



# Chief Ombudsman's opinion under the Ombudsmen Act

<b>Legislation</b>	Ombudsmen Act 1975, ss 13, 22 Bill of Rights Act 1990, ss 20 Education and Training Act 2020, ss 34(1) New Zealand Sign Language Act 2006, ss 9(1)(c) Public Service Act 2020, ss 12(1)
<b>Agency</b>	Ministry of Education
<b>Complaint about</b>	The omission by the Ministry of Education to develop an implementation framework to enable progress on its strategy on New Zealand Sign Language (NZSL) in education
<b>Ombudsman</b>	Peter Boshier
<b>Case number(s)</b>	535060
<b>Date</b>	22 December 2023

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## Summary

Representatives from a Deaf Disabled People’s Organisation (Deaf Aotearoa), who advocate for the rights of Deaf people in New Zealand, have raised concerns about the Ministry of Education’s (the Ministry) strategy to progress New Zealand Sign Language (NZSL) in education.

Deaf Aotearoa believes that the ‘Development Map for NZSL in education’ (the Map) does not adequately address the long-term issues faced by Deaf learners in relation to the provision of NZSL in the education system.<sup>1</sup>

Deaf Aotearoa made a complaint to me about the matter. After further enquiries with the Ministry, it became apparent that the key vehicle to progress NZSL in education is the use of the Map.

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<sup>1</sup> For the purposes of my report below, the terms ‘NZSL in education’, ‘education in NZSL’, and ‘NZSL education’ are used interchangeably. The ‘Development Map’ is the Ministry’s key strategy to progress access to education in NZSL.

After considering the Ministry's domestic and international obligations to progress NZSL in education, and investigating the progress of implementing the goals of the Map, I have formed the opinion that the Ministry has unreasonably omitted to:

- implement appropriate timeframes, lines of accountability and targets to operationalise the progress of the Map's goals;
- take adequate steps to ensure that it identifies and advises on the need to secure budget to implement the goals of the Map; and
- institute reasonable provisions for stakeholders to check in and feel confident that the Ministry is on track with progressing the goals of the Map.

Having considered the additional evidence the Ministry provided demonstrating how it evaluates and monitors uptake and success of various work programmes in the Map, I do not consider the evaluative framework the Ministry has implemented so far to be unreasonable.

However, the Ministry should further consider how it can best monitor and evaluate its own operational responsibilities and performance, and track its own progress against the Map's overall goals. To the extent that the Ministry has not yet undertaken such an overall consideration, I consider this unreasonable.

I recommend that the Ministry:

- revises its strategy (ie, the Map) for progressing access to NZSL in education in accordance with my findings;
- clearly and frequently communicates progress on redeveloping the Map to key stakeholders that it has shared the Map with; and
- provides me with quarterly reports on the progress of the above recommendations.

## Background to Deaf Aotearoa's complaint

1. Deaf Aotearoa is a Disabled People's Organisation with a service provision arm. As part of its advocacy and policy functions, Deaf Aotearoa works with Deaf communities, government agencies and other organisations to increase awareness, strengthen the rights of Deaf people, and to promote NZSL.<sup>2</sup>
2. Deaf Aotearoa has complained to me that the Ministry's latest strategy to progress NZSL in education – the Map – fails to adequately address the long-term issues regarding the provision of education to Deaf learners in NZSL.<sup>3</sup>

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<sup>2</sup> See <https://www.deaf.org.nz/what-we-do/policy-and-advocacy/> for further information.

<sup>3</sup> The complaint was initially jointly made by Deaf Aotearoa and Deaf Children New Zealand. Deaf Aotearoa has since taken ownership of the complaint on behalf of Deaf Children New Zealand. For the purposes of this report, I have referenced Deaf Aotearoa as the primary complainant.

3. Deaf Aotearoa wrote to me advising that, over a number of decades, Deaf and hard of hearing people have encountered a range of barriers in accessing education in NZSL. Deaf Aotearoa has noted wide-ranging concerns in this regard, such as educational underachievement, lack of provision of NZSL bilingual schools, limited access to interpreting services, and the lack of a consistent and centralised approach to education in NZSL across New Zealand.
  
4. Deaf Aotearoa note that the Ministry has developed several policy proposals and work programmes with a view to improving access to NZSL education. For example, the Ministry developed a National Plan in 2000, and a Strategy Plan in 2004, with the aim of improving access to NZSL support.



5. Deaf Aotearoa noted that the Ministry's efforts culminated in 2019 when the Ministry produced the Map in consultation with the NZSL Board.<sup>4</sup> The Map was developed as a guide to the further progression and development of the use of NZSL in education. The Ministry advises the aim of the Map is to *'...provide a robust basis to inform future advice and decisions about the development of NZSL in education...'* The Map outlines a pathway of current and future actions to improve outcomes for NZSL in education.<sup>5</sup>

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<sup>4</sup> The NZSL Board was established by Cabinet in 2014, with the purpose of promoting and maintaining NZSL by providing expert NZSL advice to the government and communities. The NZSL Board is made up of 10 members, all of whom are NZSL users. See <https://www.odi.govt.nz/nzsl/about-board/> for further information.

<sup>5</sup> Deaf Aotearoa, as a key stakeholder, was consulted as part of the Ministry's policy development process.

## My investigation

6. On 8 October 2021, I notified the Ministry of my decision to investigate Deaf Aotearoa's complaint.
  
7. As part of my investigation, I advised I would consider whether:
  - a. the omission of the Ministry to include specific targets, goals and monitoring/reporting mechanisms in its key strategy<sup>6</sup> to progress access to education in NZSL was unreasonable; and

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<sup>6</sup> For the purposes of this opinion, I refer to the Development Map as a 'strategy' throughout. By 'strategy', I mean a plan that sets out what is needed to progress NZSL in education.

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- b. the Ministry's current strategy to promote access to education in NZSL, and the actions it is taking to implement the Map, were unreasonable having regard to:
  - i. more generally, the wider context and history of the issues that have been raised with the Ministry regarding the provision and access of education in NZSL; and
  - ii. whether the Map should include specific targets, goals, timeframes and monitoring/reporting mechanisms to better enable progress on these issues.

8. I have set out the background to my investigation and my findings below.

## What is the Ministry's role in respect of NZSL?

9. The Ministry is the primary steward in progressing NZSL in the education system. The Ministry's obligations to progress NZSL in education are outlined in the following statutes:
  - a. The Education and Training Act 2020 provides that students who have special educational needs (whether because of disability or otherwise) have the same rights to enrol, attend and receive education at state schools as students who do not.<sup>7</sup>

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<sup>7</sup> The Ministry has advised in its response that case law highlights limitations to these provisions.

- b. General stewardship obligations under the Public Service Act 2020.<sup>8</sup>
- c. Obligations under section 9(1)(c) of the New Zealand Sign Language Act 2006 (NZSL Act) that government services and information should be made accessible to the Deaf community through the use of appropriate means (including the use of NZSL).
- d. Section 20 of the New Zealand Bill of Rights Act 1990 states that a person who belongs to a linguistic minority shall not be denied the right to enjoy their culture or use their language.

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<sup>8</sup> Section 11 of the Public Service Act 2020 defines the purpose, public service principles and spirit of service to the community as *'The public service supports constitutional and democratic government, enables both the current Government and successive governments to develop and implement their policies, delivers high-quality and efficient public services, supports the Government to pursue the long-term public interest, facilitates active citizenship, and acts in accordance with the law.'*

10. In terms of New Zealand's international obligations, article 24 of the United Nations Convention on the Rights of Persons with Disabilities (the Disability Convention) provides that parties should ensure an inclusive education system at all levels for disabled people.

More specifically, article 24(3)(b) states that governments must facilitate the learning of sign language and the promotion of the linguistic identity of the Deaf community.

11. In terms of the Ministry's role in respect of NZSL, the Ministry has advised it has the following relevant responsibilities:

- a. delivering funding and resourcing to support early learning services and schools to meet the additional learning needs of students and empower parents and whānau to engage with their child's education;

- b. administering a range of legislative and regulatory functions;
- c. providing/contracting service delivery for learning support services, programmes and interventions;
- d. administering learning support and providing advice on system-level resourcing;
- e. building and sustaining a specialist workforce to meet learning support needs; and
- f. monitoring and evaluating the Ministry's performance to identify strengths, gaps and areas for improvement.

## What is the Development Map for NZSL in education?

The Ministry's strategy to progress access to NZSL in education

12. The Ministry has advised that the Map is its key pathway to progress access to NZSL in education. The Map was developed with the NZSL Sector Advisory Group (NZSL SAG) and in consultation with the NZSL Board, and is aligned with the NZSL Board's five year strategy.<sup>9</sup> The Ministry advises that the Map is about progressing improved education primarily intended to benefit Deaf learners<sup>10</sup> within the early learning and compulsory education system.

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<sup>9</sup> The [NZSL Board](#) has up to 10 members in total, all of whom are NZSL users, and a majority of members are Deaf NZSL users. The purpose of the NZSL Board is to promote and maintain NZSL by providing expert advice to government and the community on NZSL.

<sup>10</sup> 'Deaf learners' is used throughout report to describe learners with NZSL as their first or preferred language.



13. The Map sets out what it would take to further progress NZSL in education. It goes into detail about the current realities and issues for Deaf learners to access NZSL in the education system, and then sets out to address the wider issues in NZSL by outlining the practical steps needed to progress different domains of the education system, including acquisition, use/access, attitude, documentation, status, workforce and system resources.

14. The Map details what outcomes are needed to achieve equitable access to NZSL across each of the domains. For example, for *'use/access'*, the desired outcome is that all Deaf learners are able to access the curricula in NZSL up to year 13.

For each of the six domains for change, the Map includes accompanying goals, and details potential solutions for how the Ministry could achieve the overall outcomes for success.

For *'use/access'*, the first potential solution is to *'investigate the current situation regarding access to the curricula, including in English and Maori-medium settings and whether via direct or mediated instruction'*.

While the Map sets out these potential solutions across an indicative 10-year timeframe, the potential solutions do not have specific date goals.

15. The Map then appends a further breakdown of each potential solution. For the first high level step of *'use/access'*, an example of this breakdown is *'gathering information on the type of in class support provided ...'*.

The Map does not include more specific details to enable the exploration of these lower-level goals, such as timeframes, the specific steps required to explore or achieve each potential solution, or who is responsible for each step.

## Explanation of the Ministry's current implementation framework for implementing its strategy to progress NZSL in education

16. In responding to my investigation, the Ministry advised that the Map sets out where the best investment would be for NZSL in education, and that this informs advice on and priorities for seeking budget bids.

The Ministry also stated that the Map is *'not a static "picture", it is a dynamic action plan; a plan for the development of NZSL language in education across the seven areas needed to build a strong thriving sustainable language'*.

17. Although there is an indicative implementation timeframe of 10 years for the Map, the Ministry advised there is no specific implementation timeline for the following reasons:

- a. it involves progressive implementation;

- b. some specific actions or tasks are dependent on further information and data; and
- c. many of the proposed actions to progress the language are dependent on ministerial and budget decisions.

18. As part of my investigation, I asked the Ministry to explain the steps it is taking to progress NZSL in education. The Ministry gave details of its current work programme which addresses some parts of the Map's goals.

The work programme described by the Ministry includes its current operational work programmes which are contributing to the improvement of Deaf learners' access to education in NZSL.

The work programme includes some evidence of where the Ministry advocated for funding to progress sections of the Map. The Ministry also identified some areas where further exploration is needed to progress the goals of the Map.

19. The Ministry has produced draft indicators for evaluating the goals of the Map.<sup>11</sup> It is clear that the Ministry has worked alongside the NZSL Board to develop these indicators.

These indicators relate to the six desired outcomes of the Map, and focus heavily on measuring the uptake of the Ministry's work programmes. For example, the key goal for *'use/access'* is that *'all children and young people with NZSL as their first or preferred language are able to access the curricula in NZSL up to y13'*.

There is a quantitative indicator of progress for *'use/access'*, defined as the *'number of ākonga and whānau accessing First Signs'*.<sup>12</sup>

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<sup>11</sup> Appendix 7 of the Ministry's January 2022 response.

<sup>12</sup> First Signs is a Ministry of Education funded in-home service for families with a Deaf or hard-of-hearing child. First Signs provides NZSL learning for the family so that they can learn together to communicate in NZSL.

20. The Ministry provided further details of progress in its current work programme in respect of NZSL in education including the deliverables, such as annual or quarterly reporting.

Most of the actions were still in progress, and the deliverables only describe the mechanisms to report on progress, without going into detail about the practical steps or timeframes specifically required to achieve each goal.

## Analysis and findings

### **Has the Ministry met its domestic and international legal obligations to enable progress of NZSL in education?**

21. Relevant domestic legislation does not specifically outline the Ministry's obligations to have in place an accountability framework for its strategy to progress NZSL.

However, the Ministry has domestic statutory obligations to ensure Deaf learners have equitable access to NZSL in education. General obligations to ensure Deaf learners are equitably included in the education system are outlined in the Education and Training Act, New Zealand Sign Language Act and the New Zealand Bill of Rights Act.

Furthermore, New Zealand has signed up to international obligations under article 24(3)(b) of the Disability Convention to facilitate the learning of sign languages and the promotion of the linguistic identity of the Deaf community.

22. These legal obligations can be described as being framed as broad, high level principles. It is clear to see how some of the rights would be enforceable on an individual basis – for example, by a student alleging discrimination on the basis of disability under the New Zealand Bill of Rights Act.

It is more difficult to determine whether the management of the education system on a more general basis is in breach of these obligations.

23. I note here the Ministry's reference to the Court of Appeal decision in *Attorney-General v Daniels*,<sup>13</sup> in which the Court considered the application of these types of rights. In that case, the Court was reluctant to find that general enforceable rights arose from the Education Act 1989 (which included a provision analogous to s 34 of the Education and Training Act).

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<sup>13</sup> *Attorney-General v Daniels* [2003] NZLR 742.



The Ministry has also pointed to *Anderson v Attorney-General*,<sup>14</sup> in which the plaintiff claimed the Ministry owed him a broadly stated duty of care to make decisions in the sole interest of enhancing his educational prospects and to always provide sufficient funding and resources for his special needs. The Court found that such a duty could not be sustained in law and the proceeding failed.

The Court did however note that more specific duties could be owed by the Ministry to an individual student, but the claim was not formulated on that basis and accordingly failed.

I note for completeness the age of these decisions, including the fact that both pre-date New Zealand's ratification of the Disability Convention in 2008.

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<sup>14</sup> *Anderson v Attorney-General* HC Auckland CIV-2004-404-002511.

However, I make no comment on whether the outcome might now be different if the cases were brought today as this would be a matter for the courts to determine on the basis of a pleaded claim.

24. I do however note that this issue is currently before the Human Rights Review Tribunal in the case of *IHC New Zealand Inc v Attorney-General*, in which the Tribunal is considering IHC's claim that a significant proportion of students attending New Zealand primary and secondary State schools who have special educational needs are being discriminated against in their access to education

25. While an Ombudsman may, after completing an investigation, form an opinion that an administrative action '*appears to be contrary to law*', it is not an Ombudsman's function to determine what the law is where it is in dispute, or to provide what would effectively be a declaratory opinion. That is the function of the courts.

26. In saying this, an Ombudsman is not precluded from looking into the reasons for, or merits of, a decision.

The Ombudsmen Act 1975 (OA) authorises an Ombudsman to inquire into all aspects of a decision, subject to the limitations in the Act, and, after doing so, to form an opinion under sections 22(1) and (2) of the OA, where appropriate, that the decision was for example, unreasonable, unjust or wrong.

27. An Ombudsman conducts their investigation as an inquisitorial body, making whatever inquiries are considered necessary into the concerns raised by the complainant.

An Ombudsman is free to call for any information that may be required, whether from the parties to the complaint, or any third party that may have relevant information relating to the subject matter of the complaint.

28. Ultimately, an Ombudsman must form an independent opinion on the substance of the complaint.

Unlike a court, an Ombudsman is entitled to consider issues of which the complainant may have been unaware, and which have come to light only in the course of the investigation.

29. In light of the above, I have considered the reasonableness of the Ministry's decision-making, having regard to the relevant legal obligations.

30. In light of the Ministry's role and legal obligations, I expect the Ministry to take reasonable steps to ensure access to NZSL in the education system.

More specifically, I expect that these steps will be visible to relevant stakeholders, be coherent and coordinated, and have a clear accountability framework.

31. With regard to the Ministry's obligations under article 24 of the Disability Convention, my expectation is that the Ministry should be working towards progressive realisation of ensuring general access to NZSL throughout the education system, recognising that it is an official New Zealand language.

32. I now turn to assess the actions and omissions of the Ministry in this context.

**Does the Map include an implementation framework that enables progress on NZSL in education?**

33. The Ministry advises that the Map<sup>15</sup> aims to *‘guide further progress towards an education system where children and young people with NZSL as their preferred language are welcome and where their progress, wellbeing and participation is valued and supported to enable achievement at levels similar to their hearing peers.’*

34. The Ministry’s response and the Map itself acknowledges there is a wide range of complex and historical issues with regard to NZSL in education, including those raised by Deaf Aotearoa.

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<sup>15</sup> As I refer to the Map throughout my analysis, I am referring to both the high-level A3 graphic document as well as its more detailed companion document.

I commend the Ministry for its extensive consultation with the NZSL Board during the development of the Map, as envisaged by Article 4(3) of the Disability Convention and its obligations under the NZSL Act.

I acknowledge the work done by the Ministry, in consultation with its key stakeholders, to appropriately identify the complex issues relating to NZSL in education.

35. The Ministry has drafted indicators to evaluate progress of the Map, which is a positive step towards ensuring the goals of the Map are being met. The Ministry outlined some of the reporting mechanisms and progress of its operational work programmes.

It is also clear the Ministry has made an effort to advocate for funding to progress sections of the Map.<sup>16</sup>

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<sup>16</sup> Annex 2 of Ministry January 2023 response – Strengthening NZSL in Education Budget Bid summary.

36. I applaud the Ministry for developing a holistic plan that sets out the long-term goals it would like to achieve to progress NZSL in education.

I also acknowledge the steps taken to progress the Map's goals, and it is clear that the Ministry is working towards increasing access to education in NZSL.

However, as set out below, I have some concerns about the implementation framework in place to progress the goals of the Map.



Does the Map have in place a reasonable implementation plan to enable accountable progress on NZSL in education?

37. There do not appear to be precise timeframes to progress the specific steps on the Map.

The Map gives a rough indication of the number of years the Ministry might expect to take to complete broad actions, but there does not appear to be a breakdown of the specific steps and timeframes to achieve each goal.

38. The Ministry has provided details of deliverables and timeframes, and some of the deliverables of the work programmes are specific about the next steps required to achieve the goals of the Map.<sup>17</sup>

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<sup>17</sup> Annex 1 of the Ministry's 31 January 2023 response.

For *'use/access: development of a National Languages Strategy for schooling'*, one of the deliverables is to develop a draft discussion document.

However, there does not appear to be a deadline for this to be completed, and the timeline for this step is 'ongoing'. Without tangible timeframes in place, it is unclear how the Ministry would demonstrate progress against the targets set out in the Map.

39. Furthermore, the current Map was drafted and distributed to key stakeholders in 2019. The Ministry indicated a 10-year timeframe to complete the goals of the Map. Nearly four years have passed since its initial development.

I consider that the Ministry could reasonably be expected, at this point, to have some idea as to how the goals of the Map will be operationalised and when this will happen.

40. I accept that COVID-19 has caused disruptions in progressing the work of the Map, and I acknowledge this is a factor outside of the Ministry's control.

However, had the Ministry identified specific steps and timeframes needed to achieve each accompanying goal in the Map, I consider this would have been helpful to reorganise, reprioritise and readjust the work involved accordingly at different stages of the pandemic.

This information could then have been clearly communicated to its stakeholders to ensure accountability and transparency in relation to which projects had been affected and delayed, and what the readjusted timeframes were.

As the Ministry did not set milestones from the outset, I am unable to assess the significance of COVID-19's impact on the deliverance of the Map's goals.

41. Although parts of the Map go into detail about the steps required to meet the desired outcomes, there are several actions that require further exploration. The Ministry outlines this as a key dependency to progress the actions of the Map. Many of the steps outlined in the Map start with *‘investigating options for...’* or *‘investigate ways of...’*

However, no further details are provided to explain the specific steps that will be taken to further investigate these options, the dates by which such inquiries are expected to be completed, or what the next steps might be.

Without details of specific steps and timeframes, it is unclear how the Ministry would set out to achieve the overarching goal of the Map.

Moreover, some actions are dependent on budget bids, and there has been little exploration of the specific steps required to progress the goals of the Map once budget has been secured.

The concerns around the timing of budget bids are discussed further below.<sup>18</sup>

42. The Ministry subsequently commented that it could provide an action plan to indicate when particular investigations will be undertaken to progress each part of the Map, *'budget notwithstanding'*.

The Ministry has endorsed the Map as its key strategy for progressing NZSL in education. I consider it is therefore essential that the Ministry explores the specific steps needed to achieve each goal set out in the Map.

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<sup>18</sup> The Ministry has provided some details of the overall implementation progress of the Map, separating progress into three categories: 'work is underway', 'requires a budget bid to progress', and 'add to the priority work programme, subject to capacity'. The Ministry has outlined the high and lower level goals, and provides a broad guide on what goals might be prioritised next, subject to capacity. However, I do not consider the Ministry has a clear implementation plan for the 'work is underway' goals, including specific steps and timeframes that it has put in place to achieve the goals.

43. Furthermore, I note that the Ministry agrees with me that there does not appear to be a clear line of accountability in progressing the goals of the Map.

44. In its further comments, the Ministry advised it disagrees with my initial framing of the Map as a ‘high-level aspirational policy document’. Instead, it defines the Map as an evidence-based approach to progressive improvement of NZSL education.

I agree insofar as the outcomes the Map seeks to achieve are thoroughly considered and evidence-based. However, as part of an evidence-based approach, I would expect the Ministry to have in place a coherent and coordinated implementation plan to logically inform decisions and sequence key milestones, in order to achieve progressive implementation.

Implementation plans come in many shapes and forms, but at a minimum they should include specific steps, timeframes, lines of accountability and targets to give a clear roadmap of how a strategy will be implemented. Despite the Ministry's disagreement with my framing, in the absence of the factors mentioned above being incorporated, the Map, in my view, does not provide a clear, evidence-based, instructive plan for change for NZSL in education.

45. I consider the omission of a coherent implementation plan (that includes specific steps, timeframes, lines of accountability and targets) to operationalise the progress of the Map's goals to be unreasonable, particularly given the length of time that has elapsed since the initial development and distribution of the Map.

46. Without a clear roadmap to success, it is difficult for the Ministry to demonstrate whether it is 'on track' to meet the wider goals of the Map.

Understandably, this has led to uncertainty and frustration for Deaf Aotearoa as a key stakeholder, as the Map does not include appropriate provisions for stakeholders to check in and feel confident that the Ministry is on track with progressing the goals of the Map.

Does the monitoring and evaluation framework promote accountability to the wider goals of the Development Map?

47. In its further comments, the Ministry provided additional evidence demonstrating how it evaluates uptake and success of various work programmes in the Map.

Based on this further evidence, I do not consider the evaluative framework the Ministry has implemented so far to be unreasonable.



48. In particular, I acknowledge the in-depth evaluative work completed for two of the Map's work programmes (that are already operational) to ensure they are fit for purpose, including for:

*First Signs*

- a. This comprehensive review was undertaken in September 2019 by an external reviewer, and concludes that First Signs provides a valuable service with a significant impact on the wellbeing, identity and communication skills of Deaf children.

*NZSL@School*

- b. This comprehensive review was undertaken in July 2021 by an external reviewer, and identifies a range of opportunities to strengthen the NZSL@School service. I acknowledge the Ministry has put in place a work programme to address the findings of this evaluation.

49. I also consider the Ministry, in consultation with key stakeholders, has also developed good draft indicators that measure success for operational work programmes that are already underway (such as the number of learners accessing *First Signs* and *NZSL@School* services).

50. However, as mentioned above, many of the areas of the Map's anticipated work programmes (that are aimed at progressing the Map's overall goals) still '*require further investigation*' and are far from operational.

I am concerned that the Map does not necessarily provide a complete framework to monitor and evaluate progress against all deliverables and goals.

51. The Ministry has noted that implementing external evaluation reviews across other domains of the Map, similar to the two mentioned above, would be costly. I am not suggesting that such an intensive evaluative programme be rolled out in this way.

52. However, the Ministry should turn its mind to how it can best monitor and evaluate its operational responsibilities and performance, and track its progress against the Map's overall goals.

Given the time that has elapsed since the establishment of the Map, and to the extent that the Ministry has not yet undertaken this overall consideration, I consider this unreasonable.

Is it reasonable for the Ministry to attribute the hindrance of any progress towards the goals of the Development Map to budgetary dependencies?

53. The Ministry has advised that many of its goals in the Map are budget-dependent. However, its strategy on identifying and advising on budget-dependent actions is not clear.

54. Ministers are responsible for setting budgets and priorities for agencies. As such, key budget decisions for the Map are ultimately made by Ministers, and are therefore not within my jurisdiction to investigate and form an opinion on.

However, I may, under section 13(2) of the OA, investigate the reasonableness of any recommendations made by agencies to Ministers.

55. The Ministry advised that one of its key roles regarding NZSL in education is to take steps to pitch for funding for budget-dependent actions.

I acknowledge the Ministry's attempts to secure budget to progress various work programmes within the Map.

However, my key concern is the lack of strategic planning to show what the Ministry is prioritising for a budget bid and when these bids will take place.

I acknowledge the Ministry has provided information on the specific goals that require a budget bid to progress.

However, I have found no evidence of a strategy underpinning which budget bids will be made and when these bids will take place.

56. At a minimum, I would expect to see a coherent, coordinated and time-sensitive approach when identifying and advising on budget bid priorities and making pitches to Ministers on budget-dependent actions.

In the absence of this approach, and given the Ministry's statutory responsibility to enable implementation of its policies, I consider that the Ministry has omitted to take adequate steps to ensure that it identifies and advises on the need to secure the budget it needs to implement the goals of the Map.

## Chief Ombudsman's opinion

57. The Ministry has domestic statutory, as well as international, obligations to ensure Deaf learners have equitable access to NZSL in education.

In light of the Ministry's role and legal obligations, I expect it to take appropriate steps to ensure access to NZSL in the education system.

More specifically, I expect the Ministry's NZSL strategy to be visible to relevant stakeholders, coherent and coordinated, and have a clear accountability framework.

58. It is my opinion that the Ministry has unreasonably omitted to implement appropriate timeframes, lines of accountability and targets to operationalise the progress of the Map's goals, or to take adequate steps to ensure that it identifies and advises on the need to secure budget to implement the goals of the Map.

The Ministry has omitted to institute appropriate provisions for stakeholders to check in and feel reasonably confident that the Ministry is on track with progressing the goals of the Map.

Lastly, to the extent that the Ministry has not yet considered how it can best monitor and evaluate its own operational responsibilities and performance against the Map's overall goals, I consider this to be unreasonable.

59. Given the Ministry's domestic and international obligations to ensure Deaf learners have equitable access to NZSL in the education system, combined with the Ministry's commitment to the Map as its key strategy to progress NZSL in education, I have formed the opinion that the Ministry's omissions are unreasonable.

## Recommendations

60. Pursuant to section 22(3) of the OA I recommend that the Ministry:

- a. Reviews and revises its key strategy (the Map) for progressing access to NZSL in education in accordance with my findings, within a twelve month period. At a minimum, I expect the Ministry's review to include the following elements:
  - i. under each goal in the Map, a clear and coordinated roadmap to show how the Ministry will achieve each of the goals. This includes specific steps required to progress the actions within the Map, as well as timeframes to achieve these steps and lines of accountability;
  - ii. consultation with its key stakeholders to assist in creating an implementation framework to underpin the goals of the Map, such as decisions on which parts of the Map should be prioritised;



- iii. an implementation framework that provides an indication of priorities for actions and budget bids; and
    - iv. a clear explanation of all dependencies and specifically how these could hinder the progress of each action or task.
  - b. provides quarterly progress reports to the Ombudsman including the following elements:
    - i. a summary on the Ministry's progress of its review and revision of the Map;
    - ii. summary of the Ministry's communication with its key stakeholders in relation to the review; and
    - iii. a time-bound plan to publish and report against the Ministry's redeveloped strategy for progressing access to NZSL in education.

A handwritten signature in black ink, appearing to read "Peter Boshier". The signature is written in a cursive style with a small dot above the 'i'.

Peter Boshier

Chief Ombudsman

## Appendix 1. Legislation

### Ombudsmen Act 1975

#### **13 Functions of Ombudsmen**

- (1) ... it shall be a function of the Ombudsmen to investigate any decision or recommendation made, or any act done or omitted ... relating to a matter of administration and affecting any person or body of persons in [their] personal capacity, in or by any of the public service agencies or organisations named in Parts 1 to 1C and 2 of Schedule 1 ... or by any officer, employee, or member of any such public service agency or organisation in [their] capacity as such officer, employee, or member.

## **22 Procedure after investigation**

- (1) The provisions of this section shall apply in every case where, after making any investigation under this Act, an Ombudsman is of opinion that the decision, recommendation, act, or omission which was the subject matter of the investigation—
- (a) appears to have been contrary to law; or
  - (b) was unreasonable, unjust, oppressive, or improperly discriminatory, or was in accordance with a rule of law or any legislation or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory; or

(c) was based wholly or partly on a mistake of law or fact; or

(d) was wrong.

(2) The provisions of this section shall also apply in any case where an Ombudsman is of opinion that in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power has been exercised for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations, or that, in the case of a decision made in the exercise of any discretionary power, reasons should have been given for the decision.

- (3) If in any case to which this section applies an Ombudsman is of the opinion—
- (a) that the matter should be referred to the appropriate authority for further consideration; or
  - (b) that the omission should be rectified; or
  - (c) that the decision should be cancelled or varied; or
  - (d) that any practice on which the decision, recommendation, act, or omission was based should be altered; or
  - (e) that any law on which the decision, recommendation, act, or omission was based should be reconsidered; or

(f) that reasons should have been given for the decision; or

(g) that any other steps should be taken—  
the Ombudsman shall report [their] opinion, and [their] reasons therefor, to the appropriate department ... and may make such recommendations as [they] thinks fit. In any such case [they] may request the department ... to notify [them], within a specified time, of the steps (if any) that it proposes to take to give effect to [the] recommendations. The Ombudsman shall also, in the case of an investigation relating to a department ... named or specified in Schedule 1, send a copy of [their] report or recommendations to the Minister concerned...

## Bill of Rights Act 1990

### **20 Rights of minorities**

A person who belongs to an ethnic, religious, or linguistic minority in New Zealand shall not be denied the right, in community with other members of that minority, to enjoy the culture, to profess and practise the religion, or to use the language, of that minority.



## Education and Training Act 2020

### **34 Students with special educational needs have same rights to education at State schools as others**

- (1) Except as provided in this Part, students who have special educational needs (whether because of disability or otherwise) have the same rights to enrol, attend, and receive education at State schools as students who do not.

## NZSL Act 2006

### **Principles to guide government departments**

#### **9 Principles**

- 1 A government department should, when exercising its functions and powers, be guided, so far as reasonably practicable, by the following principles:
  - (a) the Deaf community should be consulted on matters relating to NZSL (including, for example, the promotion of the use of NZSL):
  - (b) NZSL should be used in the promotion to the public of government services and in the provision of information to the public:

- (c) government services and information should be made accessible to the Deaf community through the use of appropriate means (including the use of NZSL).

## Public Service Act 2020

### **12 Public service principles**

- (1) In order to achieve the purpose in section 11, the public service principles are:

...

Stewardship

- (e) to proactively promote stewardship of the public service, including of—

- (i) its long-term capability and its people; and

(ii) its institutional knowledge and information;  
and

(iii) its systems and processes; and

(iv) its assets; and

(v) the legislation administered by agencies.