



Update

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

June 2021

### 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](http://www.ombudsman.parliament.nz/what-we-do).

### Background

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 Aotearoa New Zealand ratified in 2007.<sup>1</sup>

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

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<sup>1</sup> Both OPCAT and the UN Convention it supplements – (the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment) are on the UN Human Rights Office of the High Commissioner's [website](http://www.ohchr.org) (www.ohchr.org).

degrading treatment or punishment (ill treatment). These are called ‘National Preventive Mechanisms’ (NPMs).<sup>2</sup> The Chief Ombudsman is one of New Zealand’s four NPMs.

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

The Crimes of Torture Act 1989 (COTA) was amended by the Crimes of Torture Amendment Act 2006 to enable Aotearoa New Zealand to meet its international obligations under OPCAT.<sup>3</sup>

### Places of detention

Section 16 of COTA identifies a ‘*place of detention*’ as:

*...any place in New Zealand where persons are or may be deprived of liberty*

Pursuant to section 26 of COTA, an Ombudsman holding office under the Ombudsmen Act 1975 (Ombudsmen Act) has been designated a National Preventive Mechanism (NPM) by way of Gazette Notice for certain places of detention, including health and disability places of detention.<sup>4</sup> In 2018 the wording of the designation was amended to explicitly include privately-run aged care facilities.

Under section 27 of COTA, an NPM’s functions 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.

### Carrying out the OPCAT function

Under COTA, Ombudsmen are entitled to:

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<sup>2</sup> More about the purpose of OPCAT is available from the [Association for the Prevention of Torture](http://www.appt.ch) (www.appt.ch).

<sup>3</sup> The COTA is on the New Zealand Legislation website ([www.legislation.govt.nz](http://www.legislation.govt.nz)).

<sup>4</sup> Gazette Notice 2020-go2845, Designation of National Preventive Mechanisms, 2 July 2020 available at <https://gazette.govt.nz/notice/id/2020-go2845>

- 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 places they want to visit and the people they want to interview.

Section 34 of COTA provides that when carrying out their OPCAT function, Ombudsmen can use their Ombudsmen Act (OA) powers to require the production of any information, documents, papers or things (even where there may be a statutory obligation of secrecy or non-disclosure) (sections 19(1), 19(3) and 19(4) OA). To facilitate his OPCAT role, the Chief Ombudsman has authorised inspectors to exercise these powers on his behalf.

### **More information**

Find out more about the Chief Ombudsman's OPCAT role, and read his reports online: [ombudsman.parliament.nz/opcat](http://ombudsman.parliament.nz/opcat).