

# Chief Ombudsman commences two investigations into the Ministry of Health and its services for people with intellectual disabilities

**Date 14 February 2019**

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The Chief Ombudsman Peter Boshier has launched investigations into the Ministry of Health's oversight of facilities and services for intellectually disabled people with high and complex needs<sup>1</sup>.

Mr Boshier says the ability of the Ministry to resource, coordinate and plan services will come under the microscope.

'I will consider the capacity of the health system to meet the needs of some of society's most vulnerable people.'

'I am aware at times there is a shortage of beds. This has meant some people have faced lengthy delays before being assessed as ordered by the courts. I will also consider whether some have been unlawfully detained in prison or other unsuitable places because there has been nowhere else for them to go.'

The Ministry contracts five District Health Boards to provide forensic intellectual disability services. The DHBs provide around 66 secure hospital beds nationwide.

'My investigation will look at whether the facilities are adequate for those referred by the courts for assessment as well as for long-term clients, women and youth. I will also look at how much workforce planning is being done to make sure there are enough appropriately trained staff.'

Mr Boshier says he is conducting a separate investigation into the quality of the data collected by the Ministry relating to the deaths of intellectually disabled people in forensic and residential care.

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<sup>1</sup> The term 'intellectual disability' is used to refer to people with high and complex support needs, who in many cases may also be living with multiple impairments. Other people and agencies may prefer the terms 'learning disability' or 'tangata whaikaha hinengaro'. Please consult the FAQs for further discussion of these terms.

‘I consider that obtaining good quality data is essential to understanding where the pressure points are and for reviewing systems of care. I want to ensure that the Ministry is collecting enough information about these deaths to identify whether any improvements can be made.’

The investigations reflect the Ombudsman’s role in protecting and monitoring disability rights in New Zealand, and contributing to systemic improvement by investigating public sector administration and decision-making.

‘The investigations are being conducted under the Ombudsmen Act. I will also be taking the United Nations Convention on the Rights of Persons with Disabilities into account. Under the Convention, I have a role in ensuring that disability rights are protected and monitored.’

While Mr Boshier will not be carrying out a general public consultation, the investigations will include site visits and one on one interviews with clients in the secure facilities, their families/ whānau, as well as officials, medical professionals and other stakeholders. People who wish to raise concerns about their individual circumstances can continue to do so at:

<http://www.ombudsman.parliament.nz/make-a-complaint/make-a-complaint-now/make-a-complaint-online-now>

The investigation relating to data around deaths of people with intellectual disabilities in residential and forensic care will be completed in the second half of 2019. The investigation into facilities and services for intellectually disabled people with high and complex needs is planned for completion in the first half of 2020.

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Easy Read media release in PDF:

[http://www.ombudsman.parliament.nz/ckeditor\\_assets/attachments/715/Easy\\_Read\\_Media\\_Release\\_final.pdf](http://www.ombudsman.parliament.nz/ckeditor_assets/attachments/715/Easy_Read_Media_Release_final.pdf)

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[http://www.ombudsman.parliament.nz/ckeditor\\_assets/attachments/716/Easy\\_Read\\_Media\\_Release.docx](http://www.ombudsman.parliament.nz/ckeditor_assets/attachments/716/Easy_Read_Media_Release.docx)

Frequently asked questions are included below.

For further information, please get in touch with: Mark Torley, 027 275 5733,  
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## Intellectual disability investigations – questions and answers

### What does the Ombudsman do?

The Ombudsman handles complaints and investigates the administrative conduct of public sector agencies. The Ombudsman can start an investigation even if we have not received a

complaint. This can happen where we identify a systemic issue that needs looking into. A systemic investigation is where we look at the systems or practices of public sector agencies that can affect a number of people.

We also carry out a range of roles that work to protect your rights. These are things like monitoring places of detention, and how the United Nations Convention on the Rights of Persons with Disabilities is put into action in New Zealand.

More information about the Ombudsman's role and powers is available on our website:

<http://www.ombudsman.parliament.nz/what-we-do>

## **Which agency are you investigating?**

The Ministry of Health (the Ministry).

The Ministry includes Disability Support Services (DSS) which is responsible for the planning and funding of intellectual disability support services nationwide. Most of these services are provided in the community, often by non-government organisations contracted to the Ministry. A smaller number of services are provided in a hospital setting.

DSS also administers and funds services under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (IDCCR Act). The IDCCR Act provides for the compulsory care and rehabilitation of people with an intellectual disability who have:

- appeared before the criminal courts; and
- have been found unfit to stand trial, or convicted of an imprisonable offence.

## **You're undertaking two separate investigations – what do they cover?**

Both investigations will look at systemic issues around residential care of people with intellectual disabilities. The types of residential care available range from community-level support services, which provide a home-like setting with up to 24-hour staff, through to hospital-level secure services.

The first investigation will look at the Ministry's system of information collection, analysis and reporting in relation to the deaths of people with an intellectual disability in secure, supervised and community-level supported residential care.

The second investigation will look at the Ministry's role in providing facilities and services for the care and rehabilitation of people with an intellectual disability, particularly those receiving secure care services under the High and Complex Framework.

The High and Complex Framework provides services mainly for people who are subject to compulsory care orders under the IDCCR Act.

## **What is not covered by the investigations?**

These particular investigations will not be looking at wider disability issues, such as family funded care, carer support, respite support and services, learning support, and issues around access to adequate services in the community.

As these are systemic investigations, we also won't be looking at individual complaints. If you want to make an individual complaint about intellectual disability services, further information is available below under the section '*How can the Ombudsman help if I have other concerns or complaints?*'

## **Why are these investigations being done?**

Parliament funds the Chief Ombudsman to carry out self-initiated investigations (investigations we start ourselves without first receiving a complaint). Our goal is to achieve wider improvements in the public sector. The Chief Ombudsman also has a role under the United Nations Convention on the Rights of Persons with Disabilities to protect and monitor disability rights.

The Chief Ombudsman has stated that he is interested in 'the capacity of the health system to meet the needs of some of society's most vulnerable people'. He considers it important to investigate whether the Ministry is:

- properly resourcing, coordinating and planning services for people with intellectual disabilities, and
- collecting adequate information about deaths in the intellectual disability community.

## **What are you hoping to achieve?**

The two investigations will:

- identify areas of good practice; and
- make suggestions on how to make improvements if we find out something needs to be worked on.

The overall aim of the first investigation is to consider whether the Ministry has enough information to identify ways in which deaths of people with an intellectual disability in residential care could be prevented.

The overall aim of the second investigation is to consider whether people with an intellectual disability are able to live in facilities that are suitable for their individual needs.

## **What are the Terms of Reference for these investigations?**

The Terms of Reference describe what the investigations will cover. They describe how the Ombudsman will carry out the investigations and the process for reporting the outcomes.

Read the Terms of Reference for the first investigation here:

In PDF:

[http://www.ombudsman.parliament.nz/ckeditor\\_assets/attachments/711/Terms\\_of\\_Reference\\_ID\\_Deaths\\_for\\_public\\_release.pdf](http://www.ombudsman.parliament.nz/ckeditor_assets/attachments/711/Terms_of_Reference_ID_Deaths_for_public_release.pdf)

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Easy Read in PDF:

[http://www.ombudsman.parliament.nz/ckeditor\\_assets/attachments/704/Easy\\_Read\\_ToR\\_Deaths\\_final.pdf](http://www.ombudsman.parliament.nz/ckeditor_assets/attachments/704/Easy_Read_ToR_Deaths_final.pdf)

Easy Read in Word:

[http://www.ombudsman.parliament.nz/ckeditor\\_assets/attachments/705/Easy\\_Read\\_ToR\\_Intellectual\\_Disability\\_Deaths.docx](http://www.ombudsman.parliament.nz/ckeditor_assets/attachments/705/Easy_Read_ToR_Intellectual_Disability_Deaths.docx)

Read the Terms of Reference for the second investigation here:

In PDF:

[http://www.ombudsman.parliament.nz/ckeditor\\_assets/attachments/713/Terms\\_of\\_Reference\\_ID\\_Facilities\\_Services\\_for\\_public\\_release.pdf](http://www.ombudsman.parliament.nz/ckeditor_assets/attachments/713/Terms_of_Reference_ID_Facilities_Services_for_public_release.pdf)

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## **What is an ‘intellectual disability’ in the context of these investigations?**

There is no single definition of the term ‘intellectual disability’. In most cases people with an intellectual disability may have difficulty:

- understanding new information
- understanding complex (very difficult) information
- learning new skills; and
- living independently.

The IDCCR Act defines an intellectual disability as a permanent impairment that—

- results in an IQ of 70 or less;
- results in significant deficits in adaptive functioning in areas such as communication, self-care, home living and social skills; and
- becomes apparent before a person reaches the age of 18.

## **What other terms might be used?**

The focus of these investigations is on people with high and complex needs. We have chosen to use the term ‘intellectual disability’ because of this.

Intellectual disability was the term used most by the stakeholders we spoke to during the planning phase of the investigations. It is also the term used in relevant legislation, including the IDCCR Act, and by those providing high and complex disability support services.

The Chief Ombudsman acknowledges that language around disability is important. He knows the term ‘learning disability’ is also commonly used to refer to someone with an intellectual disability, especially by those in the disability community.

In Te Ao Māori, ‘tangata whaikaha hinengaro’ may be used to refer to a person with an intellectual or learning disability.

In some countries the term ‘learning disability’ is used to describe a person who may have difficulty with tasks such as reading or concentrating, for example people with dyslexia or dyspraxia. In these countries ‘intellectual disability’ means an individual who has higher needs or needs greater support.

The United Nations Convention on the Rights of Persons with Disabilities (which New Zealand has signed) refers to ‘intellectual disability’ as ‘intellectual impairment.’

The *New Zealand Disability Strategy 2016-2026* notes there are many words and terms used to identify disability, and they can be understood by people in different ways. Some people may prefer to use the term learning disability or tangata whaikaha hinengaro, in place of intellectual disability, when referring to these investigations.

## **What happens next? How will the investigations work?**

The Chief Ombudsman has met with senior Ministry officials and notified the Ministry’s Chief Executive of the investigations. Investigators assisting the Chief Ombudsman have begun the process of gathering and reviewing relevant information held by the Ministry. They are also making contact with clients in secure care and their families, whose circumstances may be relevant to the investigations.

The next step will be for Investigators to make contact with other individuals and agencies that may hold relevant information, such as:

- the district health boards that are contracted by the Ministry to provide secure care

- lawyers appointed as District Inspectors in relation to the IDCCR Act; and
- non-government providers of intellectual disability services.

These third parties can expect to hear from the Ombudsman once the first information gathering phase is complete. This is likely to be sometime over the next few months.

The final analysis of information will take place once all investigative activities are complete.

The two investigations will then be reported and published separately.

## **Who will be involved?**

The investigations will focus on the Ministry's administrative practices, systems and resources. They will include site visits and one-on-one interviews with clients in residential facilities, their families and whānau, as well as officials, medical professionals and other key stakeholders.

We will not be doing general public consultation as part of these investigations.

If you have information you believe is relevant to either of the investigations, you can contact the investigations team via [info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz).

## **Will you be using case studies in the investigations?**

The second investigation, about the role of the Ministry in providing facilities and services for people with an intellectual disability, will include individual case studies of clients in secure care.

All individuals featured in the case studies will be told about the nature of the investigation, and will have agreed to take part.

Case studies are an important part of the investigation and will help to ensure our findings include a strong focus on the people using these services.

## **Will the investigations take into account the United Nations Convention on the Rights of Persons with Disabilities?**

Yes. New Zealand ratified the United Nations Convention on the Rights of Persons with Disabilities on 25 September 2008. The Ombudsman plays a key role in protecting and monitoring disability rights in New Zealand, and is part of New Zealand's Independent Monitoring Mechanism under Article 33(2). The rights of those with an intellectual disability are recognised in the Convention and will be actively considered as part of the investigations.

## **When will the investigations be completed?**

The first investigation relating to data around deaths of people with intellectual disabilities in residential and forensic care will be completed in the second half of 2019.

The second investigation into facilities and services for intellectually disabled people with high and complex needs is likely to be completed in the first half of 2020.

## **Can the Ombudsman make recommendations as part of these investigations?**

The Ombudsman has the power to recommend solutions or remedies. For instance, the Ombudsman can determine best practice standards and make recommendations for change.

While an Ombudsman does not have legal powers to enforce their recommendations, almost all of the Ombudsman's recommendations made over the past 50 years have been accepted and implemented (put into action) by New Zealand's public sector agencies.

## **Will the Ombudsman's findings be published in Easy Read format?**

It is important that information about these investigations is widely available and accessible.

Information, including the Terms of Reference and Executive Summaries of the investigation reports will be produced and published in Easy Read. The main audience for this format is people with an intellectual disability. Easy Read information is presented sentence by sentence coupled with an image to support the understanding of the text. Easy Read avoids the use of jargon, unnecessary information, and difficult sentences.

People First New Zealand, a self-advocacy organisation for people with intellectual disabilities, will be producing our Easy Read information.

## **How can the Ombudsman help if I have other concerns or complaints?**

Individual complaints about the intellectual disability sector are likely to be considered in their own right rather than as part of the two investigations described here. If you have concerns about your own situation, or the situation of somebody close to you, a complaint to the Ombudsman can be made in writing.

If you find it difficult to make a complaint yourself, call us on 0800 802 602 and we will try to help. You can make a complaint by email, letter, fax, or using our online complaint form.

Your complaint should:

- set out the action, decision or conduct you want to complaint about
- provide any relevant background details
- explain the steps you have taken to try and resolve the matter
- include copies of your correspondence with the agency you wish to complain about
- explain the outcome you are seeking

If we are unable to assist with a specific complaint we will do our best to refer you to the appropriate pathway.

If you have a complaint about a health or disability service you have received you can make a complaint to the Health and Disability Commissioner by contacting 0800 11 22 33 or visiting [www.hdc.org.nz](http://www.hdc.org.nz).

**Okay, I've got some more questions about this. Who should I contact?**

Queries can be made to [info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz).