

Decision to implement locked cell policy

Legislation	Ombudsmen Act 1975, s 22
Agency	Department of Corrections
Ombudsman	Peter Boshier
Case number(s)	487976
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Complaint about the negative effects of implementing a locked cell policy in the Kaaka North and South pods at Northland Region Corrections Facility – Chief Ombudsman found that the implementation was unreasonable – the significant consequences (lack of access to toilet facilities and inadequate ventilation in cells) should have been addressed, or alternative measures taken to mitigate safety risks during unlock periods

Background

In August 2018, the Department of Corrections (Corrections) had concerns about the practice of cell doors being left open when prisoners were unlocked in their units. The Chief Custodial Officer issued instructions that best practice was for cells to be locked when prisoners were not in them, to mitigate safety risks.

The Northland Region Corrections Facility (NRCF) Prison Director adopted the locked cell policy in all of the units at NRCF, due to concern about prisoner-on-prisoner violence. The policy was implemented in the Kaaka North and South pods on 13 August 2018.

The complainant, a prisoner, made a complaint to the Ombudsman that the locked cell policy had a number of negative effects on the prisoners in the Kaaka North and South pods – in particular, lack of access to toilets and insufficient ventilation in cells.

Investigation

The Chief Ombudsman notified Corrections of his intention to investigate the complaint. The investigation considered the decision to implement the locked cell policy in the Kaaka North and South pods.

Safety concerns

Corrections is obligated to manage prisoners in a 'safe, secure, humane and effective manner'.¹ In some circumstances, tensions can arise between keeping prisoners safe, and managing them humanely. A decision that a restriction is required for safety purposes must necessarily involve consideration of risk, and of the negative consequences of that restriction. While the Chief Ombudsman recognised that the purpose of the locked cell policy was to keep prisoners safe, he considered that its implementation resulted in unreasonable conditions in the Kaaka North and South pods.

Access to toilets

The Kaaka North and South pods originally had a capacity of 44 prisoners each. Following the introduction of double-bunking in 2010, the pods have capacity to house 87 prisoners each. There was no communal toilet in the Kaaka North pod compound, and only one in the Kaaka South pod compound. The toilet facilities were not increased with the introduction of double-bunking. This was not previously an issue, as prisoners had open access to their own cells during periods of unlock, and so had unrestricted access to a toilet.

Corrections advised that prisoner requests for staff to open their cells to use their own toilet facilities during unlock periods were prioritised. However, during an unannounced inspection of NCRF in February 2019, under the Crimes of Torture Act 1989 (the OPCAT inspection), prison staff reported to the Chief Ombudsman's inspectors that they were not always available in the units to allow prisoners quick access to the toilet in their cell.² The Chief Ombudsman's Inspectors noted that there were extended periods when staff were not in the unit compounds interacting with prisoners, and prisoners resorted to urinating and, on occasion, defecating in the compound because of the lack of a toilet. In relation to this complaint, the Chief Ombudsman considered that the locked cell policy had unreasonably resulted in a lack of timely access to toilet facilities for prisoners in the Kaaka North and South pods.

Ventilation in cells

The cells in the Kaaka North and South pods had no openable windows. Airflow into a cell was therefore restricted when cell doors were locked during unlock periods, causing heat to build

¹ Section 5(1)(a) of the Corrections Act 2004. See also section 6(1)(g), which sets out the guiding principle that sentences must not be '*administered more restrictively than is reasonably necessary to ensure the maintenance of the law and [...] safety*'.

² OPCAT Report, *Report on an unannounced inspection of Northland Regional Corrections Facility under the Crimes of Torture Act 1989*, 29 July 2019, pages 18-19.

up. In addition to cell doors being locked during unlock periods, since January 2019, the hatches were also locked.

During the OPCAT inspection, it was noted that the locked cell policy meant that condensation was a problem, and that measured cell temperatures exceeded 28 degrees Celsius.³ In relation to this complaint, the Chief Ombudsman considered the lack of ventilation to be an unreasonable consequence of the locked cell policy.

Outcome

The Chief Ombudsman formed the opinion that the implementation of the locked cell policy in NRCF's Kaaka North and South pods was unreasonable. He considered that the significant consequences of the policy (lack of timely access to toilet facilities and inadequate ventilation in cells) should have been addressed, or alternative measures taken to mitigate safety risks during unlock periods.

Changes that had occurred

During the investigation, Corrections made a number of changes, including:

- installing a communal toilet in the Kaaka North pod in September 2019;
- ensuring a focus on staff availability to open a prisoner's cell to allow them access to the toilet there, if the communal toilet in the Kaaka North or South pods is occupied;
- taking a number of measures to increase ventilation in cells, including equipping each cell with an extraction fan, and making electric fans available for purchase (with NRCF paying for the cost of an electrical check, and fans being supplied free to prisoners with relevant health issues); and
- making chilled water readily accessible and ordering summer clothing.

Corrections also advised that it was considering the viability of installing an additional toilet in each pod, meaning there would be two communal toilets in each pod, and was exploring a number of window solutions to maximise ventilation in a secure manner.

Recommendation

Taking into account these changes, the Chief Ombudsman recommended that Corrections report back to him with an update in respect of timely access to toilet facilities and the current status of ventilation.

Corrections accepted the recommendation and provided a report, advising that it was continuing to actively explore options for further communal toilets, and the installation of vents in cells to allow for enhanced airflow.

³ Page 17.

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