



# Chief Ombudsman's speech at the launch of the National Youth in Custody Index

29 June 2016, 10.00am

**Nga Hau E Wha National Marae**

Presented by Judge Peter Boshier, Chief Ombudsman for New Zealand

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It is my privilege to address a few remarks to you this morning on this wonderful occasion.

I am proud to be associated with this project, by speaking about it with you today, and in outlining why I think it is so important.

I want to take this opportunity too to tell you a little about the work of the Ombudsman, because in so many ways the light that you have shed in the report launched today, resembles the sort of light that we shed when we undertake investigations and write reports.

Last year you were addressed by the Principal Youth Court Judge, Andrew Becroft. If there is someone in New Zealand that has the best possible insight into the position of youth in this Country, it is Judge Becroft. But he is to become the next Children's Commissioner, in fact as of this Friday, it is inspirational.

When we were colleagues working in the Chief Judges Chambers together, Judge Becroft had a statutory role in overseeing Youth Justice Residences and I had the same role in relation to Care and Protection Residences. We each took a close interest in children and young people who needed care or oversight.

Your Index is a unique insight into the lives of these young people, the pathways they take when overseen by agencies and how they have fared in that care and oversight.

The reason why I think the shedding of light is so important is because it is this very group who require our closest attention. If we cannot get it right in relation to children and young people

who are troubled or challenged, the cost to society later can be horrendous. There can be no compromise.

A vibrant democratic society thrives by being transparent and open in the way it looks after its citizens. This is the ethos that applies to my Office as an Ombudsman and it is the very same ethos that is reflected in your research and the insights you have gained from this work that you have told us about in your report.

But there is another reason why I am full of praise for the tasks that you have undertaken here, and that you have done previously. And it has to do with the skills in so many respects that you have acquired and put to good use. All of the qualities that we admire so much - commitment, sheer hard work, a passion and, in this case, a willingness to work in your own time out of school hours - are all apparent. Returning to my theme of what drives a Country and a society to be truly excellent, it can be seen in this very project and so, I do not just commend you but applaud you.

The Office of the Ombudsman operates in Christchurch, Wellington and Auckland and most of our staff, of whom there are 83 at the moment, share a similar skill set, enthusiasm and commitment of the type that you have started to demonstrate in the writing of this report.

I think that the work that our Office does is vital in giving New Zealanders confidence that they have the right to be treated fairly, and that whenever the State intervenes in a person's life, they must do it to the best of their ability, conscientiously and with a view to enhancing that person's life.

That does not always happen.

And so, under the Ombudsmen Act, we have wide jurisdiction, that is, the ability to look at the decisions that State agencies have made and to recommend change if we feel that a person has not been treated fairly. To give you an example that I know will strike a chord with you as students who clearly value your education, my fellow Ombudsman, Professor Ron Paterson, considered a complaint about the decision of a school Board of Trustees to expel a student, aged 11, who has Aspergers. The student had threatened to assault a teacher in the school staff room. Professor Paterson's investigation revealed inadequacies of process and a failure to give proper consideration to highly relevant factors including alternatives to expulsion and the effects of Aspergers on the student's behaviour. Professor Paterson concluded that, by moving immediately to impose the harshest penalty, in the face of unanswered questions, a complex background and under time pressure, the Board had acted unreasonably. It is achieving this sort of justice for those that feel unfairly treated that is so important.<sup>1</sup>

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<sup>1</sup> As published:

[http://www.ombudsman.parliament.nz/system/paperclip/document\\_files/document\\_files/1159/original/170591 -  
investigation of decision to expel high school student with aspergers.pdf?1450297703](http://www.ombudsman.parliament.nz/system/paperclip/document_files/document_files/1159/original/170591_-_investigation_of_decision_to_expel_high_school_student_with_aspergers.pdf?1450297703)

Another large area of our work is the Official Information Act and of course you well know about that Act because it has been used and continues to be used in the assembly of material, so important to the writing of your report.

And so, what is the Official Information Act?

The Act has been described by our Court of Appeal as part of our constitutional framework. It ensures open Government. It enables citizens to obtain from the Government and a number of agencies, information that should be in the public domain. It therefore ensures accountability and transparency.

But not all Ministers and agencies welcome the amount of resource intensive work created by Official Information Act requests. These can be seen as obtrusive and an unwelcome distraction in an already busy day's work.

I want to give three brief but important messages in relation to the operation of the Official Information Act, and I do so because of the observation in your report that you have been disappointed by what you believe has been unwillingness by at least one State agency to provide you with the information that it should have. I sense your deep frustration and I am sorry that you have experienced it. And so can I say as follows:

Firstly, the Official Information Act has clear expectations as to what amounts to public information, what does not, the obligation to release that information which should be released and finally timeframes that apply in doing so.

It is simply unacceptable for any State agency to flout the law. It is no answer to say that an agency is busy and is under resourced. The law is the law. The duty of my Office is to ensure that the Official Information Act is complied with and we will do so with increasing firmness. Politicians, media and inquirers such as you use the Official Information Act to good effect. But I think the Act will only be effective if it can be used speedily. Delays of the type that you have experienced from some agencies here cause a lack of confidence.

This brings me to a second and equally important aspect to the seeking of information, and it has to do with how requests are framed, and identifying to the agency, with as much precision as possible, what is actually sought, making the most of offers by agencies to assist and engage. Often such discussion and engagement at the outset is just as important as a formal request and written decision. I am therefore encouraging those who use the Act frequently, but of course everyone else as well, to be careful in framing the request and to try and approach it in a customised, responsible fashion.

The third thing I want to talk about, is the help that we will give to agencies and to inquirers about how to use the Act even better. In this year's Budget, we were funded to set up a new Outreach Team, and we will use that initiative to inform, help, coach and advise on the best way that requests can be made under the Act and just as importantly, how they can be answered. And so, as happened here, some agencies that may struggle for a variety of reasons will be able to seek assistance through this proactive work that we will do.

I want to give a lead here. When you are ready to start work on your next report, I can make staff available to provide some training and advice on how to frame requests and on the issues that might arise where large volumes of information are being sought. We can also provide some suggestions for engaging with agencies with a view to hopefully achieving good results and reducing the need to lodge complaints with my Office. We will therefore work with you in the future if you would like us to.

And now to conclude.

It has been an honour for me to speak to you this morning on such an important occasion and in such a dignified setting as this one. My congratulations on a fine achievement. I hope that as work in this area continues, and I talk here of your research and findings in relation to youth and custody, we can find our own special way of encouraging and assisting you in a constructive and positive fashion. This is how a relationship should work.