



Issue 19 / Autumn 2017

This issue



EDITORIAL
Funding for new priorities



NEWS
Improving the operation of the OIA



NEWS
Working smarter: our new structure



NEWS
The right to humane treatment



NEWS
International audit ahead



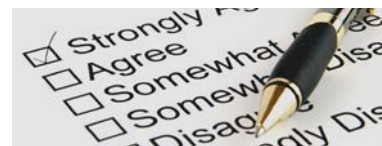
NEWS
A safe place to speak up



NEW GUIDE
OIA requests involving Ministers



OPINION
Police should release taser incident report



CASE NOTE
Local authority may withhold personal comments



EDITORIAL

Funding for new priorities

Funding from Budget 2017 will enable my Office to pursue two key priorities for the coming year. Both go to the heart of the Ombudsman's role as Parliament's watchdog.

First is to continue increasing agency compliance with the Official Information Act, and in so doing contribute to the Act's purpose to 'increase progressively the availability of official information'. At the end of 2015, we released the report *Not a game of hide and seek*, which analysed agencies' practice around the OIA and recommended improvements.

Since then, we've made changes in our Office to improve our own handling of complaints; we've released our first set of OIA statistics with the State Services Commission; more agencies are coming to us for training and advice on best practice; and Budget funding will now enable us to deliver our strategy to increase overall transparency in the OIA's operation.

This strategy includes implementing recommendations from *Not a game of hide and seek* such as developing a self-assessment tool and maturity model for agencies to assist their understanding of what our new OI Practice Investigations team will be looking for.

This team has been specifically funded by Parliament since July 2016 to help me investigate agencies' current practices, systems and compliance with the OIA on a regular basis. We'll continue to encourage agencies to publish their own OIA statistics, and we'll repeat our own data release with the State Services Commission every six months.

The second priority for the year ahead is to extend the intensity and regularity of our inspections of prisons, to ensure the humane treatment of vulnerable people held in these places of detention.

Funding from Budget 2017 will significantly enhance our activities in this area, not least by allowing us to increase our number of fulltime OPCAT (Optional Protocol to the Convention Against Torture) inspectors from three to eight. We plan more unannounced inspections of individual prison facilities as well as more in-depth inspections.

How New Zealand treats vulnerable people in places of detention is a matter of increasing attention and concern. The issue is not limited to prisons; I'm keen to also expand our monitoring of health and disability residences. I believe New Zealand can be a world leader in this area, although we clearly have some way to go.

Approximately 180 privately operated locked dementia units are currently not inspected by any monitoring body. We are intending to seek a budget bid to fill this gap. The role is likely to be significant, with the New Zealand age demographic and projected dementia population expecting to treble in the next 30 years.

Within the Office, we've made the final changes to our structure to ensure we're well positioned to deliver on our strategic intentions. We've created two main business groups: Complaints Resolution, focusing on the firm, fair and timely resolution of complaints; and Compliance and Practice, focusing on systemic interventions and advice, guidance and training to improve administrative practice generally.

Ultimately, whether inspecting a prison or resolving an OIA complaint, the theme across our work remains the same: maintaining openness and accountability of New Zealand's public institutions to the public they serve.



Improving the operation of the OIA

Improving the operation of the Official Information Act will lead to better public access to official information, enhanced respect for the law, and participation in government decision making.

The Ombudsman's 2015 report [Not a game of hide and seek](#) identified issues with some agencies' handling of the OIA, and made a number of recommendations to improve agency compliance. Our OIA Strategy to 2020, *Improving the operation of the OIA*, puts these recommendations into action with a mix of proactive interventions, guidance and support for agencies, publication of OIA data, and fast, effective complaints resolution and investigation. Learn more about the strategy [here](#).



Working smarter: our new structure

We're seeing tangible gains from the streamlining of our structure and processes to achieve faster responses and complaint resolution.

Perhaps the most considerable is the reduction of our backlog of aged complaints from 618 in December 2015 to 271 at the end of April this year.

We're on track to clear the backlog completely by the end of June 2018, a year ahead of schedule. It was good to see this recognised in the recently tabled Officers of Parliament Report:

... the Office has achieved impressive gains in carrying out its functions effectively and in a timely way. A particular consideration for us has been the Office's excellent performance in getting on top of its backlog of aged cases. It is to the Office's credit that it is doing so more quickly than expected (in two years rather than the predicted three).

We've now completed the last phase of our organisational restructure by creating two core groups: Complaints Resolution, and Compliance and Practice. This new structure and clear mandate for each group will see us achieve faster complaints resolution and more in-depth systemic interventions.

Assistant Ombudsman Priti Patel leads Complaints Resolution, and Assistant Ombudsman Emma Leach leads Compliance and Practice. They talk about their new groups below.

Priti Patel, Assistant Ombudsman, Complaints Resolution

What's your vision for Complaints Resolution?

Twelve months ago we set ourselves some ambitious goals in the Office, such as resolving at least 70 percent of complaints within three months, and slashing our backlog of aged complaints.

We've exceeded several of our own targets already, and as leader of Complaints Resolution I intend to continue that momentum. Building excellent external relationships, making sure our processes and systems are what we need for now and in future, and helping the reactive and proactive parts of the Office work together more seamlessly will all be part of that work.

What are the challenges to achieving that vision?

As an organisation, we needed to change, but of course change can be difficult and unsettling for people. The challenge is to take people with us and give them the support they need, without taking our eye off the goal. The second challenge is outside the building: we have to really focus on developing good, strong relationships with all our stakeholders, working within everyone's constraints of time and money.

What do you love about working at the Office of the Ombudsman?

Making a tangible difference to the lives of New Zealanders every day; doing incredibly diverse work that gives me deep insight into the work and decision making of a whole range of agencies; and the current transformation across the Office, which provides incredible opportunities to promote transparency and influence better decision making in agencies.

Emma Leach, Assistant Ombudsman, Compliance and Practice

What's your vision for Compliance and Practice?

The new Compliance and Practice Group positions the Office to develop our self-initiated work so that we can provide advice, look into areas of concern, seek resolution, and investigate and report on significant issues.

Our oversight includes good decision making, effective complaint handling, protection of disability rights, humane treatment of people in detention, and providing appropriate access to official information. This is all part of open and accountable government.

I want us to be proactive and agile in intervening to promote good practice and achieve systemic change; and I want us to be recognised and accessed as a valuable source of information, advice, guidance and training.

What are the challenges to achieving that vision?

We have oversight of around 4,000 government agencies, and our mandate covers many areas, so there's much we could do. Our challenge is to work within our resources, choose our interventions very carefully, and act where we can have the most effective and useful impact.

What do you love about working at the Office of the Ombudsman?

The variety of work we do, and the ability to make a difference in people's lives by helping to ensure good governance in New Zealand.



Photo: Chief Ombudsman Peter Boshier (back right) with fellow IOI members in Vienna

International audit ahead

At the end of April, Chief Ombudsman Peter Boshier attended the annual Board of Directors meeting of the International Ombudsmen's Institute (IOI) in Vienna.

The IOI was established in 1978 for the cooperation and strengthening of more than 170 independent Ombudsman institutions from more than 90 countries worldwide.

At this year's Board meeting, directors agreed on training, funding, and information priorities for the coming year. One of particular interest to New Zealand will be the agreed international audit of agency uptake of Ombudsman recommendations.

Learn more about the IOI [here](#).



A safe place to speak up

Under New Zealand's Protected Disclosures Act, the Ombudsman is one of the authorities who can receive a protected disclosure from a person with serious concerns about wrongdoing in the workplace —a 'whistleblower'. We're also tasked with providing guidance to people who may wish to make a protected disclosure.

Next month we'll be part of the launch of a project that aims to improve how organisations in New Zealand deal with concerns about wrongdoing, and how they protect the people who report it.

Led out of Queensland's Griffith University, *Whistling While They Work 2* (WWTW2) is an international research project on how to improve responses to whistleblowing in public and private organisations.

WWTW2 has now produced the *Workplace Experiences and Relationships Questionnaire* (WERQ), a 20-to-30 minute online survey for staff, managers, and board members; the wider range of perspectives from a single organisation the better. Alongside the State Services Commission, we'll be launching this survey for New Zealand workplaces in July.

Taking part is free; you'll get a confidential copy of your own as well as aggregated results, with more in-depth analyses also available.

Visit <http://whistlingwhiletheywork.edu.au/> for more information on the research project and survey.

I encourage organisations to survey many staff when participating in this project, as every response assists in the quality of the research. We want New Zealand to be a safe place for employees to speak up when they see something seriously wrong.

Chief Ombudsman Peter Boshier



Photo: Tie-down bed

The right to humane treatment

As a National Preventive Mechanism under the Crimes of Torture Act 1989, our Office monitors and inspects places of detention to ensure people are treated in a humane, safe and dignified manner.

Our OPCAT (Optional Protocol to the Convention Against Torture) inspections team will soon increase from three full-time inspectors to eight, meaning we can extend our inspections and monitoring function.

This comes at a time of growing concern about how New Zealand treats vulnerable people held in places of detention, and a commitment from this Office to fulfil our inspection and monitoring mandate.

In early March, the Chief Ombudsman released *A Question of Restraint*, a report into the Office's investigation of care and management of prisoners at risk of suicide or self harm.

In April, the Human Rights Commission released *Thinking Outside the Box*, a report by international human rights expert Dr Sharon Shalev on seclusion and restraint practices in prisons, health and disability places of detention and children's care and protection residences.

The findings of these reports shocked many New Zealanders. The most prominent case in *A Question of Restraint* was that of prisoner A, who was restrained on a tie-down bed for 16 hours a night, 37 nights in a row. Dr Shalev's report found a high use of seclusion (solitary confinement) and restraint in New Zealand places of detention, and recommended the abolition of degrading forms of restraint such as tie-down beds and chairs.

The Department of Corrections has started addressing some of the issues highlighted in *A Question of Restraint*; we support this work and will continue to monitor Corrections' responses. We also look forward to an intensified programme of inspections to improve conditions for vulnerable people held in detention.

Chief Ombudsman Peter Boshier and Chief OPCAT Inspector Jacki Jones address the Law and Order Select Committee [here](#).

NEW GUIDE



OIA requests involving Ministers

When is it lawful and reasonable for an agency to transfer an OIA request to a Minister, consult a Minister on a request, or let the Minister know of its decision?

Our latest guide to the OIA for agencies, *Dealing with OIA requests involving Ministers*, discusses the legitimate interests Ministers can have in OIA requests. Its focus is on how agencies and Ministers can manage transfer, consultation, and notification so they're complying with the law.

The guide includes easy-to-use flowcharts and worksheets, along with case studies of actual complaints dealt with by the Ombudsman. You'll find the guide [here](#).

If you're new to working with the OIA you may also find our earlier guide, *The OIA for Ministers and agencies*, useful to work through. This guide covers the 'basics', such as what is (and is not) official information, and processing requirements such as timeframes and extensions. You'll find this guide [here](#).

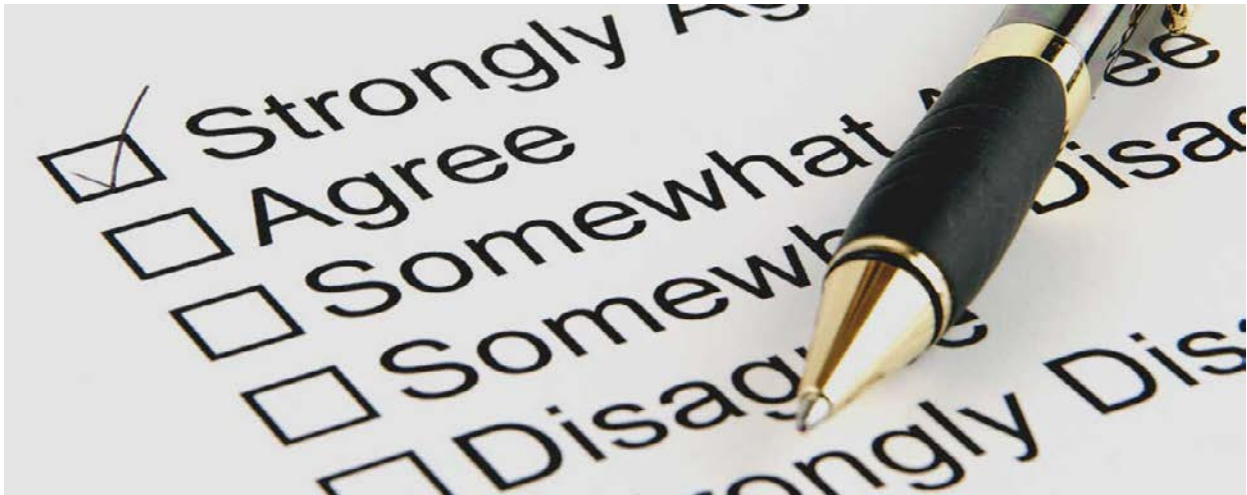


Police should release taser incident report

Police were justified in refusing a request to view footage of a man being tasered, but not in withholding the related tactical options report. This latest OIA opinion from the Chief Ombudsman follows a complaint from a television producer after Police declined both requests.

The Chief Ombudsman formed the opinion that withholding the film footage of the incident was justified on privacy grounds, but disagreed that releasing a tactical options report would compromise confidentiality, or deter a Police officer from using a tactical option in the future.

Read the full opinion [here](#).



Local authority may withhold personal comments from a staff survey

A local authority was right to withhold personal comments from a staff satisfaction survey, but was required to release aggregated results. Our latest LGOIMA case note discusses a complaint made about a local authority's refusal to release any information from the survey, and Ombudsman Leo Donnelly's resulting opinion.

Mr Donnelly formed the opinion that withholding the personal comments was justified on privacy grounds, but that these grounds should not apply to aggregated results, where there was no risk of personal identification.

Read the full case note [here](#).

