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## EDITORIAL

# From the Chief Ombudsman

New Zealand has once again taken top place in the Transparency International Perceptions of Corruption Index. This is news we can all be proud of and a position we will work to maintain. The work of my Office, as parliament's watchdog, has a crucial role.

Over the last two years, the Office of the Ombudsman has focused on the transformation of our systems and services. We've brought our use of technology into the 21st century, almost completely cleared our backlog of aged complaints, established our early resolution approach and strengthened our broader monitoring and OPCAT inspections work.

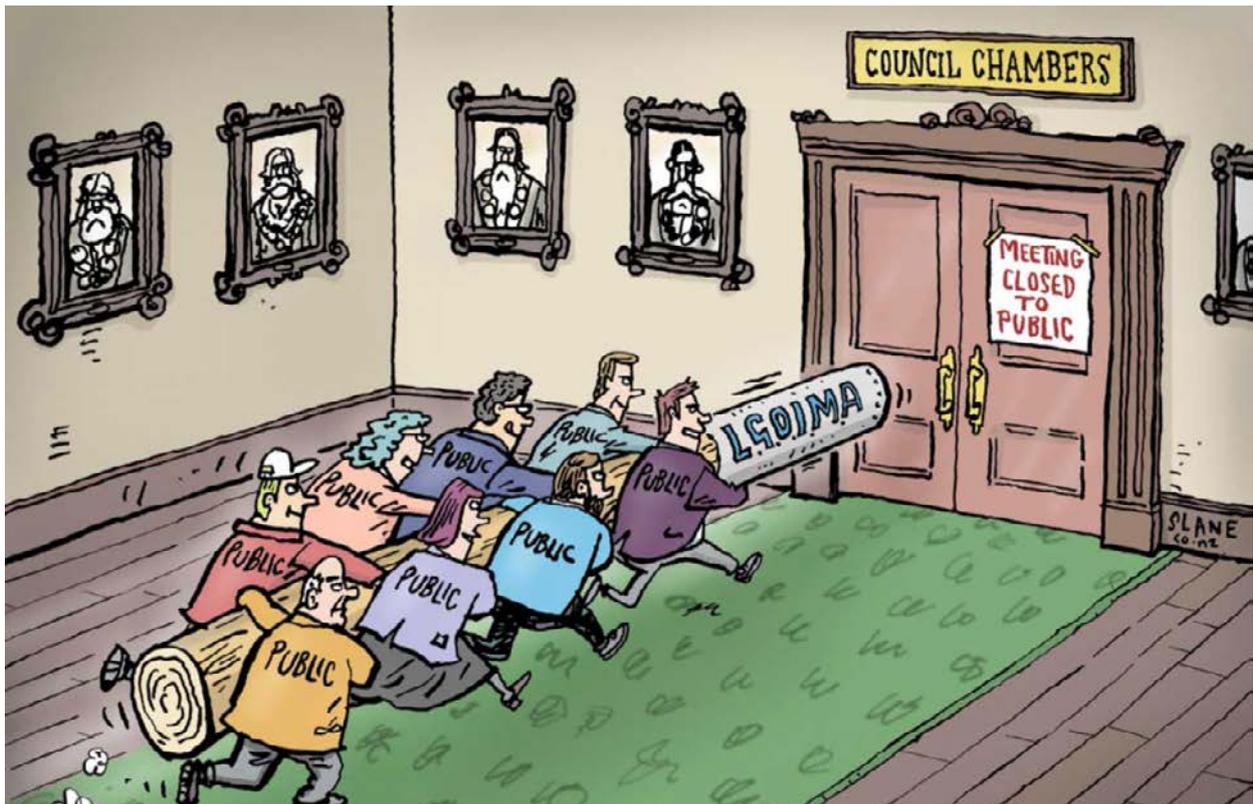
From here, my focus for 2018 is on my Office:

- Continuing to strengthen our early resolution of complaints so everyone who contacts us gets a timely and focused service.
- Undertaking more reviews into broader issues across the state sector, along the lines of last year's *Disclosure*, our examination of schools' closure and merger processes.
- Further developing our OPCAT inspections programme and adding mental health facility inspection reports to our OPCAT publications programme.
- Continuing to work across the state sector to improve performance in OIA response times and handling, and
- Providing more guidance and outreach to raise public awareness of the Ombudsman's activities and how we can help people having problems in their dealings with local or central government.

This Summer Ombudsman's Quarterly Review has stories about our work in these areas, from my Final Opinion on the seclusion of a school pupil to the release of the next set of data on agency OIA complaints.

We look forward to working with you in 2018.

**Chief Ombudsman Peter Boshier**



## Greater expectations of local authorities

New Zealand's local government sector oversees more than \$100 billion worth of fixed assets, including vital infrastructure, and ratepayers are increasingly interested in how these assets are managed.

Since 1987, the Local Government Official Information and Meetings Act (LGOIMA) has been the legislation that gives them the right to access this information.

In the latest issue of NZ Local Government Magazine, Chief Ombudsman Peter Boshier speaks candidly about the **need for some councils to lift their game** in meeting the public's increasing expectation of openness and transparency from local government.

Peter Boshier brought the same message to the Society of Local Government Managers (SOLGM) in January, outlining his intentions to work more intensively with local authorities on good official information practice.

'Any perception that the Ombudsmen are shifting the goalposts around official information law is incorrect', he said. 'We're simply applying the existing rules with more alacrity'.

Peter Boshier also said he planned to include local authorities in the six-monthly OIA statistics produced by our Office, showing the number of complaints received and their outcome by agency. We published the latest statistics for central government agencies on 27 February, and they're available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).



*Manager Tinus Schutte (centre) with members of the Auckland Investigation and Resolutions Team*

## Auckland Investigation and Resolutions Team

*While we aim to resolve every complaint as quickly as possible, in some cases formal investigation is the right approach. Auckland's Investigation and Resolution Team is one of three across the country which investigate complaints that can't be resolved quickly and informally. Manager Tinus Schutte describes their work.*

Many of the complaints we deal with are about responses to official information requests, from late replies to refusals to provide information.

We also investigate and resolve complaints about the administrative actions or decisions of a wide range of agencies, from school boards to local councils to government ministries, with a good smattering of public sector boards and authorities and even the odd orchestra thrown in.

On any given day we could be working on a complaint about a local council allowing a dog kennel on the next door property, a school board's decision to exclude a pupil, a funding cut for home-based help, or refusal of a request for copies of documents in seven large boxes stored in a regional office.

During our investigation, we're always open to opportunities to resolve the complaint along the way. If that's not possible, the Ombudsman makes an objective finding based on evidence and law, and in favour of either the complainant or the agency.

Our cases tend to be challenging, often complex and many headed. We need to work with urgency to get investigations completed as quickly as possible, but without taking any shortcuts that could compromise the Ombudsman's findings.

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If those findings are that an agency's action or decision was unreasonable, unjust, oppressive, discriminatory, contrary to law, based on a mistake of law or fact, or just plain wrong, the Ombudsman makes recommendations on a remedy. That might be a reversal of a decision, release of information, or a change in agency process.

Our work style is quiet, resilient, supportive and determined; and we're proud to provide an impartial service that gets results for both agencies and the public.

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## AUSTRALASIA/PACIFIC



*Chief Ombudsman Peter Boshier addressing the Australasian and Pacific Ombudsman Region Conference*

## Engagement and outreach

In November, Chief Ombudsman Peter Boshier spoke to the Australasian and Pacific Ombudsman Region (APOR) Conference about engaging with Māori as first peoples in New Zealand.

He emphasised the importance of acknowledging in our letters a correspondent's whakapapa or genealogy, if they choose to share it with us; of our staff learning and using Te Reo Māori in our communications; and of ensuring a strong Māori voice in our advice.

Peter Boshier also spoke of our engagement with Pacific nations, including his recent 'listen and learn' visits to the Cook Islands, Tonga, Samoa, and Niue. Three of these countries have Ombudsmen, while the fourth, Niue, is considering a similar scheme.

He noted the results of our 2016/17 nationwide public awareness survey, showing a jump in levels of awareness of the Ombudsman: from 50 percent the previous year to 71 percent in 16/17 for Māori; for Pacific people, the increase was from 40 to 62 percent.

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APOR is a regional chapter of the International Ombudsman Institute. This year's Conference in Perth was attended by Ombudsmen from Australia, New Zealand, Hong Kong and Taiwan, and the Cook Islands, Papua New Guinea, Samoa, the Solomon Islands, the Kingdom of Tonga and Vanuatu.

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## OPCAT



*Safety and the treatment of at-risk prisoners are primary concerns*

## Prison inspections show common themes

In December 2017 Chief Ombudsman Peter Boshier released a full inspection report on Christchurch Men's Prison, and three follow-up reports on Arohata, Manawatu and Rolleston Prisons.

The Christchurch inspection revealed the same issues OPCAT inspectors have identified at other prison sites, with safety, the treatment of prisoners with mental health problems, and privacy and dignity for at-risk prisoners the primary concerns.

The follow-up inspections found that out of 50 recommendations made across the three sites, 29 had been fully or partially achieved. These included improvements for women in voluntary segregation at Arohata Prison, and improved complaints processes at Manawatu and Rolleston Prisons.

Our OPCAT team will continue to monitor progress at these prisons and will do a follow-up monitoring visit to Christchurch Prison. This is part of an intensified OPCAT inspection programme for 2018 and beyond, including continued publication of our findings.

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The next reports to be published will concern a follow-up inspection of Christchurch Women's Prison, and the first full inspection of the Upper Prison at Rimutaka. The Upper Prison is being used to house women prisoners because of space constraints in Arohata, Christchurch Women's and Auckland Women's Prisons. Read all our published OPCAT Prison inspection reports at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).

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## OPINION



*Ombudsman Leo Donnelly found the Ministry of Health's offer of \$8000 in recognition of the distress and inconvenience caused by an unreasonable decision was itself unreasonable*

## Offer increased after Ombudsman's finding

In October 2013, single parent Cliff Robinson was advised by the Ministry of Health that he would receive 40 hours Funded Family Care per week for the care of his adult son John, who has an intellectual disability, schizophrenia, bipolar disorder and microcephalus.

In May 2014, Mr Robinson was told that a mistake had been made in calculating his entitlement, and his Funded Family Care was reduced to 29.5 hours from July.

He complained to the Ombudsman, who found the Ministry's decision was unreasonable. The Ministry restored Mr Robinson's 40 hours a week Funded Family Care in November 2016, and Mr Robinson then sought backpay for the period while his funding was reduced.

The Ministry apologised to Mr Robinson for its error and offered a one-off payment of \$8000 in recognition of the distress caused. Mr Robinson felt this offer was unreasonable and complained to the Ombudsman a second time.

Ombudsman Leo Donnelly formed the opinion that the Ministry's offer of \$8000 was

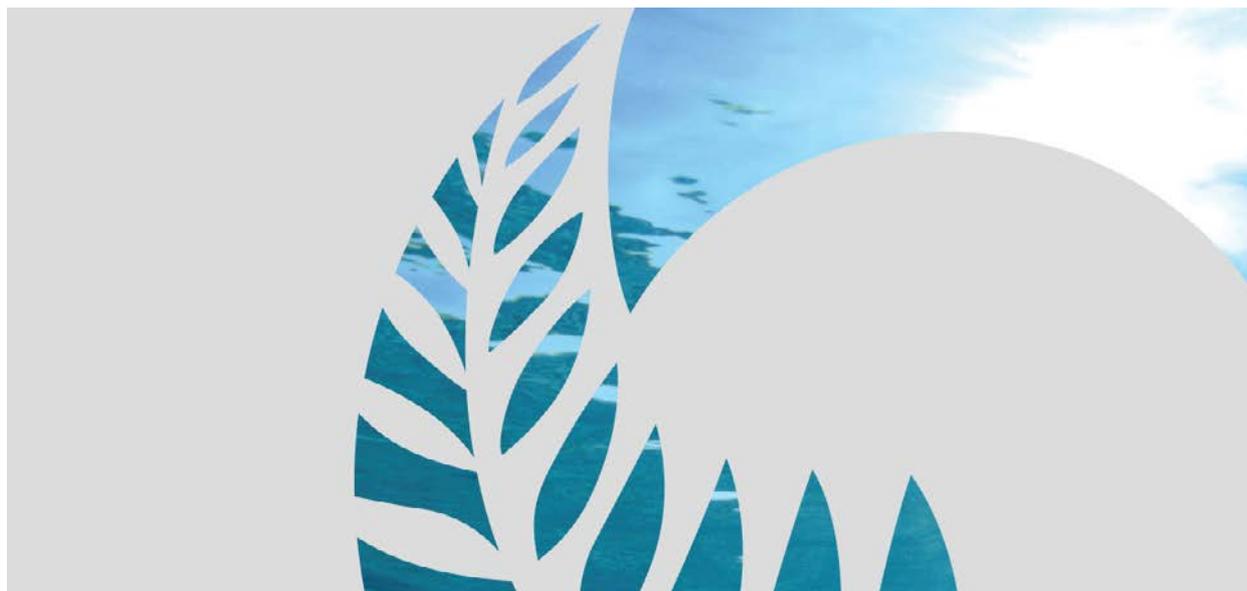
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inadequate because it didn't sufficiently recognise the amount of care Mr Robinson provided during the time his funding was reduced. The Ministry agreed to increase the offer to \$14 000, which Mr Robinson accepted.

Read both Final Opinions at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).

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## OPINION



*Chief Ombudsman finds document created during coalition negotiations doesn't meet the definition of 'official information'*

## PM entitled to refuse release

Prime Minister Jacinda Adern was entitled to refuse official information requests for a document relating to coalition negotiations, Chief Ombudsman Peter Boshier found in a Final Opinion published in December.

The Chief Ombudsman found that the Prime Minister was entitled to refuse release for reasons that included:

- the document was created during coalition negotiations between the Labour Party and New Zealand First, and Jacinda Adern held the information in her capacity as Labour Party leader, not Prime Minister;
- the document did not form part of the final coalition agreement, has played no part in policy decisions, and has not been used by any Minister in their official duties;
- neither the Prime Minister nor Deputy Prime Minister Winston Peters have used the document in their official capacity since the new government was formed.

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This means the document didn't meet the definition of 'official information' in section 2(1) of the Official Information Act: information held by a Minister of the Crown 'in their official capacity'.

Read the full Final Opinion at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).

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## OPINION



## Seclusion unreasonable and oppressive

The Chief Ombudsman found Miramar Central School acted unreasonably and oppressively in its use of seclusion on a young child with autism.

Chief Ombudsman Peter Boshier released his opinion on this complaint in December 2017, recommending the school write a formal apology to the child's parents and pay the family \$3000 in recognition of the distress caused.

'Seclusion' refers to putting a student alone in a room that they can't leave, or believe they can't leave. The investigation found that over three weeks in 2016 the boy was locked in Miramar Central School's 'time-out room' multiple times to manage his behaviour.

In light of the boy's disabilities and the periods of time he spent in the room, Peter Boshier found the school's use of seclusion was both unreasonable and oppressive.

An earlier opinion from the Chief Ombudsman found that Southland's Ruru School had also acted unreasonably in its use of seclusion.

While neither school had broken any laws that existed at the time, the Education Amendment Act that came into force in 2017 banned the use of seclusion in all New Zealand schools.

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Peter Boshier acknowledged the role of the families involved in both cases in bringing about the law change.

Read both Final Opinions at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).

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## OIA



## OIA complaints data

The Office of the Ombudsman has published the third set of statistics about official information complaints and outcomes: the data is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).

Regular publication of complaints received and their outcomes supports greater transparency in the operation of the OIA.

The latest set of data covers the period 1 July to 31 December 2017 and shows the number of complaints received by Minister or agency, and their outcome.

“Agencies will try harder to get it right if they know that information about their compliance with the OIA will be published,” said Chief Ombudsman Peter Boshier.

“It’s this kind of initiative that has resulted in New Zealand being recognised as the least corrupt nation in the world in the Transparency International Perceptions of Corruption Index 2017, and that will help us keep that ranking,” he said.

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LEARN MORE



## Heard of ANZOA?

The Australian and New Zealand Ombudsman Association (ANZOA) is the peak body for Ombudsmen in Australia and New Zealand. Its members are individual Ombudsmen working in parliamentary, industry-based and other statutory Ombudsman offices.

Are you interested in hearing more about their work? ANZOA's biannual newsletter has articles and commentary from each of the ANZOA Ombudsmen across Australia and New Zealand, including our own Chief Ombudsman Peter Boshier.

You can read previous newsletters here: <http://www.anzoa.com.au/news.html>.

Email [christina.curley@ombudsman.parliament.nz](mailto:christina.curley@ombudsman.parliament.nz) to sign up to their newsletter.

