

THE FIRST 10 YEARS 1987 - 1996

**Summary of an analysis of Parliamentary Commissioner
for the Environment investigations
and
advice on remedial action**

Office of the
PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT
Te Kaitiaki Taiao a Te Whare Pāremata

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Te Kaitiaki Taiao a te Whare Paremata /
Parliamentary Commissioner for the Environment

The first 10 years - 1987-1996

summary of a detailed analysis of PCE investigations and advice on remedial action

Introduction

This paper summarises a report completed in December 1996 to analyse the outputs of the Office of the Parliamentary Commissioner for the Environment during the first ten years of its work. It brings together and summarises existing information from Annual Reports to Parliament; the Commissioner's report for the 1991 United Nations Conference on Environment and Development; and a database developed for the second five year period. The database includes requests for PCE involvement, the Commissioner's findings and advice on remedial action, and the response of public authorities and other recipients to this advice. This summary constitutes a "pre-release" document designed to meet the needs of the 1997 Guardians for the Environment Symposium. The December 1996 report will provide the basis for a formal PCE publication later in 1997.

Demand for services

Logged expressions of concern to the PCE have increased markedly over the 1990/91 - 1995/96 period, with the average of the second half of that period double that of the first half (Table 1). By statute the Commissioner is not required to respond to requests for action unless they originate from the House of Representatives, but requests from all sources can provide valuable indicators of concern and possible system or management problems worthy of investigation under the Environment Act.

Table 1 : Demand for PCE services

Fiscal Year	Concerns	Total Requests
90/91	186	(not available)
91/92	125	(not available)
92/93	89	(not available)
93/94	300	466
94/95	408	640
95/96	320	436

Concerns data 1-7-90 to 30-6-96, from database. Total requests data (includes concerns, requests for information) from Annual Reports 1993-94 to 1995-96.

Outputs: investigations and information transfer

Over the first five years of the PCE's tenure 15 major investigation reports were produced and over the second five years more than double that at 29, for a total of 44 over the ten-year period.¹ In total there were 169 reports and investigations from the 10-year period (Table 2). Over this time, an additional 1.5 full-time equivalent investigation staff were hired (above the original allocation of 5), and efficiencies gained from improved EDP equipment and experience in investigations.

For the second five year period, 524 findings and 811 items of advice (= recommendations) were contained in reports issued by the Commissioner. The smaller number of findings as

¹ Major reports are essentially those that take from four to nine months, involve several public authorities and often national issues, usually involve two or more investigation staff, and that result in a substantial (over 20 pages) published report. Minor investigations are the remainder.

compared with items of advice results in part from reports where key findings were not explicitly listed, but contained only in the main text (mostly in earlier reports).

Table 2: Report output for first and second five years

First five years - January 1987 to December 1991

-- from publications list

Report type	FY 87/88	FY 88/89	FY 89/90	FY 90/91	91/92 (part)	Total - 1st 5 yrs
Advice to Select Committees			2	1	1	4
Major investigations	4	3	1	5	2	15
Minor investigations	1	1	6	10	2	20
Sub-total	5	4	9	16	(5)	39

Second five years - January 1992 to December 1996

-- from publications list and annual report text

Report type	91/92 (part)	FY 92/93	FY 93/94	FY 94/95	FY 95/96	96/97 (part)	Total - 2nd 5 yrs	TOTAL - 10 yrs
Advice to Select Committees	6	5	2	5	3	0	21	25
Major investigations	4	3	4	7	7	3	29	44
Minor investigations	9	8	16	16	17	14	80	100
Sub-total	(19)	16	22	28	27	17	130	169

Note: the two five-year groupings are on a calendar year basis, but the data is on a financial year basis.
Add both 1991/92 segments for the 1991/92 financial year total.

General patterns in reports and advice

In the first five years "waste", "energy/mining" and "environmental planning and management" were the most often covered issue areas. In the second five years there was an increased emphasis on "environmental planning and management" (which coincided with the advent of the Resource Management Act) and a new emphasis on "hazardous substances", "land resources", and "biota" (Table 3).

Table 3: Top issue areas

	Requests for PCE action	PCE Reports	PCE advice on remedial action
<i>First five years</i>	Waste Energy/Mining Biota Land resources	Waste Envir. Plan./Mg't. Fresh water Energy/Mining	(not in database)
<i>Second five years</i>	Envir. Plan./Mg't. Biota Land resources Air quality Hazardous substances	Envir. Plan./Mg't. Hazardous substances Energy/Mining Biota Waste	Land resources Biota Hazardous substances Envir. Plan./Mg't. Energy/Mining

Recurrent themes in the Commissioner's annual reports to Parliament included: effects of government restructuring; sustainable resource management; national guidelines; access to information; local authority performance; tangata whenua concerns; stakeholder involvement; and environmental assessment. Categorisation of PCE advice by common themes results in the graph in Figure 1.²

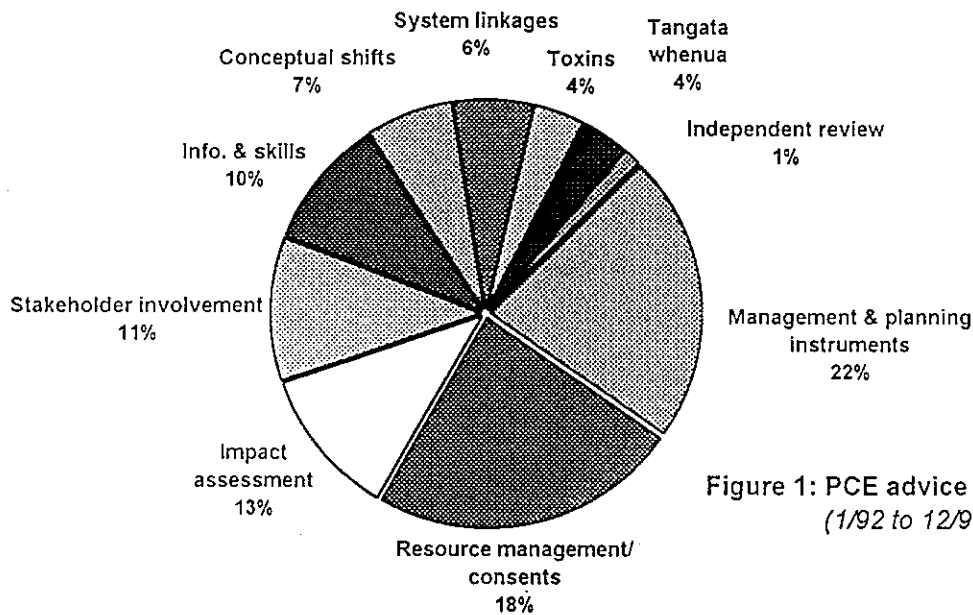


Figure 1: PCE advice by specific themes (1/92 to 12/96 inclusive)

Findings and advice by recipient type

Database records show that most of the advice during the second five year period was issued to local government agencies (46%), followed by central government agencies and Ministers of the Crown (29%), and Parliament (19%) (Table 4).

Table 4: PCE Advice by recipient type

Advice recipient type	Items of advice
Local Government	347
Central Government	226
Parliament	145
SOE/CHE	44
Company/Trade Assn.	30
Other	19

² The theme "conceptual shifts" includes sustainable resource management, the precautionary principle, and inclusion of "intangibles" or non-market values in evaluation of benefits and costs.

When findings that assess performance are separated out according to type of recipient, performance ratings for local government are better than for central government agencies or state-owned and private commercial entities (Figure 2).

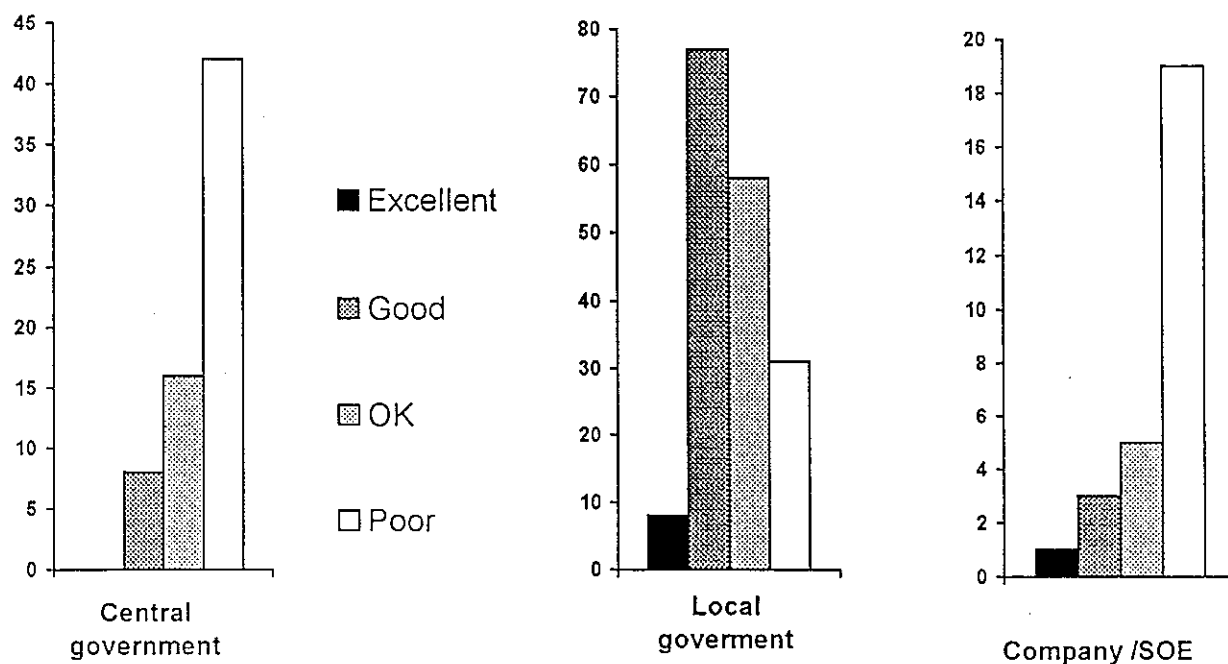


Figure 2: PCE findings: assessment of performance by recipient type³

“Shifting the system”

The Environment Act provides the Commissioner with investigation, reporting, advice on remedial action, and information-sharing functions, but does not provide enforcement powers. Whether or not advice on remedial action is accepted or implemented cannot therefore be used as a performance measure for the Commissioner, as these are matters over which she has had virtually no control apart from the clarity, targeting, and appropriateness of advice.

Nonetheless, Commissioner Hughes consistently attempted to encourage positive changes to New Zealand’s environmental management system and to the practices of environmental managers, a contribution she has termed “shifting the system”. In order to track progress in this area, where possible she monitored environmental issue areas and ascertained response to her advice on remedial action.

³ “Excellent” = exemplary in some respect; “Good” = practice fine/ complaint unfounded; “OK” = but improvements required; “Poor” = major problems. Criteria for assessment in main report.

For those advice records where response data is available, the positive response (“accepted” plus “implemented” groups) has been 72% for major reports, and 63% for all reports for the second five year period (Figure 3 for all reports).⁴

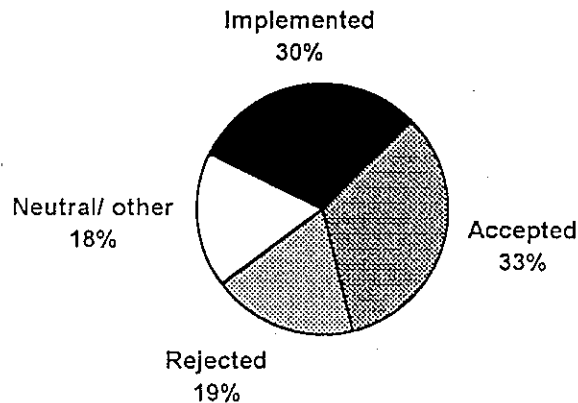


Figure 3: Response to PCE Advice for all reports
January 1992 to December 1996 inclusive

Breaking down the aggregated response by recipient type shows that central government agencies and local government accepted or implemented more of the advice on remedial action given to them than did Ministers of the Crown and Select Committees of Parliament, but all provided positive responses (Figure 4).

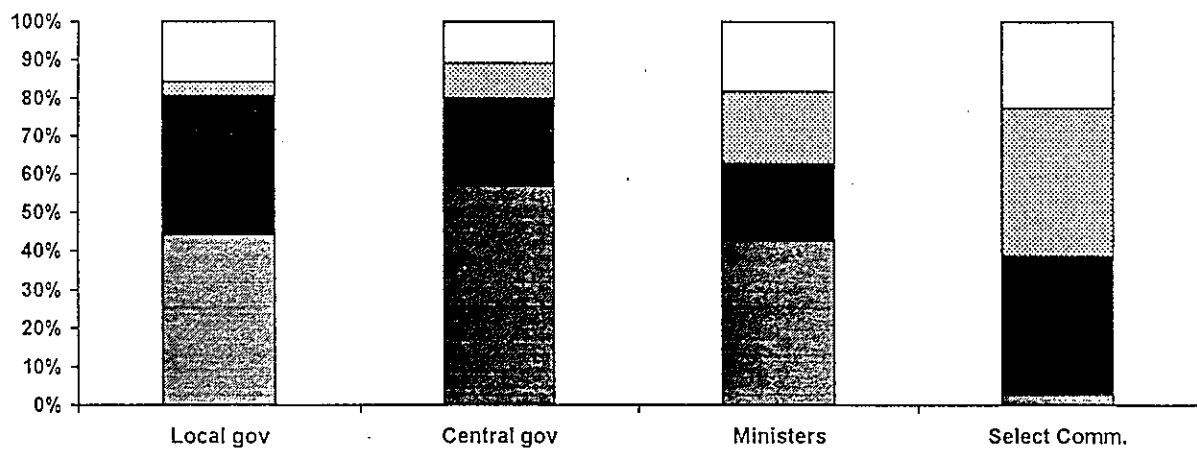


Figure 4: Response to advice by recipient groupings

(January 1992 to December 1996 inclusive)

"Accepted" = accepted, but not yet implemented

"Central gov" = Crown agencies, quangos

□ Neutral/other
 □ Rejected
 ■ Implemented
 ▨ Accepted

⁴ The database covers advice issued January 1992 to December 1996 and updates may not be commenced until three years after the advice has been issued; thus information is not available on responses for many records of advice. For major reports, response data is available for 50% of the advice records, and for all reports the response data is available for 64% of the advice records.

PCE services

As categorised in this report there are twelve basic types of service that the PCE provided over the first ten years.

1 Providing improved environmental management information

"major report" examples: 10

PCE investigations (Environment Act ss 16(1)(a -c)) seek to clarify from an independent perspective the essential nature of the environmental management problem under scrutiny and the views of all key stakeholders, to bring together information from often scattered and unpublished sources, and to report the findings in a public document. This means that the Commissioner's reports can bring together for the first time, and in one place, a useful overview of the issue. Requests for copies of the reports and references to them have indicated an ongoing interest in their use as resource documents.

2 Audits and "good practice" guides: public authority performance

"major report" examples: 10

One of the unique services the Office of the Parliamentary Commissioner for the Environment offers is the auditing of public authority environmental management practice and the offering of advice on remedial action, a function empowered by the Environment Act (s 16(1)(b)). The "good practice guides" seem to have filled an important niche, and it is hoped that their continued use will help accelerate improvements in resource management. Issues covered to date include environmental effects assessment, coastal management, historic and cultural heritage management, and monitoring for compliance with resource consents.

3 National issues/ systems: investigation and advice

"major report" examples: 19

Under the Environment Act s 16(1)(a), the Commissioner is empowered to investigate New Zealand's systems for environmental management and report findings to the House of Representatives. This area has produced perhaps some of the most dramatic results of Commissioner Hughes' tenure, on several occasions bringing into sharp focus the statutory ability of the Commissioner to criticise inadequate government policy, for example when she advised Ministers of the Crown that they improve performance regarding unsustainable fisheries and energy policies, and Crown environmental management actions that were contrary to principles of environmental assessment and the Treaty of Waitangi.

4 Environmental "ombudsman": citizen concerns

"major report" examples: 10

Investigations arising from concerns from citizen and community groups have been numerous, and comprise virtually all of the 100 "minor" investigations entered into the database. Major investigations which have arisen from concerns, most often using "pooled" concerns from several areas, include odour nuisance, hazardous wastes, agricultural spraydrift, airport noise, possum control, cellphone transmission sites, and historic and cultural heritage management.

5 Information Transfer

Section 16(1)(f) of the Environment Act empowers the Commissioner to undertake and encourage the collection and dissemination of information relating to the environment. This activity has taken many forms including direct responses to enquiries, detailed work for

investigation reports, and responding to requests for presentations. Over 1989/90 -1993/94 registered information transfer items averaged 250 per year, and over 1994/95- 1995/96 averaged 450 per year.

6 Independent Review Panels

"major report" examples: 12

As an Officer of Parliament, the Commissioner has a status independent from Ministerial and local government politics; and as resources allow, has the ability to assist in the resolution of environmental issues and disputes. In the early years, the PCE conducted audits on Environmental Impact Reports prepared under the Environmental Protection and Enhancement Procedures (EP & EP). In later years, the PCE initiated and chaired various types of Independent Review Panels to assist in the resolution of local disputes; these included sewerage, rail, airport, port, dredging and native forest logging developments.

7 Advice to Select Committees

examples: 27

Section 16(1)(d) of the Environment Act empowers Select Committees of the House to require the Commissioner to report on matters before the House which may have a significant effect on the environment. This power has to date been rarely used on specific issues (only four examples), and most of the advice to Select Committees has been at the Commissioner's initiative; these have included transport, hazardous substances, fisheries, conservation, local government, pastoral land, and biosecurity legislation.

8 "Defacto" Treaty of Waitangi ombudsman/commissioner

"major report" examples: 3; other examples: 10

In 1988 the Commissioner found that the existing statutory provisions were "insufficient to guarantee an ongoing independent overview of the Crown's fulfilment of its duties as Treaty partner" and recommended that an independent body be established to monitor the Crown's performance on Treaty issues. This was also recommended by the Royal Commission on Social Policy. The Government rejected this advice. Given this absence of a Treaty Commissioner and her mandate under the Environment Act, Commissioner Hughes from time to time (as resources allowed) investigated issues of particular concern to tangata whenua relating to public authority adherence to Treaty principles in environmental management.

9 Independent check on sensitive information

"major report" examples: 6

Under the Environment Act there are provisions for protection of sensitive information (s 20). From time to time the Commissioner found that she could obtain certain information essential to investigations promptly only by agreeing that it would not be divulged in any detail. Such information was not released, but was checked by the PCE and used as background to advice on remedial action in reports published by the Commissioner.

10 "Stop action" to allow environmental assessment

examples: 9

The PCE has no powers of intervention nor the ability require a stay of decision while she investigates, nonetheless Commissioner Hughes through power of persuasion managed to "stop the clock" from time to time to allow environmental assessment and independent review.

11 Redefining the “problem”

“major report” examples: 4

Although many of the Commissioner’s investigations are triggered by complaints, the Commissioner is not obliged to accept complainants’ definition of the “problem” nor the appropriate “solution”. In a number of cases issues were presented to the Commissioner in simplistic terms or from one point of view, and after investigation her reports presented a different perspective. Examples include rabbit and possum control, land transport, and wetland management.

12 Identifying research requirements

examples: “major reports”=19; PGSF referee=16

Pursuant to s 16(1)(f) of the Environment Act, the Commissioner often made recommendations for research priorities. The majority of these flow from the “major” investigations, where gaps in essential environmental management information are identified. The Commissioner had a policy of not endorsing individual bids to the Public Good Science Fund, but referred researchers to her relevant reports which they were free to quote. In recent years she also acted as referee for the Foundation for Research, Science and Technology on selected PGSF bids.

Conclusion

Ten years ago, Parliament created an independent Commissioner to investigate, report, and provide advice on remedial action for environmental management issues of significance. With production of nearly 170 reports over the ten years and over 700 pieces of advice in the second five year period alone, there is no doubt that the Commissioner fulfilled that function. While exercising those functions, the Commissioner also succeeded in:

- saying what needed to be said about poor Government efforts on sustainable resource management and resource-related Treaty of Waitangi issues, despite occasional hostility from Ministers of the Crown;
- “shifting the system” to actually *give effect to* her advice on remedial action in many instances;
- contributing significantly to educating the public about their rights and responsibilities under the Resource Management Act;
- providing “good practice advice” to local authorities to help ensure proper exercise of their responsibilities under the Resource Management Act;
- initiating Independent Review Panel models and encouraging more use of “stakeholder inclusive” decision-making methods by local authorities;
- raising awareness about local authority responsibilities concerning tangata whenua;
- successfully encouraging “landcare” models of landholder participation in shifts toward sustainable land management, particularly in the South Island high country;
- establishing a reputation for independence and credibility, and ensuring a respected place for the Office in the future.