



Update

Legal framework for Chief Ombudsman's inspections of health & disability facilities

October 2019

The Chief Ombudsman's roles

The word 'Ombudsman' is Swedish and loosely translated means 'grievance person'. It was first used in its modern sense in 1809 when the Swedish Parliament established the office of Justitieombudsman, who was to look after citizens' interests in their dealings with government. It is a gender-neutral term.

The first New Zealand Ombudsman was appointed in 1962 under the Parliamentary Commissioner (Ombudsman) Act 1962. New Zealand was the fourth country, after Sweden, Finland and Denmark, to establish the office of Ombudsman.

When the office was first established, the Ombudsman's powers ('jurisdiction') were to investigate complaints about central government departments and organisations.

Over the years, the Chief Ombudsman's jurisdiction has been extended across the public sector and beyond to give effect to a number of key democratic and human rights measures aimed at safeguarding the rights of individuals and promoting accountability and transparency. More at: www.ombudsman.parliament.nz/what-we-do.

Background

Inspecting places of detention helps to ensure that people who are deprived of their liberty are treated humanely, and their rights are protected and restored. It also ensures New Zealand is seen nationally and internationally as a good global citizen, adhering to agreed international human rights conventions.

The United Nations [Optional Protocol](#) to the [Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#) (OPCAT) is an international human rights agreement that New Zealand ratified in 2007.

OPCAT establishes international and national monitoring mechanisms to inspect places where people are detained, with the overall aim of preventing torture and other cruel, inhuman or degrading treatment or punishment. These are called 'National Preventive Mechanisms' (NPMs). More about the purpose of OPCAT is available from the [Association for the Prevention of Torture](#) (apt.ch).

In New Zealand, the [Crimes of Torture Act 1989](#) (COTA) provides for the designation of NPMs, as required by OPCAT.

Places of detention

Section 16 of COTA defines a “place of detention” as any place in New Zealand where persons are or may be deprived of liberty.

Under section 26 of COTA, an Ombudsman holding office under the Ombudsmen Act 1975 (Ombudsmen Act) is designated a NPM in relation to certain places of detention.

The [New Zealand Gazette](#) of 6 June 2018 sets out the relevant places of detention, which include:

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

Carrying out the NPM’s functions

Under section 27 of COTA, an NPM’s functions in respect of places of detention include:

- to examine the conditions of detention applying to detainees and the treatment of detainees; and
 - to make any recommendations it considers appropriate to the person in charge of a place of detention;
 - for improving the conditions of detention applying to detainees;
 - for improving the treatment of detainees; and
 - for preventing torture and other cruel, inhuman or degrading treatment or punishment in places of detention.

Under sections 28 – 30 of COTA, NPMs are entitled to:

- access all information regarding the number of detainees, the treatment of detainees and the conditions of detention;
- unrestricted access to any place of detention for which they are designated, and unrestricted access to any person in that place;
- interview any person, without witnesses, either personally or through an interpreter; and
- choose the designated places they want to visit and the people they want to interview.

Section 34 of the COTA, confers the same powers on NPMs that NPMs have under any other legislation when carrying out their function as an NPM. These powers include those given by the Ombudsmen Act to:

- require the production of any information, documents, papers or things that, in the Ombudsmen’s opinion, relates to the matter that is being investigated, even where there

may be a statutory obligation of secrecy or non-disclosure (refer sections 19(1), 19(3) and 19(4) of the Ombudsmen Act); and

- at any time enter and inspect any premises occupied by any departments or organisation listed in Schedule 1 of the Ombudsmen Act (refer section 27(1) of the Ombudsmen Act).

To facilitate the exercise of the NPM function, the Chief Ombudsman has authorised inspectors to exercise the powers given to him as an NPM under COTA, including the powers listed above. Any recommendations are made by the Chief Ombudsman directly.

More information

More information about our inspections programmes is available on our website (www.ombudsman.parliament.nz/what-we-do/protecting-your-rights/monitoring-places-of-detention), including:

- Aged care inspections programme diagram (October 2019)
- Legal framework (October 2019)
- Latest progress update (August 2019).

If you have any more questions about the development of the Chief Ombudsman's aged care inspection programme, please email us (info@ombudsman.parliament.nz). While we may not be able to answer them now, we will endeavour to do so in future. Let us know if you want us to contact you with any updates or you can follow us on Facebook (@ombudsmannz).