

OPCAT inspections during COVID-19 pandemic

Update on OPCAT inspections

Monitoring places of detention is an essential preventive safeguard for the treatment of people who have been deprived of their liberty.

The Secretary for Justice has designated the Chief Ombudsman's role under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) as an 'essential service' during COVID-19.

This means the Chief Ombudsman will continue his programme of onsite inspections to places of detention during the lockdown, where appropriate. His mandate includes prisons, health and disability facilities (including secure mental health units and aged care facilities), immigration facilities, and court cells.

The Chief Ombudsman is mindful of the 'do no harm' principle when exercising his mandate, and of the need to enter facilities and carry out inspections in a way that is safe, effective and supportive in this rapidly changing environment.

Statement of Principles

The Chief Ombudsman has established a set of principles to guide facilities and their staff in managing this crisis, while meeting New Zealand's international human rights obligations:

Treatment

There remains an **absolute prohibition against torture and inhuman or degrading treatment** of detained people, which must be upheld.

Protection

All possible action must be taken to **protect the health and safety** of all detained people.

Access

When detained people are suspected of, or confirmed as, having COVID-19, they should be able to **access urgent, specialised healthcare** without fuss. This is in line with the duty to provide equivalent care to those in the wider community. Special attention will be required to ensure that the needs of detained at-risk people, such as older people and people with pre-existing medical conditions, are met. This includes screening for COVID-19, and providing pathways to intensive care as required.

Support

Detained people may require **additional psychological support** at this time.

Measures

Any restrictive measures taken against detained people to prevent the spread of COVID-19 should be proportionate, lawful, accountable, necessary, and non-discriminatory. The measures must **respect human dignity**, be of limited duration, and regularly reviewed. People deprived of their liberty and their whānau should receive comprehensive information about these measures in a way they understand. Specific measures and the reasons for them should be recorded.

Rights

The fundamental rights of detained people during the pandemic must be **fully respected**. This includes, in particular, the right to maintain personal hygiene (including access to hot water and soap) and the right of daily access to the open air (of at least one hour). Any restrictions on contact with the outside world, including visits by whānau and legal advisors, should be compensated for by increased access to alternative means of communication (such as telephone or Voice-over-Internet-Protocol communication).

Contact

In cases where a detained person is isolated or placed in quarantine because they are infected or suspected of being infected by the COVID-19 virus, they must be provided with **meaningful human contact every day**.

Information

Detained people should be made aware of their rights and ability to complain, including how to raise concerns or issues they have with any increased restrictions. Contact **information for assistance should be clear and accessible**. Having questions answered or frustrations listened to is key to creating a safe and supportive environment.