



Investigation terms of reference: Ministry of Health facilities and services for people with an intellectual disability

22 January 2019

Introduction

This document sets out the terms of reference for a self-initiated investigation by the Chief Ombudsman¹ into the role of the Ministry of Health (the Ministry) in providing facilities and services to people with an intellectual disability, particularly those who are subject to the High and Complex Framework (HCF).²

Purpose of the investigation

The purpose of this investigation is to examine the role of the Ministry in planning, resourcing and co-ordinating HCF facilities and services provided by the National and Regional Intellectual Disability Secure Services (NIDSS/RIDSS) that are contracted through District Health Boards (DHBs). The investigation will identify whether the Ministry has systems, policies and processes concerning the care and rehabilitation of people with intellectual disability under the HCF, which are consistent with good administrative practice.

The investigation will take into account relevant international conventions, including the United Nations Convention on the Rights of Persons with Disabilities and the United Nations Convention on the Rights of the Child. The investigation will identify areas of good practice and make suggestions for improvement if any areas of concern are identified.³

¹ See sections 13(1) and 13(3) of the Ombudsmen Act 1975 (OA).

² HCF refers to the framework of supports provided to care recipients subject to the Intellectual Disability (Compulsory Care and Rehabilitation) Act (IDCCR Act) 2003, including eligible civil clients who have high and complex needs that are beyond the scope of mainstream services.

³ Formal recommendations under the OA will only be made if the Chief Ombudsman forms an opinion that a decision, recommendation, act, or omission by the Ministry was unreasonable or contrary to law etc, under section 22 of the Act.

Scope of the investigation

The investigation will examine the role and accountabilities of the Ministry in delivering services to people with an intellectual disability under the HCF, including:

1. The systemic capacity of the NIDSS/RIDSS to admit and treat individuals referred by the Courts under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (IDCCR Act) who require a secure hospital-level bed.
2. The adequacy of facilities and environments for the secure care of people with intellectual disabilities, including:
 - a. longer-term clients with higher needs;
 - b. women clients; and
 - c. youth clients.
3. The adequacy of workforce planning by the Ministry to ensure the availability of trained staff to work in the HCF.

The investigation will focus on capacity and capability issues affecting NIDSS and RIDSS in the five relevant DHB locations. It will consider the manner in which the Ministry has worked collaboratively with the DHBs contracted to provide NIDSS/RIDSS to address service delivery issues.

Where appropriate, the investigation will also consider the extension of these issues to mainstream intellectual disability support services. The investigation will not include a comprehensive analysis of mainstream service delivery issues but will consider the interface between secure and community-level care.

The primary focus of the investigation will be on events that have taken place since January 2013.

The investigation will use a number of case studies of individuals currently living under the HCF, to highlight the issues under examination by the Chief Ombudsman.⁴

Investigation process

The Manager Systemic Improvement Investigations will work with a team of Senior Investigators and Advisors to assist the Chief Ombudsman to conduct the investigation. The investigation team will liaise with the Ministry's nominated contact officials during the investigation. Information will be gathered through the processes set out below.

⁴ The identity of case study participants will be confirmed after contact with each individual has occurred via their NIDSS/RIDSS provider.

Information gathering

General

The information for the investigation will be gathered through research, a review of relevant documentation held by the Ministry, meetings and/or interviews with key staff, and engagement with relevant third parties including individuals and their families/representatives who appear as case studies in the report.

Any requests for information are subject to the confidentiality and secrecy provisions in the Ombudsmen Act. Under section 18(2) of the Act, every investigation by an Ombudsman must be conducted in private. Under section 21(2) of the Act, an Ombudsman and staff must maintain secrecy and only:

... disclose such matters as in the Ombudsman's opinion ought to be disclosed for the purposes of an investigation or in order to establish grounds for the Ombudsman's conclusions and recommendations.

Under section 19 of the Act, an Ombudsman can require any person to provide information relating to any matter under investigation. This empowers the Ombudsman to gather evidence, from both the Ministry and third parties, including by way of interview.

Research

The research will include a review of publicly available information, including the legislative framework governing the provision of services to clients subject to the HCF, the Ministry's annual reports, strategic intentions documents, contracts and service specifications and any other material available on its website.

Review of Ministry documentation

The review of the Ministry's systems and practices will include:

- Strategic plans, work programmes and operational plans (since the IDCCR Act came into force).
- Policies, procedures and guidance.
- Quality assurance processes.
- Reports on compliance.
- Contracts.
- Collaboration and engagement with other parties.
- Detailed information about:
 - individual case studies;
 - the services provided by each of the NIDSS/RIDSS facilities; and

- actions taken by the Ministry in response to concerns raised by DHB NIDSS/RIDSS providers.

Meetings

In addition to reviewing Ministry records, the investigation team will meet with key Ministry staff with responsibility for the following aspects of the Ministry's systems and practices concerning intellectual disability services under the HCF:

- leadership, policy and strategic direction;
- organisational/operational performance;
- contract management;
- quality assurance; and
- operational matters concerning the HCF.

As noted above, information obtained during the meetings is subject to the secrecy requirements of section 21 of the Ombudsmen Act and will not be disclosed except in accordance with that section. These meetings may be recorded and will generally take between 1-2 hours.

Scheduling of meetings

There will be an initial meeting with the Ministry shortly after the investigation is notified to discuss the Terms of Reference and the case study approach to this investigation. The investigation team will also seek an overview of the information the Ministry holds in relation to the matters under investigation. Shortly after the initial meeting, a request for relevant information held by the Ministry will be made. Any further meetings will be scheduled after the Ministry has provided the information requested and it has been analysed by the investigation team.

Interviews

The investigation team may decide to interview certain Ministry staff, in order to obtain as much relevant information as possible about the matters under investigation. These interviews will be digitally recorded. The Ministry will be advised which staff members are to be interviewed. The investigation team will then contact the interviewees direct to schedule the interview. Any Ministry staff selected as interviewees will be provided with information about the interview process, including the legal framework and the purpose of the interview. It is envisaged that interviews will take around 1 to 2 hours. Again, information obtained during the interviews is subject to the secrecy requirements of section 21 of the Ombudsmen Act and will not be disclosed except in accordance with that section.

Third party information

The investigation team will also gather relevant information from third parties involved in the intellectual disability sector, in order to add context to the information provided by the Ministry. In particular, the investigation team will obtain detailed information from NIDSS/RIDSS facilities about the case studies and related issues. Case study participants and their families/representatives will be included in this engagement. The investigation team will also contact District Inspectors and other key stakeholders, and also seek input from an independent expert in the field of Intellectual disability. For the avoidance of any doubt, the Ministry is the only agency under investigation by the Chief Ombudsman. However, DHBs contracted to provide NIDSS/RIDSS facilities will be also advised of the investigation.

Reporting

Draft report

The draft report will outline the Chief Ombudsman's provisional opinion, including the evidence relied on and the analysis undertaken in forming that opinion. Where relevant, the draft report will identify any suggestions and/or recommendations that may be made to improve the Ministry's practices. The draft will be provided to the Chief Executive of the Ministry for comment. Relevant extracts will be provided to the individuals and their families/representatives who are featured as case studies in the report. The Chief Ombudsman may also seek comment from third parties who are referred to in the report. Third parties will be given an opportunity to comment if it appears that they may be adversely affected by, or the subject of adverse comment in, an Ombudsman's opinion or recommendations.⁵

Final report

Comments received on the draft report will be considered for amendment of, or incorporation into, the final report. The Chief Ombudsman will provide the final report to the Chief Executive of the Ministry. The final report will be published on the Ombudsman's website and tabled in Parliament.

After the investigation

Following completion of the investigation, there will be ongoing monitoring of actions taken by the Ministry in response to any suggestions or recommendations by the Chief Ombudsman. The Chief Ombudsman will also conduct a review exercise as part of his Continuous Practice Improvement programme. The Chief Ombudsman will seek the views of the Ministry's senior managers on their experience of this systemic improvement investigation, its value and relevance to improving their work practices, and how future investigations may be improved when applied to other agencies.

⁵ Sections 18(3) and 22(7) of the Ombudsmen Act 1975.