



Ombudsman Quarterly Review

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

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 **Ombudsman**
Tuia kia ōrite • Fairness for all

From the Chief Ombudsman

Tēnā koutou

These are unprecedented times. This Autumn 2020 issue of the Ombudsman Quarterly Review focuses on my response to the Covid-19 pandemic.

I set high expectations of my staff during the lockdown period, and I'm proud to say they've responded well beyond those expectations.

When New Zealand entered Level 4 lockdown on 24 March, my office was ready. Most staff were equipped with the necessary devices and security arrangements were put in place to allow them to work remotely. We reprioritised some areas of work, brought others forward, and established a 'triage' system for complaints so we could deal with pandemic-related issues as a priority.

My complaint handling staff were able to continue their work from day one of lockdown, maintaining an excellent complaints clearance rate. I was determined we would avoid another backlog of unresolved complaints, such as developed after the Canterbury earthquakes—and thus far we have.

In the second week of lockdown, I received 'essential service' designation from the Ministry of Justice for my role inspecting and monitoring places of detention under the Optional Protocol to the Convention Against Torture (OPCAT).

When I announced my intention to continue OPCAT inspections during lockdown, I met some initial resistance from some facilities, but we worked together to reach agreement about process and safety. I made sure my inspections team had the necessary personal protective equipment, that we followed Ministry of Health guidelines on physical distancing, and that we developed very sound inspection principles and criteria for a programme of short, targeted, OPCAT COVID-19 inspections.

As at 29 May, we've inspected six aged care facilities, nine prisons, one Public Protection Order facility and five mental health/drug and alcohol treatment facilities, and are promptly reporting our findings to the facilities. OPCAT COVID-19 inspections will continue until circumstances no longer require them.

As we all adjust to a 'new normal', my vision is that my Office continues to provide, no matter what, the best possible independent oversight, at a time when transparency and accountability in the exercise of executive powers affecting people's lives is even more important. .

E noho rā

Chief Ombudsman Peter Boshier



OPCAT inspections continue through lockdown

As a National Preventive Mechanism under the Optional Protocol to the Convention Against Torture (OPCAT), one of the Chief Ombudsman's core functions is to monitor and inspect places of detention to ensure treatment and conditions are decent and humane.

This role is more important than ever in times such as a lockdown, when facilities have the challenging task of protecting their residents as much as possible without disproportionately limiting their rights in doing so.

Shortly after New Zealand entered Level 4 lockdown, the Chief Ombudsman developed a Statement of Principles to guide facilities and their staff in managing the crisis while meeting New Zealand's international human rights obligations. These Principles are based on advice from the United Nations Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

On 1 April, the Ministry of Justice designated the Chief Ombudsman's OPCAT function an 'essential service' under Level 4. The Chief Ombudsman then commenced a programme of short, targeted, COVID-19 inspections, using specially developed criteria, in prisons, rest homes, and mental health facilities.

The purpose was to ensure that facilities were taking the necessary measures to protect their residents from COVID-19, and that these measures were not disproportionately impacting their right to humane and decent conditions and treatment.

"I wanted to ensure, for example, that prisons were doing all they could to ensure prisoners got their minimum entitlement of one hour fresh air a day during lockdown; and that without the benefit of visitors from outside, prisoners could easily access telephones, email, and video links", Peter Boshier says.

"In the aged care sector, like all New Zealanders, I was deeply saddened and concerned by the clusters of COVID-19 cases and deaths in rest homes", Mr Boshier says.

"While I recognise there are many factors involved in these cases, given the exceptional circumstances I decided to bring forward my planned programme of inspections in the aged care sector".

"My COVID-19 aged care inspections focus on the care of those who are in the facilities and unable to leave at will because of dementia or some other cause. During a national lockdown, it's even more important that there's independent oversight of their treatment".

The inspections involve teams of only two or three inspectors, with full health and safety plans in place and wearing full personal protective equipment, and take no longer than a day.

As at 29 May, we've inspected six aged care facilities, nine prisons, one Public Protection Order facility and five mental health/drug and alcohol treatment facilities.

[Statement of Principles for places of detention managing COVID-19](#)

[Criteria for OPCAT COVID-19 inspections](#)

[Media statement: Ombudsman resets inspections programme](#)

[Media statement: Independent watchdog to inspect secure aged care facilities](#)

[Information about the Chief Ombudsman's OPCAT role](#)



Chief Ombudsman's term renewed

Chief Ombudsman Peter Boshier's term has been renewed by Parliament for a further five years, until 2025.

Speaking on the reappointment, Leader of the House Chris Hipkins said government compliance with the Official Information Act had improved significantly since Mr Boshier was appointed Chief Ombudsman in 2015, describing this as "a very, very welcome development".

Mr Boshier says he's pleased that the office's contribution has been recognised in this way, and is honoured to be able to continue working to achieve fairness for all.

Complaints in the time of COVID-19

A priority for the Office during lockdown was to maintain our agility and responsiveness in resolving and investigating complaints made under the Official Information Act (OIA).

The Chief Ombudsman made clear to the public and agencies that the investigation and resolution of complaints would continue during this period, urging officials and complainants to behave 'reasonably and with understanding' in the current circumstances.

Equipped with remote devices and with appropriate security measures in place, our complaints and resolutions teams used a triage approach to complaints, prioritising those that were concerned with COVID-19 related issues such as finance or housing.

A comprehensive 'Frequently Asked Questions' guide dealing with OIA requests during COVID-19 was also published for agencies and requesters.

The FAQ covered issues such as logistics, technology and staffing for agencies. It recognised some of the challenges they faced like having workers redeployed to COVID-19 response work, or from working remotely; and suggested ways agencies can successfully meet their official information obligations during COVID-19. These include proactive release, publishing past responses, providing staged responses, and using time extensions where necessary.

The FAQs also contain tips for requesters, and outline obligations and timeframes in place during the COVID-19 emergency for official information requests and local government meetings.

We're maintaining the FAQs as a 'living' document, amending them to reflect legislative amendments, changes in lockdown Alert Levels, and feedback from the public and agencies.

[Media statement: Chief Ombudsman continuing to accept complaints](#)

[Media statement: official information response times during COVID-19](#)

[FAQs about official information requests during COVID-19](#)



In case you missed it

New guides

[Names and contact details of public sector employees](#) is our latest guide for agencies and local authorities responding to official information requests. This comprehensive guide is supported by a worksheet and 18 new case notes.

In the first weeks of lockdown, we published a [Statement of Principles for places of detention managing COVID-19](#), and [FAQs about official information requests during COVID-19](#).

New case notes

A Council withholding minutes of a meeting on the grounds of 'without prejudice' privilege: [Request for record of 'without prejudice' meeting](#).

Kanohi ki te kanohi consultation on an OIA request justified a longer timeframe for response: [Extension of time limit to enable kanohi ki te kanohi consultation](#)

Not your usual OIA complaint-how the Ombudsman approaches complaints from people unhappy that information has been released under the OIA: [Decision to release tender information](#)

Visit by UN Independent Expert

In early March, the Chief Ombudsman welcomed the visit to New Zealand of the UN's Independent Expert on Older People, Rosa Kornfeld-Matte.

Peter Boshier updated Ms Rosa Kornfeld-Matte on his planned programme of inspections of privately owned aged care residences—a programme brought forward by COVID-19.

Ms Kornfeld-Matte was in New Zealand to assess the human rights situation of older people, including issues such as social security, elder abuse, housing, and digital inclusion.

[Media statement: Chief Ombudsman welcomes visit by international aged care expert](#)



‘Untenable’ situation at Henry Rongomau Bennett

Chief Ombudsman Peter Boshier called on the Waikato District Health Board to address urgent issues of overcrowding, seclusion and restraint at the Henry Rongomau Bennett mental health residential facility.

An unannounced OPCAT inspection in September 2019 identified three wards at 130 percent capacity and the high use of seclusion and mechanical restraint to manage service users.

“The treatment and conditions in three of the four wards I inspected was degrading, and breached article 16 of the United Nations Convention against Torture and other cruel, inhuman or degrading treatment or punishment”, Mr Boshier says.

“I consider the situation untenable and urgent action must be taken”.

[Media statement: Chief Ombudsman critical of overcrowding at Henry Bennett](#)



The duty to document

Chief Ombudsman Peter Boshier has endorsed his international counterparts’ call for rigorous documentation, preservation of records and access to information as governments, businesses and citizens deal with the COVID-19 pandemic and its aftermath.

In May, the International Conference of Information Commissioners (ICIC) released the statement that even during an event such as a pandemic, “the importance of the right to access information remains. Public bodies must recognise the value of clear and transparent communication, and of good record-keeping, in what will be a much analysed period of history”.

[Media statement: the duty to document does not cease in a crisis](#)



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