



Fairness for all

## OPCAT report

# Thematic report on inspections of Managed Isolation and Quarantine Facilities under the Crimes of Torture Act 1989

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**OPCAT Report: Thematic report on inspections of Managed Isolation and Quarantine Facilities under the Crimes of Torture Act 1989**

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## Introduction

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

I am designated to monitor and carry out such inspections of health and disability places of detention, which includes managed isolation and quarantine facilities, to ensure that people are being treated humanely and their human rights are being respected and protected.<sup>2</sup> The preventive purpose of these inspections provides for an independent opinion as to the treatment and conditions in these facilities, and for recommendations for improvement to be made.

Independent monitoring is essential during these unprecedented times. It provides confidence to the Aotearoa New Zealand public that people returning to the country are being treated fairly when in managed isolation or quarantine. While firm action to respond to COVID-19 and to keep people safe from the virus is necessary, extraordinary measures must not have an unnecessary or disproportionate impact on people's rights.

This report draws themes from six inspections of managed isolation and quarantine facilities undertaken between October and December 2020.

## Managed Isolation and Quarantine facilities

The COVID-19 virus has presented extraordinary challenges to us all. Since Aotearoa New Zealand recorded its first case of COVID-19 on 28 February 2020, the Government has taken a number of unprecedented actions to keep the public safe from the virus, including declaring a State of National Emergency on 25 March 2020.<sup>3</sup>

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<sup>1</sup> 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>

<sup>2</sup> More information about the Chief Ombudsman's monitoring of managed isolation and quarantine facilities can be found at <https://www.ombudsman.parliament.nz/what-ombudsman-can-help/monitoring-covid-19-managed-isolation-and-quarantine-facilities>

<sup>3</sup> The State of National Emergency was in force between 12:21pm on 25 March 2020 and 12:21pm on Wednesday 13 May 2020. It covered all of New Zealand including the Chatham Islands, Stewart Island and other offshore islands. The declaration was made by the Minister of Civil Defence Hon Peeni Henare in consultation with the Prime Minister Rt Hon Jacinda Ardern following advice from the Director of Civil Defence and Emergency Management. See: [https://gazette.govt.nz/assets/pdf-cache/2020/2020-go1435.pdf?2020-12-17\\_22%3A55%3A21](https://gazette.govt.nz/assets/pdf-cache/2020/2020-go1435.pdf?2020-12-17_22%3A55%3A21). The State of National Emergency was distinct from the COVID-19 Alert System. See: <https://covid19.govt.nz/alert-system/history-of-the-covid-19-alert-system/#state-of-national-emergency>

In March 2020, travel to Aotearoa New Zealand was restricted to all but New Zealand citizens or permanent residents.<sup>4</sup> From 9 April 2020, all persons arriving in the country by air were required to be isolated in managed isolation or quarantine (MIQ) facilities.<sup>5</sup>

Managed isolation facilities are ‘low-risk facilities’ that host detainees who are (generally) asymptomatic and not COVID-19 positive or close contacts of a confirmed or probable case of COVID-19.<sup>6</sup> Should a detainee in a managed isolation facility develop symptoms consistent with COVID-19 they will be isolated at that facility, according to their risk profile as assessed by health staff. Managed quarantine facilities are ‘higher-risk’ facilities that host detainees who are confirmed or probable cases of COVID-19, or are a close contact of a confirmed or probable case of COVID-19.<sup>7</sup> Some facilities are dedicated solely to providing managed isolation, or quarantine. Some facilities are dual-use and provide both managed isolation and quarantine. This report uses MIQ as an umbrella term, applying to all three types of facility.

At the time of these inspections, people entering Aotearoa New Zealand by air were required to report for medical testing and commence isolation or quarantine as soon as practicable after arrival.<sup>8</sup> Maritime arrivals were also required to be tested, and undergo isolation or quarantine for at least 14 days, either on their ship, in an MIQ facility, or a combination of the two.<sup>9</sup> MIQ facilities also accommodated detainees who had been transferred from the community after receiving a positive COVID-19 test or been identified as a close contact of someone who had tested COVID-19 positive (community detainees).

Detainees in MIQ facilities were required to stay for a minimum of 14 days in order to allow for the detection of the virus and prevent transmission to the community.<sup>10</sup> When the inspections took place, detainees were tested twice for COVID-19 during their stay in an MIQ facility,

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<sup>4</sup> For more information on border restrictions, see <https://www.immigration.govt.nz/about-us/covid-19/border-closures-and-exceptions> [accessed 17 December 2020].

<sup>5</sup> Section 70(1)(e), (ea), and (f) Health Act Order. <https://covid19.govt.nz/assets/resources/legislation-and-key-documents/COVID-19-Section-70-order-9-April-2020.pdf> [accessed 28 January 2021]

<sup>6</sup> Please see the glossary in the *Operations Framework Managed isolation and quarantine facilities*, Version 5.1: <https://www.miq.govt.nz/assets/operations-framework-managed-isolation-and-quarantine-facilities.pdf>. [accessed 22 June 2021]

<sup>7</sup> Please see the glossary in the *Operations Framework Managed isolation and quarantine facilities*, Version 5.1: <https://www.miq.govt.nz/assets/operations-framework-managed-isolation-and-quarantine-facilities.pdf>. [accessed 22 June 2021]

<sup>8</sup> COVID-19 Public Health Response (Air Border) Order (No 2) 2020: <https://legislation.govt.nz/regulation/public/2020/0239/latest/LMS403346.html> [accessed 28 January 2021]

<sup>9</sup> COVID-19 Public Health Response (Marine Border) Order (No 2) 2020: <https://legislation.govt.nz/regulation/public/2020/0240/latest/LMS403466.html> [accessed 28 January 2021]

<sup>10</sup> COVID-19 Public Health Response (Isolation and Quarantine) Order 2020, cl 10: <https://www.legislation.govt.nz/regulation/public/2020/0241/latest/LMS401711.html> [accessed 28 January 2021]

usually around day 3 and day 12. A negative test was required for leaving an MIQ facility.<sup>11</sup> Detainees were required to follow the protocols of the MIQ facility, and were not free to leave the facility at will.<sup>12</sup>

The facilities I inspected were located in Auckland and Rotorua.

I would like to acknowledge the combined efforts of all staff working in the MIQ environment, including the New Zealand Defence Force (NZDF), Ministry of Health (MoH), District Health Boards (DHBs), the Ministry of Business, Innovation and Employment (MBIE), hotel staff, security staff, and contractors to protect Aotearoa New Zealand from COVID-19. Staff have been very responsive to the feedback provided by my Inspectors during inspections, and to the recommendations I have made in my reports to improve the treatment and conditions of detainees.<sup>13</sup> I recognise staff are operating in a challenging environment and I consider that, like me, they are seeking the best outcomes for the detainees and Aotearoa New Zealand.

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<sup>11</sup> COVID-19 Public Health Response (Isolation and Quarantine) Order 2020, cl 9:  
<https://legislation.govt.nz/regulation/public/2020/0241/latest/LMS401707.html> [accessed 28 January 2021]

<sup>12</sup> COVID-19 Public Health Response (Isolation and Quarantine) Order 2020, cl 14:  
<https://legislation.govt.nz/regulation/public/2020/0241/latest/LMS401723.html> [accessed 28 January 2021]

<sup>13</sup> Under section 27(b) of the Crimes of Torture Act 1989, my function as the National Preventive Mechanism is to make recommendations to the person in charge of the place of detention.

## Executive Summary

This report outlines my key observations and recommendations in relation to six MIQ Facilities inspected between October and December 2020. I made 27 recommendations across the six MIQ Facilities, all of which MBIE has accepted.

Each Facility had its own unique set of operating circumstances, and associated challenges, in providing managed isolation and quarantine for detainees. Despite the variations, I found the Facilities to be consistently responsive in seeking to improve the treatment and conditions for detainees. My inspections were guided by expectations outlined in Appendix 1 and summarised below.

In responding to my provisional thematic report, MBIE has stated, *'The evolving and dynamic nature of the COVID-19 situation has presented complex, never previously experienced operational challenges. MIQ remains a cornerstone of the Government's elimination strategy and operates in an environment of continuous improvement. I would like to acknowledge the role of independent inspection, and the efforts of your office, in contributing to the development of improved systems and outcomes for returnees and workers in MIQ.'*

## Health and safety

I expect Facilities to provide all detainees with access to fresh air and sunshine, and time outside of the room in which they sleep. Each of the Facilities had an outside area for detainees to use, however, those areas varied in their availability and suitability. I was pleased that Facilities made changes in response to my advice that they improve these areas, including by dedicating some space to children and family groups. One Facility established a new, much larger exercise area following my inspection. Two other Facilities added ablution facilities to their offsite outdoor exercise area, after I expressed concern about their lack of availability there.

Facilities also responded promptly when I suggested improvements to infection prevention and control (IPC) measures, which are important to ensure a safe environment for detainees and staff in MIQ facilities. In particular, my Inspectors observed four instances across three Facilities where staff did not comply with personal protective equipment (PPE) requirements. Facility staff acted promptly when my Inspectors raised concerns, and I recommended that Facilities ensure staff wear personal protective equipment in accordance with Facility requirements at all times. I was also pleased that, during the inspection period, MBIE introduced an electronic sign-in system across all MIQ facilities to improve the quality of the data being collected from all workers and contractors who visit the Facilities.

Health care should be available and accessible for those in detention. In general, Facility staff displayed a proactive attitude to monitoring and responding to detainees' health needs. However, there was inconsistent practice across Facilities regarding whether detainees had access to free medical advice. Although detainees at one Facility could access free medical advice from a General Practitioner (GP), not all Facilities provided this. I would like to see this inconsistency in practice addressed. In responding to my provisional thematic report, MBIE has

informed me, '*The Ministry of Health also notes your concerns about access to free medical advice across facilities, and is investigating the issue.*' I am pleased to learn this.

I was also concerned that another Facility had potentially re-occurring shortages of health staff. This presents a health and safety risk to detainees, staff, and the wider public. I recommended this be addressed. MBIE has responded to my provisional thematic report advising, '*Pressure on the health workforce ebbs and flows in response to a range of complex factors, some caused by temporary circumstances and others which are sustained demands on the system. The Ministry of Health recognises the particular pressure for the health workforce, and works with District Health Boards on strategies to alleviate these pressure points (in the short and medium term) as a matter of priority. MIQ continues to work closely with the Ministry of Health and the District Health Boards to ensure that the health workforce capacity can match, and is responsive and resilient to, evolving and variable demand in the system.*' I appreciate the efforts of MBIE, the Ministry of Health, and the District Health Boards in this challenging area.

Detainees may enter MIQ Facilities during difficult periods of their life, which can increase stress and affect their wellbeing. I commended Facilities that took proactive measures to support detainees' mental health and wellbeing, such as by providing regular wellbeing checks for detainees, and putting together individual support and education packages for detainees.

## Contact with the outside world

Although physically prevented from interacting with the outside world while in MIQ facilities, detainees should be able to connect and communicate with people through other means, such as the internet. When inspected, two Facilities had unstable Wi-Fi, which prevented detainees from making video calls to their families and loved ones, continuing their education, and maintaining employment arrangements. I was pleased to learn that following my inspections the Wi-Fi at both Facilities had been improved. I was pleased that Facilities also took other measures to connect detainees with loved ones, such as allowing physically distanced visits with family and friends at the Facility's perimeter fence.

## Dignity and respect

I expect MIQ Facilities to communicate with detainees about their stay in an open, clear, and consistent way. The majority of surveyed detainees reported they were satisfied with Facility communication on topics such as COVID-19 testing procedures and results, how to access services, the length of their stay, and their rights. However, some surveyed and interviewed detainees at several Facilities identified a number of instances where unclear communication caused them confusion or distress, and I made it clear in one Facility's provisional report that I would like this to change. In responding to that report the Facility advised me that since my inspection, material to inform detainees had been improved and onsite wellbeing navigators contacted detainees within the first few days of their arrival. I was pleased such action had been taken.

I also expect detainees to be able to communicate through interpretation services if needed, in situations other than formal medical interactions. I made several recommendations to Facilities to ensure professional interpreter services are available and accessible 24 hours a day. I also encouraged one Facility to implement signage using symbols to improve basic communication with detainees.

People staying in MIQ facilities have a range of physical, mental, and psychosocial needs. Facility staff told my Inspectors they do not generally receive prior notice of a person's particular needs until they arrive at the Facility. Despite this challenge, detainees generally had positive feedback about how staff managed their particular needs. I made several recommendations across Facilities to improve how those Facilities meet the needs of children, young people, and people with disabilities.

## Protective measures

Protective measures such as complaints mechanisms and good communication channels are especially important in places of detention where detainees are subject to the restrictions and rules of the facility.

People in detention should be clearly informed about how they can make a complaint, and any complaints they make should be dealt with in an equitable and consistent manner. There is a description of the complaints procedure in the *Welcome Pack*<sup>14</sup> for detainees, which includes an online complaints form and email address covering all MIQ facilities. However, at the time of my inspections, none of the six Facilities had a formal, facility-based internal complaints system or register in which to record complaints and how they were addressed. Rather, individual agencies at each Facility separately recorded any complaints detainees made to them. Staff often reported they responded informally and immediately to complaints, but did not record the actions taken in response.

Although the practice of informal resolution of complaints where possible is to be encouraged, the failure to record and track internal complaints and the corrective actions taken creates risks that detainees may experience inconsistent or delayed responses. Having a formal process for receiving and responding to complaints also assists a facility to identify patterns of issues arising, address what is causing them, and take corrective action in a timely manner, rather than having complaints dealt with in an ad hoc manner that is potentially inequitable for detainees. Therefore, in provisional reports I indicated each Facility should review, or establish, a formal, complaints system that is accessible, well-communicated and includes the recording of complaints, corrective action taken, and a clear pathway of escalation.

I am pleased to learn that, since my inspections, staff at three Facilities have started using an electronic internal complaints register. I consider it important Facilities ensure that detainees are made aware of the complaints process.

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<sup>14</sup> The *Welcome Pack* is a document for detainees that contains information about their stay in an MIQ facility, including how to stay safe, and what needs to happen before they can leave the facility.

## Staffing

MIQ Facilities bring together staff from a number of agencies who are required to work together in a new, and ever-changing environment. In this context, I would like to acknowledge the professionalism and commitment of the staff my Team encountered during the inspections. MBIE has responded to my provisional thematic report stating, *'I am pleased to note that throughout the provisional thematic report their efforts are recognised, as our staff are pivotal to the success of MIQ.'*

I was concerned that the frequency of staff rotations at several Facilities made it challenging to maintain continuity of knowledge about the facility and consistency in care for detainees. As such, I made two recommendations in this area. In responding to my provisional thematic report, MBIE has advised, *'MIQ is continuing to stabilise its workforce; a new workforce strategy is under development, which includes reviewing the overarching operating model. As noted in recent report responses to your office, this includes the consideration of implementing permanent MIIF [managed isolation facility] managers. This review will assist in ensuring a sustainable MIQ system for as long as it is required, and identify any roles that can be transitioned to appropriately skilled civilian staff.'* I will follow the review with interest, and continue to look at the impact of staff rotation on the conditions and treatment of detainees in my inspections.

Concern about the need to ensure adequate levels of healthcare staff also led me to make one recommendation about health staff resourcing.

## Inspection methodology

My inspections focused on the conditions and treatment of people detained in the Facilities inspected. The expectations that guided my inspection are outlined in Appendix 1.

Between 8 October and 3 December 2020, my Inspectors undertook six announced inspections of MIQ facilities (the Facilities) around Aotearoa New Zealand. All inspections took place when Aotearoa New Zealand was at COVID-19 Alert Level 1. My Team for each inspection was made up of between two and five Inspectors.

Inspections involved onsite and remote inspection activities. During the first four inspections, my Team was onsite at the Facility for a maximum of four hours, which involved a physical tour of the Facility and an interview with the Facility Manager and other facility leads. After the physical inspection, my Inspectors discussed with Facility staff any initial issues they had noted. During the onsite visit, my Inspectors wore full personal protective equipment (PPE).

Detainees and staff were invited to participate in an online survey regarding their experience while in, or working at, the Facility.<sup>15</sup> My Team also conducted interviews with consenting detainees and staff remotely, and reviewed requested Facility information. I then produced my findings based on analysis of evidence the Team gathered from their physical observations, interviews with the Facility management team, information received from the Facility, and staff and detainee survey responses.

I sent a provisional report to each Facility and invited them to comment as to the factual accuracy and completeness of evidence in the report. Some of the Facility feedback I received came from the Facility directly, and some came from MBIE. I found the Facilities to be responsive in addressing the issues identified in my provisional reports. I considered the feedback and produced a final report for each Facility that contained my finalised findings and recommendations.

In the two later inspections, my methodology evolved for infection prevention and control purposes. My team were onsite at the Facility for a total of two and a half hours, during which time they conducted the physical inspection only, wearing full PPE. All other inspection activity was conducted remotely.

A copy of my provisional thematic report was provided to each Facility for comment. I received a response from a Facility Manager and a response from MBIE. I have had regard to that feedback when preparing my final report.

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<sup>15</sup> A staff survey was not sent to the first two Facilities I inspected. At those Facilities, detainees also only received one email requesting they participate in the survey, and there was a low response rate of 12 people between the two facilities. The survey methodology was subsequently changed so that I sent out a staff survey to the later Facilities I inspected, and I sent further messages to detainees and staff reminding them about the survey. Response rates significantly improved to an average of 61 detainees per Facility.

## Observations

### Health and Safety

#### Varying suitability of outdoor exercise areas

I expect Facilities to provide all detainees with access to fresh air and sunshine, and time out of the room in which they sleep. Each of the Facilities had an outside area for detainees to use. However, Inspectors observed, and were told by staff and detainees, that some of the outside areas did not meet the needs of all detainees.

#### Suitability of onsite exercise areas

Inspectors observed, and were told by staff and detainees, that the exercise areas at two Facilities were too small. At one Facility, this restricted the number of detainees who could access the outside area at any one time while maintaining social distancing.

At the same Facility, the smokers' area was located too close to the exercise area, causing non-smokers to be exposed to cigarette smoke. The outdoor area also lacked shade to protect detainees from the sun. MBIE has informed me that, since my inspection, the Facility concerned has established a new exercise area that is much larger than the previous area. I was advised that 45 people<sup>16</sup> can be in the new area at the same time while maintaining social distancing, and the area very rarely reaches capacity. I was also advised that in the new area detainees can exercise without being in close proximity to the smokers' area, trees provide shade, and there is plenty of grass for children to play on. I am pleased that since my inspection the Facility has acted to address the concerns I had expressed about the exercise area. I consider the new exercise area will improve the health and wellbeing of all detainees during their time at the Facility.

At another Facility, detainees reported social distancing was often breached in the exercise and smoking areas. When interviewed, staff appeared to have a good understanding of social distancing, and Inspectors did not observe any breaches of this during the physical inspection. I consider it important that all detainees feel safe using a Facility's outdoor exercise area and are able to do so safely. I expect that staff make sure social distancing is adhered to at the outdoor exercise areas.

#### Suitability of offsite outdoor exercise area

Two Facilities used an offsite outdoor exercise area due to limited outdoor space onsite.<sup>17</sup> Detainees at both Facilities could access the offsite exercise area by booking a spot on a bus every other day. The time away from the Facility included an hour of exercise, plus up to one hour of travel in total. Although having to travel to an outdoor exercise area is not ideal, I am pleased that detainees had the opportunity to exercise in a more spacious area. Staff informed

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<sup>16</sup> At the time of the inspection there were 130 detainees in the Facility.

<sup>17</sup> At one of those Facilities, the onsite outdoor exercise area was limited to 20 people for an hour at a time. The other Facility had a small balcony detainees could book.

Inspectors that although there was no shade at the offsite exercise area, detainees could purchase their own sunsmart options, such as sunscreen, sun hats, or umbrellas.

One issue that concerned my Inspectors was that detainees did not have access to bathroom facilities at the offsite exercise area. Access to sanitary and private bathroom facilities meet a basic human need. Failure to provide bathroom facilities may be a barrier to some detainees' access to fresh air and exercise. For example, one detainee commented they felt like the lack of a toilet facility made them '*lose my dignity*'.

Facility management at both facilities also had concerns about the lack of bathroom facilities in the offsite exercise area. They reported they had previously raised the issue with the Regional Isolation and Quarantine Control Centre (RIQCC), and were working with the RIQCC to identify and provide suitable bathroom facilities.

My Inspectors followed up on this issue, and I am pleased to be informed that following my inspection a portable toilet was put in place at the offsite exercise area. I commend the staff at the Facility and the RIQCC for addressing this issue so promptly. Staff told my Inspectors that a cleaner is at the exercise area seven days a week, and they clean the toilet thoroughly after each use.

However, my Inspectors observed there was a lack of signage at the exercise area about the availability of the toilet. There was also no signage inside the toilet facility about hand hygiene. Therefore, to both Facilities, **I recommended appropriate signage is provided at the offsite outdoor exercise area about the available bathroom facilities. I also recommended appropriate signage is provided inside the toilet facility at the offsite outdoor exercise area about appropriate hand hygiene.**

### Areas for improvement in infection prevention and control measures

There were clear infection prevention and control (IPC) policies and processes in place at all Facilities. Inspectors generally observed good understanding and use of IPC measures throughout Facilities, including during their entry to the Facility.<sup>18</sup> At one Facility, Inspectors observed a poster about staff PPE training on a noticeboard, and saw multiple well-resourced PPE stations throughout the Facility.

Two Facilities reported they benefitted from a dedicated Infection Prevention and Control (IPC) Coordinator provided by the Regional Isolation and Quarantine Control Centre (RIQCC). The IPC Coordinator provided training for Facility staff on the use of PPE, responded to any PPE breaches at the Facility, and completed regular inspections of IPC processes and audits of IPC measures. Another Facility Manager reported their Facility fostered a 'no blame' culture, encouraging staff to speak up, in particular, about infection prevention and control issues.

Despite these positive examples, I identified areas where infection prevention and control measures could be improved to protect detainees' health and safety. In particular, my

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<sup>18</sup> Section 3 of the national Ministry of Business, Innovation and Employment *Operations Framework Managed isolation and quarantine facilities, Version 3.1 current at 02 November 2020 (Operations Framework)* sets out the IPC principles, plan, procedures, and requirements.

Inspectors observed four instances across three Facilities where staff did not comply with PPE requirements. These included staff not wearing the required PPE in certain situations. I was pleased that Facility staff at the Facilities concerned acted promptly when my Inspectors raised these instances with them, and were willing to take steps to encourage PPE compliance. In responding to a Facility's provisional report, MBIE stated '*regular audits are undertaken, training in IPC [infection prevention and control] is provided to all staff, and we look to actively enforce the IPC requirements.*'

I consider it particularly important that staff lead by example in the areas of PPE/IPC compliance and that instances of PPE non-compliance are recorded for future reference. I am concerned that any non-compliance with PPE requirements poses a risk to the health and safety of those in the Facility. I made the following recommendations across the three Facilities:

- **I recommended that all staff wear personal protective equipment in accordance with Facility requirements at all times, and any instances of non-compliance continue to be recorded.**
- **I recommended the Facility ensure all staff and contractors comply with the Facility's infection prevention and control policies, which should be in line with the latest health guidelines.**
- **I recommended that all staff wear personal protective equipment in accordance with Facility requirements at all times.**

I also identified an area for improvement at one Facility, where my Inspectors observed hand sanitiser only in the lift. MBIE has advised that since my inspection hand sanitiser has been placed inside and outside each lift and is also available throughout the hotel, including in the lobby, reception area, kitchen, bar area, and other work spaces. I am pleased that since my inspection the Facility has reportedly acted to improve the provision of hand sanitiser in the Facility.

### Staff training on personal protective equipment and infection prevention and control

Staff reportedly attended initial personal protective equipment (PPE) training and ongoing refresher training. At most Facilities, at the time of the inspections, each agency within the Facility was responsible for ongoing PPE and IPC training for staff. I am supportive of a consistent training approach, including ongoing training and messaging for all staff about PPE and IPC policy and practice. Staff at another Facility commented via the staff survey that they would benefit from ongoing PPE training.

### COVID-19 testing of staff

Since 30 August 2020, people who work at MIQ facilities have been required to undergo regular testing for COVID-19 under the COVID-19 Public Health Response (Required Testing)

Order 2020 (the Required Testing Order).<sup>19</sup> At one Facility I inspected, the Workforce Coordinator was responsible for verifying all staff had been tested for COVID-19 in line with the Required Testing Order. The Workforce Coordinator advised they used the sign-in register at reception and staff rosters to identify and contact Facility staff and contractors to organise testing. My Team were told that the sign-in register was not always legible and did not always contain contact details for Facility contractors. This made it difficult for the Workforce Coordinator to verify the required test status of all staff and contractors who had entered the Facility.

After issuing my provisional Facility report, MBIE responded saying there were data quality issues relating to the legibility of information provided in the manual sign-in sheets. They advised that an electronic sign-in system has since been implemented at all MIQ facilities, which has significantly improved the quality of the data being collected from all workers (including contractors) who visit the Facilities. I am pleased to hear that since my inspection a measure has been put in place to better ensure all MIQ workers (including contractors and visitors) are tested in accordance with the Required Testing Order.

## Provision of healthcare

All people in places where they cannot leave at will must have access to timely and adequate healthcare. In general, Facility staff displayed a proactive attitude to monitoring detainees' needs, and responding to individual medical concerns of detainees. At one Facility, I was pleased to see detainees had access to free medical advice from a General Practitioner (GP), and free prescriptions, if required. However, access to medical advice varied across MIQ Facilities.

Detainees at another Facility informed Inspectors they felt they could have had better access to medical care when they needed it. They gave examples of experiencing delays to receiving medical care, and being unable to access a GP due to the cost involved. I found the experience reported by these detainees concerning. The *Welcome Pack (version 5.3)* for detainees states:

*Medical Care: A team of health professionals are always available at your facility. Contact the hotel reception and ask for a nurse to help you with your health concerns. The health staff will also be able to assist with any medication and prescription requirements.*

In responding to one provisional Facility report, MBIE advised that '*The healthcare processes and systems in place in the facility have improved since the inspection. The onsite health team is now more experienced in dealing with situations. They have also improved the handover between the nursing shifts*'. MBIE informed me that GPs were not brought to the Facility, but phone consults with GPs were made available to detainees on request. However, unlike at one Facility, these consultations were not free. In that instance, MBIE advised that the Facility had no control over the prices local doctors set for phone consults for patients who were not

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<sup>19</sup> The COVID-19 Public Health Response (Required Testing) Order 2020 can be accessed here: <http://www.legislation.govt.nz/regulation/public/2020/0230/latest/LMS400302.html?src=qs> [accessed 15 June 2021]

signed up with their practice. It also said detainees were able to do phone consults with their own GP and have medication sent to the Facility. MBIE further advised that where serious or urgent situations could not be resolved by the onsite nurses or a GP phone consult, individuals were taken to hospital. I would like to see the inconsistency in practice addressed. I **recommended the Facility ensure that appropriate, timely, medical care is available to detainees.**

Review of documentation, and interviews with staff and detainees, indicated that another Facility had issues with ensuring adequate numbers of health staff. My inspection occurred during a transition period when nurses from the private healthcare services provider left and the relevant DHB took over responsibility for the Facility's health workforce. MBIE advised the lack of health staff during the transition period was a '*historical, but potentially re-occurring, issue tied to system-wide constraints (financial, resourcing).*' I consider having sufficient health care staff is of utmost importance in an MIQ facility. Interviews with detainees also indicated they had experienced delays in having their health concerns addressed by staff and this had distressed them.

I consider the health staffing issues at the Facility presented a health and safety risk to detainees, staff, and the wider public, particularly as the Facility had had detainees with confirmed cases of COVID-19. This was raised with the Facility Manager at the time of the inspection. I **recommended the Facility ensure it has the required level of health care staff and expertise to meet the health needs of the detainees.**

### Support for detainees' mental health and wellbeing

Comments from detainees in interviews and surveys indicated some had found their time in managed isolation unsettling. Detainees told Inspectors they were concerned entering the Facility, and it was a very uncertain, unpredictable and ambiguous period of their life. The length of time in the facility, fears of infection, frustration and boredom, having inadequate supplies (for example, personal hygiene items) and information, and lack of contact with the outside world are factors that can cause stress.<sup>20</sup> Some detainees had returned to Aotearoa New Zealand in difficult circumstances, such as due to the passing of loved ones.

Therefore, I was pleased to see Facilities taking proactive measures to support detainees' mental health and wellbeing. For instance, detainees at one Facility who were grieving for loved ones commented on the compassion and kindness shown by staff members who they said checked in on them regularly. At another Facility, Inspectors were told that Wellness Navigators facilitated individualised care for detainees, such as providing birthday cakes on detainees' birthdays and preparing age-appropriate education packs. I commended the Facility on these positive initiatives. Staff at another Facility told my Team that Wellbeing Coordinators provided up to three wellbeing checks for detainees each day. Staff said those checks allowed them to regularly communicate with detainees, and assess wider wellbeing needs and any other issues raised by detainees. I consider regular wellbeing checks provide a good

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<sup>20</sup> Lancet 2020. Samantha K Brooks et al. *The psychological impact of quarantine and how to reduce it: rapid review of the evidence.*

opportunity to identify those detainees who are most at risk and take measures to meet their needs.

At another Facility, Inspectors learnt the Wellbeing Navigators were the first port of call for detainees with mental health concerns, and they would refer detainees on to other agencies for further support if needed. The Facility reported Welfare Navigators conducted regular checks on detainees, and could also put together individual support packages for detainees. They also said the Facility Manager '*conducts face to face brief in first 24 hrs*', and '*The ability to text or call 1737<sup>21</sup> is communicated on arrival at the Facility and also contained in the Welcome Pack [on] page 18*'. I am pleased this support is available, as some comments from detainees at the Facility indicated they felt they did not always have an opportunity to voice their mental health needs. For instance, detainees noted their daily healthcare checks were primarily focused on physical symptoms, and minimal attention was paid to their mental health. A detainee said '*questions were more of a closed nature and did not elicit much information*', and it would have been '*helpful to have open questions regarding people's mood, any changes they had noticed*'. **I recommended the Facility review the effectiveness of the measures it has in place to mitigate and address any negative effects of the experience on a detainee's mental health and wellbeing.**

### Provision of nutritious meals

Most of the detainees surveyed across the six Facilities said they had had access to food that was appropriate to their dietary needs. I consider that access to nutritious meals is also an important part of detainees' wellbeing, and that detainees have a right to access foods appropriate to their medical, cultural, ethical or religious needs.

Overall, detainees made positive comments about the food across the Facilities. However, one Facility provided information to detainees that stated they may not be able to meet every individual requirement, and that guests could arrange for online deliveries at their own expense. The document also said the Facility could not guarantee food would be delivered hot to detainees. A detainee with medical dietary needs told Inspectors staff had informed them they could not accommodate their dietary requirements, and they had received meals which did not meet their dietary needs. Another detainee told Inspectors their cooked meals were delivered to them cold.

At one Facility some surveyed detainees said the food provided was not suitable for their children. One detainee said there was not enough milk or fruit provided, and another said they had only received one child's meal for their child and had otherwise received adult meals. Detainees also commented that the chips and biscuits provided during the four-hour bus trip to the Facility, and again on their arrival at the Facility, provided inadequate nutrition for their children. Two detainees at another Facility said there was '*no option of milk for children, only juice*'. In responding to a provisional Facility report, MBIE said the food quality had improved since the inspection and there was more choice available.

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<sup>21</sup> The Welcome Pack says, '*Call or text 1737 for support with grief, anxiety, distress or mental wellbeing. This service is free, and you can call anytime, 24 hours a day, 7 days a week.*'

In response to another provisional Facility report, MBIE advised that while there are limits to the Facility's ability to cater for guests' preferences it does cater for a number of dietary requirements. I expect all detainees to have access to food appropriate to their dietary requirements. **I recommended the Facility meet detainees' dietary requirements, and provide food at an appropriate temperature.**

Similarly, detainees at another Facility commented that food was of inconsistent quality – the size of portions varied, fresh fruit was not delivered daily, and food was sometimes undercooked. The Facility advised it was unable to ensure that meals were hot upon delivery to detainees. I was concerned to learn that the Facility was unable to consistently deliver meals hot to detainees, as this could present a food safety issue. **I recommended the Facility identify how it can ensure meals are delivered hot to detainees.**

## Contact with the outside world

With detainees' physical contact with the outside world restricted, I consider MIQ facilities should facilitate and encourage frequent and free contact for detainees with people outside of the facility, such as friends and whānau. This can be done using telephones, internet/e-mail, video communication, and physically distanced visits such as at a Facility's perimeter fence.

### Access to reliable and free Wi-Fi

The majority of surveyed detainees said they had had unrestricted access to internet/Wi-Fi free of charge. Staff at one Facility reported that internet access had formerly incurred a partial charge for detainees, but that policies had changed to allow free and unlimited Wi-Fi access. Some Facilities also offered detainees SIM cards so they could use a mobile phone during their stay. One Facility had electronic devices available for children and young people, if required.

At two Facilities, interviewed and surveyed detainees reported that problems with internet connectivity had caused them distress and frustration. They said poor Wi-Fi had prevented them from making video calls to their families and loved ones, and continuing their education and employment arrangements. One detainee said, without stable Wi-Fi they could not use the smart TV in their room, and they had had to use their mobile data throughout the stay.

Detainees reported one Facility provided '*expensive SIM plans*' as an alternative to reliable Wi-Fi. One detainee was required to speak to a legal advisor over Skype, but the connection via the hotel internet '*was of poor quality to the point where I had to disconnect and use a paid for mobile call*'. Internet access is vital for detainees' contact with their whānau and the outside world during their period in the facility. The *Operations Framework* provides that detainees '*must have access to free Wi-Fi and a device that enables them to contact their loved ones*'.

During the inspections, my Inspectors were advised the reported Wi-Fi and internet connectivity problems at the two Facilities were being investigated, and there were plans for infrastructure upgrades. Responses to my provisional reports advised that since my inspections, the Wi-Fi at each Facility had been improved, although at one Facility it slowed down at times of high traffic. I am pleased to learn of the improved Wi-Fi, as the ability to have contact with the outside world, and in particular connect with loved ones, is an important right and can have a positive effect on a detainee's wellbeing.

## Fence visits

I was pleased to see several facilities supported detainees' contact with the outside world by allowing visits with family and friends at the perimeter fence. Staff explained that the detainee and their visitor must stand two metres apart on either side of the fence, and both parties must wear masks. Visits were supervised to ensure compliance with physical distancing.

However, Inspectors learned that one Facility did not allow fence visits. A detainee commented that their parents had driven from a different city to deliver toiletries and groceries, but that there were no measures in place to allow them to talk to their parents from a distance on their arrival. I consider providing for friends and whānau to visit detainees at the perimeter fence in a socially distanced, safe and controlled way supports detainees' contact with the outside world. I encouraged the Facility concerned to consider implementing perimeter fence visits, drawing on the experience of other MIQ facilities that do so.

## Measures that compromised detainee privacy

At one Facility, detainees could be observed by members of the public when using a secondary entrance to the Facility. Facility staff reported that approximately 10 percent of detainees entered the Facility from their bus via that hotel entrance which was on a busy road.

Inspectors were told the entrance was used because it was 10-15 minutes faster than using the main entrance. However, members of the public could easily view who was exiting the bus, and no form of screening was used to protect detainees' privacy and dignity. At the time of the inspection my Inspectors raised this with the Facility Manager. During a subsequent meeting my Inspectors were advised that the secondary entrance was no longer used. However, Inspectors noted that even using the Facility's main entrance, detainees remain visible to members of the public as they enter and exit the Facility. **I recommended the Facility seeks to ensure that detainees' privacy is maintained when exiting and entering the Facility.**

## Dignity and Respect

### Communication channels to detainees

I expect MIQ facilities to communicate with detainees about their stay in an open, clear, and consistent way. The majority of surveyed detainees reported they were satisfied with Facility communication on topics such as COVID-19 testing procedures and results, how to access services, the length of their stay, and their rights.

However, surveyed and/or interviewed detainees at several Facilities identified a number of instances where unclear communication caused them confusion or distress. For instance, at one Facility, a number of detainees said when they felt unwell and their illness was not COVID-19 related they had been confused about whether they could leave their room. One said, '*it seems as though the information we are getting changes depending upon who you are speaking to at the time*'. At another Facility, three detainees with symptoms consistent with COVID-19 said they were not permitted into the exercise area, while a fourth was reportedly allowed a supervised walk when they told a staff member they had '*cabin fever*'.

Due to detainees' fatigue when they first arrive at Facilities, my Team suggested the Facility provide a briefing session for detainees at a later date (rather than on arrival). The *Operations Framework* appeared to take account of detainee fatigue saying, '*If returnees arrive late at night, it may be necessary to wait until the morning to conduct the arrival health and wellbeing screen*'. In responding to the relevant provisional Facility report, MBIE outlined how the communication issues identified during the inspection had been addressed. MBIE stated:

- guests are now issued with an onward travel letter shortly after arrival stating the length of the stay and the time and date they will be released. Onsite wellbeing navigators also contact returnees within the first few days of their arrival to discuss and explain onward travel;
- a dedicated isolated person's exercise area has been established, with isolated detainees able to make escorted visits to the area multiple times a day;
- the arrival briefs have been improved to provide more guidance and information on the arrival process. The welcome packs also contain more information about departures and swabbing.

I was pleased to be told steps had been taken to improve information for detainees. In particular, I consider safe access to an outside exercise area for all those who would like it, including 'isolated detainees' is critical.

## Meeting needs of particular groups

People who stay in MIQ facilities have a range of physical, mental and psychosocial needs. However, Facility staff told my Inspectors they usually do not get prior notice of people's particular needs until they arrive at the Facility. Despite this challenge, detainees generally had positive feedback about how staff managed their particular needs.

## Accommodating people with disabilities

Inspectors spoke to two detainees with disabilities who had required additional support from one Facility. One had had a positive experience overall. However, I was concerned that the Facility reportedly did not provide reasonable accommodation<sup>22</sup> for the other detainee. That person was not provided with a room on the ground floor despite having informed the Facility they had a physical disability that limited their mobility. Due to their room placement, the detainee was concerned about how they would exit the Facility in an emergency. They also said they experienced a delay in receiving crutches to aid their mobility, and were not provided with a wheelchair on all occasions when needed. **I recommended the Facility ensure it provides reasonable accommodation for detainees with disabilities.**

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<sup>22</sup> 'Reasonable accommodation' is an important concept in the United Nations Convention on the Rights of Persons with Disabilities. It means to make a change that is reasonable to accommodate the need of a person with a disability. Please see the following webpage for more information:

<https://www.ombudsman.parliament.nz/resources/reasonable-accommodation-persons-disabilities-new-zealand>. [accessed 15 June 2021]

## Accommodating children and young people

Children and young people also have particular needs. I was pleased to see the Facilities accommodating these needs, and providing activities for children, such as one Facility where children could play and draw with chalk on the ground and designated external walls of the hotel.

At another Facility, Inspectors observed a large outdoor area with ‘green’ space and a designated children’s play area. However, several of the inspected Facilities did not have a designated outdoor play area for children. This was despite the *Managed Isolation or Quarantine Facility Selection Criteria (MIQF Selection Criteria)* stating facilities must have ‘*a child safe and friendly environment*’.

At a further Facility, Inspectors heard from staff and detainees that the lack of a dedicated children’s area outside had led to breaches of physical distancing due to young children running around the exercise area. In responding to my provisional report on that Facility, MBIE advised there was no dedicated area for children *‘as there is a risk that having separate bubbles with children in close proximity can easily lead to bubble breaches’*. To avoid this, the Facility required parents to *‘keep positive control’* over young children at all times in the exercise area.

At the time of my inspection of another Facility, it lacked a dedicated outside area for children. In responding to my provisional Facility report which discussed this, MBIE advised that, since the inspection, part of the exercise area had subsequently been *‘coned off’* for use by children. It is pleasing that the Facility had allocated this designated outside area for children. However, I advised the Facility I would like to see sunsmart options, such as sunscreen, hats, and umbrellas available to detainees.

I consider providing an outdoor space for children while they are in the Facility would be beneficial for the children’s wellbeing and that of their families. Therefore, to one Facility, I **recommended the Facility consider how it can best accommodate the particular needs of families with young children, including by providing a designated outdoor area.**

At another Facility, which was designated to accommodate unaccompanied children and young people, management staff raised concerns with my Inspectors about the levels and ability of Facility staff to provide appropriate care for those children and young people.<sup>23</sup> They said it was not uncommon to receive an hour’s notice of the impending arrival of an unaccompanied child or young person, with limited information provided about their needs. MBIE responded to this issue, informing me of how their Managed Isolation Allocation System works (MIAS). They stated within 24 to 48 hours of a flight’s arrival, the allocations team shares a list of all incoming travellers on each flight with the facility they are allocated to, highlighting any minors travelling alone. I encouraged MBIE to notify the relevant MIQ facility of the arrival of an

<sup>23</sup> An unaccompanied child or young person is defined as ‘*someone under the age of 18 years who is neither accompanied by their legal guardian(s), nor by someone designated by their legal guardian(s)*’. Definition taken from Procedures for Unaccompanied Children and Young People Standard Operating Procedures (Ministry of Business, Innovation & Employment V1.1). At the time of the inspection, there were 26 unaccompanied young people, aged between 15 and 17 years, in the Facility concerned.

unaccompanied child or young person as early as possible, so the facility can make arrangements for them.

Management staff also said some children and young people were presenting with complex medical and psychosocial needs that staff felt ill-equipped to deal with. Staff told inspectors the evolving infection prevention and control requirements further restricted the ability of staff to assess, engage with, and monitor the wellbeing of these children and young people. They said checks on children and young people at their hotel room door were '*not enough*'. I share the Facility management's concern about staff being able to meet the sometimes complex needs of the children and young people at the Facility. **I recommended adequate levels of appropriately trained and qualified staff are provided to meet the clinical and psychosocial needs of children and young people in the Facility.**

### **Transportation to two Facilities**

Two Facilities were a four-hour bus trip from the arrival airport. A number of detainees said this caused them stress, with the trip coming at the end of long international flights. For this reason, one detainee described the trip as '*horrific and unsettling*'.

Detainees said they were not informed of the location of the Facility and the bus travel involved until just prior to disembarking their plane in Auckland. They said it would have helped to know about this earlier so they could prepare mentally and ensure they had food for the trip. Detainees also queried how authorities decided who would be accommodated in Facilities that required a long bus trip to reach them. One detainee said the decision, '*should be made on the basis of need, vulnerability, assessment of how much time people had spent travelling, and other relevant factors, not on a random basis*'. Detainees reportedly had to fill out forms with their personal information on multiple occasions: before entering Aotearoa New Zealand, on the bus, and at the Facility. Some expressed surprise about this and queried whether this information could have been recorded electronically to avoid repetition.

I consider providing advance notice of the travel to detainees as early as possible could help alleviate stress by giving people time to prepare for the trip. I also consider placing families with young children in facilities that don't require a long bus trip, as happens for detainees with disabilities, would help those families, who may find the journey particularly difficult. I encouraged one Facility to review how and when it collects information from detainees to avoid them having to provide the same information on multiple occasions and when they may be particularly tired.

In responding to a provisional Facility report, MBIE advised that the bus travel was an unfortunate consequence of the location of the Facility, but the matter and any related decisions were beyond the control of the Facility. I acknowledge this, and am taking steps to examine and monitor the conditions and treatment of international passengers upon their arrival into Aotearoa New Zealand and during their transportation to MIQ facilities.

### **Accommodating people with financial needs**

I was concerned that, at one Facility, Inspectors were informed that staff had used their own money to buy personal items, such as nappies, for detainees who could not access or afford

them. The Facility Manager said the Facility did not have an endless budget for personal items. I note the Facility's document, *Guest information for returning travellers*<sup>24</sup> provided the name of a store from which detainees could purchase items such as nappies, menstrual products, and medication. The document did not mention whether assistance was available for people who may not have been able to afford those items. However, the *Welcome Pack (version 5.3)* for detainees stated the Ministry of Social Development could help in different ways and situations, and provided an email address. The Facility's *Standard Operating Procedures (SOP)* also provided that the Ministry of Social Development may be able to assist guests with essential costs or access to financial assistance.

MBIE responded to my provisional report saying the Facility maintains a storeroom with essential items that are restocked at the Facility's expense and not by staff using their own money. MBIE said specialist external agencies should be aware of, and working with, detainees with financial issues. Though I acknowledged this information, I remained concerned by reports that staff may have used their own money to buy personal items for detainees. I expect to see access to appropriate support is clearly available, straightforward and timely.

### Accommodating mariners

My Team inspected one Facility that was designated to receive mariners. However, there were no mariners in the Facility at the time of the inspection.<sup>25</sup> Inspectors reviewed the '*Maritime Crew Movements in New Zealand Standard Operating Procedure: 5 October 2020*' (*Maritime SOP*) and saw that the arrival process for mariners was less detailed than the arrival process for other detainees. The *Maritime SOP* and supporting documents (*Mariners and Transit Guests Arrival Process* and *Maritime and Transit Guests Departure Process*) did not explicitly outline how maritime detainees' particular needs, such as cultural and communication needs, would be addressed. The Facility provided some signage in a relevant language about physical distancing, that cigarettes and lighters were not to be shared, and food and drink was not to be brought into the exercise area. While I was pleased this basic information was provided in a relevant language, I suggested the Facility consider including in its Maritime SOP how it can better support non-English speaking mariners.

### Accessing interpretation services

Most facilities had a policy that stated professional interpretation services should be used for formal medical interactions. However, Facilities had ad hoc processes in place for accessing interpretation and translation services in other situations.

For instance, at one Facility, staff told my Team that multilingual staff or a web application were used to communicate with detainees day-to-day. Similarly, another Facility's *Standard Operating Procedure (SOP)* did not provide any guidance on translation or interpretation in situations other than formal medical interactions, leaving detainees and staff reliant on

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<sup>24</sup> Inspectors were provided with version 3, as at 4 August 2020.

<sup>25</sup> The Facility's *Mariners and Transit Guests Arrival Process* says 'Mariners are personnel who have either come off a ship and are waiting for an international flight, or have arrived from an international flight, and are waiting to be taken by road to their ship in an NZ Port Facility'.

alternatives to professional translation for all other purposes, such as multilingual staff or family members, phone or web applications. I consider there are other situations, for example when seeking legal advice in relation to immigration matters, making a complaint or discussing information such as departure date and ongoing travel arrangements, where the use of a professional interpretation service would be necessary and appropriate. To address this, **I recommended the Facility ensure professional interpretation services are available and used in all situations where they are needed.**

At the same Facility, feedback from staff indicated that, even in instances where translation was needed for medical purposes, access to the professional interpretation services that were available was cumbersome and awkward with different agencies at the Facility having trouble getting quick translation services. One staff member stated, '*Yes - interpreters are available. It takes a huge amount of time to organise*'. **I recommended the process for using professional interpreting services is simplified to ensure it is practicable for staff to do so as needed.**

Facility management at another Facility told my Inspectors they had not used professional interpreters during their time at the Facility, and were not aware of how to access such a service. Instead, at the time of the inspection, they reported they had used a staff member and a web application to communicate with detainees who did not speak English. This was despite the Facility's *SOP* at the time containing a section that recognised the right of detainees to a competent interpreter, where necessary and reasonably practicable. MBIE responded to my provisional report advising that, '*Posters for [an agency's] 0800 number are displayed in the Ops Room and Health Team room, and it is advertised to staff as a communication tool during key meetings.*' I am pleased to learn these helpful reminders are provided for staff. **I recommended the Facility ensure staff are aware of and apply its policy and process for using interpreters and translators.**

One Facility did not appear to have any policy or process for accessing interpreters. Rather, interpretation was accessed on an ad hoc basis. The Facility's *SOP* did not mention the use of interpreters. Staff gave varied answers when Inspectors asked them about this. Some staff said they did not know how to access interpreters. One staff member advised that interpreters could be accessed through the Wellbeing Navigators, and that interpreter services provided by the local District Health Board and the Police had been used, along with a web application. Staff also told Inspectors that members of a local multi-cultural society had been used to interpret for a group of Chinese speaking detainees, and staff said they would be comfortable using the same approach for Samoan, Russian and Korean speaking detainees.

However, the *Operations Framework* for MIQ facilities stated in order to meet the standards of the Code of Health and Disability Services Consumers' Rights, '*it is important to have a formal process of offering a translator or interpreter for those with language difficulties*'. The Facility subsequently informed me that interpreters are accessible through the Regional Isolation and Quarantine Control Centre (RIQCC) for arrivals, departures and 'swabbing'. In responding to my provisional report, the Facility informed me that a, '*Request to have 24 hour support [was] not approved, although clearly this has been identified as a fundamental need due to the 24 hour nature of the operation, with guests requiring assistance in the evenings*'. I share the Facility's concern about the need to access interpreters 24 hours a day. **I recommended the Facility**

**continue to work with the Regional Isolation and Quarantine Control Centre to develop an effective and efficient policy and process for accessing interpreters 24 hours a day.**

### Signage only in English

The Facilities communicated information about their policies and procedures to detainees in various ways, including using posters and via the television in each room. However, apart from at one Facility, all of the signage Inspectors saw on display was in English.

Staff at one Facility informed my Inspectors they had previously displayed information in various languages, but the signage had been taken down due to the space being cluttered and the notices hard to read. The Facility Manager mentioned they were considering using '*symbolic signage*' (also known as universal signage), for things such as no smoking signs and hand hygiene processes, to improve basic communication for detainees. I considered this would be a positive improvement, which would help overcome language barriers. I encouraged the Facility to implement such signage.

I was pleased to learn that consent forms for COVID-19 testing had been translated into a number of languages for detainees, and that the *Welcome Pack* for detainees was available in a number of languages.

### Protective Measures

#### Formal complaints system or register at Facilities

Anyone in detention should be informed about how they can make a complaint, and have any complaints they make dealt with in an equitable and consistent manner. However, at the time of my inspections, while a central MIQ website-based complaints process was available none of the six Facilities had a formal, internal complaints system or register.

The *Welcome Pack* for detainees contains a description of the complaints process for detainees, including avenues for escalation. The *Welcome Pack* directs detainees to, in the first instance, raise complaints by '*speaking to the onsite Facility Manager or Wellbeing Coordinator*'. Detainees can also make a complaint through the MIQ website.<sup>26</sup> MBIE advised that some facilities provided feedback forms for detainees to complete about their experience in the MIQ Facility, which could be returned to the Facility as a hard copy or emailed to the Facility Manager.

My Inspectors did not observe any signage displayed about a formal complaints process in any of the facilities. On average, 23 percent of the detainees surveyed at the Facilities said they did not know where and how to make a complaint. Across all of the Facilities, an average of 9 percent of the surveyed detainees said they had made a complaint.

When inspected, no Facility had a register to record complaints and responses to them, at the Facility level. Neither did Facilities have systems to capture formal written complaints in a

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<sup>26</sup> The MIQ website complaints address is: <https://portal.miq.govt.nz/complaints/> [accessed 15 June 2021].

confidential manner. Rather, facilities reported the Wellbeing Coordinators, nursing staff, hotel staff and NZDF staff each separately recorded any complaints made to them. Staff reported they responded informally and immediately to these complaints, but did not record the actions taken in response.

A lack of a unified method to record complaints at the facility level means there was no ability to ensure detainee complaints were treated equally or resolved in a consistent manner. Although the practice of informal resolution of complaints where possible is to be encouraged, the failure to record and track complaints and the actions taken in response creates risks that detainees may experience inconsistent or delayed responses. I consider the absence of a formal process at a Facility for raising complaints may also discourage detainees from raising concerns about their conditions or treatment. Having a formal process at each Facility for receiving and responding to complaints also assists the Facility to identify patterns of issues arising, address what is causing them, and take corrective action rather than having the complaints dealt with in an ad hoc manner that is potentially inequitable for detainees.

I am pleased that responses from the Facilities and MBIE to my provisional reports advised that since my inspections three Facilities had developed their complaints systems, including putting in place electronic registers to record complaints made and the action taken to address them. At two of those Facilities I said I would like detainees to be made aware of the complaints process. At the third Facility, MBIE informed me the complaints process had been printed off and placed on the information white board in the lobby and at reception. Reception, welfare staff and the Facility Manager also had A4 copies of the complaints process to hand out if needed.

I therefore made the following recommendations about complaints in Facilities' final reports:

- **the Facility review its complaints process to ensure it has a way of recording complaints and the action taken to address them, and that further action is taken to ensure detainees and staff are made aware of the complaints process.**
- **the Facility has a centralised complaints process to record complaints received and action taken to address them, and regularly reviews the information recorded.**
- **the Facility develop a formal centralised complaints system that is accessible and well communicated, includes the recording of complaints, the corrective action taken, and a clear pathway of escalation.**
- **the Facility ensure that detainees are made aware of the complaints process, including how they can make a complaint at the Facility and the action taken to address their complaint.**
- **the Facility ensure that detainees are made aware of the complaints process.**

## **Staffing**

Staff in MIQ facilities have a challenging, but vital role. MIQ facilities bring together a number of agencies in a new, and ever-changing environment and, in this context, I would like to

acknowledge the professionalism and commitment of the staff my Inspectors encountered. Inspectors observed staff to be positive and engaged in their work, and staff used respectful language when talking about detainees. I found Facility staff to be generally responsive to the individual needs of detainees and proactive in monitoring their welfare. The majority of detainees spoke positively of the staff at Facilities, saying they were kind, professional, and compassionate. Surveyed detainees said they had been treated with dignity and respect while in the Facility. I commend the Facilities on this positive feedback.

## Rotation of staff

I was concerned that the frequency of staff rotations at several Facilities made it challenging to maintain continuity of knowledge about the Facility and consistency in care for detainees. At the time of my inspection at two Facilities, NZDF provided staff for the Facility Manager role on a rotation schedule of one week on one week off for six weeks. At one of those Facilities, the management team expressed concern that this rotation schedule meant there was limited scope for NZDF staff to gain a good understanding of the relevant *SOPs* or training needs of staff, for example. Inspectors were also told the initial training provided for the Facility Manager was insufficient to ensure they could take on the role with confidence. Providing earlier access to the *SOPs* for new Facility Managers was identified as a simple way of addressing this.

At another Facility, the four NZDF staff, including the Facility Manager, changed each fortnight. In response to my provisional report, this Facility informed me it was part of a trial at four MIQ sites of having a permanent managed isolation facility manager. I am interested to learn of the results of that trial.

One Facility reported they had trialled a permanent Facility Manager role, but it ‘*took a toll*’ on the Facility Manager, and the trial was discontinued. At this Facility, although eighty-percent of staff at the Facility (70 staff members) reported they felt able to raise their concerns about the Facility’s practices and policies, or the welfare of anyone staying there – a small number stated the ‘*constant change*’ in NZDF leads made them feel unable to raise their concerns. **I recommended the staff rotation schedule is reviewed, particularly in relation to the Facility Manager role, to balance Facility Manager welfare against the need for consistent care for detainees, and leadership for staff.**

In response to my provisional thematic report a Facility Manager said that there were ‘*strong feelings about this subject*’ amongst their peers, and suggested there may be options to review the number of staff and length of rotations in order to ‘*allow for limited respite*’, avoid ‘*burn-out*’ and provide consistency so that detainees can become familiar with the MIQ team.

Several Facilities had changed from having a stable nursing team, to increasingly using nurses from agencies. The management team at one Facility reported this was unsettling and made communication with the nursing team challenging at times. One Facility reported they requested the same agency nurses each time, which had contributed to creating stability within the nursing team.

A potential impact of rotating staff is a breakdown of communication between agencies. For example, at one Facility, Inspectors noted during their visit that an NZDF staff member was in the nurses' station enquiring about when final health checks were to be conducted for detainees that were already waiting to leave the Facility. Nursing staff had no knowledge of the imminent departures and were not prepared to conduct the final health check. Although the nursing staff responded straightaway, it was clear that a breakdown of communication between agencies may have had a direct impact on the detainees. **I recommended the current staff rotation schedule is reviewed and arrangements are made to ensure rotating staff are adequately prepared for their roles.**

### Support for staff wellbeing

Staff at one Facility expressed they felt they had been treated unfairly and experienced stigma outside the workplace because of their work at the Facility. The Hotel Manager said this had affected staff morale and retention levels at the Facility. They advised that staff had access to professional support for their wellbeing (ie, the Employee Assistance Programme). I am concerned these issues are monitored carefully, and appropriate supervision and psychological support is made available to staff. In contrast, other Facilities reported they were well-supported by their communities, including receiving donations of personal items for detainees. Staff at one such Facility told Inspectors they were conscious of the need to be vigilant in their work practices as they recognise they have a shared sense of responsibility to the community.

## Recommendations

I am empowered by section 27 of the Crimes of Torture Act 1989 to make recommendations for improving the conditions and treatment of detention applying to detainees and for preventing torture and other cruel, inhuman or degrading treatment or punishment in places of detention.

I made 27 recommendations across the six MIQ Facilities, and these are provided in the body of this report.

## Acknowledgements

I am grateful to Facility and relevant agency staff for supporting my Inspectors in conducting their inspections. I am also grateful to those detained at the Facilities at the time of my inspections, in particular those who took the time to speak to my Inspectors or complete my inspection survey. I appreciate the circumstances are challenging and am heartened by the helpful approach taken by detainees, management and staff at the Facilities. I also acknowledge the work that would have been involved in collating the information sought by my Inspectors.

Finally, I would like to thank my Inspectors and other staff involved for the inspection work undertaken.

Peter Boshier  
Chief Ombudsman  
National Preventive Mechanism

## Appendix 1. Expectations for OPCAT COVID-19 inspections

### Expectations

An initial set of expectations has been developed to align with the Chief Ombudsman's statement of principles to guide facilities in managing this crisis<sup>27</sup>, 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 expectation, some examples are listed below.

The expectations 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.

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<sup>27</sup> 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](http://www.ombudsman.parliament.nz/resources/opcat-inspections-and-visits-during-covid-19-pandemic-update-and-statement-principles).

- 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.

### 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 digital 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.

## Appendix 2. 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 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.

### Places of detention – health and disability facilities

Section 16 of COTA defines a “place of detention” as:

*“...any place in New Zealand where persons are or may be deprived of liberty”*

Ombudsmen are designated by the Minister of Justice as a National Preventive Mechanism (NPM) to inspect certain places of detention under OPCAT, including health and disability places of detention. Managed Isolation and Quarantine facilities fall within this designation.

Under section 27 of COTA, an NPM’s functions include:

- to examine 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; and
  - for preventing torture and other cruel, inhuman or degrading treatment or punishment in places of detention.

### Carrying out the OPCAT function

Under COTA, Ombudsmen 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 people they want to interview.

Section 34 of COTA provides that when carrying out their OPCAT function, Ombudsmen can use their Ombudsmen Act (OA) powers to require the production of any information, documents, papers or things (even where there may be a statutory obligation of secrecy or non-disclosure) (sections 19(1), 19(3) and 19(4) OA). To facilitate his OPCAT role, the Chief Ombudsman has authorised inspectors to exercise these powers on his behalf.

### **More information**

Find out more about the Chief Ombudsman's OPCAT role, and read his reports online: [ombudsman.parliament.nz/opcat](http://ombudsman.parliament.nz/opcat).