

Federal Act
on the National Parliamentary Ombuds Office for Children's Rights (Ombuds Office
for Children's Rights Act, OOCRA) *Draft*

of ...

The Federal Assembly of the Swiss Confederation,

based on Article 4 of the Convention on the Rights of the Child¹ and Article 173 para. 2 of the Federal Constitution (Cst.)²,

having considered the Federal Council Dispatch of ...,

resolves:

1. Section: General provisions

Art. ... Purpose

This Act is intended to:

- a. promote, protect and help enforce the rights and interests of minors in Switzerland;
- b. make it easier for minors to establish contact with public authorities;
- c. help prevent or simply resolve conflicts between minors and public authorities as far as possible;
- d. foster an understanding of the rights and interests of minors amongst public authorities and, in this way, help create a child-friendly legal system.

Art. ... Duties

¹ The Ombuds Office has the following duties in relation to individual minors:

- a. it informs and advises minors in legal matters;
- b. it intermediates between minors and public authorities, with the agreement of the minor, in the event of disagreements;
- c. it provides recommendations to public authorities.

² It also undertakes the following duties in the interests of minors:

- a. it advises public authorities on a child-friendly legal system;
- b. it represents the interests of minors in cantonal and federal law-making processes before the legislature and the executive, in particular by taking a position on draft

¹ SR 0.107

² SR 101

Kommentiert [OSKR CH1]: **Alternatively**, e.g. Federal Act on the Ombudsman's Office for Children and Adolescents Short title: Children and Adolescents Ombudsman Act, Children's Rights Ombudsman Act

Kommentiert [OSKR CH2]: **Inspiration**: Laws of the Austrian federal states, Art. 31 DSG

legislation that is significant for minors; it also issues recommendations on the commencement of legislative work

- c. it represents the interests of minors before the judiciary, in particular by taking a position on judgements that are significant for minors.
- d. it reviews the appropriateness and effectiveness of laws and practices on a voluntary basis
- e. it connects with relevant national and international bodies within and outside of the legal system
- f. it reports on its activities on a regular basis
- g. it carries out public relations work, provides information on children's rights and campaigns for a child-friendly legal system.

Art. ... Scope

¹ The Ombuds Office's activities extend to all public authorities at federal, cantonal and municipal level as well as other experts who have regular contact with minors as part of their profession.

² Public authorities are:

- a. the executive, the legislature and the judiciary at federal, cantonal and municipal level;
- b. bodies external to the administration such as corporations, institutions, companies, foundations and private individuals, insofar as they fulfil the public duties assigned to them.

2. Section: Advising minors

1. Information and advice

Art. ... Information and advice

¹ On request, the Ombuds Office informs and advises minors about their rights, in particular in proceedings under administrative, civil and criminal law. In doing so, it carries out its own analysis of the respective case.

² It refers queries that are not of a legal nature or that are already covered by other, more suitable services to the relevant body. As well as this, it refers administrative law matters to the cantonal and communal ombuds offices if such offices exist.

Kommentiert [OSKR CH3]: Cf. e.g. § 3 Ombuds Act Zug, § 89 f. VRG ZH; § 2 Ombuds Act Baselland

Kommentiert [OSKR CH4]: Association of Parliamentary Ombudsman Offices: <https://www.ombudsstellen.ch/ombudsadressen/#parlamentarische-ombudsstellen>

2. Intermediary service

Art. ... Intermediary service

The Ombuds Office is non-partisan and acts as an intermediary between minors and public authorities if required. It is not authorised to issue orders or directives; however, it may:

- a. provide the minor with advice regarding their future conduct;
- b. discuss the matter with the public authority;
- c. issue the public authority with a recommendation if necessary. It also shares this recommendation with the minor and other parties involved at its own discretion.

² The public authorities are obligated to cooperate with the attempts made by the Ombuds Office to provide intermediary assistance. They acknowledge the Ombuds Office's recommendations and review whether and how they can implement the recommendations. They promptly inform the Ombuds Office and the minor in question of the measures they intend to adopt or of the reasons as to why they have rejected the recommendations.

³ The Ombuds Office may issue its recommendations orally or in writing and, if appropriate, may request a written response from the public authority.

Art. ... Access to the justice system

¹ Through its intermediary work, the Ombuds Office secures access to the justice system, in particular to the cantonal, national and international appeals procedure and to mediation services. It ensures that, if appropriate, the relevant authority appoints free legal representation to act for the minor.

Kommentiert [OSKR CH5]: Inspiration: e.g. § 93 VRG ZH

Kommentiert [OSKR CH6]: Requires an adjustment of the relevant procedural provisions

3. Common provisions

Art. ... Access to the Ombuds Office

¹ Minors may contact the Ombuds Office. People close to the minor may contact the Ombuds Office on the minor's behalf.

² Young adults aged under 25 may contact the Ombuds Office in relation to matters in which they are treated as minors or that are the result of legal matters pertaining to the time in which they were a minor.

³ The Ombuds Office facilitates child-friendly and barrier-free access to its services and, in particular, ensures that

- a. the use of services provided by the Ombuds Office is confidential and can be anonymous;

- b. access for minors with disabilities is guaranteed with respect to the necessary financial and human resources;
- c. communication takes place directly in the official languages and English as a minimum. Interpreters are consulted if necessary.

⁴ The Ombuds Office provides its services free of charge.

Art. ... **Right to information**

¹ All public authorities and other bodies concerned with a specific case must provide the Ombuds Office with the required information upon request. In this respect, they are released from their confidentiality obligations.

² Exceptions to this involve information that

- a. concerns the **internal or external security** of Switzerland or other confidential matters relating to foreign affairs;
- b. fall within the scope of **professional secrecy** as defined in Article 321 of the Swiss Criminal Code³.

³ By way of exception, information that comes under the scope of the professional secrecy of doctors may be shared if the person in question consents. This information may also be shared without the consent of the person in question if it relates to physical, sexual or psychological deprivation, abuse and violence against minors.

⁴ All employees of the Ombuds Office are obliged to maintain confidentiality towards third parties and the person who contacted the Ombuds Office to the same extent as the relevant public authorities.

Art. ... **Obligation to cooperate**

All public authorities and other bodies concerned with a specific case are obligated to support the Ombuds Office in fulfilling its duties and to cooperate with clarification work.

Art. ... **Reporting obligation**

¹ All employees of the Ombuds Office must report to the relevant authority if there are concrete indications that the physical, psychological or sexual integrity of a minor is in danger and they are not able to remedy the danger within the scope of their activity. In this respect, they are released from their confidentiality obligations.

Kommentiert [OSKR CH7]: See also e.g. § 8 f. Ombuds Act Zug, Art. 18 Ombuds Act Fribourg, Art. 13 E-Ombuds Act Aargau, Art. 17 VE-BOB;

Kommentiert [OSKR CH8]: Cf. e.g. France (Art. 20), Iceland (Art. 5 para. 1), Luxembourg (Art. 6 para. 2)

Kommentiert [OSKR CH9]: Cf. e.g. France (Art. 20), Belgium - French Community (Art. 4 para. 3)

Kommentiert [OSKR CH10]: Inspiration: France (Art. 20)

Kommentiert [OSKR CH11]: See e.g. § 92 para. 4 VRG ZH and § 17 Ombudsgesetz Zug. Is listed in each case alongside a duty of confidentiality (cf. e.g. § 94a VRG ZH and § 17 Ombudsgesetz Zug).

Kommentiert [OSKR CH12]: See also e.g. § 8 f. Ombudsman Act Zug, Art. 18 Ombudsman Act Fribourg, § 13 E-Ombudsman Act Aargau

Kommentiert [OSKR CH13]: Cf. Art. 314d ZGB

³ SR 311.0

² Employees also fulfil their reporting obligation if they address their report to the Ombuds Office managing director.

3. Section: Advising public authorities

Art. ... Advice

On request, the Ombuds Office advises public authorities on the rights of minors as well as on the idea of a child-friendly justice system.

Art. ... Knowledge transfer

¹ The Ombuds Office champions national and inter-cantonal knowledge transfer.

The Ombuds Office incorporates practical knowledge from its activities into existing educational opportunities and thereby contributes to the further development of such opportunities. It provides the impetus for new educational opportunities.

4. Section: Ombuds Office for Children's Rights

1. Mandate

Art. ... Awarding of mandates

¹ The Political Institutions Committees elect a non-governmental organisation to operate the Ombuds Office for 20 years on the basis of a mandate. Re-election of the same non-governmental organisation is possible without restriction.

² The mandate is awarded to a non-governmental organisation that undertakes all the duties of the Ombuds Office. The comprehensive mandate ensures knowledge can be transferred from the Ombuds Office's activities into the relevant practices. A distribution of duties to different mandate holders is excluded.

³ The mandate is awarded to a non-governmental organisation that:

- a. operates across the whole of Switzerland;
- b. has extensive knowledge of children's rights and the Swiss justice system;
- c. is a permanent organisation and has links to the federal government and the cantons;
- d. does not carry out any activity that could compromise its independence in carrying out its mandate or that is in any other way incompatible with the duties of the Ombuds Office.

Kommentiert [OSKR CH14]: Cf. e.g. Art. 97 KJG Liechtenstein
The mandate model ensures the greatest possible independence and allows synergies with existing organizations.

⁴ New elections must be preceded by a public call to tender. A sub-committee of the Political Institutions Committees is appointed to carry out new elections.

Kommentiert [OSKR CH15]: Cf. Art. 6 Ordinance on the Municipal Ombudsman's Office, City of Winterthur

⁵ The Political Institutions Committees are responsible for submitting applications for re-election.

Kommentiert [OSKR CH16]: The State Policy Commission prepared the preliminary draft for a federal ombudsman's office on July 4, 2003.

Art. ... Termination

¹ The non-governmental organisation may request to be released from its duties at the end of the respective year in compliance with a two-year notice period.

² The Political Institutions Committees may withdraw the mandate from the non-governmental organisation if the latter loses the ability to carry out the mandate on a permanent basis.

³ In the event of early termination, the mandate is initially only awarded to another organisation for the rest of the term.

2. Management and organisation

Art. ... Composition

¹ The Ombuds Office for Children's Rights is made up of one managing director and one deputy or co-director, as well as the staff required to carry out its duties.

² The provisions on deputisation apply by analogy in the event a co-director is appointed.

Art. ... Election of the managing director

¹ The Political Institutions Committees elect the Ombuds Office managing director for a term of eight years. Re-election is possible without restriction.

² New elections must be preceded by a public call to tender. A sub-committee of the Political Institutions Committees is appointed to carry out new elections.

Kommentiert [OSKR CH17]: Recommendation of VPO+ due to independence

Kommentiert [OSKR CH18]: Cf. Art. 6 Ordinance on the Municipal Ombudsman's Office, City of Winterthur

³ The Political Institutions Committees are responsible for applications for re-election.

³ The Ombuds Office managing director is subject to an employment relationship under private law with the mandated non-governmental organisation.

Art. ... Deputy

¹ The deputy is appointed by the Ombuds Office managing director.

² The requirements of the Ombuds Office managing director apply in equal measure.

Art. ... Requirements of the Ombuds Office managing director

Anyone who fulfils the following criteria is eligible to be appointed the Ombuds Office managing director:

- a. eligible to vote in Swiss federal matters or hold a permanent residence permit as a foreign national;
- b. has not been convicted of any act that would be incompatible with the office;
- c. is solvent or has not been issued with any definitive financial loss certificates;
- d. has comprehensive knowledge of public administration, the Swiss legal system, dealing with minors and conflict resolution methods;
- e. proficient in at least two official languages.

Kommentiert [OSKR CH19]: Cf. e.g. Art. 4 Ombudsman Act Fribourg, Art. 6 Ombudsman Act Geneva, Luxembourg and Belgium

Art. ... Incompatibility

¹ All employees of the Ombuds Office are prohibited from carrying out any activity that could compromise their independence in carrying out their public office duties or that is any other way incompatible with the duties of the Ombuds Office.

² The Political Institutions Committees are responsible for making decisions regarding incompatible activities according to their best judgement.

Kommentiert [OSKR CH20]: Cf. e.g. § 2 para. 4 Ombuds Act Basel-Stadt, § 14 Ombuds Act Zug, also Art. 26b FADP

Art. ... Deputy and withdrawal

¹ The deputy acts if the managing director of the Ombuds Office is absent for long periods or in cases of bias and has the same duties and powers.

² The same provisions apply to the withdrawal of the managing director as to members of courts. The managing director makes the decision themselves regarding their withdrawal.

³ If both the managing director and the deputy withdraw, the Political Institutions Committees elect a new deputy.

Art. ... Immunity

¹ Criminal proceedings against the Ombuds Office managing director on the grounds of criminal actions that directly relate to their official position or activity may only be initiated with the authorisation of the Political Institutions Committees.

The provisions of the Parliament Act of 13 December 2002⁴ apply by analogy.

Kommentiert [OSKR CH21]: Cf. e.g. Art. 17 ParlG, Venice Principles Principle No. 23

⁴ SR 171.10

Art. ... Termination

¹ The Ombuds Office managing director may request to be released from their duties at the end of the respective month in compliance with a six-month notice period.

² The Political Institutions Committees may relieve the managing director of their duties before their term of office ends if the latter:

- a. commits an intentional or gross breach of their official obligations;
- b. permanently loses their ability to hold office;
- c. is convicted of an act that is not compatible with the office.

³ The managing director must immediately communicate the details of any criminal convictions that transpire over their term of office and that lead to an entry in a private extract in the register of convictions.

⁴ In the event of early termination, a new managing director is initially only elected for the rest of the term.

Art. ... Organisation

¹ The Ombuds Office managing director determines the organisation for fulfilling the duties of the Ombuds Office themselves.

² They are responsible for establishing, amending and terminating employment relationships with staff. Staff work exclusively on the orders of the Ombuds Office managing director.

Art. ... Position and registered office

¹ The Ombuds Office is independent in fulfilling its duties and does not act on the orders of authorities or third parties.

² The Ombuds Office's registered office is the registered office of the mandated non-governmental organisation. The Ombuds Office may establish offices serving specific language regions.

Art. ... Confidentiality

¹ The Ombuds Office managing director, the deputy and the employees are obliged to maintain confidentiality concerning information that becomes known to them exclusively through their activity to the extent that such confidentiality is necessary in the overriding, legitimate interests of the minors in question. The parties are obligated to maintain confidentiality even after their activity has ended.

Kommentiert [OSKR CH22]: Inspiration: § 10 E-Ombudsgesetz Aargau, Art. 26a DSG (Data Protection Officer), Venice Principles

Kommentiert [OSKR CH23]: Inspiration: § 17 Ombudsman Act of the Canton of Zug, § 94a VRG ZH

² In particular, they refuse to testify about observations they have made as part of their activity in administrative, civil or criminal proceedings, unless those involved release them from their confidentiality obligation.

³ The obligation to maintain confidentiality also applies to experts and third parties consulted by the Ombuds Office.

Kommentiert [OSKR CH24]: See Art. 166 para. 1 let. d ZPO, but also e.g. Art. 170 and Art. 173 para. 2 StPO, Art. 16 VwVG in conjunction with Art. 42 BZP. Art. 42 BZP

Art. ... **Reporting**

¹ The Ombuds Office managing director prepares an annual report on the Ombuds Office's activity for the Political Institutions Committees. Specifically, the report presents shortcomings identified in the applicable law and the activities of public authorities, offers suggestions for legislative, organisational or administrative reform and provides information about recommendations issued and their implementation.

² The report is published.

³ The Ombuds Office can publish further reports.

Kommentiert [OSKR CH25]: Inspiration: § 11 of the Basel-Stadt Ombudsman Act

Art. ... **Oversight**

¹ The Control Committees review whether the Ombuds Office is fulfilling its legal duties.

² If the Control Committees request to view documents that contain personal data, the Ombuds Office takes suitable precautions to protect the person and the data.

Kommentiert [OSKR CH26]: Cf. e.g. Art. 13 VE-BOB

5. Section: Financing

Art. ...

¹ The Ombuds Office's costs are borne by the federal government.

² Contributions from the federal government are financed from general funds.

³ The Ombuds Office prepares an annual budget and requests contributions from the Political Institutions Committees in accordance with this.

⁴ The Political Institutions Committees approve the level of contributions in accordance with the Ombuds Office's requested budget.

Kommentiert [OSKR CH27]: Cf. § 14a Ordinance of the Ombudsman's Office of the City of Winterthur

6. Section: Final provisions

Art. ... **Enforcement**

The Federal Assembly issues the legislative implementing provisions relating to the Ombuds Office in the form of ordinances of the Federal Assembly.

Kommentiert [OSKR CH28]: cf. Art. 10 VE-BOB

Art. ... Amendment of another decree

The amendment of previous law is regulated in the appendix.

Art. ... Referendum and entry into force

¹ This law is subject to an optional referendum.

² The Conference for Coordination of the Federal Assembly determines the date on which the law enters into force.

Kommentiert [OSKR CH29]: cf. art. 23 para. 2 VE-BOB

Amendment to previous law

Appendix

The following decrees are amended as follows:

1. ...
2. ...

Kommentiert [OSKR CH30]: Cf. e.g. Appendix VE-BOB: Responsibility Act, Parliament Act