

Protecting the rights of detained people

The role of the Ombudsman

Peter Boshier, Chief Ombudsman

Tackling dementia: It's everybody's business

Alzheimers New Zealand conference

Auckland, 25 October 2018

The logo for the Ombudsman, featuring a stylized leaf icon to the left of the word "Ombudsman" in a bold, sans-serif font. The background of the slide is a blue sky with a large, faint, stylized leaf graphic and some thin, brown, dried plant stalks in the foreground.

Ombudsman

Extended health & disability mandate

*"... for the purpose of examining and monitoring the treatment of persons detained:
... in health and disability places of detention including within privately run aged care facilities"*

New Zealand Gazette (6 June 2018)





This is not my home

A collection of perspectives on the provision of aged residential care without consent

Compiled and published by the Human Rights Commission
Co-editors Dr Mark Fisher and Janet Anderson-Bilton

NEW ZEALAND

Vulnerable elderly restrained in chairs all day: documents

26 Mar, 2018 5:00am

4 minutes to read



He Ara Tika A pathway forward

The scope and role of the Optional Protocol to the Convention against Torture (OPCAT) in relation to Aged care and disability

Geneva human rights committee 'shocked' at NZ's human rights report card

Laura Walters · 07:04, Apr 24, 2018



Minister David Rutherford on human rights

Rest home closed after resident tied to bed

Nov 17 2009



SHUTTER

A shot of the elderly woman tied to the bed which led to the audit and closure of the

OPINION

Sharon Shalev: Degrading restraints and seclusion still used too much in NZ

27 Apr, 2017 5:00am



New Zealand Framework for Dementia Care

Crisis in aged care looms

Ruby Nyika · 15:39, Feb 25 2018

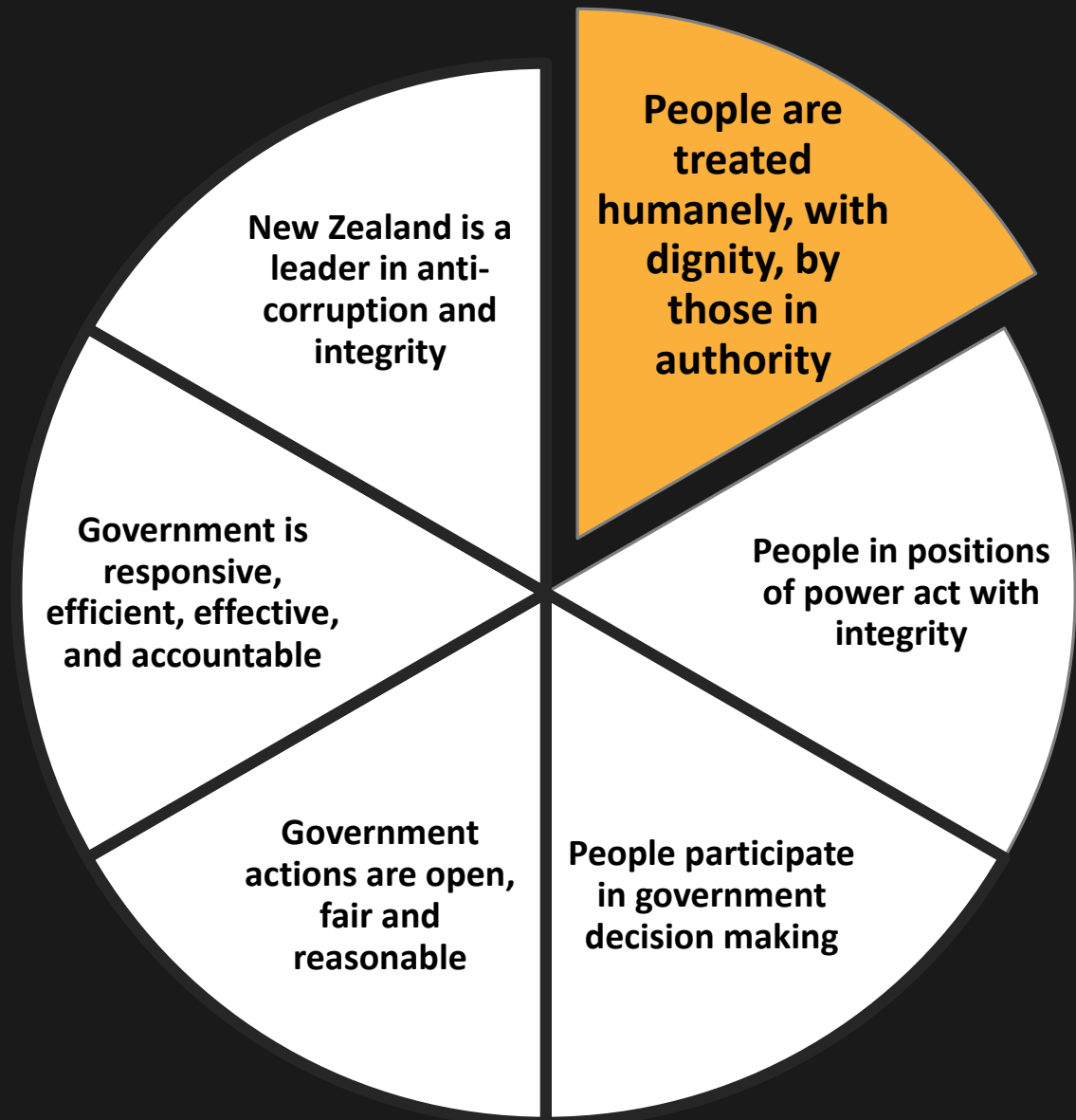


Andrew Little addressed questions from the committee on the

A complaint about an elderly woman being tied to a bed has prompted the MidCentral District Health Board to close down the former award-



Investigate, review, and inspect the administrative conduct of public sector agencies, and provide advice and guidance to ensure people are treated fairly.



International and national obligations

- An international human rights obligation
 - United Nations Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 2002 (OPCAT)
- Legislated in NZ
 - Crimes of Torture Act 1989 (COTA)
 - National Preventive Mechanism (NPM)
- Focus on prevention
 - Recommendations to establish and maintain safeguards and good practise
 - Prevent cruel, inhuman or degrading treatment – not just torture

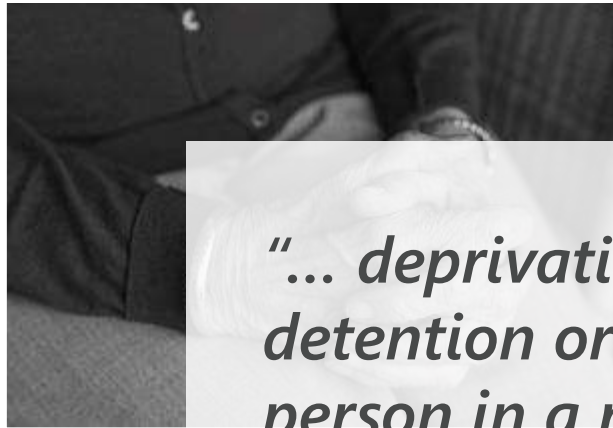
“... torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights.”

OPCAT (2002)

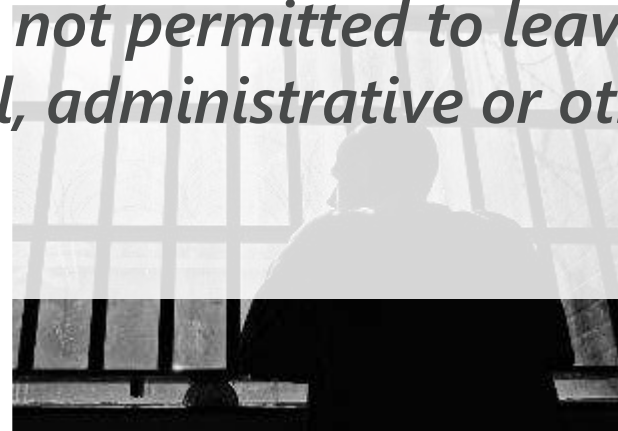
“... efforts to eradicate torture should first and foremost be concentrated on prevention ...”

OPCAT (2002)

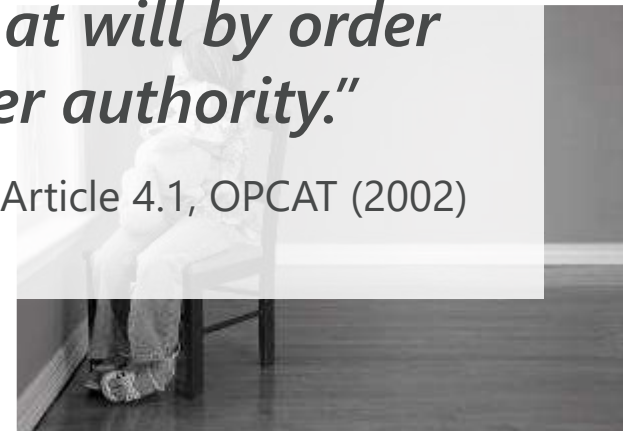
Who is a detainee? What is a place of detention?



"... deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority."



Article 4.1, OPCAT (2002)

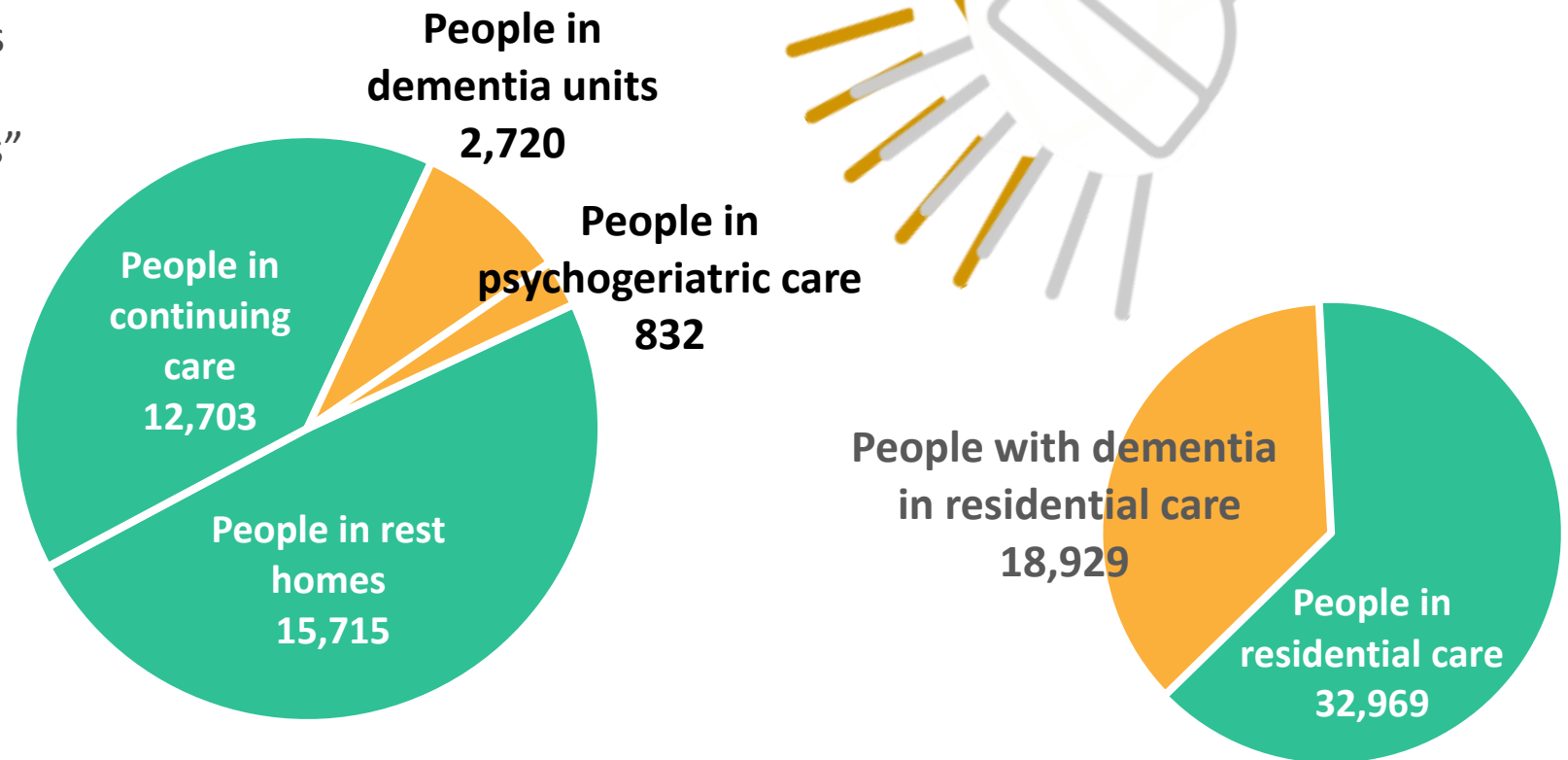


My focus: detained people in detention facilities

“... for the purpose of examining and monitoring the treatment of persons detained:

... in health and disability places of detention **including** within privately run aged care facilities”

New Zealand Gazette (6 June 2018)



Monitoring prisons and mental health facilities ...



- Conduct regular inspections
 - Unrestricted access to facility
 - Some unannounced
 - Visit each facility at least 1 x every 4 years
- Gather and analyse evidence
 - Unrestricted access to information
 - Facility data and records
 - Observations
 - Input from staff, detainees, family, visitors, and others (interviews, surveys etc)
 - Assess against my inspection criteria and international best practise standards
- Make recommendations and report
- Follow up visits, if required

Considerations:

- **Treatment of detainees**
- **Legality of detention**
- **Facility's protective measures**
- **Detainees' material conditions**
- **Detainees' regimes and activities**
- **Detainees' access to health care**
- **Staffing**

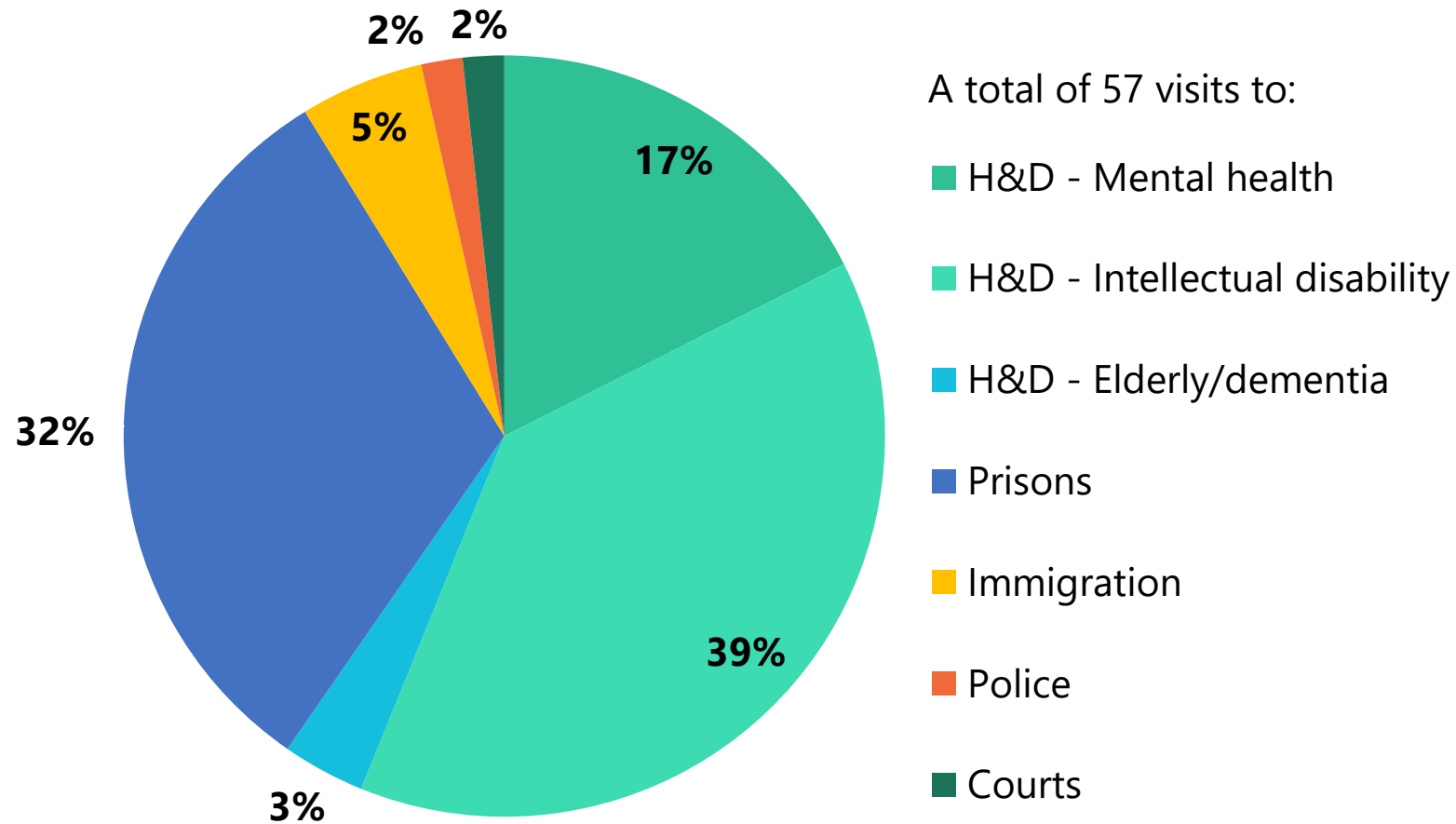
Who is involved ...

- National Preventive Mechanism (NPM)
- Core team of inspectors (OPCAT team)
 - Mental health and disability
 - Social work
 - Prison operation and management
- Assisted by (composition depending on facility being visited)
 - Specialist advisors (medical, cultural, social expertise etc)
 - Former detainees
 - Advocates



Where we've been and what we've found ...

Detention facilities visited (formal & informal) in 2016/17



Key issues identified

- **Balance - prisons and health and disability facilities**
- **Private dementia facilities**
- **Prison - At Risk Units**
- **Mental health**
- **Intellectual disability**
- **Ability to monitor change.**

What happens next?

Inspections at least 12-18 months away

Work out the details

Confirm our role

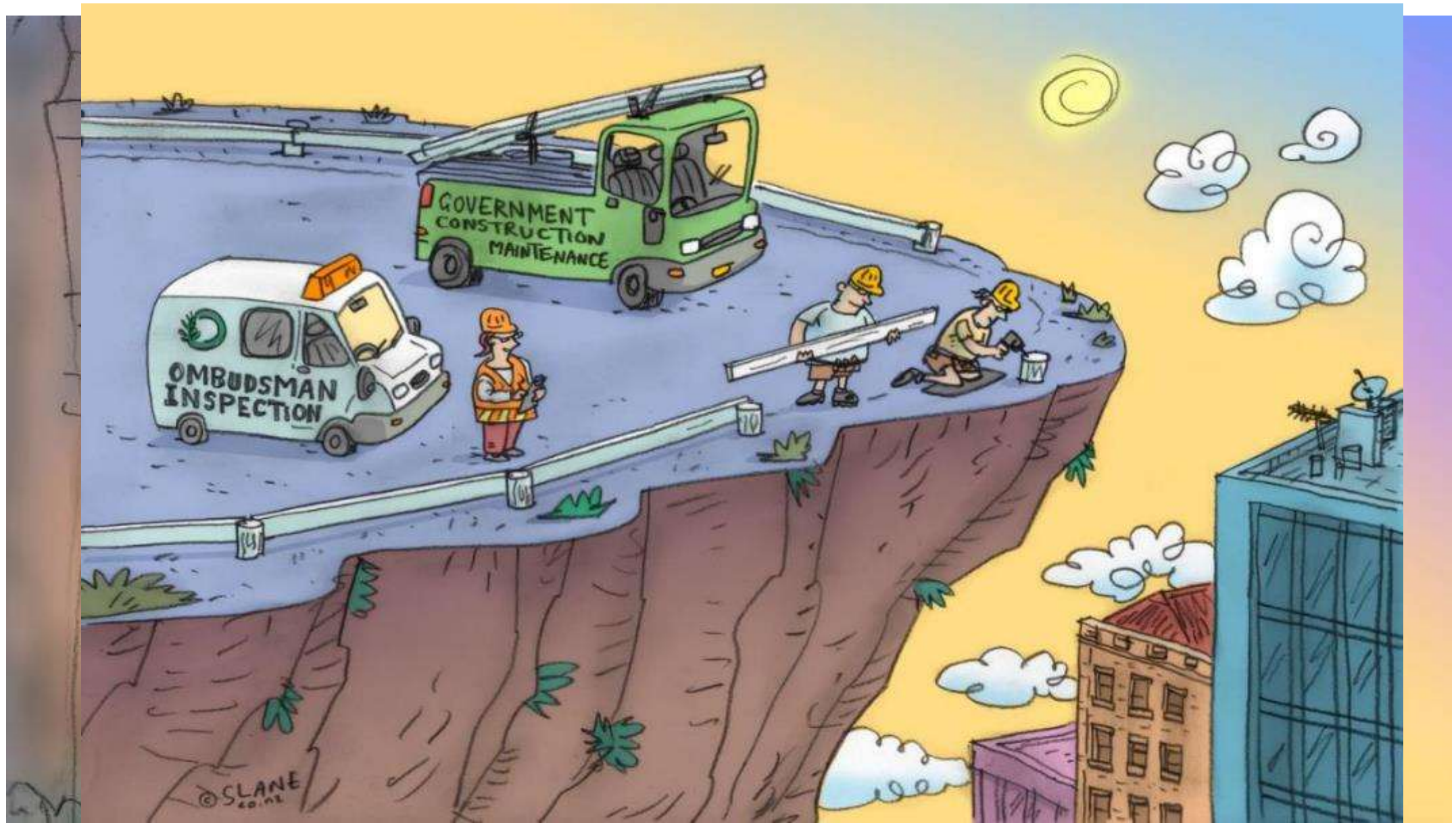
Get funding

Answers to some common questions ...

- Parliament pays
- Monitoring programme & inspection criteria yet to be determined
- Looking at conditions and treatment, not standards and systems
- Prevention, not complaints
- Detained people in detention facilities, not all residents in all residential care
- Case by case basis required to determine who is 'detained' in non-secure aged care facilities

More information ...

- www.ombudsman.parliament.nz
 - www.facebook.com/ombudsmannz
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Any questions?

 **Ombudsman**