



Update

OPCAT inspections to include people held securely in privately-run aged care facilities

March 2020

Background

New Zealand has made an international commitment to make sure ‘detained’ people are being treated in the right way and are living in a humane environment. People can be detained because they are very unwell, have broken a law, or to keep themselves or others safe. They still have human rights.

One of the Chief Ombudsman’s roles is to let Parliament know what is happening in ‘places of detention’, including health and disability facilities. Ultimately his role is to make sure these facilities have sufficient safeguards in place to prevent any human rights violations. If not, he recommends practical improvements to address any risks, poor practices, or systemic problems, which could result in a person being treated badly.

On 6 June 2018, the Chief Ombudsman was told by the Minister of Justice to inspect the treatment and conditions of people held securely in privately-run aged care facilities. Parliament gave him funding on 1 July 2019 to develop and implement this new inspections programme, over three years.

Update

The Chief Ombudsman’s inspections programme is being extended to include people detained in privately-run aged care facilities – primarily those in locked care facilities (‘residents’). The new programme will be phased in over the next three years.

Our first step is to familiarise ourselves with privately-run aged care facilities. We are visiting a number of facilities between 2019 and 2021. These visits are part of our ongoing information gathering and will help inform development of the assessment criteria we will use when conducting inspections. These visits are also a chance for us to introduce ourselves and our inspection function. We’re calling these visits ‘orientation visits’.

We still have a lot more work to do to develop this new inspections programme and, at this point in time, expect that inspections will start from 1 July 2021. We propose to seek feedback on our inspection assessment criteria before reporting on inspections.

Why the Chief Ombudsman is inspecting privately-run aged care facilities

The Chief Ombudsman already examines the treatment of people held in secure, state-run health and disability facilities, including residents and patients in locked dementia facilities and psychogeriatric wards.

Extending the Chief Ombudsman's mandate to monitor the treatment of people detained in all aged care facilities, including privately-run facilities, will provide Parliament and the public with an independent overview of how some of our most vulnerable people are treated and what, if any, improvements need to be made to meet existing human rights standards.

What will be involved in an inspection

We're still working on exactly what will be involved but expect it will be similar to how we inspect other facilities.

That is, we conduct a physical inspection of the facility (sometimes unannounced); review the facility's paper work, policies, procedures; and talk to staff, residents (where possible), and residents' family, whānau, or representatives.

We use the same assessment criteria across the same type of facility so it is fair to all. Some of the things we look for are:

- How residents are treated, including any allegations of ill-treatment, the use of isolation, force, or restraint
- The facility's protection measures, such as information provided to residents on admission, complaint processes, registers, and record-keeping
- Residents' living conditions
- Residents' activities, such as contact with their family and others outside the facility, outdoor exercise, education and leisure activities
- Residents' access to health care
- The facility's staffing levels, staff conduct, and staff training.

We prepare a report after an inspection, outlining what we saw at that point in time. These reports highlight good practice, identify areas for improvement, and make recommendations where necessary. Reports are given to those in charge of the facility and may be published.

In some cases, we do a follow up inspection to find out how the Chief Ombudsman's recommendations have been addressed.

How inspections differ from audits and reviews

The Chief Ombudsman is an independent Officer of Parliament, not part of government. His inspections programme is fully independent of government, the health and disability sector, and private interests.

To meet international obligations, the Chief Ombudsman is tasked with assessing the conditions and treatment of detained people to determine if there are any risks, poor practices, or systemic problems in the facility that could result in a human rights violation.

Current government health sector audits and reviews check to see if a facility's systems and standards comply with requirements set by New Zealand authorities.

The Chief Ombudsman's inspections have a very different purpose from current audits and reviews, and must be independent.

Who does the inspections

Inspections will be done by our experienced OPCAT teams, which includes inspectors with various expertise and backgrounds in areas such as health and disability and social work. We are currently recruiting more inspectors to help us with our expanded inspection programme.

Inspectors are also helped by specialist advisors with medical, cultural, disability and social expertise, and lived-in experience, or people who have advocated on behalf of residents.

Our team members are authorised by the Chief Ombudsman to exercise his powers to enter premises, talk to people, and gather the information.

Who will pay for the inspections

Individual facilities will not be charged. The Chief Ombudsman's inspections programme is paid for by Parliament.

What assessment criteria will be used during an inspection

We have yet to develop our inspection assessment criteria as we are still in our information gathering phase.

How to be involved

We will be seeking feedback on our proposed assessment criteria. We will let you know closer to the time when this will occur.

Note that while feedback will be sought, the Chief Ombudsman is not co-designing his inspections programme. The United Nations require him to establish a totally independent inspection function so it is for the Chief Ombudsman to decide how to implement this function.

How to make a complaint

The Chief Ombudsman's inspection role is about preventing human rights violations from occurring. This role does not give him the power to investigate individual complaints relating to privately-run aged care facilities.

There are however a number of ways to report any concerns you may have about the care you, or someone you know, is receiving or to make a complaint. The Ministry of Health has a list of who to contact on its website (health.govt.nz) – search for 'residential care complaint'.

Updates and more information

We are publishing updates on our progress in setting up the work programme. These updates and more information are available on our website (www.ombudsman.parliament.nz/opcat). If you have any more questions about the development of the Chief Ombudsman's aged care

inspection programme, please email us (info@ombudsman.parliament.nz). While we may not be able to answer them now, we will endeavour to do so in future. Let us know if you want us to contact you with any updates or you can follow us on Facebook (@ombudsmannz).

Legislative framework

The Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is a unique international human rights agreement that New Zealand ratified in 2007.

The OPCAT establishes international and national monitoring mechanisms to visit places where people are detained, with the overall aim of preventing torture and other cruel, inhuman or degrading treatment or punishment. More about the purpose of OPCAT is available from the Association for the Prevention of Torture (apt.ch).

In New Zealand, the Crimes of Torture Act 1989 (COTA) provides for the designation of 'National Preventive Mechanisms' (NPMs) to inspect places of detention, as required by OPCAT. The Chief Ombudsman is an NPM and the Human Rights Commission is the Central NPM. More about New Zealand's human rights laws is available from the Ministry of Justice (justice.govt.nz).