



# Ombudsman

Fairness for all


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OPCAT Report

## Report on an unannounced follow-up inspection of Rolleston Prison Under the Crimes of Torture Act 1989

5. December 2017

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Tari o te Kaitiaki Mana Tangata







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## Executive Summary

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.

On 12 April 2017, Inspector Tessa Harbutt and Inspector Sue Silva (to whom I have delegated authority to carry out visits of places of detention under COTA)<sup>1</sup> visited Rolleston Prison (the Prison) to follow up on recommendations made in a previous OPCAT report (April 2016).

During the visit on 12 April 2017, the Inspectors visited all units and spoke with the Operations Manager, prisoners and staff at the site.

There were 11 recommendations made following the visit in April 2016. These are detailed below.

## 2016 Recommendations—treatment

### Recommendation: treatment

- a. Cameras should not cover the toilet area in the Separates cells.

Corrections rejected recommendation a, and stated:

*While the Department is mindful of the dignity of prisoners, what is most paramount is managing prisoners in a safe environment. We therefore consider that the use of cameras in the safe cells and separates cells are in accordance with the principles and minimum requirements specified in the Corrections Act 2004 and Corrections Regulations 2005. In particular, section 5(1)(a) of the Act states that: “the overriding responsibility of staff is that sentences are administered in a safe, secure, humane, and effective manner.”*

*The cameras in safe cells are necessary to safeguard the well-being of prisoners who are assessed as being at risk of self harm by allowing them to be monitored. This position is in line with section 151(b) of the Crimes Act 1961 which states that, “everyone who has actual care or charge of a person who is a vulnerable adult and who is unable to provide himself or herself with necessaries is under a legal duty to take reasonable steps to protect that person from injury. “ The ability of staff to remotely observe prisoners in safe cells has meant that on numerous occasions they have prevented a potential prisoner suicide or self harming incident. We therefore consider that section 151(b) of the Crimes Act 1961 is applicable to the use of cameras in safe cells and any concerns about privacy in safe cells must be secondary to the risk posed to a prisoner’s life.*

*The secure cell cameras are not monitored constantly, although the footage may be viewed at any time. It is important to understand that the prisoners in these cells are either serving a period of segregation or a period of cell confinement. These prisoners*

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<sup>1</sup> Acting under delegation of the NPM Chief Ombudsman Peter Boshier.

*typically exhibit extremely challenging, threatening and abusive behaviour. The cameras have been found to be a beneficial aid in deterring this destructive behaviour in prisoners. Camera footage is an important tool in order to provide evidence of a prisoner's actions and to protect staff from unfounded allegations.*

### Inspectors' observations (April 2017)—not achieved

The Separates cells were not visited as part of this inspection. However, it was reported that the CCTV cameras continued to cover the toilet area in the Separates cells. I still consider Prison staff (and others) having the ability, either directly or through camera footage, to observe prisoners undertaking their ablutions or in various stages of undress to amount to degrading treatment or punishment for the purpose of the Convention Against Torture. However I note that Schedule 2 Part C of the Corrections Regulations provides that cells for prisoners at risk of self harm must have '*no privacy screening or other barrier that prevents a full view of the cell from the door window*', which constrains Corrections' ability to fully address this issue.

A National Working Group has been established by Corrections to review privacy issues in both At-Risk Units (ARUs) and Separates cells.<sup>2</sup> I consider that amending Schedule 2 Part C should be considered in the context of this working party.

Corrections' response (June 2017): partially accepted

*A National Working Group is now in place. Corrections views this as good progress towards resolving the disagreement between the Ombudsman and Corrections as to how to balance prisoner safety and prisoner privacy (which has been a recurring theme in previous COTA inspections).*

*The working group has visited ARU Cells at one prison, and has so far held three meetings to discuss the merits of various identified options. At this stage, the group is seeking further information before it can make recommendations. The group is scheduled for a further meeting in August 2017. Corrections accepts that amending Schedule 2 Part C of the Corrections Regulations is a necessary consideration for the National Working Group.*

*Corrections views this as good progress towards resolving the differences of view as to how to balance prisoner safety and prisoner privacy.*

*Corrections considers that marking this recommendation 'Not Achieved', and failing to refer to the Ombudsman's involvement in the process of reconsideration, are unreasonable in circumstances where Corrections and the Ombudsman are co-operating to resolve this issue. Corrections asks that this issue be marked as 'Under Consideration' or similar, and removed from the repeat recommendations on page 8.*

You have asked that I change my finding to this recommendation from 'Not Achieved' to Under Consideration' based on the establishment of a working group to review privacy issues. While I

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<sup>2</sup> The Ombudsman is engaged in an advisory capacity on these issues.

commend these undertakings, I consider a recommendation has only been achieved when the recommended action has been substantially completed.

**Recommendation: treatment**

- b. Privacy screens should be installed around the toilet facilities in the Separates cells.

Corrections rejected recommendation b, and stated:

*The Department views the matter of prisoner dignity and privacy seriously. All possible steps are therefore taken to ensure that privacy is provided where it is possible and appropriate. However, we do not consider that any form of privacy screening should be used in the safe cells.*

*The absence of privacy screening is necessary to safeguard the wellbeing of prisoners who are assessed as at risk of self harm. Please note that the absence of privacy screening is compliant with Schedule 2, Part C of the Corrections Regulations 2005, which specifies the items and features of cells for prisoners at risk of self harm. The Schedule states that “no privacy screening or any other barrier that prevents a full view of the cell from the door window” should be a feature of the cell. Corrections considers that the installation of privacy screens around the toilet area in separates cells is not appropriate because it would not be consistent with the safe custodial management of prisoners.*

**Inspectors’ observations (April 2017)—not achieved**

Prison management advised that they had recently visited Tongariro Prison and were looking to install similar privacy screens in their Separates cells. They envisioned this to begin within the next six months.

Corrections’ response (June 2017): partially accepted

*Please refer to the response to recommendation a.*

You have asked that I change this recommendation ‘to Under Consideration’. I consider a recommendation has only been achieved when the recommended action has been substantially completed. At the time of writing, privacy screens had not been erected in Separates cells.

**Recommendation: treatment**

- c. A robust system should be put in place to ensure all documentation related to prisoners placed in a Separates cell, on segregation and following a use of force incident is completed to the required standards.

Corrections accepted recommendation c, and stated:

*Prisoners are not held for extended periods of time in segregation at Rolleston Prison as the site does not have segregation cells. Prisoners are held while transfers can be made to another facility. Previously the segregated paper work has accompanied the prisoner to the new site and it is then entered on the new sites register. Following the COTA team’s*

*visit and recommendations, Rolleston Prison has implemented a segregation register, which will be maintained to Prison Operations Manual (POM) standards.*

### Inspectors' observations (April 2017)—not achieved

The Segregation Register and Use of Force Register were made available to the Inspectors. Since April 2016 there had been four prisoners on segregation and two incidents of use of force. Both registers were missing essential details and paperwork had not been fully completed. Dates, times and signatures had been omitted, along with missing paperwork in both registers.

Corrections' response (June 2017): accepted

*Accepted, noting that measures have been taken since the April 2016 report. Corrections ask that the recommendation is updated to reflect that such a system is already in place.*

*The Prison Director has noted the concerns about the quality of the record keeping in the segregation register. The system will now be monitored on a regular basis to ensure compliance.*

#### **Recommendation: treatment**

- d. Separates cells should be decommissioned and replaced with cells that are fit for purpose.

Corrections accepted recommendation d, and stated:

*The separates cells are used for temporary cell confinement after prisoner misconduct hearings and for holding segregated prisoners who are awaiting transfer to another facility. On average, between one and three prisoners are held in the separates cells per month, usually for three days. As the cells are used infrequently, the Department does not have any plans to replace them.*

*However, there is refurbishment work in progress on all of the four units at Rolleston Prison, including the separates cells. The interior of each cell, including shower rooms, corridors, ceilings, walls, doors and floors are being washed, removed of defects, and painted. The work is being carried out by an Offender Employment Instructor and trained prisoners. It is expected to be complete by September 2016.*

### Inspectors' observations (April 2017)—not achieved

Inspectors observed (on camera) that the Separates cells had been cleaned and painted. However, they were still not considered fit for purpose due to the limited ventilation and natural light. Prisoners were still required to eat their meals on the floor next to an open toilet.

Corrections' response (June 2017): partially accepted

*Partially accepted, noting that measures have been taken to address this issue since the April 2016 report.*



*An extension to Rolleston Prison is being planned as part of the Department's programme of work to increase capacity in response to the rising prison population. The programme will add 240 beds to Rolleston Prison with eight new separates cells, built to standard. The new separates cells will be prioritised for use.*

#### Recommendation: treatment

- e. All staff should be up to date with mandatory training requirements.

Corrections accepted recommendation e, and stated:

*Managers at Rolleston Prison have been tasked to ensure all staff have up to date refresher training, including control and restraint training, we expect this will be completed by October 2016.*

#### Inspectors' observations (April 2017)—achieved

Prison management reported that 86 percent of staff were up to date with their mandatory Control and Restraint training. Figures provided from the Southern Prisons Training Records showed 54 out of 62 staff were compliant.<sup>3</sup> Ongoing training was planned to capture the remaining staff.

## 2017 Follow-up recommendations—treatment

I recommend that:

- a. Cameras should not cover the toilet area in the Separates cells. **This is a repeat recommendation.**
- b. Privacy screens should be installed around the toilet facilities in the Separates cells. **This is a repeat recommendation.**
- c. A robust system should be put in place to ensure all documentation related to prisoners placed in a Separates cell, on segregation and following a use of force incident is completed to the required standard. **This is a repeat recommendation.**
- d. Separates facilities should be decommissioned and replaced with cells that are fit for purpose. **This is a repeat recommendation.**

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<sup>3</sup> Of the 72 full-time staff, 10 were unavailable for training due to sickness and injury.

## 2016 Recommendations—protective measures

### Recommendation: protective measures

- f. The complaints process should be displayed in all areas of the prison, including contact details for the Prison Inspectorate and the Office of the Ombudsman.

Corrections accepted recommendation f, and stated:

*All unit prisoner notice boards and control rooms now have the latest POM prisoner complaints notice laminated and displayed. The notices explain how prisoners may contact the Corrections Inspectorate and the Office of the Ombudsman. All out of date information has now been removed.*

### Inspectors' observations (April 2017)—achieved

Notice boards were viewed in two units and had the relevant information on display. Telephone numbers for the Prison Inspectorate and the Office of the Ombudsman were also on display.

### Recommendation: protective measures

- g. Emergency call buttons should be fixed in the showers in Rata Unit.

Corrections accepted recommendation g, and stated:

*The Rata Unit is a small 20 bed wing that predominantly houses older child sex offenders. The shower cubicles do have wall rails fitted for added safety. It may not be practical to have duress buttons in showers given the wet areas; however we will investigate the possibility of installing such devices in the showers of Rata Unit. If this is not a viable option we will look at what other mitigations may be put in place.*

*Currently the Rata Unit has three showers. Two of the showers have normal standing shower cubicles with a fixed seat for prisoners to sit on. The other shower has rails all around inside of the shower cubicle and a fold down seat attached to the shower cubicle wall. The seat is designed so the prisoner can sit while taking a shower.*

*All three showers have a seat fitted in the changing section of the shower cubicle in order to assist with drying and dressing.*

*Staff have been reminded to be attentive if they have an elderly prisoner using the shower, who may be more likely to slip. They will conduct a safety check if the prisoner has gone beyond a 10 minute timeframe in the shower. The shower block is within six metres of prisoner common room and 20 metres of the staff base.*

### Inspectors' observations (April 2017)—achieved

The Operations Management reported that enhanced observations were taking place for prisoners in Rata when showering. However, unit staff advised that there was no expectation

for them to conduct enhanced observations whilst showering, nor had they been issued any instructions to do so.

Corrections' response (June 2017): partially accepted

*As noted in the Report, the Prison Director has investigated the option to install alarms in the shower. Wall-mounted buttons were determined to be an inadequate solution because a person falling to the floor would be unable to reach a wall mounted button.*

*Corrections is investigating alternative options such as wired or portable waterproof audible devices.*

*In the interim, the Prison Director will issue a reminder instruction to staff regarding safety checks for elderly prisoners.*

*Corrections requests that this repeat recommendation be removed. The recommended solution to this issue is not a viable one, and Corrections' action on this issue has already moved on to alternative means of addressing the issue of emergencies in the showers.*

At the time of writing, emergency call bells had been installed in the showers in Rata Unit.

#### **Recommendation: protective measures**

h. A sufficient supply of underwear should be available for all prisoners.

Corrections accepted recommendation h, and stated:

*Prisoners at Rolleston Prison can chose to have their own underwear issued or, if required, the prison will supply underwear. As the majority of prisoners chose to use their own underwear, the prison does not usually hold a wide range of sizes on site. Due to the lead time in the ordering process, this can cause a delay in supplying underwear to newly arrived prisoners whose size is not available at the time.*

*The Prison Director has reported that the prison will order a wider range of sizes from the supplier and arrange for the stock levels to be proactively managed. In an exceptional instance where a size is unavailable, the site can source the underwear locally so that the prisoner can receive the underwear in a timely fashion.*

#### **Inspectors' observations (April 2017)—not achieved**

Management reported that this matter had been addressed, although there was still a shortage of underwear available to prisoners on the units. One unit advised that they have a small supply of second-hand underwear, which was sighted and not deemed suitable. Another unit advised that they repair underwear using remnants of used material. The ongoing shortage of suitable underwear is still problematic and has not been fully addressed at the time of the inspection.

Corrections' response (July 2017): accepted

*Whilst noting that measures have been taken since the April 2016 report, the Prison Director has instructed all units to ensure every prisoner has access to suitable underwear. The concerns raised by the Ombudsman regarding quality of some items are acknowledged.*

*Stock levels will be monitored and managed to ensure that an adequate supply in a range of sizes is available at all times.*

## 2017 Follow-up recommendations—protective measures

I recommend that:

- a. A sufficient supply of underwear should be available for all prisoners. **This is a repeat recommendation.**

## 2016 Recommendations – material conditions

### Recommendation: material conditions

- i. The Department should consider reviewing the items available on the P119 with a view to offering healthier choices. Ideally, prisoners should be part of this process.

Corrections rejected recommendation i, and stated:

*The options available on the P119 are nationally consistent and regularly considered by Prison Directors at their forum. We consider that there are sufficient numbers of healthy choices on the current list including fruit, muesli bars and nuts. Please note that the P119 purchases are intended to be in addition to the food provided by the Department for meals, which is considered to be a sufficient full diet in quantity and quality.*

### Inspectors' observations (April 2017)—achieved

A new P119 provider for the southern region was in place at the time of the inspection. It was too early to tell how effective the new provider had been.

## 2016 Recommendations—activities and communications

### Recommendation: activities and communications

- j. Information kiosks should be in working order.

Corrections accepted recommendation j, and stated:

*The Department is replacing all prisoner kiosks with new technology. The business case was approved for the new technology to be rolled out across all prisons over the next two financial years (2015/16 and 2016/17).*

*The roll out of the new technology is in progress. Rolleston Prison has been scheduled for roll out from 5 September 2016. In the interim, if prisoners wish to access any information that is held in the information kiosk, they may request it from unit staff, who will provide it to them.*

*I am advised that Principal Advisor and Senior Investigator at the Office of the Ombudsman have been invited to visit the Department and view the new kiosks.*

Inspectors' observations (April 2017)—achieved  
Kiosks that were inspected were in working order.

## 2016 Recommendations—health care

### Recommendation: health care

k. Access to dental services needs to be enhanced.

Corrections accepted recommendation k, and stated:

*The Department's dental/oral health policy sets out to provide basic and necessary dental care according to the clinical needs of patients. Prisoners requiring urgent care are given dental care appointments at the next scheduled clinic.*

*The Director Offender Health has investigated waiting times for dental services at Rolleston Prison and has found that the four month period was caused by a large influx of requests at the time of the COTA investigation. This waitlist was therefore higher than usual for Rolleston Prison. The current waiting time for non-urgent dental care at Rolleston Prison is less than one month.*

*Rolleston Prison has been able to facilitate dental care for prisoners through the Oral Health Services at Canterbury District Health Board. This process will be used for prisoners requiring more urgent attention when appointments are not available within the contracted hours offered by the service provider at Rolleston Prison.*

*I am advised that at a national Health Services meeting on 22 and 23 June 2016, the Director Offender Health discussed the importance of monitoring and managing waitlists with all Health Centre Managers.*

Inspectors' observations (April 2017)—achieved

Prisoners with dental pain were transferred to Christchurch Men's Prison for treatment. Waiting times were between two and three weeks.

The service was for pain management only unless a prisoner was able to evidence good oral hygiene prior to incarceration. This discriminates against prisoners without the financial means for dentistry prior to imprisonment.

## 2017 Follow-up recommendations—health care

I recommend that:

- a. Dental treatment is based on dental need.

Corrections' response (Nov 2017): not accepted

*While not accepting the Ombudsman's conclusion that its policy is discriminatory, Corrections has noted these concerns, and has decided to review the national policy in view of the same views expressed in another report.*

## Acknowledgements

I appreciate the full co-operation extended by the managers and staff to the Inspectors during their visit to the Prison.

## Consultation

A draft copy of this report was forwarded to the Prison Director and Corrections Services National Office for comment as to fact, finding or omission prior to finalisation and distribution.

## Publication

Under Section 27 and 36 of the Crimes of Torture Act 1089, the Chief Ombudsman will present a copy of this report to Parliament before publication on the Ombudsman website.

**Peter Boshier**  
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National Preventive Mechanism

## Appendix 1. Overview of OPCAT – Prisons

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 visits 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. 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 was designated a National Preventive Mechanism (NPM) for certain places of detention, including prisons and court cells.

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

2. 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
3. to make any recommendations it considers appropriate to the person in charge of a place of detention:
  - a. for improving the conditions of detention applying to detainees;
  - b. for improving the treatment of detainees;
  - c. for preventing torture and other cruel, inhuman or degrading treatment or punishment in places of detention.

To facilitate the exercise of their NPM functions, the Ombudsmen have delegated their powers to inspect places of detention to Inspectors (OPCAT).

Under COTA, NPMs are entitled to:

4. access all information regarding the number of detainees, the treatment of detainees and the conditions of detention;
5. unrestricted access to any place of detention for which they are designated, and unrestricted access to any person in that place;
6. interview any person, without witnesses, either personally or through an interpreter; and
7. choose the places they want to visit and the persons they want to interview.