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**EDITORIAL**

## From the Chief Ombudsman

With oversight of more than four thousand state sector organisations, the Office of the Ombudsman is an impartial and independent watchdog of government. This Ombudsman Quarterly Review shows some of the breadth and depth of our work.

In June we published *Disclosure*, our comprehensive report into school closures and mergers under Tomorrow's Schools, particularly following the Canterbury earthquakes. Canterbury

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educators and communities welcomed the findings of the report and the ensuing apology from the Ministry of Education.

My Office has a strong role to play in providing guidance to people who wish to disclose serious wrongdoing, investigating their claims if warranted, and ensuring protection for people who speak out.

In July, we hosted with the State Services Commission the latest phase of whistleblowing, or protected disclosure, research for Australia and New Zealand. The first phase of the research gave us mixed results to say the least. The current research, *Integrity@WERQ*, should tell us more about whistleblowing processes and protections in our workplaces.

In July I also released my Final Opinion on the case of alleged ministerial interference in an Official Information Act request about the KiwiRail Third Main business case. I initiated the investigation in response to the seriousness of the allegations, and thanks to the hard work of my Office, issued my Final Opinion fewer than five weeks later.

Within the Office, we're continuing to clear our backlog of historic complaints, and provide early resolution wherever possible to new complaints. I remain determined that by 2020 no complaint that progresses to investigation takes longer than 12 months to resolve.

Finally, the Chief Executive of the Department of Corrections and I have formally signed an updated agreement that will underpin our work to ensure the safe and humane treatment of people held in legal custody.

You'll read more on all this in this OQR, along with a profile of our Early Resolution Team and news on our OPCAT team's work with their English and Australian counterparts.

**Chief Ombudsman Peter Boshier**



## 'Finally heard': schools respond to *Disclosure*

Canterbury educators have welcomed *Disclosure*, the Chief Ombudsman's investigation of school closures and mergers, and say it's time to focus on the needs of their schools and students today.

*Disclosure* found that a significantly flawed process in Canterbury added further trauma to schools and communities still recovering from a devastating earthquake. On the Chief Ombudsman's recommendation, the Ministry of Education printed a public apology in local media and is working with education groups to develop a much better process for the future.

Below are the views of three people who were closely involved.

*Disclosure's findings precisely mirror the concerns every Canterbury principal has held from the day the bombshell was dropped on schools in September 2012. As principals, we feel we have finally been heard.*

*After the apology from the Ministry of Education, I believe it is time to look forward. This includes rebuilding trust with the Ministry of Education. The trauma of the events is still with us and the energies of our schools continue to be on how best to support children and their communities.*

***Denise Torrey, Principal Somerfield School, Past President NZ Principals Federation***

*I very much appreciated the Ombudsman's report, findings and recommendations, but I was disappointed that the apology waited until the Ministry of Education was ordered to deliver it...I would be very willing to be part of any review process that helped form policy and procedure to ensure that the experiences we had are never repeated in another community.*

***Paul Wilkinson, Deputy Principal, Rawhiti School***

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*The report was extensive and accurately represented the events and subsequent Ministry actions, and the apology printed in the Christchurch Press fulfilled the intention of the report.*

*I am still unemployed due to the process, and am looking for different opportunities with great reluctance and difficulty. There are some wonderful positives that may come from this report and it could certainly improve the lot of future closure or merger communities – if the Ministry takes it properly to heart.*

**Mike Allen, former Principal, Aranui School**

Disclosure is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).

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## INSIDE OOTO



*Manager Rachel Petterson (centre left) with members of the ERT*

## Early Resolution Team

From the citizenship application of a US tech billionaire to a prisoner who can't access 'publicly available' information, the topics that land on the desks of our Early Resolution Team are many and varied. There's seldom a quiet moment in the team whose purpose is to resolve complaints as quickly as possible.

Manager Rachel Petterson says while each team member has their own area of expertise, such as law or education, 'they can also pick up a file and get up to speed with complex new matters very quickly. It's fast paced and very diverse work; and incredibly satisfying, to get tangible outcomes for agencies and the public.'

Early Resolution deals with complaints about decision making by government agencies and about responses to official information requests. The goal is to reach a thorough and robust resolution within three months of a complaint being received.

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'Increasingly, we can resolve complaints with just a phone call or email – it's about clarifying a request or response. Other times we proceed to formal investigation if required. We have a much more flexible way of working in the Office, which lets us take the right approach for the circumstances.'

Rachel is clear that the role of the team is to investigate, not advocate. 'Our job is to apply the law. Each resolution needs to be clear, impartial and supported by the legislation. You need a certain amount of resilience, because you're dealing with matters that directly affect people's lives. We're a great team and give each other lots of support.'

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## NEWS



*Professor AJ Brown talks at the launch of Integrity@WERQ*

## Whistleblowing research aims to fill gaps

A high-profile case of fraud at the Ministry of Transport raised some hard questions about New Zealand's whistleblowing processes and protections. It's an issue that's been on the Ombudsman's radar for some time.

In partnership with the State Services Commission, we hosted the launch in July of *Integrity@WERQ*, an online survey for people at all levels of an organisation to record their perceptions of the ethical environment and whistleblowing processes at their place of work.

The launch also saw the release of the results of the first phase of the research, led out of Australia's Griffith University. *Whistling While they Work 2* compared the strengths and weaknesses of 699 New Zealand and Australian organisations; New Zealand's public sector ranked 8th out of 10 public sector jurisdictions.

Griffith University's Professor AJ Brown said the results appeared to confirm weaknesses in our protected disclosure framework. 'There's a wide diversity of results among New Zealand agencies, with some scoring well but many also scoring poorly', Professor Brown said. '*Integrity@WERQ* will hopefully take us further in identifying best practice and any gaps.'

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The Ombudsman provides guidance to potential whistleblowers and is one of the appropriate authorities a whistleblower can approach with concerns about wrongdoing in their workplace.

For more on *Whistling While they Work 2* and the *Integrity@WERQ* survey, see <http://www.whistlingwhiletheywork.edu.au>. The State Services Commission's model standards are available at [www.ssc.govt.nz](http://www.ssc.govt.nz).

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## NEWS



*Jacki Jones (centre) with the Dame Phyllis Frost Centre Inspections team*

## OPCAT expertise helps Victoria prepare for inspections

OPCAT Chief Inspector Jacki Jones has been working with Victorian Ombudsman Deborah Glass to help prepare for Australia's ratification of the Optional Protocol to the Convention Against Torture by the end of this year.

'Victoria's Ombudsman is preparing for the possibility of becoming a designated National Preventive Mechanism under OPCAT', Jacki says, 'with the aim of being one of the monitoring bodies that will inspect and report upon conditions for people held in places of detention.'

'I was in Melbourne to lead a pilot week-long inspection of the Dame Phyllis Frost Centre, a women's prison holding around 500 inmates just west of the city. I took a team of 11 new inspectors through the nuts and bolts of an inspection—and I want to say that the prison was really cooperative. They were keen to get a baseline of how they were performing, and to make improvements from there.'

With seven years as a prison inspector, Jacki was well placed to share her experience. She says that Australian prisons are generally built to similar scale and design to those in New Zealand,

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and that the issues she identified at the Dame Phyllis Frost Centre were very similar to those here, mostly concerning the privacy and dignity of prisoners.



*OPCAT Inspector Emma Roebuck with members of the HMIP team*

While visiting the United Kingdom in July, OPCAT Inspector Emma Roebuck took the opportunity to accompany a team from Her Majesty's Inspectorate of Prisons (HMIP) on an unannounced inspection of Holme House Prison in County Durham.

Emma describes HMIP as 'the international gold standard' for prison inspection regimes, and says it was good to observe many similarities between the UK and New Zealand approach. She says that while the issues identified relate mostly to safety and overcrowding, UK Prisons overall are facing unprecedented problems with a mass influx of psychoactive synthetic drugs.

'Synthetic psychoactives are flooding into the prisons in the UK, and causing huge challenges for prisoner health, behaviour and mortality', she says. 'Although we are aware these substances are used in New Zealand prisons, we haven't seen anything like this level, and hope this remains the case.'

**The OPCAT team is now publishing its reports into unannounced Corrections facility visits. Reports on visits to Hawke's Bay Prison and Spring Hill Corrections Facility are both available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).**



Chief Ombudsman Peter Boshier (left) and Corrections Chief Executive Ray Smith at the signing

## Agreement underpins relationship

A formal agreement signed by the Chief Ombudsman and the Chief Executive of the Department of the Corrections will underpin the continued growth of a constructive and open relationship between the two agencies.

Signed on 21 August at the Office of the Ombudsman in Wellington, the *Agreement between the Chief Executive of the Department of Corrections and the Chief Ombudsman* commits both agencies to working together to ensure that people held in custody are treated humanely and provided with opportunities for rehabilitation.

It sets out each organisation's roles and requirements, along with procedures relating to prison visits under the Ombudsmen Act, the procedures for dealing with serious incidents including deaths in custody, and the Department's internal complaints process.

Speaking at the signing, Chief Ombudsman Peter Boshier said that each party's role would be much harder to accomplish without cooperation and shared trust.

'This Agreement fulfils the requirements of section 160 of the Corrections Act 2004, and provides the framework for the relationship between our two agencies,' Peter Boshier said.

The Agreement is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).



## KiwiRail: no line crossed, but room for improvement

No evidence of Ministerial interference, but some actions on KiwiRail's part that could be open to criticism.

These are the key findings of an Ombudsmen Act investigation into how KiwiRail managed an Official Information Act (OIA) request concerning the Third Main business case for Auckland's rail network.

The Chief Ombudsman decided to investigate after public speculation about political interference in KiwiRail's decision on an OIA request for the Third Main business case. He said he was satisfied that the line between ministerial input and ministerial interference was not crossed in this case.

'KiwiRail was entitled to notify and consult with the Minister of Transport about the OIA request, and the Minister was also entitled to convey his view', Peter Boshier said. 'However, KiwiRail could be open to criticism for some aspects of its handling of the OIA request. Agencies need very clear processes for dealing with requests that involve the responsible Minister.'

Peter Boshier suggested that KiwiRail review its OIA systems, provide training for staff, and use the new *Model protocol on dealing with OIA requests involving Ministers* to protect against any irregularity in processing OIA requests.

'A protocol agreed to by both parties will also protect against the perception of irregularity, which can be just as damaging,' he said.

'I encourage KiwiRail and other agencies to use the model protocol published by my Office,

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which sets out agreed criteria for how agencies and Ministers will discuss and agree upon their management of OIA requests.

'The KiwiRail investigation and model protocol should result in greater awareness and care among Ministers and agencies consulting on OIA responses,' he said.

The Final Opinion and model protocol are available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).

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## CASE NOTE



## Privacy vs public interest

Ombudsman Leo Donnelly recommended the Department of Internal Affairs release the number of days US citizen Peter Thiel spent in New Zealand before being granted citizenship in exceptional circumstances in 2011.

The Ombudsman formed the opinion that Mr Thiel's privacy interests were not outweighed by the high public interest in the transparency and fairness of the decision.

The Department of Internal Affairs accepted the recommendation and released the information to the requester, Radio New Zealand. It showed that in the five years before applying for citizenship, Mr Thiel spent a total of 12 days in New Zealand.

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



## Prisoner without internet access

Section 18(d) of the Official Information Act allows an agency to withhold information that's already publicly available. This was the withholding ground Police used when refusing a prisoner's request for information that was already available on the internet.

The issue was that the prisoner didn't have internet access, and he complained to the Ombudsman about the withholding. Chief Ombudsman Peter Boshier noted that s 18(d) permits, but doesn't require, publicly available information to be withheld; he formed the opinion that the Police response was unreasonable. Police accepted the recommendation that they release the information to the prisoner.

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

