



**EDITORIAL**

## Working together to achieve excellence

Our office has decided to embark on two far-reaching projects, which could quite dramatically shape agency response so far as the Official Information Act (OIA) is concerned.

For some time, we have been signalling that we would start to publish statistical information about the OIA complaints that we receive. The project has been sometimes described as the publication of *'league tables'*, but as you can imagine, that is not a wholly accurate description. We decided we should embark on this as increased transparency around agency compliance with the OIA is one of the goals of our report on the operation of the OIA published at the end of last year, *'Not a Game of Hide and Seek'*.

There has been a major and important development. The new State Services Commissioner, Peter Hughes, has written to me asking me whether we could work together to foster a better appreciation of, and compliance with, the OIA. I have been asked to make staff available to work on a project plan and I have readily agreed. With the considerable influence of the State Services Commission, and Mr Hughes in particular, we are in my view on the cusp of achieving very real change for the good.

Of course, we must continue in our role of receiving and enquiring into complaints, and making the appropriate recommendation if we feel that an agency has not complied. A vital part of this office's function is to ensure accountability in this respect. This will continue on, not only as it always has done, but with increasing efficiency and timeliness in our office.

The agency improvement project is wholly different, and of course we were funded by Parliament in this year's budget to begin a program of assisting, informing and making state agencies more accountable. The fact that the State Services Commission leads the public service means that our own project can take on a wholly new sense of importance and urgency. Frankly, I am just delighted.

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Our plan is to publish the first statistical information by the end of January next year. But beyond that, just what we publish and when may depend very much on how this project with the State Services Commission proceeds.

The second project of real importance again concerns the operation of the OIA, but this time where, in the operation of good government, *'free and frank'* discussion arises and communications should be protected. There continues to be anxiety and unease about just where the boundary is in this issue. It is vital on both sides. For requesters, they are entitled to have transparency and input in relation to the operation of government. But equally for Ministers and officials, there must be room for robust advice and discussion to occur, and sometimes confidentiality is necessary to enable that.

Accordingly, next month, we join with the Department of the Prime Minister and Cabinet in leading a discussion on the issues that arise, and appreciation of the viewpoints, to feed into guidance we are drafting to give a little more certainty in this very sensitive area of good government.

I welcome this office's ability to work with other important agencies in this way, in order to achieve the best operation of the OIA for all New Zealanders. Next year promises to be a very exciting time, both from the point of view of consolidation of my wish to achieve much better timeliness, but also, in the development of our relationship with agencies so as to increase excellence in state sector transparency and accountability.

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## FEATURED



## Speech to lawyers in government

On 19 August 2016 the Chief Ombudsman gave an address to the Lawyers in Government Conference. Judge Boshier discussed what is and is not working well, both with the Ombudsman's Office and the application of the OIA, as well as outlining his future plans. He also gave his read out on when official advice, including legal advice, can be withheld. A copy of Judge Boshier's paper *'The Ombudsman and the Official Information Act: A Free and Frank Appraisal'* can be found [here](#).

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# COTA inspector visit to Las Colinas Detention and Re-entry Facility

Las Colinas Detention and Re-entry Facility was recently identified by Prison Reform International as a world-leading jail, due to its female-focused design which provides a more normative environment for prisoners. Emma Roebuck, COTA Inspector from the Office of the Ombudsman, was heading to the United States on holiday and arranged a visit to this exceptional county jail.

Located in Santee, the 45-acre facility serves as the primary point of intake for women prisoners in San Diego County. Las Colinas was opened in August 2014 and despite having an operating capacity of 1,270 female prisoners the facility has a community-feel with the majority of women moving freely across the site to education, the dining room, medical and vocational and work centres.

The concept of direct supervision was highly evident at the facility; staff are located with the prisoners in large open, communal spaces maximising opportunities for positive interaction between staff and prisoners.

The jail is a far-cry from a harsh, institutional environment. It is filled with daylight, soothing colours and there is a distinct absence of cell bars due to the effective focus on relational security.

Las Colinas staff explained that most female offenders pose a low-security risk, but their trauma histories present high service needs in terms of medical, psychological and social input. The facility is therefore designed to address these needs and has been constructed as a learning, and not a penal, environment.

The visit to Las Colinas provided an insightful learning opportunity for our COTA Inspector to see an overseas state of the art detention facility in full operation.



Emma Roebuck, COTA Inspector visits Las Colinas Detention and Re-entry Facility



Prison dining room, Las Colinas Detention and Re-entry Facility





Las Colinas Detention and Re-entry Facility training and rehabilitation Unit



## Reasonable Accommodation Guide focussing on persons with disabilities

The Office of the Ombudsman is part of New Zealand's Independent Monitoring Mechanism (IMM) which promotes, protects and monitors implementation of the Convention on the Rights of Persons with Disabilities (the Convention) in New Zealand. There have been two significant developments in the disability area during recent months that should be celebrated.

Firstly on 26 September 2016 the IMM launched its guide focussing on '*Reasonable accommodation of persons with disabilities*'. The guide aims to assist persons with

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disabilities to understand their rights to request reasonable accommodation. Reasonable accommodation is a key concept in the Convention, and refers to changes that may be necessary to accommodate the needs of a person with a disability. The guide also informs agencies providing services to persons with disabilities of the importance of being accessible and eliminating barriers. Chief Ombudsman, Judge Peter Boshier, spoke at the launch and noted that reasonable accommodation was largely about being flexible and keeping an open mind. He noted that providing reasonable accommodation generally costs nothing, or very little. The IMM was delighted that Catalina Devandas Aguilar, United Nations Special Rapporteur on the Rights of Persons with Disabilities, also spoke at the launch, and was complimentary of the work that had been completed in this area. The reasonable accommodation guide is available in a number of formats including an Easy-Read version, and a New Zealand Sign Language video. A link to the guides can be found [here](#).

### **New Zealand's accession to the Optional Protocol to the Convention.**

New Zealanders who consider their rights have been breached under the Convention, and have exhausted domestic remedies, will now be able to make a complaint to the United Nations Committee on the Rights of Persons with Disabilities. The Optional Protocol to the Convention enables the Committee to examine individual complaints against member states such as New Zealand, and now has over ninety signatories worldwide. The Office of the Ombudsman is very pleased with this development, and had previously made submissions to the Government on the importance of signing the Optional Protocol.

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### **IN THE NEWS**



## **Right to an Inclusive Education – Report**

In June 2016 the report *Article 24: The Right to an Inclusive Education Interim Implementation Report* was published by the Independent Monitoring Mechanism of the Disability Convention.

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This report focuses on what is happening now in Aotearoa about making inclusive education a reality for all New Zealanders. The right to inclusive education is set out in Article 24 of the Disability Convention. While this report acknowledges developments made in this area, it also recognises that many barriers still exist to prevent disabled people from being able to fully participate in education. To this end, the report provides recommendations to the Government so it can successfully work to meet its obligations under the Disability Convention.

You can view the report on our website under Disabilities Convention and also [here](#).

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## New Zealand prisons to face greater scrutiny from Ombudsman's Office – Media release

In October 2016 we published a media release on the reports by the Department of Corrections into organised fighting and access to contraband at Mt Eden Corrections Facility.

You can read the media release [here](#).

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## Ombudsman's Office working faster, despite increasing workloads

On 20 October 2016 the Ombudsman's Annual Report was tabled in Parliament which showed that the office's workload has again increased this past year, but the office was resolving complaints faster, and in greater numbers, than in the previous year.

You can view the Annual Report [here](#).

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## COTA report on tie down beds

The Chief Ombudsman is currently investigating the use of tie down beds and mechanical restraints in Corrections' facilities pursuant to his function of monitoring places of detention under the Crimes of Torture Act. The evidence gathering is complete and the report is currently under consultation. The complexity of the issues raised has necessitated a more intensive consultation process than originally anticipated. It is not possible to give a definitive time frame for finalising the report but its completion is a key priority for the Office.

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### CASE NOTES

## Request for the Callinan report on David Bain's compensation claim

In September 2016 the Chief Ombudsman published a case note about his investigation of the refusal of the Minister of Justice, Hon Amy Adams, to release a copy of the report by Hon Ian Callinan QC concerning David Bain's claim for compensation for wrongful conviction and imprisonment (the Callinan report). The Minister refused the request under section 9(2)(h) of the Official Information Act (OIA) in order to maintain legal professional privilege.

The Chief Ombudsman formed the opinion that the Callinan report was legally privileged; that privilege had not been waived; and that withholding was therefore necessary in order to maintain privilege. Furthermore, the need to withhold was not outweighed by the public interest in disclosure (section 9(1) OIA refers). The Minister was therefore entitled to refuse the request under section 9(2)(h) of the OIA.

A link to the case note can be found [here](#).

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## Record of reasons required for delegated immigration decision

On 30 August 2016 the Chief Ombudsman published a case note about an investigation into a decision by a senior immigration staff member, who had absolute discretion (now section 61 of the Immigration Act 2009) delegated from the Associate Minister of Immigration, to refuse to consider or grant a visa, and who did not record reasons for the decision. The Chief Ombudsman determined that a record of the decision should be made such as would enable an internal or external reviewer to understand why the decision was made.

A link to the case note can be found [here](#).



## Request for information relating to the business case for Wiri Prison

On 13 September 2016 the Chief Ombudsman published his opinion on the Department of Corrections' decision to withhold information from the business case on Wiri Prison. The Chief Ombudsman accepted that release of the information would prejudice or disadvantage the Department in negotiating a favourable outcome for future prison projects. The need to withhold was not outweighed by the public interest in release.

A link to the opinion can be found [here](#).

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## Request for information relating to request for inquiry into convictions of Peter Ellis

The Chief Ombudsman has published his opinion on a request for information about a request for a Commission of Inquiry into the convictions of Peter Ellis. The information included a draft letter to the complainants in response to their request for a Commission of Inquiry, and emails about the draft. The Chief Ombudsman accepted that it was necessary to withhold this information to maintain the free and frank expression of opinions during the drafting process. There was no countervailing public interest in disclosure of the draft or emails about the draft.

A link to the opinion can be found [here](#).