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OPCAT Report

Report on an unannounced follow up inspection of Invercargill Prison under the Crimes of Torture Act 1989

15 July 2019

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Chief Ombudsman
National Preventive Mechanism

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Office of the Ombudsman
Tari o te Kaitiaki Mana Tangata





OPCAT Report: Report on an unannounced follow up inspection of Invercargill Prison under the Crimes of Torture Act 1989

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Contents

Executive Summary	4
Treatment	6
Protective measures	9
Material conditions	9
Activities and communications	11
Health care	12
2019 follow up recommendations	14
Acknowledgements	14
Publication	14
Appendix 1. Summary of 2016 recommendations and 2019 follow up findings	15
Appendix 2. Corrections’ response to 2019 follow up findings and recommendations	18
Appendix 3. Legislative framework	22

Executive Summary

Background

In 2007, the Ombudsmen were designated one of the National Preventive Mechanisms (NPMs) under the Crimes of Torture Act (COTA), with responsibility for examining and monitoring the general conditions and treatment of detainees in New Zealand prisons.

From 8 April to 12 April 2019 my Inspectors (to whom I have authorised to carry out visits of places of detention under COTA) visited Invercargill Prison (the Prison) to follow up on recommendations made in a previous OPCAT report (May 2016). There were 174 prisoners in the Prison on the first day of inspection.

Methodology

During the follow up inspection from 8 to 12 April 2019, my Inspectors visited all units and spoke with a selection of managers and staff across the site.

The team looked for progress in implementing the recommendations made in 2016, and identified any additional issues that need addressing.

My Inspectors provided verbal feedback to the Prison Director on 12 April 2019, outlining initial observations.

Findings

Eighteen recommendations were made following the full OPCAT inspection in 2016. The follow up inspection found of these 18 recommendations, six had been achieved, six partially achieved and six not achieved. Six repeat recommendations have been made as a consequence of the April 2019 follow up inspection. (See Appendix 1).

My Inspectors made the following positive observations:

- the Prison had conducted a programme of work to clean and maintain the facility. Noticeable improvements, in terms of the condition of the Prison, were evident. The facility was cleaner, tidier and in better repair. A rolling painting programme was now in place;
- my Inspectors conducted a review of Directed Segregation and Use of Force paperwork and found the paperwork to be comprehensive;
- a new cultural and arts initiative had been introduced for remand prisoners. This initiative was prisoner-led and supported by staff;
- sentenced prisoners in Central and South Units were locked at 7pm; and
- additional medical staff had been rostered on the weekend.

However, I continue to have significant concerns about the quality of care and management provided to prisoners in the Intervention and Support Unit (ISU)¹ at the Prison. My specific concerns relate to:

- an absence of therapeutic activities, and intervention and support for prisoners experiencing mental distress;
- extended periods of isolation for prisoners in the ISU (up to 23 hours a day);
- prisoners being held in dry cells² without access to toilets and drinking water, due to a shortage of standard cells, contravenes Rule 15 of the UN Standard Minimum Rules for the Treatment of Prisoners;
- the ISU being used as the default management unit following use of force, which undermined the intended purpose of the environment; and
- the weekly staff rotation in the ISU, resulting in some staff not building the necessary skills and experience to work with prisoners experiencing mental distress.

¹ Formerly known as the At Risk Unit (ARU).

² A dry cell is a room without a toilet or water source.

Treatment

2016 Recommendations – treatment

- a. Cameras in the At Risk cells and Basement Unit should not cover the toilet area. Furthermore, all toilets should have privacy screening. **Not achieved.**

Findings 2019

Cameras were still operating in the Intervention and Support Unit (ISU) cells. My Inspectors observed prisoners via CCTV, when they were naked, partially naked, or undertaking their ablutions. Cameras were still operating in certain cells in the Basement Unit³. Prisoners allocated to these cells covered the cameras and staff permitted them to remain obscured. The Prison had not introduced any specific measures to address these privacy issues since my 2016 inspection.

My Inspectors note that some prisons and court cells have recently implemented technology that 'blacks out' the toilet area in camera feeds. Invercargill Prison has yet to introduce such technology.

I remain of the opinion that the ability to observe prisoners, either directly or via CCTV, undertaking their ablutions or in various stages of undress is degrading treatment or punishment and a breach of Article 16 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

I continue to engage with the Department of Corrections on this issue.

- b. The Prison needs to implement a plan to improve general living conditions for remand prisoners; including accommodation, constructive activities and recreation space. **Partially achieved.**

Findings 2019

My Inspectors observed notable improvements to the general living conditions across the entire Prison. A rolling painting programme was in place. Cell standards had improved and graffiti had been removed.

However, remand prisoners continued to be double-bunked in cells built for one. A lack of internal recreation space and purposeful activity for this group of prisoners remained an issue.

³ One of the four Units in the Prison – North, Basement, Centre and South.

The majority of remand prisoners were either locked in their cell or in the yard (a basic yard-to-cell regime). However, I note and welcome the development of a carving programme and an arts programme for a small group of remand prisoners (approximately 12). This new culturally informed initiative was prisoner-led and supported by staff. Prisoners and staff spoke of the benefits of these two programmes, and the positive impact of these activities for the prisoners was apparent to my Inspectors.

- c. All management plans need to be individualised, specific, relevant and complete. **Partially achieved.**

Findings 2019

My Inspectors found ISU management plans were basic, not individualised and generic in content.

Management plans for prisoners on directed segregation were completed within timeframes however, some plans were lacking detail on how to reduce the likelihood of inappropriate prisoner behaviour. Other plans reflected good practice and detailed multi-disciplinary working to address issues that had resulted in directed segregation.

- d. Prisoners in the ARU should receive specialist input and therapeutic intervention to address their current and ongoing mental health needs. **Not achieved.**

Findings 2019

I am aware that the Department of Corrections is currently undertaking a pilot project at some prisons to increase therapeutic responses in ISUs. The purpose of an ISU is to enable the observation and safe management of prisoners at risk of harming themselves. However, my Inspectors saw no evidence of ISU prisoners receiving specialist input and therapeutic interventions to address their current and ongoing mental health needs.

At the time of inspection, the ISU's three safe cells were at capacity, and both dry cells were being used to accommodate at-risk prisoners. Prisoners in dry cells do not have access to a toilet and drinking water in their cell. Due to a shortage of safe cells, prisoners were being held in dry cells without ready access to toilets and drinking water in contravention of Rule 15 of the UN Standard Minimum Rules for the Treatment of Prisoners:

The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary in a clean and decent manner.

Prisoners in dry cells were provided with cardboard receptacles to undertake their ablutions, which I deem to be inadequate sanitary installations.

My Inspectors were also concerned about hot cell temperatures and lack of access to drinking water. Inspectors were informed that medical staff had concerns about the risk of dehydration for prisoners in the ISU and had, on occasion, reminded prisoners to proactively ask custodial staff for water.

Since my 2016 inspection, the Prison had contracted a mental health In-Reach Clinician,⁴ however, the prescribed referral process meant that prisoners in the ISU were not automatically seen and supported by the clinician. At the time of inspection, there was an absence of therapeutic activities, interventions and support for prisoners in the ISU.

Prisoners were experiencing long periods of isolation, up to 23 hours. Staff informed Inspectors that opportunities for suitable prisoners to associate in the ISU yard or day room was allowed. This was not occurring at the time of the inspection.

Staff working in the ISU were on weekly rotation, and not subject to the usual extended placement my Inspectors observe at other prisons. This meant that staff were not building the relevant skills, relationships and expertise to work in such a highly specialised Unit.

In addition, the ISU was also being used as the default management facility for prisoners following a use of force, which undermined the intended purpose of the environment.

- e. The Prison should carry out its own safety survey to identify where prisoners feel least safe, and address the findings in an arena that includes prisoner representation. **Partially achieved.**

Findings 2019

The Prison had not undertaken a specific safety survey, but it had undertaken a well-functioning service assessment,⁵ which included focus groups with prisoners on each of the four units (Basement, North, Centre and South). Prisoners in that focus group feedback reported feeling generally safe in the Prison although concerns were raised regarding risks of stand-overs, intimidation and bullying within the context of double-bunked cells and yards.

The Prison also employed the Department of Corrections national 'Prison Tension Assessment Tool' on a daily basis. Senior managers reported that tension levels at the Prison were consistently low.

⁴ Mental Health In-Reach Clinicians provide services to prisoners with mild to moderate mental health issues. This is currently a pilot scheme, which is funded until June 2019.

⁵ *Tokorima a Māui*. June 2018.

Protective measures

2016 Recommendations – protective measures

- f. A review of the complaints process should be conducted at site level to ensure that prisoners can readily access complaint forms and the system is operating effectively. (This could be carried out in conjunction with the safety survey).
Achieved.

Findings 2019

A new complaints process had been rolled-out nationwide since my 2016 inspection. My Inspectors observed staff loading prisoners' complaints on the Integrated Offender Management System (IOMS) in a timely manner. A review of a sample of prisoner complaints showed that generally complaints were responded to appropriately and within timeframe.

Prisoners did not raise any concerns regarding the complaints process with my Inspectors.

Material conditions

2016 Recommendations – material conditions

- g. Locking of prisoners should commence at 4.45pm, as per the stated 8 to 5 regime.
Not achieved.

Findings 2019

My Inspectors noted that locking of prisoners in the North and Basement units commenced as early as 4pm during the inspection. However, prisoners in Centre and South units were locked at approximately 7pm.

- h. Management should review their maintenance and cleaning procedures to ensure that cells are kept in a clean and decent state of repair. **Achieved.**

Findings 2019

My Inspectors noted significant improvements to the general living conditions across the entire Prison. A rolling painting programme was in place. Cell standards had improved and graffiti had been removed. The Prison was generally clean and well-maintained.

- i. The Prison undertakes a stock-take of prisoners clothing to ensure there is adequate clean clothing for prisoners. **Achieved.**

Findings 2019

My Inspectors noted adequate clothing stocks. Prisoners reported that they had been issued a sufficient amount of suitable clothing.

- j. The serving of meals needs to be standardised to normal hours, particularly on units (South and Centre) that are not running an 8-5 regime. This would involve lunch being served any time between 12.00 and 1.30pm, and dinner to be served any time between 5pm and 7pm. **Not achieved.**

Findings 2019

Mealtimes had not been standardised to normal hours. My Inspectors observed dinners served to prisoners at their cell doors at approximately 4pm in the North and Basement Units and lunches served at around 11:15am during the inspection.

Inspectors were informed by senior managers that the Department of Corrections is undertaking a national review of shift patterns, which will include a review of prisoner meal times.

I consider the serving of evening meals at 4pm contravenes Rule 22 of the Nelson Mandela Rules:

Every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

- k. Remand prisoners should have access to dining facilities. **Not achieved.**

Findings 2019

I continue to remain concerned about remand prisoners eating their meals in small cells in close proximity to the toilet.

No prisoners, sentenced or remand, were observed using the designated dining area. Staff reported that sentenced prisoners in Centre and South units had stopped eating in the communal dining area and had been eating in their respective Units while refurbishment work on the Prison kitchen was undertaken. Upon completion of the refurbishment, sentenced prisoners informed staff that they preferred eating in the open communal areas within their units.

- I. The Department should consider reviewing the items available on the P119 with a view to offering healthier choices. Prisoners should be part of the review process. **Partially achieved.**

Findings 2019

A review of the P119 (prisoner shop) has been conducted and implemented nationwide since my 2016 inspection. Prisoners informed my Inspectors that they were not part of the review process.

Activities and communications

2016 Recommendations – activities and communications

- m. All Right Track notes should be entered into IOMS. **Partially achieved.**

Findings 2019

My Inspectors' review of prisoner notes on IOMS showed that general Right Track file notes were being entered on IOMS by custodial staff. However, Right Track multi-disciplinary team (MDT) weekly meeting notes continued to be stored on a separate computer system and were not always entered into IOMS.

Right track MDT weekly meetings were not occurring regularly. Staff reported that the meetings were becoming increasingly sporadic and despite being scheduled were only occurring in approximately 50 percent of cases as custodial staff were often performing other duties.

- n. Expand the use of Audio Visual Link (AVL) visits for out-of-region family contact. **Not achieved.**

Findings 2019

At the time of the inspection, only seven percent of prisoners were from out-of-region. AVL provision for prisoners from outside the region had not been formally established at the Prison. My Inspectors were unable to identify a clear process for prisoners to request AVL family contact.

Health care

2016 Recommendations – health care

- o. Patients should be able to make a confidential health care complaint internally instead of using the general prison complaint system. Responses should be provided in a timely manner. **Partially achieved.**

Findings 2019

The Prison had not established a separate health complaints system. The Manager, Health Services informed my Inspectors of the measures the Prison was taking to provide better confidentiality regarding prisoners' health complaints. This entailed not entering health complaint responses in IOMS. My Inspectors reviewed a number of health complaints and noted that responses were both confidential and timely.

- p. There should be adequate supervision of all medications (including controlled drugs) to ensure safe practice. **Achieved.**

Findings 2019

During the 2016 inspection, my Inspectors saw an internal memo (dated 7 July 2008) requesting an exemption⁶ for the need to have a second authorised person to check the balance of controlled drugs at the time medication was administered.

⁶ Approval of the exemption was not provided.

During the follow up inspection, the Health Manager informed my Inspectors that a second authorised person has been rostered onto all shifts, including weekends to ensure appropriate administration of medication. Rosters confirmed that additional nurses have been placed on the weekend.

q. Dental provision should be increased with some urgency. **Achieved.**

Findings 2019

At the time of the 2016 inspection, there was evidence of several semi-urgent and non-urgent patients having to wait considerable time for dental treatment.

I am pleased to see that the provision of dental services at the Prison had improved. Triage systems had been reviewed. Inspectors noted timeframes to see the dentist were reasonable.

r. A service level agreement should be developed with the regional forensic service. **Achieved.**

Findings 2019

My Inspectors were provided with a signed, up to date copy of the joint Service Level Agreement with Invercargill Prison, Otago Corrections Facility and the Southern District Health Board's Regional Forensic Psychiatric Service.

2019 follow up recommendations

Treatment

I recommend that:

- a. Cameras in the ISU cells and Basement Unit not cover the toilet area. Furthermore, all toilets should have privacy screening. **This is a repeat recommendation.**
- b. The Prison implements a plan to improve general living conditions for remand prisoners; including accommodation, constructive activities and recreation space. **This is a repeat recommendation.**
- c. Prisoners in the ISU receive specialist input and therapeutic intervention to address their current and ongoing mental health needs. **This is a repeat recommendation.**

Material conditions

- d. Locking of prisoners commence at 4.45pm, as per the stated 8 to 5 regime. **This is a repeat recommendation.**
- e. The serving of meals be standardised to normal hours, particularly on units (South and Centre) that are not running an 8 to 5 regime. This would involve lunch being served any time between 12pm and 1.30pm, and dinner to be served any time between 5pm and 7pm. **This is a repeat recommendation.**

Activities and communications

- f. Expand the use of Audio Visual Link (AVL) visits for out-of-region family contact. **This is a repeat recommendation.**

Acknowledgements

I appreciate the full co-operation extended by the managers and staff to my Inspectors during their visit to the Prison. I also acknowledge the work that would have been involved in collating the information sought by the Inspectors.

Publication

Under Section 27 and 36 of the Crimes of Torture Act 1989, I will present a copy of my final report to Parliament before publication on my website.

Peter Boshier

Chief Ombudsman

National Preventive Mechanism

Appendix 1. Summary of 2016 recommendations and 2019 follow up findings

2016 recommendations	Prison response	Follow up finding 2019
a. Cameras in the At Risk cells and Basement Unit should not cover the toilet area. Furthermore, all toilets should have privacy screening.	Rejected	Not achieved
b. The Prison needs to implement a plan to improve general living conditions for remand prisoners; including accommodation, constructive activities and recreation space.	Partially accepted	Partially achieved
c. All management plans need to be individualised, specific, relevant and complete.	Accepted	Partially achieved
d. Prisoners in the ARU should receive specialist input and therapeutic intervention to address their current and ongoing mental health needs.	Partially accepted	Not achieved
e. The Prison should carry out its own safety survey to identify where prisoners feel least safe, and address the findings in an arena that includes prisoner representation.	Partially accepted	Partially achieved
f. A review of the complaints process should be conducted at site level to ensure that prisoners can readily access complaint forms and the system is operating effectively. (This could be carried out in conjunction with the safety survey).	Partially accepted	Achieved
g. Locking of prisoners should commence at 4.45pm, as per the stated 8 to 5 regime.	Accepted	Not achieved

2016 recommendations	Prison response	Follow up finding 2019
h. Management should review their maintenance and cleaning procedures to ensure that cells are kept in a clean and decent state of repair.	Accepted	Achieved
i. The Prison undertakes a stock-take of prisoners clothing to ensure there is adequate clean clothing for prisoners.	Rejected	Achieved
j. Ideally, the serving of meals needs to be standardised to normal hours, particularly on units (South and Centre) that are not running an 8-5 regime. This would involve lunch being served any time between 12.00 and 1.30pm, and dinner to be served any time between 5pm and 7pm.	Rejected	Not achieved
k. Remand prisoners should have access to dining facilities.	Rejected	Not achieved
l. The Department should consider reviewing the items available on the P119 with a view to offering healthier choices. Prisoners should be part of the review process.	Rejected	Partially achieved
m. All Right Track notes should be entered into IOMS.	Accepted	Partially achieved
n. Expand the use of AVL visits for out-of-region family contact.	Partially accepted	Not achieved
o. Patients should be able to make a confidential health care complaint internally instead of using the general prison complaint system. Responses should be provided in a timely manner.	Partially accepted	Partially achieved
p. There should be adequate supervision of all medications (including controlled drugs) to ensure safe practice.	Partially accepted	Achieved

2016 recommendations	Prison response	Follow up finding 2019
<p>q. Dental provision should be increased with some urgency.</p>	<p>Partially accepted</p>	<p>Achieved</p>
<p>r. A service level agreement should be developed with the regional forensic service.</p>	<p>Accepted</p>	<p>Achieved</p>

Appendix 2. Corrections' response to 2019 follow up findings and recommendations

Follow up recommendations

- a. Cameras in the At Risk cells and Basement Unit not cover the toilet area. Furthermore, all toilets should have privacy screening.**

The Department of Corrections partially accepted this recommendation, and commented:

Corrections acknowledge that balancing the dignity and privacy of prisoners in Intervention and Support Units (ISUs) with the preservation of life presents a unique challenge. As acknowledged by your office, a piece of work has been underway in this area, which has been led by the Chief Custodial Officer. This work has looked at research and international practices to support future actions and includes consideration of international practices, legislative instruments and identifying potential options for enhancing privacy for prisoners in ISUs. Your office has been provided a copy of the completed review regarding this work, for consultation.

It is expected that initial plans will be established by the end of July 2019. Once received any feedback from your office will be considered as part of the planning process.

- b. The Prison implements a plan to improve general living conditions for remand prisoners; including accommodation, constructive activities and recreation space.**

The Department of Corrections partially accepted this recommendation, and commented:

Invercargill Prison acknowledges that all prisoners should have access to constructive activities which can enable them to progress inside and outside of the prison. Corrections understand that this is an important element of an individual's rehabilitation and reintegration back into society.

Invercargill Prison offers a varied range of constructive activities and programmes for remand prisoners. These programmes include:

- *Prisoner-led carving programme*
- *Intensive Literacy and Numeracy (ILN)*
- *Positive lifestyle Programme (PLP)*
- *Learner Driver License*
- *Brainwave Programme*

In addition to the rehabilitation programmes offered;

- *Short Motivation Programme (SMP)*
- *Head Start (a behavioural skills programme)*

Invercargill Prison will continue to offer their current programmes to remand prisoners and venture to expand on our available constructive activities for remand prisoners in an appropriate and secure environment.

With regards to the general living conditions, your inspector observed notable improvements to the general living conditions across the prison which is partly due to the painting programme facilitated by the prisoners.

c. Prisoners in the ISU receive specialist input and therapeutic intervention to address their current and ongoing mental health needs.

The Department of Corrections partially accepted this recommendation, and commented:

Corrections is committed to ensuring the safety and wellbeing of our prison population and appreciates the impact that mental health issues can have on re-offending.

Invercargill currently offer a range of specialist input and therapeutic intervention to manage individuals with a variety of complex mental health needs through a combination of medical and psychiatric interventions as well as lower level therapeutic responses delivered by staff on site. However, we acknowledge that there is always room to improve our services in order to address the current and ongoing mental health needs of the prisoners in our care.

Since your initial inspection in 2016, Invercargill Prison have adopted a multi-disciplinary team approach in order to address the needs of prisoners with acute and complex mental health issues. There have been instances where Invercargill Prison have facilitated prisoner's access to their community psychiatrist to provide continuity of care and to ensure that their acute mental health needs can be addressed by the most appropriate clinician. This is possible due to the coordination and liaising of multiple teams, internally and externally including; the forensic psychiatrist, the forensic liaison nurse, Health Center staff and custodial management and officers.

Further, patients in the ISU are offered therapeutic exercises in the form of physical exercise, television/radio, books, writing materials/colouring, work tasks and a range of sensory tools.

Separate to the services already identified, there are a number of counselling options available to individuals in prison, including those in the mainstream prison population. These include;

- *ACC sensitive claims counselling*
- *Cultural liaison worker*
- *Meetings with Drug and Alcohol specialists*
- *The Chaplaincy services for general well being.*

In response to the Department of Corrections' comments, I acknowledge that while these services may be available in the Prison, my Inspectors did not observe them in practice.

Further staff support and training, in conjunction with more clinical input, may assist in alleviating custodial pressures and allow for enhanced specialist input and therapeutic intervention for prisoners to address their current and ongoing mental health needs.

d. Locking of prisoners commence at 4.45pm, as per the stated 8 to 5 regime.

The Department of Corrections partially accepted this recommendation, and commented:

Corrections acknowledge the observation that the locking of prisoners occurs earlier than 4:45pm; however, there are multiple factors that the staff need to negotiate which can result in an earlier lock period. Corrections Officers manage several categories of prisoners, for the safety of the prisoners it is important that different categories are kept separate from each other. In order for all prisoners to be accommodated safely in their cells for their final wellbeing and muster check, it can be necessary to commence lock up prior to 4:45pm. Invercargill Prison are considering how to reduce the time of their locking procedures in order to commence lock up closer to 4:45pm, whilst ensuring the safety and secure management of the multiple prisoner categories.

Further, Invercargill Prison endeavours to ensure that prisoners subject to the 8 to 5 regimes receive higher than the one hour minimum requirement for time outside of their cell.

In response to the Department of Corrections' comments, I would like to clarify that 'time outside of their cell' is not equivalent to 'open air' which is a requirement under Rule 23 of the UN Standard Minimum Rules for the Treatment of Prisoners:

Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

e. The serving of meals be standardised to normal hours, particularly on units (South and Centre) that are not running an 8-5 regime. This would involve lunch being served any time between 12.00 and 1.30pm, and dinner to be served any time between 5pm and 7pm.

The Department of Corrections accepted this recommendation, and commented:

The importance of aligning meal times to standardised hours is currently being addressed as part of our ongoing 'Making Shifts Work' project. Corrections have acknowledged that there are certain limitations to the current eight hour shift structure in issuing meals to prisoners, conducting muster checks and the lock up times. The 'Making Shifts Work' project team will provide foundational infrastructure to enable flexible work practices and a modern rehabilitation-focused prison system, supported by up-to-date and effective technology.

As your office is aware, the Healthy Products Canteen Review was completed in 2018. The aim of this review was to offer healthier and more substantial choices to

prisoners through a review of the options sold at the P119 store. Given the completion of this review and the provision of a sufficient quantity of nutritional food, alongside the ability for prisoners to purchase additional food items, we consider this mitigates immediate concerns.

f. Expand the use of Audio Visual Link (AVL) visits for out-of-region family contact.

The Department of Corrections accepted this recommendation, and commented:

Corrections acknowledge the importance of AVL visits for prisoners and their out-of-region families. Currently, AVL visits are rostered by the Receiving Officer on site when contacted by probation services who act on behalf of the family to arrange a suitable time.

Whilst Corrections agree that expanding AVL Services is an option to allow for more out of region family contact, we note that this needs to be carefully considered across the region as this recommendation affects the community outside of Invercargill where AVL suites are situated. This recommendation will be considered at a meeting in June 2019 to discuss AVL expansion and how this may be successfully actioned in the community and prisons. At the same time, Invercargill Prison is considering how they can increase the visibility of AVL visits to the prisoner's families.

Appendix 3. Legislative framework

In 2007, the New Zealand Government ratified the United Nations Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

The objective of OPCAT is to establish a system of regular inspections undertaken by an independent national body to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

The Crimes of Torture Act 1989 (COTA) was amended by the Crimes of Torture Amendment Act 2006 to enable New Zealand to meet its international obligations under OPCAT.

Places of detention

Section 16 of COTA identifies a *'place of detention'* as:

...any place in New Zealand where persons are or may be deprived of liberty, including, for example, detention or custody in...

(a) a prison ...

(c) a court cell.

Pursuant to section 26 of COTA, an Ombudsman holding office under the Ombudsmen Act 1975 (Ombudsmen Act) was designated a National Preventive Mechanism (NPM) for certain places of detention, including prisons and court cells.

Carrying out the NPM's functions

Under section 27 of COTA, an NPM's functions, in respect of places of detention, include:

- to examine, at regular intervals and at any other times the NPM may decide, the conditions of detention applying to detainees and the treatment of detainees; and
 - to make any recommendations it considers appropriate to the person in charge of a place of detention;
 - for improving the conditions of detention applying to detainees;
 - for improving the treatment of detainees;
 - for preventing torture and other cruel, inhuman or degrading treatment or punishment in places of detention.

Under COTA, NPMs are entitled to:

- access all information regarding the number of detainees, the treatment of detainees and the conditions of detention;
- unrestricted access to any place of detention for which they are designated, and unrestricted access to any person in that place;
- interview any person, without witnesses, either personally or through an interpreter; and

- choose the places they want to visit and the persons they want to interview.

Section 34 of the COTA, confers the same powers on NPMs that NPMs have under any other legislation when carrying out their function as an NPM. These powers include those given by the Ombudsmen Act to:

- require the production of any information, documents, papers or things that, in the Ombudsmen's opinion, relates to the matter that is being investigated, even where there may be a statutory obligation of secrecy or non-disclosure (refer sections 19(1), 19(3) and 19(4) of the Ombudsmen Act); and
- at any time enter and inspect any premises occupied by any departments or organisation listed in Schedule 1 of the Ombudsmen Act (refer section 27(1) of the Ombudsmen Act).

To facilitate the exercise of the NPM function, the Chief Ombudsman has authorised inspectors to exercise the powers given to him as an NPM under COTA, which includes those powers in the Ombudsmen Act for the purpose of carrying out the NPM function.

More information

Find out more about the Chief Ombudsman's NPM function, inspection powers, and read his reports online: www.ombudsman.govt.nz under What we do > Protecting your rights > Monitoring places of detention.