ivarature is available online:

<http://www.forumsec.org/resources/article/files/PacPlan%20WP.pdf>

RECENT ADDRESS BY PHILIP ERQUIAGA, DIRECTOR GENERAL, PACIFIC DEPARTMENT, ASIAN DEVELOPMENT BANK

In his 15 April address to the 'XIth Congress of the South Pacific Association of Supreme Audit Institutions (SPASAI)' in Rarotonga, endorsing the **Pacific Regional Audit Initiative**, Mr Erquiaga outlined a number of crucial lessons for the establishment of regional initiatives:

ADB has identified some key lessons to guide its assistance and to strengthen the development impact of its support for regional activities.

First, regional initiatives are most successful when they directly address national needs and priorities, and indeed when they reinforce the focus of assistance at the national level. This is seemingly obvious, but the recognition that

working regionally is merely a tool to better meet national needs can often become lost as the promotion of regionalism takes on a life of its own within the Pacific's regional architecture.

Second, ADB is most successful when it complements and builds upon sectors and themes in which it has performed strongly in the past. Once countries have worked together and achieved a positive outcome to a common issue it creates a base for deeper cooperative relationships in the future. Success builds success.

Third, sub-regional approaches can be successful by allowing for variation in emphasis and approach for self-selecting groups of countries with heightened commitment. Every Pacific country is different and each has unique priorities at any point in time. Regional activities which demand involvement by a large group can be slowed or even stopped by one unwilling member. This is something we have seen happen time and again in the Pacific - where seemingly good ideas prove difficult to implement. Having a sub-regional group of participating countries who actually see benefit in participating creates the basis for a strong team working to a common purpose and increases the likelihood of success.

Fourth, successful regional interventions can be time and resource intensive, requiring long-term engagement. In the past ADB has ended up extending the implementation period of many of our regional activities to provide the time necessary for all participating countries to move forward together. Working at a regional level does take more time, more communication, and more give and take than working on national level actions. All involved need to make sure the benefits flowing from regional cooperation justify the extra time and effort required.

For the full text of the speech please visit: <http://www.adb.org/Documents/Speeches/2008/sp2008015.asp>

OTHER PACIFIC NETWORKS

The Pacific Senior Health Officials' Network

<http://www.health.gov.au/internet/main/publishing.nsf/Content/Pacific+Senior+Health+Officials+Network-1>

Pacific Village Online

This portal consists of several communities of public sector professionals based in the Pacific region. Their goals are to share practice related experiences, knowledge and resources that are relevant to improving public service governance in our region.

<http://www.thepacificvillage.org/>

Pacific Islands, Australia and New Zealand Electoral Administrators' Network

http://www.aec.gov.au/About_AEC/AEC_Services/International_Services/PIANZEA/

The Pacific Regional Rights Resource Team

From 1 July, the PRRRT will be managed by the Secretariat of the Pacific Community.

Upcoming events include Community Paralegal training in Nauru from 28 July to 1 August.

<http://www.rrrt.org/>

The Pacific Islands Association of Non-Governmental Organisations (PIANGO)

The Pacific Islands Association of Non-Governmental Organisations (PIANGO) is a regional network of NGO focal points or coordinating bodies known as National Liaison Units (NLUs) based in 22 Pacific Island countries and territories. PIANGO was formally established in 1991 to assist NGOs in the Pacific to initiate action, give voice to their concerns and work collaboratively with other development actors for just and sustainable human development.

<http://www.piango.org/>

The Asia Pacific Quality Network

APQN seeks to enhance the quality of higher education in the Asia-Pacific region through strengthening the quality assurance agencies and promoting cooperation between them: *In December 2007, the DGF funds from the World Bank will come to an end and APQN will*

learn to fend for itself. It will enter an exciting phase where it has to continue to support its members, strengthen cooperation with its current partners, and develop new partnerships to ensure a sustainable future. This is the challenge to APQN as it strives to respond to the needs of a region that contains over half of the world's population.

<http://www.apqn.org/about/president/>

A REGIONAL HUMAN RIGHTS MECHANISM?

'A regional human rights mechanism to promote education and advocacy in the Pacific should be established to support countries that do not have a national human rights institution or active civil society, said delegates to an international conference held in Samoa last month.

More than 50 academics, jurists, activists attended the symposium, 'Strategies for the Future: Protecting Rights in the Pacific', held from 27 to 29 April 2008 in the capital Apia ...

At the conclusion of the conference a representative working group was established to draft and submit a proposal on a potential regional human rights mechanism for the Pacific Island leaders' meeting in August 2009.'

<http://www.asiapacificforum.net/news/call-for-pacific-human-rights-mechanism.html>

Thank you to Charmaine Rodrigues (UNDP Pacific Centre) for this item.

USP: PUTTING REGIONAL QUALITY AUDITS INTO PRACTICE

'The University of the South Pacific was visited by the Academic Audit Team from the Australian Universities Quality Agency (AUQA) and the New Zealand Universities Academic Audit Unit (NZUAAU) from 11-14 February, 2008.

The objective of such a quality audit is to enhance institutional performance and to

enable the University to better achieve its strategic goals, outlined in the USP Strategic Plan 2006 – 2010. The external quality audit was a first for the University.

The audit team included Professor Robyn Quin (Chair) Pro Vice Chancellor, Curtin University, Western Australia, Professor Gus Guthrie, Consultant, Australia, Prof Joyce Kirk, Pro Vice Chancellor, RMIT, Melbourne, Associate Professor Elizabeth McKinley, Director, Starpath Project, University of Auckland and Dr Antony Stella, Audit Director, AUQA.

The audit focused on university wide processes, activities, programmes and practices in governance and management, teaching and learning, strategic support services, student support services, research and graduate affairs, human resources, community partnerships and engagement.'

<http://www.quality.usp.ac.fj/>

OTHER NEWS

The 'Parliamentary Joint Committee on the **Australian Commission for Law Enforcement Integrity**' on 15 May 2008 initiated an inquiry into law enforcement integrity models. This inquiry may offer significant insights for Ombudsmen considering the way they work with law enforcement agencies, and for countries looking to establish new regimes in this area.

http://www.aph.gov.au/senate/committee/ac lei_ctte/lawenfmod/index.htm

Judgment handed down on Al-Yamamah Affair

'On 14 April 2008 the High Court in London handed down a very important judgment relating to the stopping of the Serious Fraud Office Investigation into the Al-Yamamah affair. The High Court decided that the Director of the Serious Fraud Office in name, although in reality the British Government, surrendered to a threat by Saudi Arabia and discontinued its investigation into allegations of bribery by BAE Systems in relation to the Al-

Yamamah military aircraft contracts with the Kingdom of Saudi Arabia. The Court held that the Court should intervene to stop this interference with the course of British justice:

'The claimants succeed on the ground that the Director and Government failed to recognise that the rule of law required the decision to discontinue to be reached as an exercise of independent judgment, in pursuance of the power conferred by statute. To preserve the integrity and independence of that judgment demanded resistance to the pressure exerted by means of a specific threat. That threat was intended to prevent the Director from pursuing the course of investigation he had chosen to adopt. It achieved its purpose.'

An appeal has been lodged against the decision.

<http://www.bailii.org/ew/cases/EWHC/Admin/2008/714.html>

Thank you to Charmaine Rodrigues (UNDP Pacific Centre) for this item.

ADMINISTRATIVE DEFICIENCY

The majority of our work at the Office of the Commonwealth Ombudsman involves resolving issues informally with agencies without needing to reach any firm view about whether the agency conduct was defective. The emphasis in our work is on achieving remedies for complainants, and improving agency complaint-handling processes and public administration generally. Instances nevertheless arise in which administrative deficiency should be recorded and notified to an agency.

The term administrative deficiency is not defined (or even specifically referred to) in the *Ombudsman Act 1976*. It is a phrase used by this office when referring to agency action that is assessed as being 'deficient' for a reason specified explicitly or implicitly in s 15 of the Act. Section 15 lists the grounds on which the Ombudsman can formally make a report to an agency, and ultimately the Prime

Minister and Parliament. Those grounds are of two kinds: a deficiency in the conduct of an agency in an individual case (eg, delay); or a deficiency more broadly in the agency or the system of government (eg, discriminatory legislation).

Recording an administrative deficiency can be an integral part of the record of our investigation. It feeds into the systemic work of the office, by identifying issues that may need further examination by specialist teams. Notifying an agency that administrative deficiency has been recorded is also an important message to the agency about its administrative performance and can assist the agency in improving its administrative processes.

In more serious cases, a s15 report signed by the Ombudsman is used to record administrative deficiency by an agency. Because a s15 report is formal in nature and is provided to the relevant Minister, the agency is first given an opportunity under s8(5) to comment on the draft report of the Ombudsman. In less significant cases, administrative deficiency can be recorded by the office without a s15 report. Nevertheless, we must follow a fair procedure, be able to justify our assessment that an agency's actions were deficient, and the recording of administrative deficiency must be signed off at an appropriately senior level in the office.

What is Administrative Deficiency?

Administrative deficiency in the individual case:

- unreasonable delay
- inadequate advice, explanation or reasons
- legal error
- factual error
- human error
- procedural deficiency
- unreasonable/harsh/discriminatory action or decision
- flawed administrative process
- unprofessional behaviour by an officer
- breach of duty/misconduct by an officer

Administrative deficiency in the agency or system of government:

- legislation: unreasonable or harsh impact or unintended consequence
- government policy: unreasonable or harsh impact
- resource deficiency in agency
- inadequate knowledge/training of agency staff
- Australian Government programs: deficiency arising from their interaction
- Commonwealth/State responsibilities: cross-jurisdictional difficulties

OMBUDSMAN LAUNCHES E-BULLETIN

The Commonwealth Ombudsman e-bulletins describe recent case studies of finalised complaints from which lessons can be drawn that are considered to be of interest to a wider audience. Three e-bulletins will be produced each year. To subscribe to the Ombudsman e-bulletin send a blank email to e-bulletin-subscribe@lists.ombudsman.gov.au.

The first edition is available now online and the second edition will shortly be released: http://www.comb.gov.au/commonwealth/publish.nsf/Content/ebulletin_number001.

QUALITY STANDARDS FOR COMPLAINT HANDLING

In June the Office of the Commonwealth Ombudsman adopted the following Quality Standards for Complaint Handling. For a copy of our full Quality Assurance framework please write to us at pacific@ombudsman.gov.au.

1. The response to an approach identifies all appropriate issues at the earliest stage with complainants appropriately advised and issue strings recorded.
2. All communication is courteous and respectful, appropriate to the recipient, 100 per cent accurate, and complies with templates and style guides.
3. Complainants and agencies are kept informed of the progress of the complaint, and delayed or sensitive cases are appropriately escalated.

4. The conduct of the investigation demonstrates an understanding of applicable law and agency policies, and complies with all office policy, guidelines and the work practice manual.
5. Timeframes comply with published standards, and reasons for any delays appropriately recorded.
6. Complaints are handled consistently across the office irrespective of the location of the Investigating Officer.
7. Complaints are handled consistently according to office-wide guidelines subject to documented processes for particular agencies.
8. Record keeping, including email management, and the use of Resolve complies with relevant policies
9. Requests for information from agencies are clear, relevant and do not impose an unreasonable resource burden on the agency.
10. Systemic issues are identified, administrative deficiency recorded where appropriate, and proposed remedies are appropriate.

POVERTY AND THE RULE OF LAW

The [Commission on the Legal Empowerment of the Poor](#) released a [report](#) on 3 June emphasizing the essential nature of the rule of law in eliminating poverty. The reports findings indicated that a vast majority of the world's poor live outside the protections of the law. Many are not registered with any state legal entity, making their existence essentially undocumented and creating additional barriers to exercising their rights. The commission called on world governments to make fighting legal disenfranchisement a top priority:

Four billion people around the world are robbed of the chance to better their lives and climb out of poverty, because they are excluded from the rule of law. Whether living below or slightly above the poverty line, these men, women, and children lack the protections and rights afforded by the law. They may be citizens of the country in which they live, but

their resources, modest at best, can neither be properly protected nor leveraged. Thus it is not the absence of assets or lack of work that holds them back, but the fact that the assets and work are insecure, unprotected, and far less productive than they might be. There are further vulnerabilities, as well. Indigenous communities may be deprived of a political voice and their human rights violated. In addition to exclusion based on their poverty and their gender, poor women may also be denied the right to inherit property. In our own era then, vast poverty must be understood as created by society itself.

In too many countries, the laws, institutions, and policies governing economic, social, and political affairs deny a large part of society the chance to participate on equal terms. The rules of the game are unfair. This is not only morally unacceptable; it stunts economic development and can readily undermine stability and security. The outcomes of governance – that is, the cumulative effect of policies and institutions on peoples' lives – will only change if the processes of governance are fundamentally changed.

<http://jurist.law.pitt.edu/paperchase/2008/06/rule-of-law-needed-to-fight-global.php>

CONTACT US

Network News is supported by AusAID's Pacific Governance Support Program, which works to reduce poverty and achieve sustainable development by linking Australian Commonwealth Government with their Pacific counterparts, and by supporting shared regional governance approaches.

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