



**OMBUDSMAN  
QUARTERLY  
REVIEW**

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

**Ombudsman**  
Fairness for all

Issue 21 / Spring 2017

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## EDITORIAL

# From the Chief Ombudsman

As a director of the International Ombudsman Institute with responsibilities for the Pacific, I'm committed to promoting the role of the Ombudsman in our part of the world, and supporting our Pacific neighbours to have their voices heard in the international environment.

Last month I was privileged to make the first official visit by a New Zealand Chief Ombudsman to Tonga, to learn first-hand about the work of the Ofisi o e Omipatineni, and canvass opportunities to raise the profile of the Ombudsman, both within Tonga and across the Pacific.

My itinerary also included visits to Samoa, the Cook Islands and Niue, where again I received extraordinary hospitality and had very constructive meetings with my counterparts and with senior government officials.

Another highlight of October was the release of my Annual Report for 2016/17. It shows our further progress in resolving complaints much more quickly and conducting thorough investigations when the need is apparent, as well as the growth in our work to proactively seek systemic improvement in the public sector through wider engagement and interventions. This is thanks to changes to how we work in our Office, and also to external initiatives such as our regular release of OIA data.

This month I released my latest opinion, concerning the seclusion of a child at their school between 2011 and 2014. The complaint that led to this investigation was instrumental in stimulating a change in legislation, seclusion now being banned in all schools and early childhood education centres.

You can read more on all these topics in this OQR, along with a summary of recent case notes, a profile of the work of our Disability Rights Team, and an update on our 'Experts by Experience' in health and disability places of detention.

As 2017 draws to a close, I extend my warmest thanks to everyone who has been involved in our work in the past year. Thank you as well everyone who gives us feedback, whether on social media or through contacting us directly. Comments like these remind us all why we come into work every day.

*So, thanks to your Office my gripe with the Council has been resolved. I suspect that without your intervention I would still be writing letters to them and getting no reply. It is nice to know that there is a remedy to official indifference.*

*ML, ratepayer*

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*Once again I wanted to thank you from the bottom of our hearts for dealing with our complaint so quickly and professionally. We cannot speak highly enough of the service we have received from you and your office. It will make a huge difference to our son's last few years at school, and I have the peace of mind I need moving forward.*

*FK, parent*

Very best wishes for the festive season, and here's to a busy and rewarding 2018.

**Chief Ombudsman Peter Boshier**

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## IMPACT



## Annual Report 2016/17

New Zealand's first Ombudsman, Sir Guy Powles, presented his inaugural Annual Report to Parliament in 1962. Sir Guy had two full-time staff, oversight of 66 central government agencies, and 142 complaints to deal with in his first year in office.

In 2016/17, with nearly a hundred staff and with oversight of 4000 state sector agencies, we completed 12 141 complaints and other work, and achieved 700 remedies for New Zealanders.

This year's Annual Report shows the increased impact we're having in more areas and in more lives. The full Annual Report is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).



*Peter Boshier with Tongan Ombudsman 'Aisea Havea Taumoepeau*

## Learning first-hand

Chief Ombudsman Peter Boshier says he was 'humbled and awed' by the reception he received on his recent official visits to Ombudsmen in the Pacific.

'A series of high-level meetings with government and parliamentary officials reinforced the importance of the Ombudsman's work across our region, and the positive relationships among Ombudsmen in this part of the world', he said.

'Having an independent figure listen to the complaints of ordinary citizens and deal with issues of importance objectively, while holding government accountable, is important in every nation', Peter Boshier said.

'It was great for me to take the opportunity to listen and learn about the work of my counterparts in the region, and to share information and experiences from a New Zealand and international perspective.

'My itinerary included the Kingdom of Tonga, where I made the first official visit of a New Zealand Chief Ombudsman to that country, Samoa, Cook Islands and Niue. It was a privilege to be able to reciprocate the regular visits that Pacific Ombudsmen pay to our Office here.'

Local publicity for each visit highlighted the role of the Ombudsman and its importance in an open society.

Most of all, though, the trip was an opportunity to listen and learn. 'As one of the directors of the International Ombudsmen Institute, I have particular responsibility for the Pacific region', Peter Boshier said.

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'This was an exceptional opportunity for me to learn first-hand the best ways I can support Pacific interests in the future and support Pacific Ombudsmen to have a voice on the international stage.'



*Peter Boshier with (l) Acting Samoan Prime Minister Papali'itele Niko Lee Hang and Chairman of Samoa's Public Service Commission Afioga Tuu'u Dr Ieti Taulealo.*



*Senior Disability Rights Advisor Paul Brown with his daughter Helena*

## Monitor and protect

*'As a disabled person I live with the experience of disability discrimination every day, so it's personally empowering and motivating to be able to use my skills to promote systemic change.'*

*Paul Brown, Senior Disability Rights Advisor*

New Zealand ratified the *United Nations Convention on the Rights of Persons with Disabilities* in 2008. This convention aims to ensure the full and equal enjoyment of human rights and freedoms by all persons with disabilities.

The Ombudsman, the Human Rights Commission and the Disabled People's Organisations Coalition make up New Zealand's Independent Monitoring Mechanism (IMM). The IMM monitors New Zealand's implementation of the Disability Convention.

Our three-person Disability Rights team handles complaints related to the Disability Convention and works across various projects, including:

- The ground-breaking IMM guide *Reasonable accommodation of persons with disabilities* in New Zealand – this guide focuses on how small changes in attitude and environment can make a huge difference to freedoms and rights for people with disabilities. It is available in a range of accessible formats including NZ Sign Language.
- Making our Ombudsman fact sheets and leaflets available in Easy Read for people with learning disabilities – advocacy group People First New Zealand is working with us on this.

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- Working with the staff of the Cook Islands Office of the Ombudsman on implementing the Disability Convention, and how to use it more effectively.
  - Making submissions on issues of importance to the disability sector, such as our submission in favour of New Zealand joining the Marrakesh Treaty, which increases access to books and other printed materials for blind and print disabled people.

Read more about our work under the Disability Convention at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).

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## OIA



## Agencies moving faster

Government agencies are moving faster on OIA requests, with 93 percent of requests in 2016/17 answered within the statutory timeframe of 20 working days.\*

The Ombudsman's new way of handling complaints about delays should see that figure improve still further.

In previous years, we've formally investigated all complaints about delays. We're now taking a much more flexible approach. In summary:

When we receive a complaint, we contact the agency or Minister concerned and notify that they have five working days to acknowledge a delay, and confirm a decision has been communicated to the requester.

If the agency or Minister doesn't meet this timeframe, the Ombudsman investigates and forms a Provisional Opinion. The agency or Minister then has two weeks to comment on the opinion and communicate a decision to the requester.

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If the agency or Minister doesn't meet this timeframe, the Ombudsman forms a Final Opinion and makes recommendations if needed.

This new approach is part of our focus on early resolution, which in 2016/17 saw us complete 79 percent of all complaints and other contacts within three months, and 92 percent within six months.

\* This is one of the figures included in the data on the number of OIA requests made in 2016/17 and the timeliness of responses, released by the State Services Commission in September this year. At the same time, the Ombudsman released data on complaints and their outcomes.

Read more on the SSC and Ombudsman data at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).

Read more on our approach to complaints about delays at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).

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## OPCAT



*L-R: OPCAT Inspectors Tessa Harbutt and Sue da Silva with Expert by Experience Sal Faid at Christchurch Hospital*

## An equal voice

*'I believe the Ombudsman is leading the way in including Experts by Experience in their inspections and getting the view, so to speak, from the other side of the desk.'*

*Expert by Experience Sal Faid*

For the past year, Experts by Experience have been adding an invaluable dimension to our OPCAT inspections of mental health facilities.

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Experts by Experience are people who have used mental health services or cared for someone who has used them.

'As Inspectors, we can see how things look; the Experts by Experience can tell us how things feel', says Chief OPCAT Inspector Jacki Jones.

'An example is the impact of noise levels. The background sound of jangling keys and shutting doors might seem subtle to us, but to a person with high sensory awareness they can be very distressing'.

Sal Faid joined the OPCAT team as an Expert by Experience on their recent inspection of the Acute Unit at Christchurch Hospital. She says that as a mental health consumer advocate she appreciated the opportunity for peer to peer conversations with the clients.

'I was an equal voice on the OPCAT team, and able to provide a different dimension of feedback and experience, particularly because I could korero directly with my peers,' Sal said.

'Experts by Experience are consulted in setting expectations for the treatment of mental health clients, and it makes sense that we are involved in monitoring whether those expectations have been met'.

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## RIGHT TO KNOW



*L to R: former Assistant Privacy Commissioner Katrine Evans, Transparency International's Bryce Edwards, Ombudsman Leo Donnelly and RNZ panel host Brent Edwards*

## PrivacyLive

*Society's changed over the life of these (Privacy and Official Information) Acts. Expectations about privacy have risen, but also expectations about public interest. People have a greater sense of wanting transparency for accountability, and for citizen participation. It's not just about finding out after the event, it's about 'how can I get information before something happens'.*

*Ombudsman Leo Donnelly, PrivacyLive*

The Privacy Act and the Official Information Act are cornerstones of transparency and democracy, and both are worth celebrating. On international Right to Know Day on 22 September, the Office of the Ombudsman and the Office of the Privacy Commissioner hosted a PrivacyLive panel discussion on New Zealanders' legal right to access personal information.

In a discussion hosted by Radio New Zealand's Brent Edwards, Ombudsman Leo Donnelly, former Assistant Privacy Commissioner Katrine Evans, and Dr Bryce Edwards from Transparency International discussed the increasing tension between personal privacy and public transparency.



## Seclusion complaint: family and child let down

In November the Chief Ombudsman released his opinion on the seclusion of an autistic boy at Ruru Specialist School, saying the child and his family were let down by the school and the Ministry of Education.

Peter Boshier acknowledged the role of the child's parents in pursuing their concerns. He said that while there was no evidence of unlawful behaviour according to the law of the time, the parents' actions were instrumental in bringing about a law change banning the use of seclusion in schools.

The investigation focused on the actions of Ruru school during 2011 to 2014, when the student was on several occasions transported from his satellite classroom and put in a small corner room at Ruru's main site.

Peter Boshier emphasised in his opinion that what a room is called, and what its stated purpose is, are not the point; the point is how a room is used, and the experience of the child put in the room. He found that the boy had been put in seclusion at Ruru on several occasions, although incomplete records and differing staff recollections made it difficult to be clear how many.

Read the media statement and full opinion at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).



## Official information on private email accounts

Our latest case note considers the question of whether the Local Government Official Information and Meetings Act (LGOIMA) applies to information sent and received on private email accounts; and if so, whether this information can be withheld to protect the confidentiality of journalistic sources. The case concerned a request for a Regional Councillor's communications over a specified period, and the full case note is at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).



## Advice on the effectiveness of benefit reductions

The Ministry of Social Development refused a request for advice or reports it had provided the Minister of Social Development on the effectiveness of section 70a benefit reductions. The withholding ground was s 9(2)(f)(iv) of the Official Information Act, which can protect official advice so Ministers have time to deliberate in private. Ombudsman Leo Donnelly

found that the information should not have been withheld: the Minister had had time to deliberate on the advice, and the information was in the public interest. Full case note at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).

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## SEASON'S GREETINGS



## Timeframes over Christmas and New Year

Best wishes for Christmas and New Year from the Office of the Ombudsman. Please note the below:

The three weeks between 25 December and 15 January are not part of the '20 working days' agencies have to respond to an OIA or LGOIMA requests. Any request you put in around this time of year may take a little longer to respond to.

The last day of business for the Ombudsman this year will be Friday 22 December, and we will reopen on Wednesday 3 January.

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