

# OQR

**OMBUDSMAN  
QUARTERLY  
REVIEW**

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

**Ombudsman**  
Fairness for all

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## EDITORIAL

# From the Chief Ombudsman

Tēnā koutou

In my last newsletter, I mentioned that I had almost cleared the backlog of aged complaints. I'm thrilled to report that that backlog is now almost history.

In December 2015, we had 659 complaints under investigation outstanding for more than a year. In mid-April we wrapped up all but three of the complaints, 14 months ahead of schedule. It has been an outstanding effort from the team, but more importantly, it has brought long-awaited closure for many people and agencies.

The next significant international conference in our region will be in November when the Australasian and Pacific Ombudsman Region (APOR) conference will be held in Auckland.

The recently passed Customs and Excise Act has given me a new function. The Act will see me consulted on information-sharing agreements between the New Zealand Customs Service and private sector agencies.

And finally, my Pacific outreach programme has gone up a notch with the publication of *Waka Tangata*, a bi-annual newsletter showcasing news, events and the work of Ombudsmen across the Australasian and Pacific regions.

I am thrilled to be getting more engaged with the nations of the Pacific. It gives me great satisfaction that I have been able to grow relationships with our Pacific neighbours, and that their commitment to transparency, accountability and their people is so real.

E noho rā.

**Chief Ombudsman Peter Boshier**



## Farewell to Ombudsman Leo Donnelly

At the end of June, we bid farewell to one of the most influential members of staff, Ombudsman Leo Donnelly.

Leo is the second-longest serving staff member, and has made a significant contribution to the Office in his 33 year-tenure.

Having joined us in 1985 as an investigating officer in the then newly established Official Information Act section, he was appointed Senior Investigating Officer of the Official Information section in 1990, and in November 1996 he was appointed Assistant Ombudsman. In September 2004, Leo was appointed to the newly established position of Deputy Ombudsman, Investigations and Inspections, and in August 2016 he received a warrant from Parliament to act as an Ombudsman for one year, which was then extended to June 2018.

Known to staff as a true historian as to the evolution of the Office, Leo has worked with six Chief Ombudsmen during his tenure. He has seen the Office obtain new jurisdictions, and move from being a reactive complaints driven Office to one that is proactive and willing to assist, advise and provide guidance so that people are treated fairly.

A Wellingtonian born and bred, Leo has had a lifetime involvement in the sport of karate as an accomplished athlete, coach and administrator at national and international level. His skills were amply demonstrated at a staff conference in 2014 where he gave an impromptu class in karate, showing just why he is a 6thDan in the sport.

Leo will be farewelled at a formal Parliamentary reception in mid-June, and by staff closer to his departure.

Haere rā Leo – farewell, but not goodbye.



## Balancing competing principles of good government

How do we balance two principles of good government: officials providing ‘free and frank advice’ to ministers, with public interest in transparency and accountability.

Chief Ombudsman Peter Boshier and Andrew Kibblewhite, the Chief Executive of the Department of Prime Minister and Cabinet and the Head of the Policy Profession for the public service, have jointly authored on this topic for Victoria University's *Policy Quarterly* magazine.

The article outlines discussions between the two on how to balance the principles that contribute to good government. The first is that public servants should provide free and frank advice to ministers. The second is that the public should have timely access to official information to enable them to participate in government decision and holding the government to account.

As the paper notes – “It may seem novel that the Chief Ombudsman and the Chief Executive of the Department of the Prime Minister and Cabinet are writing an article together; however, this demonstrates our shared commitment to good government.”

We are taking steps to reduce uncertainty about when advice can be withheld by issuing new principles-based guidance and providing more advisory services. The guidance can be read [here](#).

A copy of the full *Policy Quarterly* article can be found [here](#).



*Chief Ombudsman Peter Boshier with Hong Kong Ombudsman Connie Lau and Western Australia Ombudsman Chris Field.*

## International Ombudsman Institute turns 40

On 30 April 2018, the [International Ombudsman Institute \(IOI\)](#) held an event at the headquarters of the United Nations in New York to mark the 40th anniversary of its establishment in 1978.

The IOI is the only global organisation for the cooperation of more than 180 independent Ombudsman institutions from more than 100 countries worldwide, including New Zealand.

The event, attended by Chief Ombudsman Peter Boshier, provided a platform for discussion between the United Nations and the Ombudsman community. It was the perfect setting to advocate the important work Ombudsman integrity institutions around the world do in the human rights and anti-corruption fields, and to showcase the role Ombudsman institutions play in implementing the Agenda 2030 for Sustainable Development.

To commemorate the 40th anniversary of its establishment, the IOI presented its most recent publication *A Mission to Justice – The International Ombudsman Institute 1978-2018*, by Richard Carver, Senior Lecturer in Human Rights and Governance at Oxford Brookes University.

The Chief Ombudsman's presence at the United Nations was timely given he has a key role in implementing two resolutions that New Zealand has signed – the Optional Protocol to the Convention Against Torture (OPCAT) and the United Nations Convention on the Rights of Persons with Disabilities.



## Spreading the word – and setting a challenge

There's nothing like spreading the word about the Ombudsman or its work, so Chief Ombudsman Peter Boshier was delighted to accept an invitation to speak to more than 100 managers and staff at Ministry of Business, Innovation and Employment (MBIE) in April.

The address, entitled *Bringing the lamp of scrutiny to otherwise dark places*, was part of the Ministry's first ever Official Information Act (OIA) Week which aimed to build a positive OIA culture and improve the work it does by better understanding what underpins the legislation.

While it doesn't quite roll off the tongue like Māori Language Week or Privacy Week, the OIA Week underlined what a vital piece of legislation the Act is.

One of the key points the Chief Ombudsman made was that one purpose of the Act is to progressively increase the availability of official information, enable more participation by the public, make Minister's and officials more accountable, and promote good government.

He argued that the word 'progressively' was vital to the OIA's interpretation, and that it is a living document, not a static one. He said that the Act is as relevant today as it was when it replaced the Official Secrets Act, an Act which made the release of information held by Government agencies a criminal offence.

And he laid down a challenge for MBIE staff – manage public expectations in the moment, in a way that is current for the time they are being dealt with.

The Chief Ombudsman concluded by noting that while the OIA was complex and evolving, agencies should see the Act as an opportunity to engage and be open with their stakeholders – seeing it this way, rather than as a burdensome compliance exercise, was the challenge faced by all in the public sector.

The speech can be read [here](#).



## Inspections show recurring themes

Cameras covering toilets and a lack of privacy screens around toilet facilities in At-Risk cells and Management cell in prisons continue to be areas of concern for the Chief Ombudsman.

While acknowledging these issues are evident across the prison system, and that the Department of Corrections is working to find possible solutions, the reports on Christchurch Women's and Arohata Upper Prisons again raise concerns.

Another emerging issue is double bunking, which is becoming more prevalent as the overall prison muster continues to rise, combined with inadequate cell sizes. Double bunking is being implemented at both sites inspected.

The OPCAT report for the unannounced inspection of Arohata Upper (63 percent of visits to places of detention in 2016/17 were unannounced) revealed that cell sizes didn't meet the international standard for even one person, let alone two.

Inspectors recorded measurements of a standard one-person cell, including sanitary facilities, at 5.7m<sup>2</sup>. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) defines minimum standards for living space per prisoner as 6m<sup>2</sup> of living space for a single-occupancy cell, plus sanitary facility. The CPT has also published desirable cell size standards for two prisoners as 'at least 10m<sup>2</sup> (6m<sup>2</sup> + 4m<sup>2</sup>) of living space plus sanitary annexe'.

However, it is not all bad news. The follow-up report for Christchurch Women's Prison, the first since late 2014, found clean and tidy conditions, with a relaxed atmosphere and generally good relationships among staff and prisoners. There was a range of constructive activities available for low-security prisoners, and a job expo was about to be held.

OPCAT reports for the past year can be found [here](#).



## Seeking better OIA practices

The Chief Ombudsman has commenced four self-initiated investigations into the official information practices of selected agencies.

The investigations aim to establish whether the agencies have the leadership, culture, organisational systems, policies and procedures in place to support good practices to achieve the purposes of the Official Information Act 1982 (OIA).

The agencies involved, the Ministry for Culture and Heritage, the Ministry for the Environment, the Department of Conservation and Land Information New Zealand, all welcome the initiative.

Environmental and cultural issues are a key current concern, therefore supporting these agencies to develop better OIA processes will help them better serve the public.

To assist in the investigations, the Chief Ombudsman is seeking input from the agencies and their staff, and from stakeholders who have engaged with the agencies through the OIA process.

The initiative was first flagged in the Office's *Strategic Intentions 2017/21*, and the findings of all the investigations will be published before the end of 2018.

The outcomes will provide the public with continuing trust and confidence in public sector agencies, and outline the standards to which public sector agencies should aspire in terms of decision-making processes, transparency and accountability.

The Chief Ombudsman intends to carry out self-initiated investigations of official information practices on a regular basis, and it is anticipated that over time, up to 12 official information practice investigations will be carried out on public sector agencies annually.





## Aircraft landings in Fiordland

Ombudsman Leo Donnelly has found that the Department of Conservation (DoC) acted contrary to the law in granting extra concessions to tourism operators wanting to land on a remote Fiordland plateau.

In 2016, DoC began a trial that allowed up to 70 landings per day on Ngapunatoru Plateau, contrary to its Fiordland National Park Management plan that allowed for only 10 landings a day.

The Ombudsman's opinion, released in late April, noted that it appeared the aviation tourism industry had pressured DoC for more glacier landings to meet growing tourist demand. DoC had been trying to find pragmatic solutions to balance growing tourism demands and possible environmental impacts.

Mr Donnelly recommended that DoC take appropriate action to ensure that the existing landing concessions are made consistent with the Plan's aircraft landing limits as soon as reasonably practicable. DoC has committed to undertake a full review of the Plan.

The full opinion can be read [here](#).



## A look at recent case notes

### Ombudsman Act case notes

#### **Declined request for dispensation regarding school Transport Entitlement Zone –**

A family asked the Board of Trustees (the Board) of School A for dispensation to allow their child to access bus services to attend School B. The Board refused the family's request. What was the outcome?

**Administrative error resulting in lost opportunity for ACC claim –** A patient who was unaware he had asbestosis underwent a CT scan while being treated at a DHB Hospital. On the scan's accompanying notes a radiologist noted previous asbestos exposure. This CT scan with accompanying notes was misfiled, for unknown reasons, and the patient's diagnosis of asbestosis was not confirmed until autopsy. What was the outcome?

**Early resolution of a potential water restriction to a family home –** A family received notice that an agency would be severely restricting its water supply because of an overdue account. Once the Ombudsman became involved, the agency reviewed its accounts and realised it was in error.

### Official information case notes

**Request for information concerning the Mangrove Management Bill –** A requester sought access to information concerning a local Bill proposed by a District Council. The Council decided to grant the request but wanted to charge \$608 for the supply of the requested information, a charge the Ombudsman found unreasonable.

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**Request for information on overseas property acquisition** – A media outlet asked the Overseas Investment Office for copies of documents in relation to an overseas couple’s acquisition of property. The information withheld fell into two categories, being details of the ‘*good character allegations*’ which were considered in the application, and legal advice on the interpretation of the ‘*good character test*’. What was the outcome here?

