

OPCAT COVID-19 report

Report on inspections of prisons under the Crimes of Torture Act 1989

June 2020

 **Ombudsman**
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Office of the Ombudsman
Tari o te Kaitiaki Mana Tangata





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Contents

Introduction	5
COVID-19 pandemic	5
New Zealand alert level system	5
COVID-19 OPCAT inspections	6
Executive summary	7
Inspection methodology	8
Key observations	8
Health and safety	8
COVID-19 preparedness and response	9
Medical isolation and separation	9
Cleaning and personal protective equipment	10
Access to hygiene and sanitation necessities	11
Unlock times and access to fresh air	11
Physical distancing	12
Physical and mental health care	12
Contact with the outside world	13
Access to communication tools	13
Legal communications	13
Mail	14
Dignity and respect	14
Relationship between staff and prisoners	14
Activities programmes	15
COVID-19 information	15
Protective measures	16
Complaints process	16
Staffing	17
Staffing levels	17
Staff wellbeing	17

Summary of recommendations	18
Acknowledgements	19
Appendix 1. New Zealand COVID-19 Alert Level system	20
Appendix 2. COVID-19 OPCAT inspections criteria	23



Introduction

New Zealand has international human rights obligations under the United Nations Optional Protocol to the Convention against Torture (OPCAT)¹ to prevent torture and other cruel, inhuman or degrading treatment and punishment. As part of OPCAT, there is a requirement for New Zealand to have an independent inspection programme of places of detention (where people are not free to leave at will).

Ombudsmen have been designated by the Minister of Justice to carry out OPCAT inspections of prisons. The preventive purpose of these inspections is to provide independent assurance that the treatment and conditions in these facilities are appropriate, and to provide recommendations for improvement.

COVID-19 pandemic

COVID-19 is a new type of coronavirus that affects lungs and airways.² On 7 January 2020, China confirmed COVID-19 (SARS-CoV-2). It had not previously been detected in humans or animals. At the time of this report being published, there had been 8.2 million confirmed cases of COVID-19 worldwide, and 446,000 deaths. There is no specific treatment or vaccination for COVID-19.

COVID-19 is spread from person to person by droplets. When an infected person coughs, sneezes, or talks, droplets containing the virus spread and can settle on surrounding surfaces or directly infect others. COVID-19 is mostly spread because of close contact with people with the virus who have symptoms. People may also get infected if they touch surfaces or objects with droplets and then touch their mouth, nose, or eyes.

The way that COVID-19 spreads means that places of detention are at higher risk of an outbreak because of the restrictions in place, which may limit the practicality of practicing physical distancing and other preventative measures.

New Zealand alert level system

The New Zealand Government has implemented an 'alert level' system for responding to COVID-19. There are four alert levels, with Alert Level 1 being the lowest and Alert Level 4 being the highest. The alert system was designed to help the public to understand what public health and social measures are in place at any time. Levels have been applied in conjunction with specific response legislation and public health orders made by the Director-General of Health. Levels can be applied to a town, city, region, or the country as a whole. An overview of the Alert Level system and the implications of each Alert Level is at Appendix 1.

¹ Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. More information about OPCAT and the Chief Ombudsman's National Preventive Mechanism (NPM) function can be found at <https://www.ombudsman.parliament.nz/what-we-can-help/monitoring-places-detention/why-ombudsman-monitors-places-detention>

² Coronaviruses are a large and diverse family of viruses which cause illnesses such as the common cold. The most recent diseases caused by it include severe acute respiratory syndrome (SARS) and Middle East respiratory syndrome (MERS).

New Zealand was in Alert Level 3 for 48 hours from 23 March 2020, with the move to Alert Level 4 occurring at 11:59pm on 25 March 2020. The government announced that New Zealand would move to Alert Level 3 at 11:59pm on Monday 27 April 2020, for a period of two weeks. New Zealand then moved to Alert Level 2 at 11:59pm on 11 May 2020 and returned to Alert Level 1 at 11:59pm on 8 June 2020.

A national emergency was also declared on 25 March 2020 at 12:21pm and was extended six times. The state of national emergency ended on 13 May 2020 at 12:21pm. It was replaced with a National Transitional Period to support a transition from response into the initial recovery phase.

COVID-19 OPCAT inspections

I reviewed my pre-planned OPCAT programme of inspections and visits in light of COVID-19 and my designation as an essential service for OPCAT inspections.³ I considered a wide range of information, including that provided by the United Nations. I was acutely aware of the specific risks people in places of detention faced, both from the virus itself but also from the measures taken to prevent the spread of COVID-19 in places of detention and the impact these may have on people's human rights. I decided that as well as remote monitoring primarily through information gathering, physical on-site inspections must continue in order for me to provide effective independent oversight. My OPCAT COVID-19 inspections were carried out with full regard for health and safety. They were short and targeted, using specific COVID-19 relevant assessment criteria.⁴ The full criteria can be found in Appendix 2.

Engagement with Department of Corrections

As the country moved into Alert Level 4, the Chief Executive of the Department of Corrections (the Department) advised me by letter on 23 March 2020 that *'I will need to introduce an initial suspension to legal and statutory visits, including those from your office.'* Immediately upon receiving this letter, I telephoned the Chief Executive to advise I could not accept this as I have a statutory mandate to fulfil under the Crimes of Torture Act that cannot be circumscribed. My legal mandate for unrestricted access to places of detention is clear.⁵

On 7 April 2020 I advised the Chief Executive that:

...the Secretary of Justice [has] designated my OPCAT role as an essential service during COVID-19 Alert Level 4. This recognises the fact that while I am considering a variety of innovative ways to monitor places of detention at this time, onsite inspections and visits must also continue to ensure that conditions and treatment of people are appropriate.

³ See <https://uniteforrecovery.govt.nz/assets/resources/legislation-and-key-documents/COVID-19-national-action-plan-2-issued-1-April.pdf> for more information about essential services during the Alert Level 4 lockdown.

⁴ See: <https://www.ombudsman.parliament.nz/resources/criteria-opcat-covid-19-inspections> for the inspection criteria for the COVID-19 OPCAT inspections.

⁵ See sections 29 of the Crimes of Torture Act 1989 and section 27 of the Ombudsmen Act 1975.

On 8 April 2020 the Chief Executive wrote to me again explaining *'I suspended the access of statutory visitors to prisons except where the visit was pre-approved'*, so that a safety plan for the visit could be agreed. He also reiterated he was committed to working with me collaboratively in considering how my staff might visit prisons safely. He stated *'I consider that it is even more essential that you exercise your functions in the current context, provided this can be done safely.'*

I later confirmed to the Chief Executive that my inspections would be announced, and I would engage with the Department on health and safety issues. Department staff at the facilities inspected were welcoming and professional.

I acknowledge the need for firm action to combat COVID-19 and to keep those in care safe from the virus. However, I firmly believe that independent monitoring is essential during these unprecedented times. Extraordinary measures imposed by the Government must not have an unnecessary or disproportionate impact on people's rights. 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.

Monitoring places of detention remains an essential preventive safeguard for the treatment of detained people. It also provides confidence to the New Zealand public that our most vulnerable people are being treated fairly during these times. This experience presented me with a situation where I needed to make sure that the use of extraordinary measures by the Government did not override my statutory role and mandate to report independently to Parliament.

Executive summary

This report outlines my key findings and recommendations in relation to nine prisons inspected during the period of 29 April 2020 to 8 May 2020. At the time of the inspections, New Zealand was at COVID-19 Alert Level 3.⁶

My key observation was that prisons responded to the COVID-19 pandemic in a well-resourced, balanced, and efficient manner, despite the complex challenges of managing prisoners at this time. My Inspectors observed generally positive relationships between the staff and prisoners, and noted enhanced health and safety processes were in place and effectively communicated to staff and prisoners.

I found that prisons had taken measures to support prisoners in maintaining contact with the outside world, and provided them with relevant and up-to-date information about COVID-19. Prisoners spoke of feeling supported, safe, and well-informed.

I made some recommendations for improving the conditions and treatment of prisoners in seven prisons. In particular, I found that some prisoners in some units at four prisons were not receiving

⁶ See <https://covid19.govt.nz/alert-system/covid-19-alert-system/> for more about New Zealand's COVID-19 alert system.

access to at least one hour of fresh air on a daily basis,⁷ or being provided with activities to occupy their time. This was especially the case for prisoners who had been isolated for 14 days as new arrivals in a prison or due to suspected COVID-19 symptoms, or who were placed in medical isolation because they were identified as being particularly vulnerable to COVID-19.

Inspection methodology

Nine inspectors, in three teams of three (my Teams), conducted nine inspections of prisons in Auckland, Wellington, and Christchurch, located respectively in the Department's Northern, Lower North, and Southern Regions. The prisons ranged in size, occupancy,⁸ and security classification, and held women, men, youth, and older people.

My Teams were on site for an average of six hours. They visited a varying number of units at each prison site, with a focus on the units housing prisoners separated from the general prison population or in medical isolation, and each prison's Receiving Office. A total of 46 areas (referred to as 'units' in this report) in nine prisons were inspected.

Inspectors wore personal protective equipment (PPE) to conduct the inspections, and this PPE was changed before entering each Unit or more frequently in accordance with the prisons' protocols.⁹

Each prison was given advanced notice of the inspection. Senior management at the prisons provided my Teams with additional information, including health and safety processes.

The Teams spoke to staff and prisoners during the inspections.

Key observations

Health and safety

If the highly infectious COVID-19 enters a prison, transmission is difficult to see and therefore control, particularly when prisoners are accommodated together and there are restrictions on their movement. My inspections considered whether appropriate planning and procedures were in place to ensure that prisoners were protected from COVID-19. This included pandemic planning, access to hand washing and hygiene facilities, and an appropriate level of cleaning and sanitation within the prison. My Team were also looking for evidence that prisoners' other health needs were respected, and that they continued to have access to fresh air and general medical care.

⁷ Rule 23 (1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) provides that: *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.*

⁸ Capacities for each of the Prisons ranged from 99 to 70 percent (99, 99, 90, 90, 90, 80, 80, 80, 70).

⁹ Inspectors were supplied with disposable masks, gloves, eye protection, hooded gowns, and overshoes by the Office of the Ombudsman and wore any other PPE as agreed with the prison at the time of inspection.

While the nature of COVID-19 meant that increased restrictions on movement were needed, my inspections provided an independent check that any restrictions applied by a prison (including use of isolation) were necessary, proportionate, and legal in the circumstances

COVID-19 preparedness and response

I found that the Department and individual prisons had amended their health and safety policies and processes in response to the COVID-19 pandemic. I found the resultant practices in place during Alert Level 3 were of a high standard.

Entry requirements for prisoners had been enhanced with temperature checks and general health screens for all incoming prisoners. COVID-19 testing was performed on any prisoners displaying symptoms.¹⁰ Receiving Office systems were observed to be efficient and staff had good processes in place to manage COVID-19 related risk.

Staff were required to undergo a daily temperature check upon admission to the gatehouse. Some prisons required all staff to record the time of their entry and exit to each unit to facilitate contact tracing if necessary.

Up-to-date information regarding COVID-19 was clearly displayed in most of the units my Teams visited. Information was also regularly communicated to prisoners by prison management and staff, through unit meetings or by staff being able to answer prisoners' specific questions. Some prisons distributed leaflets or weekly newsletters with general updates and information relating to COVID-19, including information on the situation and infection control advice.

Medical isolation and separation

Several prisons had dedicated areas or units to accommodate prisoners separated from the general prison population as part of their infection control measures. That is, prisoners in 'medical isolation,'¹¹ prisoners with suspected or confirmed COVID-19, or prisoners entering or re-entering the prison.

Prisoners considered by the Ministry of Health to be particularly vulnerable to COVID-19 were placed in 'medical isolation,' including older people (generally over 70 years old), pregnant women, those with pre-existing chronic health conditions, and those with a mixture of health issues, including *mate wareware* (dementia-related illnesses).

My Teams observed good systems in place to manage the health and wellbeing of prisoners in medical isolation, or those who were separated. Entry procedures into these dedicated units were robust, including heightened PPE requirements, to keep both staff and prisoners safe.

At all prisons, each new arrival was screened for COVID-19 symptoms upon, or before, arrival at the Receiving Office. Any prisoner who displayed symptoms that met the World Health

¹⁰ During the period of the inspections, only one prisoner tested positive for COVID-19.

¹¹ See <https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-information-specific-audiences>

Organization's case definition of COVID-19,¹² was tested and placed in medical isolation until the test returned a negative result. Prisoners were then returned to their cohort 'bubble' or, if the 14-day isolation period had expired, placed in another unit.

Prison managers acknowledged the challenge of keeping prisoners in isolation separate, while ensuring that all prisoners received their minimum daily entitlements.¹³ Staff reported that in some prisons, units were running more than nine different unlock regimes. Staff also said that, during Alert Levels 4 and 3, communal areas, including yards, telephones, cells, and showers, were required to be thoroughly cleaned and sanitised between each 'unlock'. At some prisons, staff were working overtime to manage complex unlock and sanitisation regimes and ensure all prisoners received their minimum daily entitlements.

Prisons with remand prisoners faced additional challenges in accommodating new arrivals during the pandemic. Many prisons managed this by creating multiple cohorts and 'bubbles,' based on the remand prisoner's arrival date.

My Teams found the cohort 'bubble'¹⁴ and isolation systems in all the prisons visited to be clear and effective at keeping prisoners separated from each other, minimising the risk of the potential spread of COVID-19 in prisons.

However, at some of the prisons the separation of individuals and the resulting unlock regimes had a negative effect on some prisoners' daily access to fresh air and activities. Therefore, I recommended to four prisons that all prisoners should have access to at least one hour each day of fresh air.

Cleaning and personal protective equipment

In all the prisons visited, my Teams observed appropriate supplies of personal protective equipment (PPE) and cleaning materials. The prisons generally had an adequate supply of clean and appropriate sized clothing and bedding, and regular access to laundry services. Staff and vulnerable prisoners wore PPE.¹⁵

Two units at different prisons did not have access to certain essential cleaning materials, such as mops. Prisoners accommodated in residences at one of these prisons were responsible for purchasing their own cleaning materials. I noted in those two prisons that the systems for ensuring cleaning materials were effectively distributed to prisoners required improving. I recommended to these two prisons that all prisoners have access to cleaning materials.

¹² See <https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-resources-health-professionals/case-definition-covid-19-infection>

¹³ Under sections 69 and 70 of the Corrections Act 2004, every prisoner has a minimum entitlement to 1 hour of physical exercise on a daily basis, to be taken in the open air if weather permits, subject to the ability to reasonably deny this entitlement due to emergency situations or for health or safety.

¹⁴ See <https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-resources-health-professionals> for Ministry of Health guidance and also <https://covid19.govt.nz/covid-19/how-were-uniting/physical-distancing/> for government guidance.

¹⁵ In accordance with the Ministry of Health's advice on PPE for workers: <https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-information-specific-audiences/covid-19-personal-protective-equipment-workers>

At some prisons, high traffic areas such as Receiving Offices, entry points, Audio Visual Link (AVL) areas, and administration areas, were cleaned by recently contracted external providers. The Teams noted that, overall, the prisons were well maintained and clean throughout.

Of the 46 units inspected, my Teams only observed two units that presented any cleanliness concerns; a blocked toilet and a water puddle.

Access to hygiene and sanitation necessities

All prisoners had access to showers, toilets, and handwashing facilities either in their cells or within their areas of the prison. They were also provided with the necessary toiletries.

However, two prisons' recreational areas had little to no access to handwashing facilities or hand sanitiser. I recommended that prisoners have access to the hygiene facilities when in these shared areas.

Unlock times and access to fresh air

In some units, my Teams identified that the prisoners were unlocked throughout the day or unlock times had not been reduced as a result of COVID-19. Some prisoners were unlocked throughout the day, had individual yards, or access to yards adjoining recreation areas.

In most prisons, however, unlock times had reduced as a result of COVID-19. This was often due to the number of 'bubbles' operating in units at most prisons.

Four prisons also had difficulties ensuring that all prisoners across all units received one hour of fresh air on a daily basis. This was due to the precautions prisons had taken to reduce the risk of COVID-19, primarily preserving the integrity of multiple 'bubbles'. One facility was only able to provide some prisoners access to an hour of fresh air every other day; while another facility was only able to provide some prisoners with 30 minutes daily. Some prisoners at one prison said that, although they were unlocked for one hour a day, they only had access to fresh air on weekends.

Inspectors found the prisoners who had been separated, or who were in medical isolation, were less likely to have access to fresh air during Alert Levels 4 and 3.

Inspectors were told a range of factors contributed to prisons' inability to ensure all prisoners received daily access to one hour of fresh air, including the number of 'bubbles' within a prison, 'the variety of prisoners' security classifications and categories (eg, mainstream, remand, voluntary segregation, etc), and building infrastructure limitations.

The affected prisoners who were spoken with generally understood the prisons' difficulty in accommodating their access to fresh air during the pandemic. Many understood the need for the changes and supported staff. However, they said they struggled with the lack of access to fresh air.

As noted above (under *Medical isolation and separation*), I made recommendations to four prisons that all prisoners should have access to at least one hour each day of fresh air.

I also found that one prison's log books were not complete so the prison was unable to confirm whether the prisoners housed in their units had received their minimum entitlements¹⁶ during Alert Levels 4 and 3. I recommended to that prison that unit staff maintain accurate records

Physical distancing

The prisons my Teams inspected were adhering to Ministry of Health guidelines through the use of physical distancing and creation of 'bubbles.' Generally, each unit within the prisons operated as its own 'bubble', which sometimes contained smaller 'bubbles' where required. The prisons had clear systems in place for ensuring that prisoners were kept in 'bubbles' to minimise the risk of COVID-19 spreading. Consequently, units were operating complex routines and unlock regimes to meet distancing requirements; unlocking alternating groups for meals, cleaning, outdoor exercise, and yard time.

Different prisons had different regimes with respect to staff and the 'bubbles.' Some prisons had staff dedicated to each 'bubble,' while others performed their duties while adhering to physical distancing requirements or the use of PPE.

Physical and mental health care

Regular medical care was available and accessible to prisoners at the time of my inspections. The General Practitioners continued to visit some prisons as usual. Other sites implemented phone consultations, with face-to-face consultations occurring as necessary. Those prisons with onsite health centres continued to have clinics available.

One prison had developed a list of prisoners who might be particularly vulnerable to COVID-19, and tailored their regime and contact with health services accordingly. Another prison had a system by which any prisoners who reported cold or flu symptoms or mental health concerns would be seen by a medical professional the same day.

At one prison, my Team was told that health centre appointments only occurred for matters of necessity during Alert Levels 4 and 3, in order to reduce movements around the prison. Prisoners said they had been informed about the reduction of routine appointments during the pandemic and understood the reasoning.

Information provided by the prisons indicated that transfers to hospital for medical treatment or emergency care occurred during Alert Levels 4 and 3 where necessary. Many pre-existing appointments had been cancelled or delayed by the relevant District Health Board or medical provider due to COVID-19. My Teams viewed health care policies and patient records at several prisons and identified their medical treatment and emergency care processes were robust. One of the prisons issued PPE to prisoners leaving the site for treatment during Alert Levels 4 and 3, to minimise the need for them to be separated on their return.

Trauma and mental health counselling continued to be provided to prisoners during Alert Levels 4 and 3, but as virtual or non-contact sessions. Prisoners were appreciative of this additional support during this period. My Team was advised that during Alert Level 4, one of the prisons had conducted wellness checks across their units to identify any prisoners who required additional psychological and emotional support during the pandemic. I welcome this initiative.

¹⁶ See above note 13.

Drug and alcohol treatment sessions and psychological services continued to be offered, using telephone and video conference facilities. Several prisoners emphasised how valuable this was in maintaining motivation and engagement with their treatment.

Contact with the outside world

Contact with the outside world is an essential safeguard against ill-treatment and is critical for the psychological well-being of prisoners. Restricting visitor access was one of the most significant changes for prisons under COVID-19 and the introduction of the Government's Alert Level system. Where visiting regimes are restricted, even in these unprecedented circumstances, I expect that sufficient alternative methods for prisoners to maintain contact with the outside world should be facilitated, encouraged, and frequent.

Access to communication tools

None of the prisons were allowing private visitors during Alert Levels 4 and 3. However, my Teams observed that generally the prisons were making efforts to keep prisoners in contact with their whānau during this period.

Prisons took extra initiatives to keep prisoners connected with their whānau, including installation of additional phones in communal areas, provision of in-cell telephones, unlimited telephone calls for a set cost, provision of phone cards each week, and/or exploring options for video conferencing or access to laptops.

Prisons that provided weekly phone cards provided phone cards to all prisoners. This compensatory measure was issued to all, and not on a case-by-case basis. At one of the prisons, those prisoners who did not have telephone contact with whānau had the equivalent credit transferred into their trust account. Prisoners reported that this was a welcome initiative.

At one of the prisons, managers informed my Team they had arranged for a prisoner with a family member in hospital to make a video call, on compassionate grounds. Some of the other prisons were considering options for video conference call capabilities on an ongoing basis.

Prisoners reported that they were able to access phones to make their calls without issues and were satisfied with the process during Alert Level 4 and 3. Inspectors' review of some of the units' call logs confirmed this was the case.

In several prisons, remand prisoners said they had not been able to make their initial phone call in a timely manner.¹⁷ This issue was raised with managers at the time of inspection, who stated they would look into it.

Legal communications

Physical distancing requirements during Alert Levels 4 and 3 meant that prisoners' court hearings, legal visits, and parole hearings, could not take place in person so were instead conducted virtually, using Audio Visual Link (AVL) facilities.

¹⁷ Newly arrived prisoners must be allowed one free phone call within New Zealand for the purpose of advising their next of kin (Corrections Regulations 2005, regulation 87).

Many prisons had made changes to accommodate and support prisoners' ability to access legal advice and to appear at hearings during this time. These initiatives included increasing the number of AVL booths available, implementing a secure online system to allow lawyers to talk privately with prisoners, availability of phones in the units to allow prisoners to contact lawyers, and providing a dedicated email address for lawyers to send correspondence to their clients.

The Teams reviewed data on all prisons' scheduled AVL sessions, which indicated that AVL use had increased during 'lockdown'.

I was pleased to see that all prisons inspected were enabling court hearings, legal advisory sessions, and Parole Board hearings to take place during Alert Levels 4 and 3, and that AVL facilities were being used effectively for this purpose.

Mail

At the time of inspection, prisons continued to operate their email and mail systems, with modifications. Both staff and prisoners noted the delays for incoming mail, but recognised this was due to the impacts of COVID-19. Postal mail was quarantined for 48 hours at most prisons as a COVID-19 countermeasure before proceeding through the routine checking process.

The volumes of external correspondence, including mail and email, had increased throughout Alert Levels 4 and 3. Some of the prisons reported an increase of 20-50 percent compared to before 'lockdown'. At some prisons, my Teams observed emails being distributed the day after they were received.

Prisoners confirmed that access to mail and email was good and that any delay was understandable in the circumstances.

Dignity and respect

Prisoners must be treated with dignity and respect, and COVID-19, or any other emergency, should not impact this. My inspections were concerned with the how prisoners were being treated in this unusual environment. In particular, how staff were communicating with prisoners—I expect prisons to ensure that staff and prisoners have access to information about COVID-19, as well as information about what it means for them in terms of their routine within the prison and why any changes are occurring.

Relationship between staff and prisoners

The majority of interactions my Teams observed between staff and prisoners were dignified, respectful, and compassionate. Staff and prisoners were respectful, empathetic, and positive about each other.

The Teams observed clear and collaborative communication in most of the units they visited. In many of the units staff used prisoners' first names when interacting with them, which was pleasing to see.

At one of the prisons, my Team observed meals being provided outside of normal meal times to meet the needs of prisoners who observed Ramadan.

In other units, Inspectors noted that staff engagement with prisoners was minimal. The interactions observed in these units were functional but respectful.

My Teams observed that vulnerable prisoners were housed in cells appropriate to their needs, including some being located on ground floor units to accommodate their accessibility requirements.

Activities programmes

Most of the prisons provided additional resources, primarily activity workbooks, to boost morale and keep prisoners occupied during Alert Levels 4 and 3. My Team viewed a variety of these workbooks distributed during 'lockdown.' The workbooks included modules on improving self-esteem by the Centre for Clinical Interventions, maths and literacy booklets, Brain Bites Activity Books, and wellbeing information such as workout programmes.

Additional initiatives included providing prisoners with additional television channels, streaming films in-cell, evening snack packs with additional food, board game sessions, and additional library books. Two prisons had also put an additional one-off payment of \$5 into prisoners' trust account to purchase canteen goods.

Prisoners continued to be able to rent in-cell televisions in Alert Levels 4 and 3. Prior to the 'lockdown,' if a prisoner was charged with a misconduct, the television could be removed as a form of punishment. However, at one prison, Inspectors were told this was not occurring during Alert Levels 4 and 3. Prison managers showed understanding of the increased significance of prisoners' access to televisions in light of the COVID-19 restrictions. I consider this concession to be a noteworthy indication of the prison's compassion for the prisoners in their care at this unprecedented time.

One prison had also taken steps to ensure that separation and medical isolation did not take the form of punishment. This included installing additional power points to allow separated or medically isolated prisoners' access to a television. In some prisons, there were unforeseen issues with the availability and accessibility of televisions for some prisoners during Alert Level 4 and 3. Prisoners in one prison found themselves separated to minimise the spread of COVID-19 with no activities to keep them occupied. I recommended to that prison that all prisoners have access to a television.

COVID-19 information

I found evidence of effective, proactive communication about measures being taken in respect of COVID-19 across the prisons. Information and updates regarding COVID-19 were generally made widely available to prisoners and communicated in a format that was easy to understand.

Information about COVID-19 measures was proactively communicated to prisoners through various methods in the prisons. How information was relayed and how comments and feedback were received varied. This was not surprising, due to different sizes, security levels, and technology available at each of the prisons.

Information and updates regarding COVID-19 were made widely available to prisoners and communicated by posters and notices displayed in the units, at 'staff parades' where verbal updates were provided, and by written in-cell notices that were delivered or made available through the kiosk system.¹⁸

In one prison, some prisoners who had only received the written in-cell notices reported they had not received sufficient information, and others expressed that they did not understand why certain measures were being taken. Other prisoners reported that their kiosk in-cell interfaces were not working and they could not, therefore, access the information while in their cells. While there were some posters and notices displayed, I encouraged the prison to include more visible signage across the site.

Several other prisons had taken measures to elicit individual feedback and address prisoners' concerns. At some prisons, managers and staff spoke with prisoners individually or collectively, in forums. Another prison had conducted a survey of prisoner welfare and experiences during Alert Level 4 and provided Inspectors with a copy of collated responses. A majority of prisoners said they felt 'informed' about COVID-19; were aware why staff were wearing PPE; and understood the changes to regimes and activities. Generally, my Teams observed that managers and staff were actively working to address prisoners' concerns and feedback.

Protective measures

Prisoners should have safe and accessible ways to raise concerns and have these considered and responded to. Protective measures are safeguards against ill-treatment and are of particular importance when there are increased restrictions within a prison. Action taken as a result of COVID-19 should not impact on prisoners' access to complaints mechanisms.

Complaints process

Prisoners could make a complaint about their treatment by lodging a complaint form with staff. There was sufficient information about the complaints process, including contact details for the Ombudsman and the Office of the Inspectorate, on display in all units. My Teams were informed that the complaint processes had not changed or been adversely affected by COVID-19 restrictions.

¹⁸ Kiosks and in-cell user interfaces are a fundamental aspect of the prisons' operating model. Prisoners can order food, correspond with their Case Managers, book visits, make health-related requests, lay complaints, and request information through the system.

In some prisons, complaints could also be made through the kiosk system. At one of the prison, the Ombudsman contact details could not be located in the information available through these kiosks. This has since been remedied.

My Teams reviewed a sample of complaints lodged in recent weeks prior to the inspection. The majority of the complaints reviewed had been closed or resolved within the appropriate timeframes, some within a week. At one prison, a portion of complaints from the period reviewed were still open or took longer than two weeks to close.

Prisoners confirmed that they understood the complaints process, although few of the prisoners my Teams spoke with had lodged a complaint during the 'lockdown.' At one of the prisons, Inspectors were told that completing a complaint form was often unnecessary due to the ability of prisoners to resolve issues directly with staff. At another prison, the complaint responses reviewed by my Team were positive, with a strong focus on mediation. Many of these complaints appeared to have been resolved to the satisfaction of the prisoner concerned.

Staffing

Staff must be healthy, trained, and supported by management in order to keep prisoners safe. My inspections considered whether prisons had plans in place to maintain safe staffing levels during COVID-19.

Staffing levels

In all but one of the 46 units inspected, my Teams found there were sufficient staff to provide the necessary service to the number of prisoners on the day of inspection.

Managers acknowledged that staffing was a challenge for some prisons, which they addressed by alternative resource allocations as well as comprehensive staff reduction plans. Some prisons also found it necessary to temporarily suspend certain industries and recreation activities to accommodate lower staffing levels during Alert Levels 4 and 3.

Managers at some of the prisons said their staff were busier than usual and working overtime to maintain a visible presence in all areas at all times, including weekends.

Many of the prisons redeployed appropriately trained staff, who had been performing other functions prior to COVID-19, into custodial roles or employed non-custodial staff to fill non-contact custodial positions, such as working in the gatehouse. Records at one prison even showed an increase in staffing levels from before the 'lockdown.'. Another prison allocated some staff to work off site to minimise the risk of wide-spread infection; they could be readily available in case of a staff shortage.

Staff wellbeing

Overall, prison managers displayed an understanding of the issues facing staff during the COVID-19 pandemic, both at home and at work. Inspectors found them supportive of staff and their home circumstances. A number of staff were unable to work due to the complexities of maintaining their personal 'bubbles', or for health reasons. Some prison managers also offered practical support, such as free meals. Some prison staff told my Team about the high level of team spirit over recent weeks; their managers had taken steps to boost staff morale, such as providing morning teas.

All staff my Teams spoke with said the prison they worked in had robust procedures in place to ensure the health and safety of staff and prisoners. They had received good communication from management, and had a good understanding of the prison's expectations during Alert Levels 4 and 3. Generally, staff reported they had received appropriate training, access to PPE, and felt confident in the overall health and safety processes.

All of the staff my Teams spoke with said they felt safe and supported throughout Alert Levels 4 and 3.

Summary of recommendations

I made recommendations for improving the conditions and treatment of prisoners in relation to seven prisons.

I recommended that:

- All prisoners are able to spend at least one hour each day in the fresh air (four prisons).
- All prisoners have access to cleaning materials (two prisons).
- All prisoners have access to hand washing facilities and products when in recreation areas (two prisons).
- Unit staff maintain complete and accurate records of time out-of-cell (one prison).
- All prisoners are given their initial phone call on admission to the Prison (one prison).
- All prisoners subject to separation and medical isolation have access to a television in their cells (one prison).

The Department accepted all of my recommendations.

The Department has reported that steps have been taken to give effect to each of the recommendations.

Acknowledgements

I am grateful to the Department and prison staff for supporting my Inspectors in conducting their inspections. I appreciate that this is a difficult time, and am heartened by the helpful approach taken by management and staff. I also acknowledge the work that would have been involved in collating the information sought by my Inspectors.

Also, thank you to the various prisoners who have discussed difficult and personal information with my Teams.

Finally, I would like to thank my Inspectors and supporting staff for the work undertaken during this challenging period.

Peter Boshier

Chief Ombudsman

National Preventive Mechanism



Appendix 1. New Zealand COVID-19 Alert Level system

Alert Level 1 — Prepare

The disease is contained in New Zealand.

Risk assessment

- COVID-19 is uncontrolled overseas.
- Isolated household transmission could be occurring in New Zealand.

Range of measures that can be applied locally or nationally

- Border entry measures to minimise risk of importing COVID-19 cases.
- Intensive testing for COVID-19.
- Rapid contact tracing of any positive case.
- Self-isolation and quarantine required.
- Schools and workplaces open, and must operate safely.
- No restrictions on personal movement but people are encouraged to maintain a record of where they have been.
- No restrictions on gatherings but organisers encouraged to maintain records to enable contact tracing.
- Stay home if you're sick, report flu-like symptoms.
- Wash and dry your hands, cough into your elbow, don't touch your face.
- No restrictions on domestic transport — avoid public transport or travel if you're sick.
- No restrictions on workplaces or services but they are encouraged to maintain records to enable contact tracing

Alert Level 2 — Reduce

The disease is contained, but the risk of community transmission remains.

Risk assessment

- Household transmission could be occurring.
- Single or isolated cluster outbreaks.

Range of measures that can be applied locally or nationally

- People can reconnect with friends and family, and socialise in groups of up to 100, go shopping or travel domestically if following public health guidance.
- Keep physical distancing of 2 metres from people you don't know when out in public or in retail stores. Keep 1 metre physical distancing in controlled environments like workplaces, where practical.
- No more than 100 people at gatherings, including weddings, birthdays, funerals and tangihanga.
- Businesses can open to the public if following public health guidance including physical distancing and record keeping. Alternative ways of working are encouraged where possible.

- Hospitality businesses must keep groups of customers separated, seated and served by a single person.
- Maximum of 100 people at a time in a defined space.
- Sport and recreation activities are allowed, subject to conditions on gatherings, record keeping, and physical distancing where practical.
- Public venues such as museums, libraries and pools can open if they comply with public health measures and ensure 1 metre physical distancing and record keeping.
- Event facilities, including cinemas, stadiums, concert venues and casinos can have more than 100 people at a time, provided there are no more than 100 in a defined space, and the groups do not mix.
- Health and disability care services operate as normally as possible.
- It is safe to send your children to schools, early learning services and tertiary education. There will be appropriate measures in place.
- People at higher risk of severe illness from COVID-19, for example those with underlying medical conditions, especially if not well-controlled, and older people, are encouraged to take additional precautions when leaving home. They may work if they agree with their employer that they can do so safely.

Alert Level 3 — Restrict

High risk the disease is not contained.

Risk assessment

- Community transmission might be happening.
- New clusters may emerge but can be controlled through testing and contact tracing.

Range of measures that can be applied locally or nationally

- People instructed to stay home in their bubble other than for essential personal movement — including to go to work, school if they have to or for local recreation.
- Physical distancing of 2 metres outside home including on public transport, or 1 metre in controlled environments like schools and workplaces.
- Bubbles must stay within their immediate household bubble but can expand this to reconnect with close family/whānau, or bring in caregivers or support isolated people. This extended bubble should remain exclusive.
- Schools between years 1 to 10 and Early Childhood Education centres can safely open but will have limited capacity. Children should learn at home if possible.
- People must work from home unless that is not possible.
- Businesses can open premises, but cannot physically interact with customers.
- Low-risk local recreation activities are allowed.
- Public venues are closed. This includes libraries, museums, cinemas, food courts, gyms, pools, playgrounds, markets.
- Gatherings of up to 10 people are allowed but only for wedding services, funerals and tangihanga. Physical distancing and public health measures must be maintained.

- Healthcare services use virtual, non-contact consultations where possible.
- Inter-regional travel is highly limited to, for example, essential workers, with limited exemptions for others.
- People at high risk of severe illness such as older people and those with existing medical conditions are encouraged to stay at home where possible, and take additional precautions when leaving home. They may choose to work.

Alert Level 4 — Lockdown

Likely that disease is not contained.

Risk assessment

- Community transmission is occurring.
- Widespread outbreaks and new clusters.

Range of measures that can be applied locally or nationally

- People instructed to stay at home in their bubble other than for essential personal movement.
- Safe recreational activity is allowed in the local area.
- Travel is severely limited.
- All gatherings cancelled and all public venues closed.
- Businesses closed except for essential services, such as supermarkets, pharmacies, clinics, petrol stations and lifeline utilities.
- Educational facilities closed.
- Rationing of supplies and requisitioning of facilities possible.
- Reprioritisation of healthcare services.

Appendix 2. Criteria for OPCAT COVID-19 inspections

Criteria

A set of criteria has been developed to align with the Chief Ombudsman's statement of principles to guide facilities in managing this crisis,¹⁹ 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.

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.

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

Contact with the outside world

- Ability and frequency to communicate with other people outside of the facility, such as whānau and legal advisors.
- 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

- Treated with dignity, respect and compassion.
- Consideration is given to the particular needs of vulnerable groups, including those with disabilities.
- 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

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

Staffing

- 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.
- Sufficient staff to provide the necessary services to the number of people in the facility and their needs.

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