



Ombudsman Quarterly Review

The quarterly update of Ombudsman news, reports, investigations and more.

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 **Ombudsman**
Tuia kia ōrite • Fairness for all

From the Chief Ombudsman

There is no doubt that the role of the Ombudsman and the scope of my work is expanding.



The last three months has seen some significant opinions and reports published by my office. The proposed Erebus Memorial in an Auckland park was the subject of an opinion I released in March. The location of the memorial and the process around the decision to erect it there has been controversial. [My opinion](#), that Manatū Taonga Ministry for Culture and Heritage acted unreasonably by not consulting more widely before forming a preference for the Parnell location was reached after very careful consideration and consultation with the parties involved.

I have also recently highlighted the disproportionate seclusion of Māori patients at two mental health facilities. It is an issue I have highlighted previously and one which I strongly feel needs to be looked at more closely to see why this has been the case. You can read my reports in this edition of the OQR.

I was delighted to be elected as Second Vice President of the International Ombudsman Institute in March. As well as an honour for me personally, my appointment to this role reflects well on New Zealand as recognition of our commitment to human rights and the democratic process. It is also a vote of confidence in our ability to work alongside other nations such as our Pacific neighbours to increase their own capability in these areas.

Planning continues for events marking the 60th anniversary this year of the establishment of the role of Ombudsman in New Zealand. My office is working on a number of projects that will highlight the history of the office, its journey until this point and how we envision

our work into the future. I am very pleased to be leading the office at this extraordinary time in our history and looking forward to sharing our plans with the communities we work with and the wider public.

It is particularly poignant that in our 60th year, since the establishment of my office, we farewelled the first female Ombudsman appointed in New Zealand.

Nadja Tollemache OBE passed away earlier this month at home in Auckland. A legal academic who taught a number of our high-profile legal practitioners at Auckland Law School, Ms Tollemache served as Ombudsman from 1987 to 1992. She then went on to become the first Banking Ombudsman in 1995. We offer our sincere condolences to her loved ones.



Ngā mihi
Peter Boshier
Chief Ombudsman



Opinions

Chief Ombudsman's opinion under the Ombudsmen Act - Erebus Memorial

Peter Boshier says Manatū Taonga Ministry for Culture and Heritage acted unreasonably by not consulting more widely before forming a preference for a location for the proposed National Erebus Memorial in Auckland.

[Mr Boshier in March released his final opinion](#) on a complaint from some Māori and community members about the process followed by the Ministry for Culture and Heritage (the Ministry) and other issues around the proposed memorial at Dove-Myer Robinson Park Taurarua in Parnell



“My view is that the Ministry should have consulted the wider local community and all Tāmaki Makaurau iwi comprising the mana whenua before advising on a preference for any site in Auckland.”

[Chief Ombudsman's opinion under the Ombudsmen Act - Erebus Memorial](#)

Complaints

Complaints about OIA responses continue to rise

Complaints to the Ombudsman rose in the six months to 31 December 2021 from 722 to 892, according to data published on March 10.

For the 2021 calendar year, a total of 1614 complaints about Official Information Act responses from central government agencies was received by the Ombudsman. This was up 33 percent from 1218 in the 2020 calendar year.

However, complaints about responses to Local Government Official Information and Meetings Act (LGOIMA) requests declined 17 percent in the six months to 31 December 2021, from 183 at 30 June 2021 to 152.

Over the 2021 calendar year, 335 LGOIMA complaints were received, compared with 295 in the 2020 calendar year, an increase of 14 percent.

[Read the full press release](#)

Inspections

Third reports highlights overrepresentation of Māori in mental health seclusion

[Peter Boshier highlighted for the third time in less than a year](#) the overrepresentation of Māori in mental health seclusion.

Ward 21, an acute mental health inpatient unit at Palmerston North Hospital, was inspected by the Ombudsman in May last year.

In his report published on 2 May, Mr Boshier highlighted a number of troubling issues at the unit, including the overrepresentation of Māori patients in seclusion events.

“Of the 20 seclusion events at Ward 21 reported in the six months to 30 April 2021, 14 of them involved Māori patients. That amounts to 70 percent, despite only 38 percent of patients on the ward at the time identifying as Māori.”

[Report on an unannounced inspection of Ward 21, Palmerston North Hospital, under the Crimes of Torture Act 1989](#)

No benefit in seclusion of mental health patients, says Ombudsman

[Chief Ombudsman Peter Boshier says he is worried](#) about high rates of seclusion at two Bay of Plenty mental health facilities, particularly for Māori patients.

Mr Boshier has published reports of follow-up visits to Te Toki Maurere in Whakatāne and Te Whare Maiangi in Tauranga in July and August last year. Both are mental health inpatient units run by Bay of Plenty District Health Board. Concerns around seclusion practices were reported for both facilities.

Mr Boshier has previously raised similar concerns about the disproportionate seclusion of Māori patients in a report about Te Awhina acute mental health unit in Whanganui.

The inspections were carried out under the Crimes of Torture Act 1989. New Zealand is a signatory to the [Optional Protocol to the Convention against Torture](#) (OPCAT), an international human rights agreement.

[Report on an unannounced follow up inspection of Te Toki Maurere Unit, Whakatāne Hospital, under the Crimes of Torture Act 1989](#)

[Report on an unannounced follow up inspection of Te Whare Maiangi Unit, Tauranga Hospital, under the Crimes of Torture Act 1989](#)



OPCAT report: Thematic report on inspections of secure intellectual disability facilities

[A report summarising the Chief Ombudsman's observations](#) and recommendations of a sample of secure intellectual disability residences in New Zealand has been published.

Peter Boshier conducted inspections of 17 secure intellectual disability residences across six services under the Crimes of Torture Act 1989. Inspections began in August 2019 and ended in June 2020, interrupted by the national response to the Covid-19 pandemic.

Overall, he found there was significant variation in the treatment and conditions across the residences.

[OPCAT Report: Thematic report on inspections of secure intellectual disability facilities under the Crimes of Torture Act 1989](#)



International

Peter Boshier elected as Second Vice President of the International Ombudsman Institute

[The Chief Ombudsman was in March elected](#) as Second Vice President of the International Ombudsman Institute (IOI).

Mr Boshier has served on the board of the IOI, a global organisation made up of more than 200 independent ombudsman institutions from more than 100 countries, since 2016. The Ombudsman New Zealand has been a part of the IOI since its inception in 1978.

Mr Boshier was selected based on the commitment he has shown to the IOI is his role as Regional President of the Australasia and Pacific Region of the IOI and the contributions he has made to the IOI UN Working Group, both of which have supported the IOI to become an internationally recognised organisation.



Māori engagement

Following his recommitment to Te Tiriti o Waitangi, tikanga and te reo Māori cultural confidence within office practices, the Chief Ombudsman has commissioned his Rōpū Māori Hononga Hapori – Māori and Community Engagement team - to lead the programme.

It focuses on developing his Te Ao Māori strategy, supporting Te Ao Māori cultural capability development programme and his Māori and community outreach and engagement Strategy. The strategies and supporting development programme are expected to be delivered later this year.

Mr Boshier meets regularly with his Pūhara Mana Tangata (Māori Advisory Board) to provide updates and to seek feedback on issues or concerns affecting Māori. He continues to nurture the relationship with the Kiingitanga through an annual intern programme, and has also reached out to Ngāti Toa Rangatira and Te Ātiawa to help strengthen the relationship with mana whenua. The Chief Ombudsman will be engaging more widely with iwi this year to listen to the voices of Māori and share how his office can help.



Disability issues

In April the Chief Ombudsman took part in a national forum held by the Independent Monitoring Mechanism (IMM) to review New Zealand's implementation of the [United Nations Convention on the Rights of People with Disabilities](#).

A range of issues such as obligations under Te Tiriti o Waitangi, experience of poverty and access to justice were covered in eight sessions. It was also an opportunity for disabled people and tāngata whaikaha Māori to ask questions of government.

Mr Boshier said the country was entering a period of change for the lives of disabled New Zealanders.

“Proposed accessibility legislation, and the imminent establishment of a Ministry for Disabled People, have the potential to advance the rights of disabled New Zealanders and to remove barriers that have persisted for too long,” he told the forum.

Conclusions from the forum will be published later this year in preparation for the United Nation's review of the Convention in early August.

The Ombudsman is one of three partners of New Zealand's IMM, along with the Human Rights Commission and the Disabled People's Organisations' Coalition.



Case notes

Request for data gathered by Inland Revenue contractor

Mr Boshier published a case note in which he found it was unreasonable for the Inland Revenue Department to rely on sections 18(e) and 18(c) of the Official Information Act when it refused to release polling data gathered by a contractor to a requester. The department accepted his opinion and released some aggregated raw data to the complainant.

[Request for data gathered by Inland Revenue contractor](#)



Council not entitled to withhold internal workshop presentation

The Chief Ombudsman found Palmerston North City Council was not entitled to withhold an internal workshop presentation. He formed the opinion that Section 7(2)(f)(i) of the LGOIMA did not apply and the council was wrong to have refused the information request. The Ombudsman recommended the council apologise to the requester.

[Council not entitled to withhold internal workshop presentation](#)

Analyses of electronic commerce chapter of Trans-Pacific Partnership Agreement

A request was made to the Ministry of Foreign Affairs and Trade for analyses of electronic commerce chapter of the Trans-Pacific Partnership Agreement and other trade negotiations. Documents were released with redactions on the basis that sections 6(a), 6(b)(i), 9(2)(g)(i), 9(2)(h) and 9(2)(j) of the Official Information Act 1982 applied to most of the information.

The Chief Ombudsman was of the opinion that there was countervailing public interest to the extent that a summary should be released of some information. Other information was also released.

[Analyses of electronic commerce chapter of Trans-Pacific Partnership Agreement](#)

Failure of Immigration New Zealand to provide interpreter at border

Immigration New Zealand refused entry to the complainant following a consensual interview at the border without an interpreter.

The Chief Ombudsman was not convinced that the complainant adequately understood the questions and formed the opinion that INZ's decision to conduct the interview without the assistance of an interpreter was unreasonable, notwithstanding the consent given.

He recommended INZ apologise to the complainant, use an interpreter in future interviews, and disregard information obtained during interview in future applications.

[Failure of Immigration New Zealand to provide interpreter at border](#)

Unreasonable decision of Board of Trustees to trespass student without opportunity to comment

A student trespassed after planning and holding a fight on a school's grounds. The Chief Ombudsman found the student's family was not given an opportunity to comment before the trespass decision was finalised.

He recommended the Board of Trustees reconsider its decision and apologise to the family.

[Unreasonable decision of Board of Trustees to trespass student without opportunity to comment](#)



The Ombudsman Kaitiaki Mana Tangata

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