

**11th World Conference of the International Ombudsman Institute
Bangkok, Thailand**

13-19 November 2016

Plenary Session: Presentations of innovative projects

'Starter Kit for New Ombudsman and Developing or Expanding Offices'

Chris Field, Western Australian Ombudsman and IOI Treasurer

Thank you Nick. Good morning to delegates.

In this session, featuring innovative ideas in the Ombudsman world, I am absolutely delighted to present to you the newest Australasian and Pacific Ombudsman Region and International Ombudsman Institute project, the *Starter kit for new ombudsman and developing or expanding offices*.

As many of you know, the IOI, through its regional subvention project, allocates a portion of its yearly budget to fund subventions to IOI regions.

Following this allocation, each year the Executive Committee and the Board of the IOI considers applications from the IOI regions for projects to support the purposes of the IOI.

Project proposals are assessed against a range of criteria, including:

- Contribution of the project to increase regional visibility of the IOI;
- The particular needs of the region;
- Strengthening the capacity and capability of Member offices; and
- The broader impact and wider application for the IOI community.

In 2013, following consultation with all APOR Members, the (then) New South Wales Ombudsman, Bruce Barbour, and I applied, on behalf of APOR, for an IOI Regional subvention for what we believed was an innovative idea.

We proposed to create a comprehensive resource for newly created Ombudsman offices, newly appointed Ombudsman and developing or expanding Ombudsman offices – a resource that would draw upon the collective expertise and experience of APOR Members.

The objective of the project was twofold.

First, to provide a highly accessible and practical web-based induction tool for newly created Ombudsman offices or newly appointed Ombudsmen utilising the knowledge and experience of existing Ombudsmen. In this way, the Kit is designed to answer all those questions that each of us have no doubt asked in those first few months when we are new to our roles.

Second, to provide a resource for those offices undergoing an expansion of functions or dealing with novel or challenging issues. As you know, and as we are discussing at this World Conference, the recent experience of Ombudsman around the world has been one of expansion of functions. Successfully navigating such expansion was very much in our minds in developing the Kit.

By bringing together these works in one central place, and of course adding to this body of work over time, we aimed to create a rich library of resources to inform the work of new Ombudsmen and developing or expanding offices.

Following approval of the subvention grant, the project team surveyed APOR Members to identify useful topics, information and resources for the Kit. Additionally, many APOR Member offices provided various resources for the Kit, and these are now available as a resource for new ombudsmen and developing or expanding offices. I take this opportunity to thank APOR Members for generously contributing to the Kit.

The Kit is accessed through a secure web portal on the IOI website, and it is intended to be a living document. The resources and information in the Kit can be updated and replaced as required, and my office will coordinate any changes to the Kit.

As Rebecca my Director Research and Projects is demonstrating, when you log in to the Member area of the IOI website, you will see a link to the Kit that will take you to the Kit home page.

[\[Slides 1,2,3,4\]](#)

The resources in the Kit are structured into four broad topics:

- Core principles;
- Governance and Office Management;
- Complaints and Investigations; and
- Stakeholder Engagement.

Within each topic area of the Kit there are a number of pages that provide further information on the chosen topic area.

As I have said, the topics covered in the Kit were identified through the survey of IOI Members from APOR and in this way we hope the Kit is truly a work that draws on the collective expertise of IOI Members and meets the needs of new ombudsmen or offices expanding their functions both in APOR, and the IOI more generally.

Each section of the Kit contains an overview, as well as public resources and resources provided by APOR Members available for download. Over time, we welcome, and I encourage, IOI Members from around the globe to contribute materials from their offices that they believe could be of assistance to new ombudsmen or those expanding their functions.

I will now briefly walk through each of these four broad topic areas. Looking first to *Core Principles*.

[\[Slide 5 Core Principles landing page\]](#)

The Core Principles section of the Kit provides information and resources relating to what it means to be an Ombudsman.

The resources in the *Core Principles* section provide a range of perspectives on these themes, including text books, journal articles, conference papers, submissions and presentations.

[\[Slide 6 1 level down to Guiding Principles\]](#)

Next the Kit explores guiding principles in more detail.

[\[Slide 7 How to build and maintain independence\]](#)

Before moving to further detail about how to build and maintain independence.

Where the *Core principles* section of the Starter Kit speaks to the fundamental principles of what it means to be an Ombudsman, the following sections provide guidance to assist new Ombudsman and expanding or developing Ombudsman offices in relation to a range of key strategic and operational matters.

[\[Slide 8 Governance and Office Management\]](#)

For example, in *Governance and Office Management*, new offices and newly appointed Ombudsman will find not only principles based papers, but also practical frameworks and guidelines provided by APOR Members, that have been developed by, and used in, their own offices in a range of areas, namely:

[\[Slide 9 Strategic and business planning\]](#)

- The ever important issue of strategic and business planning;

[\[Slide 10 Measuring and monitoring performance\]](#)

- Why and how we measure and monitor performance;

[\[Slide 11 New functions and a growing office\]](#)

- Developing and managing new functions and a growing office;

[\[Slide 12 Risk management\]](#)

- The critical issue of risk management;

[\[Slide 13 Records management\]](#)

- As Chairman of the State Records Commission of Western Australia, a matter close to my heart – the importance of good records management; and

[\[Slide 14 Challenges to jurisdiction\]](#)

- A matter that hopefully will not arise very often – how to respond to challenges to jurisdiction.

[\[Slide 15 Complaints and investigations\]](#)

Next the Kit examines our core business of complaints and investigations.

The resources in this section are arranged into:

[\[Slide 16 Receiving and assessing complaints\]](#)

- Receiving and assessing complaints;

[\[Slide 17 Conducting investigations\]](#)

- Conducting investigations; and

[\[Slide 18 Managing parties to a complaint\]](#)

- Managing parties to a complaint.

Reflecting the diversity of the region, these resources were provided by Ombudsman offices in Australia, New Zealand, the Republic of Kiribati and Hong Kong.

These offices provided a large range of very practical tools for dealing with complaints and complainants, including manuals, frameworks, fact sheets, assessment tools, all available for new Ombudsman, or offices who are expanding functions, to download and adopt in their jurisdiction.

[\[Slide 19 Stakeholder Engagement\]](#)

Next the Kit provides information and resources relating to the office's engagement and communication with its key stakeholders, more particularly:

[\[Slide 20 Members of Parliament\]](#)

- Members of Parliament;

[\[Slide 21 Journalists\]](#)

- Journalists; and

[\[Slide 22 Government agencies\]](#)

- Public agencies.

[\[Slide 23 \(Outreach and awareness\)\]](#)

We also provide information and material on the approaches taken by Ombudsman offices to raise awareness of, and accessibility to, their offices.

[\[Slide 24 \(Contacts\)\]](#)

Lastly, there is a page with the contact information for APOR Member offices, including details to contact my office if you have questions about, or would like to add to, the Kit.

I encourage you to log in and explore the Kit. As I mentioned, the Kit is intended to be a living document, so please feel free to provide additional or updated resources to my office for inclusion in the Kit.

I am also pleased, and excited, that the Kit, originally available to APOR Members, has been made available to all IOI Members – further enhancing the value of the Kit and the assistance that is able to be provided to new Ombudsmen taking office all around the world and those who are considering the expansion of functions for their offices.

Can I finally acknowledge my sincere appreciation for the support of the office of the New South Wales Ombudsman, particularly to my colleagues, the immediate former New South Wales Ombudsman, Bruce Barbour, colleague Professor John McMillan, the acting New South Wales Ombudsman, and Tom Millet of John's office, Rebecca Poole and Lindon McKenna of my office, and the staff of the IOI Secretariat in Vienna for their very hard work in delivering the Kit. I am delighted to be able to present a project that I believe provides a rich library of very helpful information in one central place that I think will be a valuable resource for all of us and our offices.

Thank you.



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As a member of the International Ombudsman Institute (IOI) you are welcome to join the member area of our website and enjoy exclusive access to the IOI's internal news and publications as well as the possibility to edit your institution's profile and add cases to the newly implemented case database.

- **EDIT INSTITUTION DATABASE** will give you full access to your institutions data fact sheet. Information shown on your institution's IOI web-profile (i.e. contact details, current incumbent, pictures and logos) can be updated and uploaded via this menu function.
- **INTERNAL PUBLICATIONS and INTERNAL NEWS** provide documents such as the minutes of IOI Board meetings or the chapters of the IOI's Comparative Study of Ombudsmen in the Australasia & Pacific Region, which can be accessed exclusively by IOI members.
- **MY CASES** will lead you to the IOI's online-based case database; a new feature which will facilitate the exchange of experience and best practices with colleagues on an international level.

In case of any technical problems within this member area, please contact the IOI General Secretariat (ioi@volksanw.gv.at).

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APOR Starter Kit

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► Starter Kit for New Ombudsman and Developing or Expanding Offices

Welcome to a collection of Ombudsman resources, guidance and useful advice, prepared for the members of the Australasian and Pacific Ombudsman Region (APOR) with the financial support of the International Ombudsman Institute (IOI). This 'starter kit' is designed to provide assistance to newly established Ombudsman offices, as well as to those undergoing expansion or looking for assistance to develop existing services or new functions.

The resources in this Starter Kit are set out under a number of broad topics:

Core principles

- [Guiding principles](#)
- [How to build and maintain independence](#)

Governance and office management

- [Strategic and business planning](#)
- [Measuring and monitoring performance](#)
- [New functions and a growing office](#)
- [Risk management](#)
- [Records management](#)
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Complaints and investigations

- [Receiving and assessing complaints](#)
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GUIDING PRINCIPLES

HOW TO BUILD AND MAINTAIN INDEPENDENCE

Core principles

- ▶ This section of the Starter Kit provides information and resources relating to the core principles of what it means to be an Ombudsman.
 - **Guiding principles** - principles for operating an office which acts, and is seen to act, with a high degree of integrity.
 - **How to build and maintain independence** - the role of the Ombudsman as an independent officer, and characteristics of independence.

Guiding principles

- ▶ The Ombudsman is a core institution of modern government with a role to promote and protect human rights, contribute to the maintenance of the rule of law and as a pathway to accessible, timely and effective administrative justice.

As the Ombudsman has a significant role to keep the executive government to account, the Ombudsman and the Ombudsman's office must act, and be seen to act, with a high degree of integrity and accountability.

[more](#)

How to build and maintain independence

- ▶ Possibly the most important element to the success of an Ombudsman is the office's independence. It must not be, or be seen to be, answerable to the government of the day or to the agencies within the office's jurisdiction. At the same time, the office must also not be or be seen to be a community advocate. The Ombudsman must clearly be acting in the public interest at all times.

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Guiding principles

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► The Ombudsman is a core institution of modern government with a role to promote and protect human rights, contribute to the maintenance of the rule of law and as a pathway to accessible, timely and effective administrative justice.

As the Ombudsman has a significant role to keep the executive government to account, the Ombudsman and the Ombudsman's office must act, and be seen to act, with a high degree of integrity and accountability.

The trust and respect of Parliament, the public, and agencies are essential to the efficient and effective functioning of the office.

To aid this goal, offices should establish clear expectations of staff, through a code

Public resources

Australia and New Zealand Ombudsman Association, [Use of the term Ombudsman: Essential criteria for calling a body an Ombudsman](#), <www.anzoa.com.au>.

Australia and New Zealand Ombudsman Association, [Submission to Productivity Commission Inquiry into Access to Justice Arrangements Draft Report](#), May 2014, <www.anzoa.com.au>.



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How to build and maintain independence

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► Possibly the most important element to the success of an Ombudsman is the office's independence. It must not be, or be seen to be, answerable to the government of the day or to the agencies within the office's jurisdiction. At the same time, the office must also not be or be seen to be a community advocate. The Ombudsman must clearly be acting in the public interest at all times.

The independence of an Ombudsman depends on a range of considerations, including:

► Appointment: How the Ombudsman is appointed and how the Ombudsman can be removed from their position are important features of independence. The more the executive government can influence this process, the greater the vulnerability of the Ombudsman to influence, whether real or perceived. The links below provide some examples of appointment and termination provisions of Australian Ombudsmen.



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Governance and office management

► This section of the Starter Kit provides information and resources relating to the good governance of the office and how to support the office's core functions.

- **Strategic and business planning** - establishing and implementing the strategic direction for the office
- **Measuring and monitoring performance** - Monitor the efficiency and effectiveness of the office, for internal and external reporting
- **New functions and a growing office** - considerations for proposed new functions and handling an expanding office
- **Risk management** - risk considerations for Ombudsman offices
- **Records management** - considerations for proper records management
- **Challenges to jurisdiction** - difficulties the office can face when its legislated jurisdiction is changed by government or challenged in court.



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Strategic and business planning

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► Strategic and business planning is an important part of an office's corporate governance framework. Its purpose is to continuously improve the office's outward-facing and inward-facing services by establishing a set of clearly defined expectations and outcomes.

Offices can establish a range of strategic and business planning documents to guide their work:

► A whole of office Strategic Plan identifies the key activities of the office and links them to the office's overarching goals – its 'reason for being'. It may include a purpose/mission/values statement, identify the key stakeholders of the office, set out the office's strategic direction over the life of the Plan, and identify how the office will measure the success of the Plan.



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Measuring and monitoring performance

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► As with any other public or private sector organisation, it is important that offices monitor, measure and report on their performance. This will provide the Ombudsman and senior staff with confidence in the work of the office. It will also allow the office to demonstrate to the community that it is making appropriate and efficient use of the funding and resources with which it is provided. In some jurisdictions, this information can also be of assistance to the Parliamentary Committees tasked with overseeing the work of the Ombudsman. Offices can use this information to support applications for additional funding and resources, particularly if there is a clear increase in a particular area of the office's work. And finally, this information will be useful to demonstrate the office's importance to the community.



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New functions and a growing office

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► Communities are demanding a greater level of transparency and accountability from government as well as those delivering services that were once the responsibility of the public sector. In looking for additional accountability mechanisms, governments often first look to existing mechanisms, such as Ombudsmen, that are trusted, effective and where the additional oversight functions are comparatively inexpensive to implement.

Offices around the world are very different. The possibility for Ombudsman offices to expand and change is dependent on the office's enabling legislation, as well as the serving Ombudsman's approach to the office. Some have maintained very traditional offices, dealing only with complaints about maladministration by government departments. Others have been given functions that expand their jurisdiction into areas such as policing, the provision of community services, correctional facilities, ensuring compliance with the Optional Protocol to the Convention Against Torture, reviewing the deaths of certain children, people with a



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Risk management

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▶ Standard ISO 31000:2009 Risk Management – Principles and guidelines defines risk as the ‘effect of uncertainty on objectives’.

It is important that Ombudsman offices have policies and procedures in place to identify, assess, manage/mitigate and monitor a range of risks, and that these are reviewed and evaluated at appropriate intervals.

Some common risks are:

- ▶ Reputational risk
- ▶ Fraud or corrupt conduct
- ▶ Personnel and information security
- ▶ Not meeting legislative and regulatory requirements
- ▶ Not meeting performance targets
- ▶ Not meeting stakeholder expectations
- ▶ Not maintaining quality controls



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Records management

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► Proper maintenance of records is an important part of a well-functioning organisation. It is particularly important that Ombudsman offices have good record management practices because it is a key area where Ombudsmen often identify poor practice in agencies in their jurisdiction. In addition, Ombudsman offices often deal with sensitive and, sometimes, highly confidential or secret information.

Most jurisdictions have legislative and regulatory requirements that apply to creating, maintaining, disposing and archiving of records.

Ombudsman offices should consider:

- What are the legislative and regulatory requirements?
- Does the office have policies and training to help staff to identify official records and ensure proper storage of those records?



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Challenges to jurisdiction

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► Ombudsman offices can face particular challenges when the executive government seeks to change the Ombudsman's jurisdiction in a way that might limit the office's ability to function effectively, or impact its independence.

The office can also face challenges when the Ombudsman's jurisdiction is challenged in court. An overview of relevant litigation that has affected APOR members can be found in the information about each office in the **APOR Information Manual**, available on the IOI website.

Public resources

Australasian and Pacific Ombudsman Region, **Information Manual 2015**, May 2015, <www.theioi.org>.

Victorian Ombudsman, **A section 25(2) report to Parliament on the proposed integrity system and its impact on the functions of the Ombudsman**, December 2012, <www.ombudsman.vic.gov.au>.



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Complaints and investigations

► This section of the Starter Kit provides information and resources relating to the office's core complaint handling functions.

- [Receiving and assessing complaints](#)
- [Conducting investigations](#)
- [Managing parties to a complaint](#)

Receiving and assessing complaints

► How complaints are received and assessed can vary depending on a number of factors, including the jurisdiction of the Ombudsman, the agencies and other parties involved, the actions that the complainant has already taken, and the complainant's desired intended outcome.

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► How complaints are received and assessed can vary depending on a number of factors, including the jurisdiction of the Ombudsman, the agencies and other parties involved, the actions that the complainant has already taken, and the complainant's desired intended outcome.

The starting point for Ombudsmen when considering their complaint handling processes is to consider their enabling legislation.

Matters to consider include:

- How can or must complaints be made? (What is the definition of 'complaint?')
- What is in and out of the Ombudsman's jurisdiction?
- Should the Ombudsman exercise discretion to decline to investigate? For example, it is often more timely and effective if the agency being complained about has had an opportunity to consider the complaint before the Ombudsman becomes involved.

The assessment process will also identify and consider any risks associated with the complaint, which may have a bearing on the exercise of the Ombudsman's discretion.

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► Approaches to investigating complaints vary according to a number of factors, including the jurisdiction of the Ombudsman's office, the agencies and other parties involved, the complexity of the matter, and the intended outcome.

The starting point for Ombudsmen when considering their complaint handling and investigation processes is to consider their enabling legislation.

Matters to consider when initiating and conducting an investigation include:

- Is there scope for trying to resolve complaints through an informal process before proceeding with a full investigation process? For example, can the Ombudsman make enquiries and disclose information before commencing an investigation? Does the legislation contemplate both formal and informal investigation processes?
- What information can be disclosed/released during an investigation and to whom?
- What are the Ombudsman's powers to gather evidence?
- What procedural fairness (natural justice) processes apply?
- Who must be informed of the outcome of the investigation?
- What appeal or review mechanisms are there?



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Managing parties to a complaint

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The independence of the Ombudsman's role is not just about independence from the executive government, it is also about being independent from all parties to a dispute.

Establishing good relationships with agencies assists in timely and effective resolution of complaints. This requires ongoing dialogue at a senior level and agreeing to procedures for the agency to respond to the office's enquiries. In handling complaints, offices can request information and suggest resolutions in the first instance.

It is also good practice for offices to maintain good relationships with complainants. This can be done by managing their expectations, giving reasons for decisions, informing them of outcomes and keeping them informed about the progress of their matter.

Ombudsmen have jurisdiction over agencies that can have significant impact or influence over people's lives, for example public housing, prisons and detention centres, welfare, education, child protection and policing. Complainants accessing the Ombudsman's services can be distressed, angry, facing hardship, or have medical or mental health issues. These need to be managed sensitively and



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Stakeholder engagement

► This section of the Starter Kit provides information and resources relating to the office's engagement and communication with its key stakeholders.

- **Members of Parliament** – Interacting with Members of Parliament and government Ministers.
- **Journalists** – Expectations of staff for communicating with the media and journalists and in other forums.
- **Agencies** – Improving public administration through interaction with agencies.
- **Outreach and awareness** – Considerations for raising awareness about the office's services in the community, and enhancing access for the public.



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Members of Parliament

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► The relationship between the Ombudsman and Parliament will depend on the office's enabling legislation and the structure of government.

Generally, in order to be, and be seen to be, independent, the relationship between the Ombudsman and Members of Parliament should not be influenced by political considerations.



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► To ensure a consistent and professional approach, it is important that the office speaks with one official public voice.

Generally it is good practice for enquiries from journalists to be referred to a senior officer who can appropriately handle the enquiry. It is up to the Ombudsman to determine what information the senior officer can disclose, however as an officer of Parliament it will generally be inappropriate to disclose information about a particular investigation before a public report on the matter is tabled in Parliament. In many jurisdictions, the Ombudsman's enabling legislation allows for information to be disclosed if doing so is in the public interest.

Offices should establish a policy to guide staff on communicating with the media. In addition, the office's Code of Conduct or other policy should provide guidance about staff making public statements (to the media and on social media or other forums) which may relate to or affect their work in the office.



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Government agencies

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► Ombudsmen engage with agencies to improve public administration in various ways, not just through resolving and investigating complaints.

Offices often provide training to improve the knowledge, skills and practices of agencies, on topics such as:

- Complaint handling
- Conducting investigations
- Good decision making
- Managing unreasonable complainant conduct

Offices can also publish a range of materials to assist agencies to improve their administrative practices. These are usually made available on their websites. See the [Contacts](#) page of this Starter Kit for links to APOR members' websites.

Ombudsmen or other senior officers often meet with their counterparts at the agencies within their jurisdiction, particularly those agencies for which the office receives a large number of complaints. These meetings are an opportunity to discuss complaint trends and systemic issues, build relationships, and discuss and agree to approaches for interactions between the office and the agency.



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Outreach and awareness

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▶ Ensuring that all of the community are aware of, and can access, services should be an essential objective of the office.

Offices can:

- ▶ Engage directly with the community, for example through complaint clinics where people can discuss their issues and complaints with staff face to face;
- ▶ Promote the role and functions of the Ombudsman in local print and radio media; and
- ▶ Attend, and participate in, events and forums for community groups and organizations that provide support or advocacy for members of the community, such as: Community legal centres; Financial counsellors; and other relevant welfare groups.

Offices can use strategies for enhanced outreach to specific groups of people and geographical areas, which may be marginalised, underrepresented in complaint statistics, or where there is limited access to the services of the Ombudsman. This can include

- ▶ Visits to regional areas;



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Contacts

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► **Starter Kit contact**

For any questions or comments regarding this Starter Kit, please contact the Western Australian Ombudsman's office by email: communications@ombudsman.wa.gov.au

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