



Investigation into prisoner's right to exercise at Auckland prison

Legislation	Ombudsmen Act 1975, ss 13, 22; Corrections Act 2004, ss 69, 70
Agency	Department of Corrections
Complaint about	Exercise regime for prisoners in Auckland Prison D Block
Ombudsman	Professor Ron Paterson
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Summary

The complainant, Mr Arthur Taylor, was held in Auckland Prison's D Block. In August 2014, he made a complaint that the Department of Corrections (the Department) was denying D Block prisoners the opportunity to exercise in the open air.

Mr Taylor's complaint highlights a recurring issue of prisoners at Auckland Prison's East Division¹ not receiving the opportunity to spend at least one hour daily exercising in the open air. The issue has been raised in previous Ombudsman and Inspector of Corrections reports.

Under section 70 of the Corrections Act 2004 prisoners are entitled on a daily basis to one hour of physical exercise, and in the open air if the weather permits. The Act provides that the entitlement may be withheld in certain circumstances such as when there is an emergency at the prison or the security of the prison is threatened, as specified in section 69(2).

The purpose of the section 69(2) exceptions is not to enable prison management to organise normal prison schedules in a manner that fails at the outset to allow for the minimum entitlements of prisoners. They are intended to cover exceptional circumstances, where in an emergency or for security or health or safety reasons, there is justification for denying the entitlement for a reasonable period. Thus, simply because officers have a training day or are on annual leave and are therefore unavailable, prisoners should not be denied their entitlement to exercise in the open air. Such situations are part of normal prison operations. Prison management need to manage these without prisoners missing out on any of their entitlements.

The opportunity for prisoners to exercise daily for one hour in the open air is not a goal for prison management to work towards. It is an entitlement that should be reflected in a prison's daily regimes. The Department must be in a position to demonstrate that the minimum entitlement has been met.

My investigation found that in the period under investigation:

- Auckland Prison's D Block operated a regime on Fridays where prisoners were only unlocked in the morning for approximately 1 hour 15 minutes.
- On 13 August 2014, the unlock time provided to D Block prisoners was reduced, due to a reduction in staffing at Auckland Prison that day when 18 staff members were deployed to assist Northland Region Corrections Facility (NRCF) return to normal hours of unlock. NRCF had been on a period of lockdown following an incident where a prisoner climbed onto the prison roof.

¹ Auckland Prison consists of East and West Divisions. The East Division comprises the Management Unit and A to D Blocks (generally housing High and Maximum security prisoners). It also has the prison's At Risk and Special Needs units, which house prisoners at risk of self-harm or who have complex health needs, including mentally unwell prisoners.

I concluded that:

- the Friday regime in D Block was unreasonable as it did not allow prisoners in D Block a reasonable opportunity to have one hour exercise in the open air, in addition to cleaning their cells, having a shower and using a telephone;
- the lock-up on 13 August 2014 in D Block was not unreasonable. The Department was faced with an unforeseen situation at NRCF. The need to return NRCF prisoners to normal hours of unlock after an enforced lockdown required an assessment within a short period as to how this would be done and the resources to do so safely.

Complaint

1. Mr Taylor complained about the Department denying prisoners in Auckland Prison's D Block the opportunity to exercise in the open air. The relevant background is set out in **Annex A**.
2. In August 2014, Mr Taylor complained that prisoners at Auckland Prison continued to be denied the opportunity to spend one hour exercising daily in the open air. In his view, this indicated the Department was in *'no way deterred from continuing to deny prisoners their 1 hour minimum entitlement'* and *'nothing was learned'* from the Supreme Court decision of *Taunoa v Attorney General*,² and previous Ombudsman reports. He commented:
 - a. The Supreme Court's *'comments/findings'* in *Taunoa* confirmed that the one hour exercise in the open air was a minimum entitlement and basic safeguard for prisoners; for example paras 49-51, 88 and 97 of the decision.
 - b. Despite the Department being aware of the Supreme Court's decision of 2007 and previous Ombudsman reports, the practice continued *'for such a long period'* of time at Auckland Prison. There *'needs to be accountability'* for what has occurred.
3. In relation to a lock-up on Friday 7 February 2014, Mr Taylor advised that:
 - a. He and other prisoners in D Block were locked at 9.30am on 7 February, and remained locked until 9.48am on Saturday 8 February 2014.
 - b. He believed that there was no *'emergency or other acceptable reasons for this'* period of lock. He understood that the staff from D Block *'were away on a bonding exercise – playing softball.'*
 - c. He believed that regardless of whether the lock regime was due to staff being away on training, *'prisoners cannot lawfully be deprived of their statutory minimum of 1 hours' exercise – and in the open air if weather permits.'*

² *Taunoa v Attorney General* [2007] NZSC 70.

4. Mr Taylor also advised that subsequent to Inspector Louise MacDonald's report of 16 June 2014:
 - a. There was a further instance on Wednesday 13 August 2014 of prisoners in D Block being denied the opportunity to exercise in the open air. The majority of prisoners in D Block were locked at around 11am, and staff did not unlock them until 9.45am on 14 August 2014.
 - b. The only time he had out of his cell on 13 August 2014 was 1 hour 15 minutes to clean his cell, have a shower and make telephone calls.
 - c. He lodged PC.01 prison complaint form (registration number 323748) about this matter. He believed the prison's reply in Section C of the form about an emergency at NRCF was *'false'*.
 - d. He was told by a prison staff member that the lockdown on 13 August 2014 was organised at least the day before, so that some prisoners from D Block could receive their graduation certificate for a course they had completed. The staff member's comments were in line with his memory of the day. He recalls that half of the prisoners on his accommodation landing were unlocked for the ceremony. He believes the ceremony was *'organised at least a week in advance and attended by people connected with the course from outside the prison.'*

Department's comments

5. In December 2014, former Chief Ombudsman Dame Beverley Wakem notified the Department of her intention to investigate Mr Taylor's complaint. In February 2015, the Department responded to the investigation.
6. In relation to the lock-up on Friday 7 February 2014, the Department advised:
 - a. Staff from D Block participated in a staff wellness day on 7 February 2014. However, prisoners were not denied exercise as a result. D Block operated as usual that day as it was managed by substitute staff from other units.
 - b. On the day in question, Mr Taylor and seven other prisoners were given the opportunity to exercise in the yard. Mr Taylor was unlocked for one hour and fifteen minutes while he used the staff phone and prisoner payphone in the morning. He declined the offer to exercise in the yard.
 - c. The staff wellness day that Mr Taylor has referred to as a bonding session was in fact a planned structured day that gave staff the opportunity to develop pathways for prisoners, discuss and develop the role of corrections officers and provide a safer, more efficient environment. The day included a fitness test, a number of presentations, and at the end of the day staff participated in a physical team building activity. The staff were not playing softball as alleged by Mr Taylor.

7. In relation to the lock-up on Wednesday 13 August 2014, the Department advised:
 - a. On 13 August 2014, the Auckland Prison Advanced Control and Restraint Team were deployed to NRCF.
 - b. A total of 18 staff (including staff from D Block) were sent to assist NRCF return to business as usual after a period of lockdown following an incident where a prisoner had been on the prison roof. Due to the reduced staff numbers, Auckland Prison D Block was locked down on that day. The rest of the site was operating as usual.
 - c. Section 69(2) of the Corrections Act 2004³ sets out circumstances in which minimum entitlements may be denied for a period of time that is reasonable in the circumstances. In the Department's view, there is the potential for security being threatened in circumstances where the unavailability of staff is sudden and unexpected, such as the deployment of staff to another prison site. Therefore, the lockdown of D Block on 13 August 2014 was appropriate.
 - d. Staff had made arrangements to attend and support the High Risk Personality Programme graduation that Mr Taylor referred to. However, it was always the intention to maintain normal routines in the unit for the duration of the ceremony. This plan was unduly affected by Auckland Prison staff having to attend the emergency situation at NRCF.
8. The Department advised:
 - a. The *Taunoa* judgement was very influential in shaping the Department's policy to ensure that its obligations to administer sentences in a safe, secure, humane and effective manner are met.
 - b. The recommendations made in the Ombudsman inspection reports on Auckland Prison under the Crimes of Torture Act 1989 have been acted upon.
 - c. There have been a number of changes implemented to the routines in Auckland Prison D Block and the rest of the prison's East Division to ensure all prisoners are getting their minimum entitlement. These include the following:
 - i. Extended unlock through lunchtime and the rest of the afternoon every Friday instead of a lockdown.
 - ii. Extended daily yard time until 4pm.
 - iii. Prisoners now have access to exercise on Saturday and Sunday.
 - iv. Some of the more challenging prisoners have been relocated from D Block to the Management Unit where they have their own exercise yard attached to the cell. This allows the remaining prisoners in D Block with individual management plans to use the yards in D Block.

³ See Appendix B.

- v. The introduction of a ten hour shift for staff in D Block would allow unlock hours to extend even more.
 - vi. There are prisoner payphones in the exercise yards in D Block. These payphones are in addition to the telephone available inside the Unit, and are an indication of the strategies that have been implemented from the findings of the *Taunoa* case. Furthermore, all prisoners on directed segregation are treated the same. They all receive a minimum one hour exercise in an open area, on top of which they are given extra time to shower, clean their cells and make telephone calls.
- d. Contrary to Mr Taylor's allegations, staff at Auckland Prison have put a great deal of effort into ensuring that all prisoners are receiving their minimum entitlements. The changes to routines, unlock hours and facilities have resulted in prisoners often having access to more than the minimum entitlement of an hour exercise in the open air.

Analysis and findings

9. The starting point is section 70 of the Corrections Act 2004, which provides:
- (1) *Every prisoner (other than a prisoner who is engaged in outdoor work) may, on a daily basis, take at least 1 hour of physical exercise.*
 - (2) *The physical exercise referred to in subsection (1) may be taken by the prisoner in the open air if the weather permits.*
10. This statutory right for prisoners (not engaged in outdoor work) to take one hour daily physical exercise is described in section 69(1)(a) as a '*minimum entitlement*'.
11. The circumstances in which a minimum entitlement may be denied are set out in section 69(2), (3) and (4). The relevant over-ride provision in the present case is section 69(2)(b), where '*the security of the prison is threatened*'.
12. The Corrections Act is silent on whether the means by which a threat is brought about affects the Department's authority to deny a minimum entitlement. On its face, it appears simply to be a question of fact whether prison security is threatened (whether by the absence of staff or not) and the reason for the absence of the staff is immaterial.
13. It is nevertheless clear from the legislation and case law that minimum entitlements are important and not to be denied without good cause.
14. The purpose of the section 69(2) exceptions is not to enable prison management to organise normal prison schedules in a manner that fails at the outset to allow for the minimum entitlements of prisoners. They are intended to cover exceptional circumstances, where in an emergency or for security or health or safety reasons, there is justification for denying the entitlement for a reasonable period. Thus, simply because officers have a training day or are on annual leave and are therefore unavailable,

prisoners should not be denied their entitlement to exercise in the open air. Such situations are part of normal prison operations. Prison management need to manage these without prisoners missing out on any of their entitlements.

15. The opportunity for prisoners to exercise daily for one hour in the open air is not a goal for prison management to work towards. It is an entitlement that should be reflected in a prison's daily regimes. The Department must be in a position to demonstrate that the minimum entitlement has been met.
16. The words '*minimum*' and '*entitlement*' should be understood to mean what they say and given effect in a manner that does not diminish their importance in the corrections system. While section 6(1)(a) of the Corrections Act makes the '*maintenance of public safety...the paramount consideration*', in my view that principle is not intended to permit prisons to be administered in a manner that facilitates the denial of minimum entitlements.
17. In *Taunoa*, the Supreme Court noted the importance of the minimum entitlement to one hour exercise in the open air:⁴

These are the standards [ie, the United Nations Standard Minimum Rules for the Treatment of Prisoners] which New Zealand, in its report to the United Nations Human Rights Committee, has said are observed by New Zealand legislation and regulations. Rule 21 of the standards sets as a minimum requirement 'one hour of suitable exercise in the open air daily if the weather permits', in which the able-bodied shall receive 'physical and recreational training' with suitable equipment.

The importance of outdoor exercise for prisoner well-being is emphasised by the Committee for the Prevention of Torture in the 1991 report cited by Blanchard J at para [194]. And as the Court of Appeal in the present case commented of the minimum entitlement:

'It should not be underestimated how important such an entitlement would be to someone confined for 22 or 23 hours per day in a cell.'

18. The key issues for consideration in this Ombudsmen Act investigation are whether the D Block Friday regime and the lock-up in D Block on Wednesday 13 August 2014 were unreasonable.

D Block Friday regime

19. The Department has advised that on 7 February 2014, D Block '*operated as usual*'.

⁴ Para [51].

20. The Department's paperwork records that there was a Staff Day for C and D Block staff. The day included a fitness test, and presentations from the prison's Psychological Services, Case Management and Prison Manager.
21. On the question of what '*operated as usual*' meant in practice, the Department's paperwork records that on 7 February 2014 on the level where Mr Taylor was housed in D Block,⁵ six prisoners were unlocked at 8.30am and re-locked at 9.45am. Another six prisoners were unlocked at 9.45am and re-locked 11am. There were no further periods of unlock. Lunch was served at 11.10am and dinner at 3.20pm. A 'face to name' check of prisoners was completed at 11.23am, 3.10pm and 4.34pm.
22. In Mr Taylor's case, the paperwork records that he was unlocked at 8.30am and re-locked at 9.45am. He declined to go to the exercise yard. During unlock he had a shower and used the telephone, including telephone calls relating to legal matters. At 8.35am, he was taken to the prisoner phone booth to use the telephone. At 8.50am, he was taken to a D Block office to use the telephone. At 9.30am, he was taken to the prisoner phone booth to use the telephone. (The D Block logbook of Saturday 8 February 2014 records that he was unlocked at 9.48am and re-locked at 11.03am. He cleaned his cell and had a shower during unlock. He had recreation between 1pm and 2.30pm.)
23. I am not satisfied that the D Block Friday regime allowed prisoners a reasonable opportunity to have one hour exercise in the open air, in addition to cleaning their cells, having a shower and using the telephone. In order to have one hour exercise in the open air, prisoners clearly have to forgo some of their other basic day-to-day needs.
24. The Department has advised that there are payphones in the D Block exercise yards. However, that was not the case at the time Mr Taylor raised his concerns. I note that in response to his concerns about the D Block Friday regime, and enquiry as to when payphones would be installed in the exercise yards, Auckland Prison told him on 11 February 2014 that the installation work was '*progressing well with an expected completion date within the month*'.⁶

Lock-up on Wednesday 13 August 2014, D Block

25. In relation to the lock-up on 13 August 2014, there was an incident at NRCF on 11 August 2014. The incident resulted in a partial lockdown of NRCF. The Department's paperwork shows:
 - a. Auckland Prison's Advanced Control and Restraint team of 18 staff members was tasked with assisting NRCF's return to normal routines on 13 August 2014.
 - b. In D Block, there were 12 prisoners who were unlocked at 8.37am. At 9.48am, one of the 12 prisoners was locked. At 9.17am, another prisoner was unlocked to go to

⁵ D Block consists of four levels. Each level has 12 individual cells.

⁶ Mr Taylor's prison PC.01 complaint form no 301433.

the Medical Office. This prisoner returned to the Unit at 9.46am. At 9.48am, five prisoners including Mr Taylor were unlocked. At 9.55am, six prisoners were locked and another six prisoners were unlocked. At 11.05am, six prisoners including Mr Taylor were locked. The paperwork did not state what he did during unlock. At 11.10am, five of the prisoners, who were unlocked at 8.37am, were locked. Also at 11.10am, five of the prisoners, who were unlocked at 9.55am, were locked. Another prisoner left the Unit to go to hospital. At 1.10pm, five of the prisoners, who were unlocked at 8.37am, were again unlocked. A prisoner was unlocked at 1.45pm to go to the Medical Office, and the prisoner returned to the Unit at 2.20pm. At 2.55pm, the prisoner who went to hospital returned to the Unit and was locked. At 3.20pm a prisoner was unlocked to clean. At 3.20pm, four prisoners were locked. At 4.15pm, three prisoners were locked. The records are incomplete so it is unclear whether all the prisoners were offered the opportunity to exercise in the open air.

26. On 28 January 2016, I wrote to Mr Taylor advising that the circumstances in this case appeared to fall within the legislative exception. It was an unanticipated situation that threatened the security of D Block. The response of prison management was reasonable in the circumstances.
27. In his response on 16 February 2016, Mr Taylor commented:
 - a. The Department's omission to provide the opportunity for one hour exercise in the open air on 13 August 2014 was not the result of an emergency at Auckland Prison, but rather NRCF. An emergency within a particular prison is *'the only legal basis upon which open air exercise can be denied – and then only if it is an emergency and it is reasonable in the circumstances.'*
 - b. Furthermore, an emergency is an *'unforeseen and sudden'* event. However, the deployment of staff from Auckland Prison to NRCF was planned. The *'so called emergency'* at NRCF had occurred two days before the deployment of Auckland Prison staff. Any planned deployment of staff must take into account the legal requirements to provide prisoner minimum entitlements.
28. In a situation where the Department plans to deploy prison staff from one prison to another, knowing that this would threaten prison security unless prisoners were denied their minimum entitlement, this may be unreasonable. However, such a conclusion obviously turns on the facts of the particular case.
29. In this case, I reviewed a departmental debriefing note of the situation at NRCF:
 - a. There were NRCF prisoners who had been on lockdown following the incident on 11 August 2014 where a prisoner got onto the prison roof.
 - b. The deployment of staff in Auckland Prison's Advanced Control and Restraint Team to NRCF was to assist NRCF return to normal hours of unlock; it was not to deal with a prisoner on the roof.

- c. A decision was made within a short period to deploy Auckland Prison staff. Auckland Prison was advised at 4pm on 12 August 2014 of the assignment and that they were to be at NRCF by 8am on 13 August 2014. On 13 August 2014, the staff departed at 4am for NRCF.
 - d. The reason for the deployment of Auckland Prison's Advanced Control and Restraint Team was to ensure NRCF had the capability at hand to deal with any prisoner threats during unlock, since some NRCF prisoners may have felt aggrieved about the extended lockdown.
30. The return of NRCF to normal hours unlock was in my view a critically important objective. Hence, the absence of staff from Auckland Prison was not due to a routine, foreseeable situation. It was necessitated on an urgent basis to ensure that the prisoners at NRCF could be unlocked safely. What happened at NRCF could not have been predicted. The need to have additional staff at NRCF for safety during unlock was assessed and acted on at short notice.
31. There is a clear difference between the one-off circumstances of 13 August 2014 and a situation where prison management set Unit regimes that do not allow for prisoners' entitlement to exercise in the open air.

My opinion

32. For the reasons outlined above, in my opinion:
- a. The D Block Friday regime was unreasonable as it did not give prisoners in D Block a reasonable opportunity to have one hour exercise in the open air, in addition to cleaning their cells, having a shower and using the telephone.
 - b. The lock-up on 13 August 2014 in D Block was not unreasonable.

Monitoring of exercise entitlement

33. Given the background of Auckland Prison's apparent failure to give prisoners their minimum exercise entitlements on a continuing and consistent basis, I am concerned that prison management seem incapable of ensuring that the prison's regimes afford prisoners their statutory entitlement to one hour exercise in the open air, weather permitting.
34. I wrote the Department on 28 January 2016 proposing to recommend that the Department:
- a. monitor and record the provision to prisoners of one hour exercise in the open air in the Units at Auckland Prison's East Division;
 - b. act on any breach of the entitlement that arise; and

- c. provide the Chief Ombudsman with detailed monthly reports from its monitoring (including details of any breaches that occurred) on an ongoing basis until further notice. The Chief Ombudsman would consider the monthly reports and decide whether the issue has been adequately addressed.
35. On 25 February 2016, the Department advised that Auckland Prison has put in place a reporting regime to provide the Chief Ombudsman with detailed monthly reports. At the time of formalising my opinion, this Office had received two such reports from Auckland Prison.

Professor Ron Paterson
Ombudsman

Appendix A: Background

Auckland Prison was inspected under the provisions of Part 2 of the Crimes of Torture Act 1989 on 2-4 August 2010. As a result, two recommendations regarding prisoners' entitlements to open air exercise were made to the Prison Manager.

On 10 August 2011, the Prison was again inspected under the Crimes of Torture Act. Following that inspection one of the recommendations made earlier was restated.

The Department's management of Mr Taylor

In April 2012, following several complaints from prisoner Arthur Taylor, the former Chief Ombudsman commenced an investigation (reference 329229) into the Department's management of him at Auckland Prison during the period 15 June 2011 to 30 April 2012. Relevant to the current investigation, the former Chief Ombudsman found that Auckland Prison did not provide Mr Taylor with the statutory entitlement of one hour exercise each day between October 2011 and May 2012.

Mr Taylor's complaint to Auckland Prison, January 2014

On 20 and 31 January 2014, Mr Taylor lodged PC.01 prison complaint forms (registration numbers 301433 and 302063) raising concerns that prisoners were not receiving the statutory entitlement of one hour exercise in the open air. In section A of complaint form 301433, Mr Taylor wrote:

The time being allowed out of cells is insufficient in terms of section 70 of the Corrections Act. Under the present regime prisoners on each half of the landings are receiving 1 hour 15 minutes out of their cells on Fridays as a maximum. Corrections are well aware from COTA inspections⁷ into my treatment by the Ombudsman, that time for cleaning, showers, phonecalls etc is separate and additional to time for exercise. That means on top of the minimum 1 hour each day and in the open air if weather permits we are only receiving 15 minutes on Friday for phone calls (among up to 12 prisoners), cleaning and showers. As well we are not being permitted any exercise in the open air on Fridays. This is all unlawful I request this regime be reviewed to bring conditions into compliance with applicable law/policy. Further Mr Ellis-Kirif [sic] assured me in the middle of 2013 [payphones] would be installed in the yards – approval was given when is this going to be actioned?

⁷ By 'COTA', Mr Taylor was referring to the inspections and reports of Auckland Prison under the Crimes of Torture Act. For clarity, the COTA inspections and reports did not concern the specific treatment of Mr Taylor, but rather the conditions at the Prison. A separate investigation into the particular treatment of Mr Taylor between 15 June 2011 and 30 April 2012 at Auckland Prison was conducted under the Ombudsmen Act.

In section A of complaint form 302063, Mr Taylor wrote:

As Corrections is aware from COTA reports and the recent Special Investigation by the Ombudsman into my treatment at Auckland Prison over a 'snapshot' 8 months the 1 hour in the open air (where weather permits) exercise daily requirement is additional to the time to be permitted out of cell for cleaning, showering, phonecalls etc. I have pointed out in a previous (unanswered) PC01, that my (and other prisoner's) only being unlocked for a total one hour...on Fridays is not lawful. It does not matter what the excuse, I am statutorily (section 70 and 69(1)(a) Corrections Act) entitled to this. And as well this exercise is to be taken in the 'open air' at my option – not if staff/Corrections feels like giving it. I put Corrections on specific notice, if this statutory minimum entitlement continue to be denied, it is only going to result in the Department receiving yet more criticism for acting as though it is above the law as well as legal action and complaints to outside agencies. As noted, additional time out of cell must be given for the other matter enumerated above.

In response to Mr Taylor's concerns, Auckland Prison replied on 11 February 2014 as follows in section C of complaint form 301433:

As per section 70 of the Corrections Act.

70 Exercise

- (1) Every prisoner (other than a prisoner who is engaged in outdoor work) may, on a daily basis, take at least 1 hour of physical exercise.*
- (2) The physical exercise referred to in subsection (1) may be taken by the prisoner in the open air if the weather permits.*

POM F.01.01 Minimum entitlement provisions

Every prisoner (other than a prisoner who is engaged in outdoor work) may, on a daily basis, take at least one hour of physical exercise. The exercise may be taken by the prisoner in the open air if the weather permits.

Delta Block Management treat this period claimed by Mr Taylor out of cell as minimal and regularly extend this period. Access to the phone well exceeds minimal entitlements for all prisoners in the unit.

The introduction of card phones [payphones] in the yards is progressing well with an expected completion date within the month.

Mr Taylor's complaint to the Inspector of Corrections, January 2014

In addition to making a complaint through the Department's prison complaints process, Mr Taylor made a complaint to the Inspector of Corrections.

On 17 March 2014, Inspector Louise MacDonald wrote to Mr Taylor advising that:

- She was *'satisfied'* that the *'unlock regime for prisoners in D Block is communicated clearly to the prisoners and that they were aware the Unit was locked down on Friday afternoon so management could facilitate staff operational requirements (e.g. training/administration/emergency exercises).'*
- She was also *'satisfied'* that the *'Unit regime on Fridays was not unlawful'* as Mr Taylor had alleged in his interview with her on 28 January 2014, and his complaint forms 301433 and 302063.

On 25 March 2014, Ms MacDonald wrote to Mr Taylor advising that:

- During her review, on a separate matter, of documentation relating to the regimes in the Units of Auckland Prison's East Division, she realised that she had misinterpreted section 69(4)(aa)(ii) of the Corrections Act 2004 when she originally responded to his complaint. She was originally of the *'view that a prisoner could be denied access to their 1 hour exercise in the 'open air' environment under Section 70 of the Corrections Act, for no more than 2 consecutive days if authorised by the Prison Manager for the reasons provided under clause (4)(aa)(ii)'* of section 69.⁸
- She now realised that her original interpretation (that all prisoners could be denied minimum entitlements for no more than 2 consecutive days at a time) was incorrect and that this only applied to *'those prisoners'* referred to in *'clause 4(aa)(i)'*.
- Upon realising her mistake, she reviewed her original response. Although prisoners in D Block are now provided daily with the opportunity of one hour's exercise in the exercise yard, she understood that *'this was not always the case'*.
- She was aware that prisoners in other Units of Auckland Prison's East Division were not provided with *'the opportunity to take their minimum exercise period of 1 hour in an open air environment, weather permitting as per Section 70 of the Corrections Act 2004'*.
- On realising that Auckland Prison was not complying with Section 70 of the Corrections Act 2004, she *'brought the matter to the Prison Manager's attention to rectify'*. The Prison Manager was reviewing *'the Unit regimes and operational*

⁸ Section 69(4)(aa) of the Corrections Act states:

(4) A prisoner –
[(aa) may be denied, for not more than 2 consecutive days at a time, the minimum entitlement referred to in subsection 1(a) if –
(i) the prisoner has been temporarily released from custody or temporarily removed from prison under section 62 or removed for judicial purposes under section 65; and
(ii) in the opinion of the prison manager, it is not practicable to provide the entitlement during the times the prisoner is in the prison:]

resources to ensure compliance with section 70, Corrections Act 2004 for all prisoners at Auckland Prison'. She would continue to liaise with prison management to ensure compliance with section 70 at Auckland Prison.

Mr Taylor had made a separate complaint to the Inspector of Corrections about High security classification prisoners being managed in Maximum security conditions at Auckland Prison. He received Inspector Louise MacDonald's report of 16 June 2014 on the issue. Relevant to his complaint about D Block prisoners being denied access to exercise in the open air, he noted that Ms MacDonald's report stated (at paras 43-45):

43. While reviewing documentation of the Unit regimes for East Division, the regional Inspector found that Units A, B & C Unit routines do not facilitate any 'open air' facility (yards) for prisoners on Friday, Saturday & Sunday. This would appear to be in breach of Section 70 of the Corrections Act 2004 which states that;

'70 Exercise

(1) Every prisoner (other than a prisoner who is engaged in outdoor work) may, on a daily basis, take at least 1 hour of physical exercise.

(2) The physical exercise referred to in subsection (1) may be taken by the prisoner in the open air if the weather permits.'

44. The regional Inspector brought the matter to the attention of the Prison Manager on 20 March 2014 who advised that he is dealing with the matter as a priority to ensure compliance with Section 70 of the Corrections Act 2004 for all prisoners at ARP [Auckland Regional Prison].

45. The regional Inspector will continue to monitor the prison's progress to ensure compliance of Section 70, Corrections Act 2004.

Mr Taylor's complaint to Auckland Prison, August 2014

On 20 August 2014, Mr Taylor lodged PC.01 prison complaint form 323748 to complain about being denied the opportunity to exercise in the open air on 13 August 2014. He wrote in Section A of the form:

On 13-08-2014, I along with the majority of D Unit Prisoners were denied the opportunity for any open air exercise, in breach of Section 69(1)(a) and 70 Corrections Act. We were locked from 11 am Wednesday until 9.50am Thursday (14/8).

Why was this? Why were legal requirements including POM [the Department's Prison Operations Manuel] breached and disregarded? All relevant documents/information is requested and an investigation of why this decision was made to allow this 'Basic Safeguard' (C. Taunoa, Supreme Court, Paragraph 194) to be denied.

In section C of the complaint form, Auckland Prison's reply of 21 August 2014 stated:

F.01.01 Minimum entitlement provisions

a. a PCO [Principal Corrections Officer] or other authorised delegate, has determined that it is impracticable to provide the entitlement during the time the prisoner is in the prison, and

b. the prisoner has not been denied this entitlement on the two previous consecutive days.

The day Mr Taylor is complaining about 13 August 2014 an off site emergency depleted staffing levels at Auckland Prison so accordingly services were reduced as per Standard Operational Procedures so Auckland Prison could deploy 16 staff to attend the incident.

Appendix B: Relevant Corrections Act provisions and departmental policy

Corrections Act 2004

Section 69(1)(a) of the Corrections Act 2004 states that every prisoner has minimum entitlement to *'physical exercise as provided for in section 70'* of the Act.

Section 70 states:

- (1) Every prisoner (other than a prisoner who is engaged in outdoor work) may, on a daily basis, take at least 1 hour of physical exercise.*
- (2) The physical exercise referred to in subsection (1) may be taken by the prisoner in the open air if the weather permits.*

Section 69(2) states that:

- a prisoner may be denied, for a period of time that is reasonable in the circumstances, 1 or more of the minimum entitlements set out in subsection (1) if –*
- (a) there is an emergency in the prison; or*
 - (b) the security of the prison is threatened; or*
 - (c) the health or safety of any person is threatened.*

Section 69(6) states that *'subsections (2), (3) and (4) override sections 70 to 78'*.

The Department's policy

Paragraph 1 of the Department's policy *'F.01.01 Minimum entitlement provisions'* states:

Every prisoner (other than a prisoner who is engaged in outdoor work) may, on a daily basis, take at least one hour of physical exercise. The exercise may be taken by the prisoner in the open air if the weather permits. This entitlement should be denied if:

- a. the prisoner has been temporarily released, removed, or is attending court, and*
- b. a PCO [Principal Corrections Officer] or other authorised delegate, has determined that it is impracticable to provide this entitlement during the time the prisoner is in the prison, and*
- c. the prisoner has not been denied this entitlement on the two previous consecutive days.*

Paragraph 1 of the Department's policy *'F.01.02 Prisoners denied minimum entitlements'* states:

A prisoner may be denied for a period of time that is reasonable in the circumstances, any of the minimum entitlements if there is an emergency in the

prison or the security of the prison is threatened or if the health and safety of any person is threatened.