



Submission

Submission of the Ombudsmen on the Prisoners' and Victims' Claims (Continuation and Reform) Amendment Bill (8 February 2013)

Introduction

1. The Ombudsmen are Officers of Parliament. We are responsible to Parliament and are independent of the Government.
2. Our purpose is to investigate, review and inspect the administrative conduct of state sector agencies and provide advice and guidance in order to ensure people are treated fairly in New Zealand.
3. Our main functions that are relevant to this submission are to:
 - a. investigate state sector administration and decision making under the Ombudsmen Act; and
 - b. monitor and inspect places of detention for cruel and inhuman treatment under the Crimes of Torture Act (COTA).
4. We are concerned that the victims' claims scheme, which the Bill makes permanent, provides neither a suitable way to compensate victims of crime nor a suitable way to prevent abuse or mistreatment of prisoners in accordance with New Zealand's international obligations.
5. We have seen and support the submission made by the Human Rights Commission on this matter.

Substantive comments

6. Since 2007, we have been a National Preventive Mechanism under COTA, with a clear focus on the prevention of cruel and inhuman treatment of prisoners. COTA gives effect to New Zealand's international obligations under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or

Punishment. In this role, we monitor and make recommendations to improve the conditions of detention and the treatment of detainees.

7. We are concerned about the proposal in the Bill to make the victims' claims scheme permanent. We consider that the regime does not support a focus on the fair and humane treatment of prisoners. Rather, it acts as a disincentive for prisoners to pursue their human rights by seeking compensation for abuse or mistreatment. We have been informed by a number of prisoners that there is no point in pursuing a claim as "any money just goes to the victims' account anyway". While there are other mechanisms to prevent the cruel and inhumane treatment of people detained in prison (including our own role under COTA), we consider that the ultimate ability to pursue a claim for compensation is an important measure in terms of preserving independent oversight of the treatment by the state of those in its custody.
8. In undertaking our inspection role under COTA, we have seen a number of cases that may raise issues of cruel and inhuman treatment of prisoners, in particular:
 - a. potential unlawful detention;
 - b. potential unlawful strip searching; and
 - c. inappropriate placement on segregation (resulting in isolation and the removal of minimum entitlements).
9. However, our inspection role does not allow us to be present when every instance of cruel or inhuman treatment within a prison may be occurring. We consider an effective regime that does not act as a disincentive to prisoners pursuing claims for compensation for abuse or mistreatment, and the independent judicial oversight that will result, is important in ensuring New Zealand can meet its international obligations under the Convention against Torture.
10. We are also concerned that the victims' claims regime does not satisfactorily address the needs of victims. We support the submission by the Human Rights Commission that the scheme does not adequately provide restitution for victims. It seems bizarre that the scheme makes a victim's access to compensation dependent on the offender themselves being abused or mistreated whilst in prison, and then pursuing a claim for compensation in that respect. We agree with the Commission that a preferable approach would be to build on recent enhancements and develop a fair and comprehensive system of restitution for victims overall.

Dame Beverley Wakem, Chief Ombudsman
8 February 2013