

Museum of New Zealand display ‘virgin in condom’ allowed under legislation

Legislation	Ombudsmen Act 1975, Museum of New Zealand Te Papa Tongarewa Act 1992
Agency	Te Papa Tongarewa
Ombudsman	Anand Satyanand
Case number(s)	W40043
Date	1998

Decision to display art exhibition—offence given by some items—statutory functions and duties of Museum—Museum of New Zealand Te Papa Tongarewa Act 1992, ss 4, 7(j), 8(b) and 8(c)—Ombudsmen Act 1975, s 13

This complaint was one of several received expressing similar concerns with respect to the Pictura Britannica exhibition at the Museum of New Zealand. In particular the complainants indicated that they found the item ‘Virgin in a Condom’ offensive. Some complainants requested that the offending items be removed. Upon receipt of the complaints, it was first necessary to make clear to the complainants the statutory framework within which any investigation of the Museum’s decision to display the exhibition would be made. The following points were emphasised: Ombudsmen do not have authority to intervene to withdraw the exhibition or any items in it; decisions to display an exhibition is a matter for the Museum. Ombudsmen have no authority to direct the Museum in this regard; and public debate about the exhibition questioned the artistic merit and intention of some items. This judgement is necessarily subjective and arguably outside the Ombudsmen’s jurisdiction in terms of s 13(1) of the *Ombudsmen Act* over ‘matters of administration’. The substitution of an alternative opinion on such issues for that of the members of the Museum’s Board was a course of action which would only be embarked upon with some reluctance.

Notwithstanding these points, it was also noted that the Museum is established under the provisions of the *Museum of New Zealand Te Papa Tongarewa Act 1992*. The Act sets out the functions of the Board and the duties it must observe in the performance of its functions. There was thus authority to make inquiries of the Board as to what procedural steps it took to ensure compliance with its statutory functions and duties at the time it considered whether it was appropriate to put the exhibition on display at the Museum. An investigation was

undertaken on this basis, advising all parties that the inquiries would be limited to procedural issues. Professional decisions as to what should be displayed were for the Board to make.

During the course of the investigation several important points were made with respect to the Museum's procedures. The Museum has in place detailed policies and procedures to guide the development of exhibitions. The policy makes specific reference to the *Museum of New Zealand Te Papa Tongarewa Act 1992* for its mandate. The Museum also has in place a process to ensure that decisions about content, timing and location of exhibitions conform to policy.

With respect to the Museum's compliance with its statutory functions, the Museum noted that section 7(j) of the Act provides for the Museum to '*co-operate with other institutions and organisations having objectives similar to those of the Board*'. Pictura Britannica was originally scheduled to be displayed at another gallery, but that venue was temporarily closed for repair. Pictura Britannica was thought to be an important exhibition, appropriate for the New Zealand Festival of the Arts (which was being held concurrently) and for New Zealand contemporary art audiences.

Section 8 of the Act sets out the duties the Museum must observe in the performance of its functions. In particular section 8(b) requires the Board to 'recognise the mana and significance of... other major traditions and cultural heritages'. In this respect the Museum noted that Pictura Britannica was devoted to the tradition of contemporary visual arts practice that is part of British society. Attention was drawn to section 8(c) of the Act, which requires the Board to 'endeavour to ensure that the Museum is a source of pride for all New Zealanders'. The Museum also drew attention to section 4 of the Act. This section provides:

The purpose of this Act is to establish a National Museum that, under the name Museum of New Zealand Te Papa Tongarewa, shall provide a forum in which the nation may present, explore, and preserve both the heritage of its cultures and knowledge of the natural environment in order better (a) To understand and treasure the past; and (b) To enrich the present; and (c) To meet the challenges of the future.

The Museum observed that within New Zealand society and its constituent cultures there exist many differing understandings and views, all of which are challenging and which might on occasion conflict. Strategies had been developed for dealing with those potential conflicts. In this case the exhibition was positioned in a discrete exhibition space, access was limited and behind a barrier, a substantial entry charge was applied, and signage was put in place warning that some items might give offence.

In the light of this explanation of the procedures and the Chief Executive's assurance that she was satisfied before acceptance that Pictura Britannica was an appropriate exhibition within the terms of the Museum's statute, it was concluded that the procedures followed were adequate. However, it was emphasised that the outcome of the investigation expressed no view on the nature of the exhibition or its artistic merits.

The Ombudsman noted it was most unfortunate that a significant number of people were offended by some of the items in the exhibition. However, the Museum's Board and Chief Executive will often have a difficult task in circumstances such as these. There are many

different cultural strands in New Zealand society, and exhibitions which are challenging and enriching to some may be disturbing to others. Finding an appropriate balance is the ideal to strive for, but it is also one which will not always be easy to attain.

This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.