

Criteria for OPCAT COVID-19 inspections

April 2020

 **Ombudsman**

Tuia kia ōrite • Fairness for all

Office of the Ombudsman
Tari o te Kaitiaki Mana Tangata



Purpose

Inspecting places of detention helps to ensure that people who are deprived of their liberty are treated humanely, and their rights are respected and protected. It also ensures New Zealand adheres to agreed international human rights conventions.

New Zealand is a signatory to the United Nations Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).¹ The purpose of OPCAT is to establish a system of independent monitoring of places of detention. The Chief Ombudsman has been designated by the Minister of Justice as an independent monitor under OPCAT², and has been granted essential services status during COVID-19 in order to carry out these inspections.

The Chief Ombudsman's purpose of OPCAT COVID-19 inspections during the pandemic is to ensure that people are being treated humanely and their human rights are being protected. This preventive approach aims to ensure that safeguards against ill treatment are in place and that any risks, poor practices or systemic problems are identified and addressed. In addition, to ensure any restrictions on the normal conditions and treatment of people in places of detention are minimal, proportionate to the nature of the health emergency and in accordance with the law. It is important to note that human rights are inalienable; even during these extraordinary times people can expect to be treated with care and respect.

1 New Zealand's obligations under OPCAT can be found in the Crimes of Torture Act 1989 located at: www.legislation.govt.nz/act/public/1989/0106/latest/DLM192818.html [accessed at 11.30am on 13 April 2020].

2 Refer New Zealand Gazette notice at: www.gazette.govt.nz/notice/id/2018-go2603

Criteria

An initial set of criteria has been developed to align with the Chief Ombudsman's statement of principles to guide facilities in managing this crisis³, while meeting New Zealand's international human rights obligations. While the type of facility will inform the Chief Ombudsman's specific areas of interest under each criterion, some examples are listed below.

We welcome feedback on the criteria to info@ombudsman.parliament.nz

The criteria are a guide for consideration by the Chief Ombudsman's Inspectors, not a checklist or a set of rules. They are not an exhaustive list of all matters that could be relevant to the Chief Ombudsman's examination of treatment and conditions.

Health and safety

- ⊗ Adequate level of cleaning/sanitation throughout all areas of the facility.
- ⊗ Access to hand washing facilities.
- ⊗ Access to bathing facilities.
- ⊗ Appropriate supplies available in order to allow detainees the same level of personal hygiene as the population as a whole.
- ⊗ Appropriate plans and policies for the management of suspected or confirmed cases of COVID-19, including access to medical care off-site, if needed. People in detention with suspected or confirmed cases of COVID-19 should be able to access urgent, specialised healthcare without fuss.
- ⊗ Ability to be "physically distant" from people, in line with Ministry of Health guidelines.
- ⊗ Access to fresh air, drinking water and nutritious meals.
- ⊗ Appropriate amount of time out of the room in which they sleep.
- ⊗ Ability to have meaningful human contact.
- ⊗ Medical isolation should be prevented from taking the form of disciplinary solitary confinement; medical isolation must be on the basis of an independent medical evaluation, proportionate, limited in time and subject to procedural safeguards.
- ⊗ During a quarantine or isolation there should be open and clear communication by management to detainees, including in regard to the provision of food, drinks, sanitary items and medicine, and contact with the outside world.
- ⊗ Regular medical care to those who are in need of it remains available and accessible.
- ⊗ Rationing of health responses and allocation decisions are guided by human rights standards, based on clinical status and do not discriminate based on any other selection criteria, such as age, gender, ethnicity and disability.

³ The Chief Ombudsman's Statement of Principles can be found at www.ombudsman.parliament.nz/resources/op-cat-inspections-and-visits-during-covid-19-pandemic-update-and-statement-principles

Contact with the outside world

- ② Ability and frequency to communicate with other people outside of the facility, such as whānau and legal advisors.
- ② Where visiting regimes are restricted for health-related reasons, sufficient compensatory alternative methods are provided to maintain contact with families and the outside world, for example by telephone, internet/e-mail, video communication and other appropriate electronic means. Such contacts should be both facilitated and encouraged, be frequent and free.

Dignity and respect

- ② Treated with dignity, respect and compassion.
- ② Consideration is given to the particular needs of vulnerable groups, including those with disabilities.
- ② Information about COVID-19 has been communicated to those under the care of the facility in sufficient regularity, depth and in a way in which can be understood. Information should be reliable, accurate and up to date, concerning all measures being taken, their duration, and the reasons for them.

Protective measures

- ② Mechanism to inform, receive and deal appropriately with complaints is functioning, effective, and clearly communicated to all detainees and their whānau.
- ② Effective, proactive communication around measures being taken in respect of COVID-19, including timeframes.

Staffing

- ② Management are supporting and supportive of staff. Management are proactive in planning the work of members of staff during the COVID-19 pandemic, share the emergency preparedness plan, and provide support for relatives of members of staff. Specific training and equipment should be provided to all staff, and efforts to increase healthcare and hygiene provision should be prioritised.
- ② Sufficient staff to provide the necessary services to the number of people in the facility and their needs.