



Summary of key feedback: Expectations for conditions and treatment of residents in health and disability places of detention – aged care

The Chief Ombudsman expresses his gratitude for the feedback he has received on his draft '*Expectations for conditions and treatment of residents in health and disability places of detention – aged care*' (Expectations- aged care), which were shared on 30 June 2021. This feedback has been carefully considered, and has been integral in updating the *Expectations- aged care*.

While all the feedback received has helped inform updates throughout the expectations, the feedback contained some key themes which are summarised below.

The *Expectations – aged care* is a living document, and will be updated as required. The Chief Ombudsman welcomes feedback on them at any time.

Integrated health and disability services

Feedback highlighted the fact that Aged Residential Care (ARC) providers are only one part of a wider health and disability system that provides care and support to residents in aged care.

The Chief Ombudsman's OPCAT monitoring programme takes into consideration the responsibilities of all relevant agencies, including those of District Health Boards, as well as other organisations and professionals.

He acknowledges that it would help make the full scope of his role clearer by including reference to how aged care services are provided and the integrated health and disability system in his *Expectations – aged care*.

The updated *Expectations – aged care* is now explicit about the fact that a number of agencies, organisations, and professionals, contribute to the conditions and treatment that residents experience, and that not all of the Chief Ombudsman's expectations can be met by the facility or service provider alone.

The Chief Ombudsman's OPCAT monitoring and prevention function enables him to examine all relevant parts of this wider system. His focus is on the outcome for residents.

The legal framework

Another strong message from the feedback identified concerns with the legal authority by which residents are 'detained'. In particular, feedback provided further valuable insight into

the operation of the Protection of Personal and Property Rights Act 1988 (PPPR Act). It was clear from feedback that support and care agencies have been raising issues and sharing their experiences of the PPPR Act with government agencies, and are seeking change in this area.

The Chief Ombudsman is aware of the legal framework in which aged residential care is provided and the complexities of this. While this is a matter of interest for him, and it is his expectation that correct legal and health processes have been followed in order for a resident to be placed in a secure facility, the Chief Ombudsman recognises that there are many considerations that need to be understood in this area. He expects to see all those responsible for aged care facilities embodying best practice and prioritising the rights of residents, however is mindful of the context in which they are operating.

Terminology

The Chief Ombudsman acknowledges the importance of language and the feedback on some of the terms used in the *Expectations – aged care*.

He understands that the term ‘detention’ is not one usually associated with aged residential care. However, while the Chief Ombudsman has aimed to minimise the use of the term in his *Expectations- aged care*, these terms may on occasion need to be used to accurately reflect the Chief Ombudsman’s mandate and the language used in the relevant legislation (principally COTA and OPCAT)¹.

Some feedback also suggested that the term ‘facility’ could be replaced. Currently, this term is used in relation to all health and disability places of detention – of which aged residential care is part – the Chief Ombudsman monitors. This term therefore remains in the *Expectations- aged care* for consistency across his OPCAT monitoring programme. The Chief Ombudsman is actively considering what language would be best used going forward. Again, feedback on this is welcome.

Inspection process and inspection team

Some feedback asked for the *Expectations – aged care* to include information about the inspection process and the inspection team.

The Chief Ombudsman is committed to providing regular and clear information about his inspection programme. This includes information on how inspections will be undertaken, and reassurance that his inspection teams will uphold the mana of residents, whānau, and professionals, and carry out inspections with professionalism and integrity.

In order to ensure the *Expectations – aged care* are as streamlined as possible, this information will be provided elsewhere. The *Expectations – aged care* link to a ‘resident and whānau information sheet’ on the [Chief Ombudsman’s website](#), which contains some of this detail.

¹ Crimes of Torture Act, 1989 and the United Nations Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Chief Ombudsman will consider further updates to his website with more information about inspection methodology and the principles his inspectors work under, such as the 'do no harm' principle, which is at the centre of the OPCAT role.

Complementarity with the Ministry of Health's Health and Disability Services Standards

Some feedback received noted and welcomed the *Expectations – aged care's* common and complimentary areas of focus with the Ministry of Health's (MoH) Health and Disability Services Standards (NZS 8134:2008).

The Chief Ombudsman understands the role of the MoH's standards and their importance in the health and disability sector in Aotearoa New Zealand. He is cognisant of the standards, including the updated Ngā Paerewa Health and Disability Services Standard NZS 8134:2021, which come into effect in February 2022.

However, it is also important to point out that the Chief Ombudsman's role is not to 'audit' facilities against national standards, but rather to 'monitor and examine' from the international human rights perspective of *prevention*. There may be, at times, instances where his view is different to, or goes beyond, those outlined in the standards. He makes observations or recommendations in order to improve the conditions and treatment of residents, and prevent 'ill-treatment', based on his own judgement and international human rights law and guidance.