Ombudsman
Fairness for all

Guide

OPCAT – Expectations for conditions and treatment of residents

in health and disability places of detention – aged care

Version #1.1 – June 2022

Contents

Introduction

Monitoring the conditions of detention applying to detainees and the treatment of detainees (conditions and treatment) helps to ensure that those who are deprived of their liberty, and cannot leave at will, are treated humanely and their rights are respected and protected.

This approach is preventive, aiming to ensure that safeguards against ill-treatment are in place and that risks, poor practices, or systemic problems, are identified and addressed promptly. It also helps to ensure Aotearoa New Zealand adheres to international human rights standards, to which all people are entitled, and provides assurance by an independent officer of parliament as to the conditions and treatment occurring in a facility.

The Chief Ombudsman is designated by the Minister of Justice to monitor health and disability places of detention. This includes aged care facilities where people are unable to leave at will.

The role is broad and includes examining the treatment and conditions of people living in those facilities (residents). The Chief Ombudsman makes recommendations to improve the conditions and treatment of residents. They may also identify good practice.

Central to the Chief Ombudsman's monitoring function is conducting visits and inspections of aged care facilities. These visits and inspections are required under the United Nations Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

Further detail about the legal framework under which the Chief Ombudsman operates is located in **Appendix 1**. Information about inspections, including what residents, whānau and aged residential care services can expect, is available on the Chief Ombudsman's website.[1]

The Chief Ombudsman's expectations

This 'expectations' document sets out the Chief Ombudsman's expectations for the conditions and treatment of residents in aged care facilities who cannot leave at will.

The expectations are intended to provide residents, their whānau[2], facility, service or agency leadership, management and staff, Parliament, and the public with an understanding of some of the matters the Chief Ombudsman considers when monitoring aged care facilities.

These expectations will also guide the Chief Ombudsman's staff when conducting inspections. However, inspections are not a 'check list' exercise and these expectations are indicative only; they are not exhaustive.

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1 See https://www.ombudsman.parliament.nz/what-ombudsman-can-help/aged-care-monitoring/opcat-inspections-aged-care-facilities

2 This documents refers to whānau rather than family. In Te Ao Māori whānau encompasses family in the fullest meaning. Whānau may include immediate and extended family through whakapapa (genealogy), as well as all persons connected by emotional or spiritual bonds. Any person who has been involved in the care or welfare of a resident may also be considered whānau (kaupapa whānau).

Appendix 2 to this document includes examples of evidence sources that the Chief Ombudsman may consider when examining residents' conditions and treatment.

The expectations and areas of interest are based on international and domestic human rights law and guidance, some of which is listed in **Appendix 3** to this document. The expectations also draw from applicable domestic legislation, regulations and policies that inform, but do not determine, the Chief Ombudsman's observations.

The expectations are informed by te Tiriti o Waitangi / the Treaty of Waitangi[3] and its principles, including those articulated in the Waitangi Tribunal's kaupapa inquiry into health services and outcomes (Wai 2575).

The Chief Ombudsman understands that aged residential care provision is one part of a system providing care and support to residents. A number of agencies, organisations and professionals contribute to the conditions and treatment that residents experience. Not all of the expectations in this document can be met by the facility or service provider alone, whom work within an integrated health and disability system. The Chief Ombudsman's monitoring and prevention function is able to examine and make recommendations on all relevant parts of this system. His focus is on the outcome for residents. He may therefore make recommendations to any person or agency within the system that has the ability to make the necessary changes (not just the facility itself).

The expectations, unless otherwise specified, apply to all residents. However, the Chief Ombudsman is acutely aware of the needs and rights of distinct groups of people who may be in aged care facilities, including:

- Māori
- Pacific peoples
- Women
- LGBTQIA+ persons
- Foreign nationals

The Chief Ombudsman and Inspectors will always have mind to how the conditions in the facility, and treatment of residents, is experienced by, and effects these groups in particular.

This is a living document

This is the first version of the Chief Ombudsman's '*Expectations for conditions and treatment of residents in in health and disability places of detention – aged care*'. The expectations will be updated over time. The Chief Ombudsman welcomes feedback on this document[4], recognising

[3] The Chief Ombudsman recognises there are two texts with different meanings.

[4] Please visit the website at https://www.ombudsman.parliament.nz/what-ombudsman-can-help/aged-care-monitoring for more information about the Chief Ombudsman's monitoring role in aged care, including information on how to provide feedback on these Expectations.

that best practice is continually evolving, and there will always be further or new areas relevant to monitoring of aged care facilities.

A note about the resident group and terminology

The Chief Ombudsman monitors aged care facilities where people are not free to leave at will - primarily secure dementia level care and/or psychogeriatric level care.

Residents in secure aged care facilities mostly have a diagnosis of dementia, along with varied other health or disability related needs. Dementia is an umbrella term, used to describe a group of symptoms affecting brain function. The symptoms each person experiences depends on the parts of the brain that are affected. However, the most common dementia symptoms include changes in memory, thinking, behaviour, personality and emotions. These changes affect a person's ability to perform everyday tasks and interfere with their everyday lives.[5]

The expectations in this document refer to 'residents', 'dementia' and 'facilities'. However, the Chief Ombudsman acknowledges the importance of language and that some people will have a preference for using other terms, including kupu Māori such as kaumatua (elder) and mate wareware (mate referring to being unwell, and wareware to forgetting or forgetfulness). The Chief Ombudsman encourages, and may adopt, the use of kupu Māori or other terms when appropriate.

[5] Dementia is progressive, which means that for most people the changes gradually spread through the brain and lead to the symptoms getting worse. Dementia is different for everyone – what people experience, and how quickly they are affected is unique to them. What they can do, remember and understand may change from day to day. See https://alzheimers.org.nz/about-dementia/what-is-dementia/

1. Leadership and culture

Expectation: Leadership and culture promote the rights of residents.

Strong, rights-promoting leadership and governance is evident. Organisational culture reflects a person-directed and holistic approach to care with emphasis on nurturing residents' wellbeing, health and enjoyment of their life. Governance arrangements recognise the role of tangata whenua.

Residents, their Enduring Power of Attorney or Welfare Guardian (authorised representative), whānau and others, including staff members, have a role in decision-making. They are able to share their views and concerns, in particular about the conditions and treatment of residents. Residents, authorised representatives, whānau and community members have a high degree of trust in leadership and staff.

Examples of areas of interest

Engagement, integrity and accountability

Leadership at all levels are committed to, and take responsibility for, providing safe, responsive and high quality care for residents. This is evident in strategic and operational plans, including considerations such as staffing, resourcing and quality improvement.

Leaders have a genuine insight and understanding of the culture and reality within relevant facilities, and are engaged in monitoring and ensuring appropriate conditions and treatment are provided.

Organisational culture

All staff uphold the dignity and respect of residents at all times. There is strong leadership to support this.

Māori leadership and arrangements with Māori are evident, including within the facility.

Governance and participation

Residents, their authorised representatives, whānau and community members are involved in governance and operational decision-making processes (eg they sit on the board, as advisory or consumer groups with independent facilitation).

Equality, diversity and inclusion

There is commitment to ensuring that policies, strategies, processes and behaviours promote equality, respect diversity and contribute to an inclusive organisational culture.

Fair and non-discriminatory processes are deployed, including when meeting the distinct needs of residents or resident groups, irrespective of age, disability, sex, gender, sexual orientation, family status, race, nationality, religion, political opinion, employment status, or belief.

2. Safety and independence

Expectation: Residents are safe and their independence is promoted.

No person is arbitrarily deprived of their liberty. Thorough assessment, legal processes, and the appropriate documentation are followed. The resident is involved in these processes to the fullest extent possible.

Residents' rights are promoted and protected. Residents, their authorised representatives, and their whānau are routinely and fully informed of their rights, including the ability to challenge the level of care needed as well as how to raise a concern or complaint and access advocacy services.

Residents' independence and autonomy is maintained to the fullest extent possible, and is central to their care. They are supported, well informed and have opportunities for meaningful engagement. Independence is protected and nurtured by the facility environment and culture.

Residents are safe from harm, abuse, or neglect of all kinds (including but not limited to physical, emotional, spiritual, financial or sexual). Risks are identified, recorded and addressed.

The human dignity and human rights of all residents are maintained and upheld at all times. Residents' rights to statutory protections and complaints processes are respected. Residents' feedback and input is sought and considered; they have a voice on matters that affect them.

Examples of areas of interest

Placement in the facility

Residents are in a facility that is appropriate to their needs. Their placement is lawful and correct processes have been followed, including the fullest possible consideration and honouring of their views and wishes.

The reasons for the resident being in a secure facility are clear and recorded, and explained to the resident in a way that they understand. All appropriate documentation is obtained and held securely.

Before and on arrival, residents are made to feel welcome and are treated with kindness. The particular needs of the resident are identified. Immediate needs upon arrival are considered and met, and residents are supported to feel comfortable in the facility, including through whānau involvement and appropriate welcoming services (such as pōwhiri), depending on the resident's wishes.

Safety risks to self and others are identified and assessed before residents are allocated to any particular area. Residents are provided with information in an appropriate language and format to assist with the settling in process.

Consent, consultation and supported decision-making

Residents are informed about and consulted on decisions or actions that have impact on their lives to the fullest extent possible. There is an assumption of capacity, and residents are supported to make decisions where they are not able to fully choose themselves. When this is not possible, the appropriate combination of residents, their authorised representatives, and whānau are informed about and consulted on decisions or actions that impact the resident. Capacity is regularly reviewed.

Consent to treatment from the relevant party is sought, recorded and adhered to. Where consent is not possible, there are robust processes in place to ensure that any treatment is necessary, appropriate and authorised.

Concerns, complaints, and feedback

Feedback from residents and others (such as authorised representatives, whānau and advocates) is actively sought, considered and used to inform and improve service planning and delivery.

Residents and others are listened to when they raise concerns or make complaints, and the issues raised are addressed. Their views are taken seriously and responded to sensitively. Complaints systems are accessible to residents and others, well communicated, timely, confidential and effective. Outcomes are transparent, fair, well communicated, documented and in line with a policy of full disclosure.

Concerns and complaints may be raised independently of staff. Residents and others can raise concerns, make complaints and give feedback without repercussions or fear of negative consequences. They can ask for decisions to be reviewed without difficulty.

Advocacy and support

Residents, their authorised representatives, and whānau (as appropriate) are informed of and have easy and private access to independent advocates or support persons in a timely manner.

This includes residents having whānau or others, such as trusted community members, with them when this is their preference.

Privacy and confidentiality

Residents' privacy and confidentiality are respected and preserved. Residents enjoy physical, visual, auditory, and personal privacy to the fullest extent possible. Any infringement on privacy is justified and proportionate.

All resident information is kept securely to preserve privacy and confidentiality.

Confidentiality and its limits are explained to residents, authorised representatives and whānau on admission and as necessary. This is done in an accessible format, and it is recorded that this information has been provided.

Safeguarding (freedom from abuse or neglect)

Residents are safe at all times, including in the facility, transport to-and-from the facility, and overnight.

Residents are not subjected to discrimination, coercion, harassment, bullying, or any form of exploitation. All concerns (including potential concerns or indications) regarding exploitation, violence, abuse or neglect are promptly documented and investigated, or referred to the appropriate authority for investigation.

Personal autonomy

Residents live in an enabling environment. The physical layout, available resources and culture of the facility promote resident autonomy and independence.

Residents receive support to live and mobilise with the greatest possible independence. These measures include access to personal mobility aids, devices, assistive technologies (e.g. walker, wheelchair, mobility scooters, and canes) and other forms of assistance and intermediaries. Physical rehabilitation or exercise is provided as necessary.

Residents have individualised supports to meet their hearing, visual and sensory impairment needs (e.g. hearing aids and batteries, glasses and/or magnifying devices, access to picture board or large alphabet, Sign Language interpreter).

Restrictions

Residents are not subject to greater restrictions than are individually necessary for safety. Blanket restrictions are never used.

Restrictive practices (such as withholding items, mail or phone calls, cancelling or preventing visits or outings) are not used unless in accordance with resident, authorised representatives and whānau (as appropriate) consultation, reflected in the resident's support/care plan and supported by documented clinical indication. Any such restrictions are regularly reviewed. There is active work to reduce and minimise the use of restrictive practices, and reports on their use to relevant authorities.

Restraint

Restraint, in all its forms (including environmental, mechanical, physical, personal, chemical) is recognised as a serious intervention with potentially harmful effects on the resident.

There is proactive work to eliminate the use of restraint, as well as reducing and minimising its immediate use.

Restraint is only used as a last resort and for the immediate safety of a resident or others. All other, less restrictive, options are considered first. Where restraint is used it is authorised, practised, documented and reviewed appropriately.

The specific needs, including cultural needs, of residents are recognised throughout any restraint episode, and relevant advice is sought in order to maintain safety.

Means of restraint which are unlawful and/or inherently degrading, including chemical restraint (the use of medicines to ensure compliance and to render a resident incapable of resistance), are never used. All medicines are prescribed and used for valid therapeutic indications.

Restraint is never used as a punishment, discipline, or a form of behavioural modification.

3. Dignity and respect

Expectation: Residents are treated with dignity and respect.

All residents are valued. Residents' rights are protected, and they do not experience discrimination. Residents are recognised as experts in their own experience, and on their needs and wishes.

The diversity of residents is respected, and there is not a 'one size fits all' approach. Responsiveness to diversity is demonstrated through specific strategies and services, which are based on a well-informed understanding of the relevant population groups of residents.

Residents are treated with humanity, compassion, kindness and decency. The facility provides an open and safe environment for residents to be themselves, without judgement or reprimand. Staff and residents have constructive and positive relationships, and these are seen as an integral part of maintaining a safe environment with the best outcomes for residents.

Examples of areas of interest

Respect for the individual

Residents' wishes, views, and preferences are sought, recorded, and evident in their care and support. They are respected and valued as individuals, whose background, current health status, culture, religion or nationality, among other factors, inform the nature of the support they receive.

Choice

Residents have choice wherever possible. Residents' current choices are respected and honoured to the fullest extent they can be, including through supported decision-making. These choices include day-to-day life decisions such as what clothes to wear, grooming, food, where to spend time and with whom, entertainment, and daily routine (eg, when to shower,

get up, or go to bed). If choices cannot be honoured the reasons why are appropriately explained to the resident.

Whānau and community connections

The importance of residents' loved ones in the life of the resident is acknowledged and valued. Contact with whānau, and the wider community, is promoted in diverse ways, in line with the resident's preferences and in privacy.

Residents are located as close to their home, whānau, whakapapa and whenua as possible, where this is their preference. Measures are taken to prevent and address disadvantages faced by residents located far from their whānau or connections.

The role of kaitiakitanga (caregiving) for the oranga wairua (spiritual wellbeing) of the collective whānau is understood and respected. The role of whānau as a key part of residents' care is recognised and valued.

Residents can connect with the wider community and be engaged as citizens. They have opportunities to follow the news, are kept informed of key events and able to exercise their relevant civil and political rights.

Visits

Residents are offered the fullest visiting arrangements possible. Visitors are made to feel welcome. The visitor environment is private, accessible, safe and comfortable.

Identity, culture, faith, and lifestyle

Diversity is welcomed. No resident experiences discrimination based on their identity, culture, faith (or spirituality) or lifestyle or any of the 'prohibited grounds' for discrimination.[6]

Residents, their authorised representatives, and whānau (as appropriate) are asked about what matters to the resident, and this is reflected in the resident's life at the facility. They have access to kaumātua and/or kuia, and others who can provide cultural and/or spiritual support.

Communication and language

Communication with, and about, residents is kind and respectful.

Residents are supported to communicate as freely as possible, including through functioning devices, communication tools, and practices, according to their needs and wishes.

Information, resources, and activities are provided in languages and formats that reflect the needs and preferences of residents.

Language is understood to be central to identity and well-being. Residents are facilitated to speak in whatever languages they chose, or which come naturally to them. Professional

[6] The prohibited grounds are outlined in Section 21 of the Human Rights Act 1993.

interpretation services are used. Where residents are not able to communicate through language (including alternative languages such as sign language) other means are used to help determine the resident's needs and views.

4. Health, care, and wellbeing

Expectation: Residents enjoy the highest attainable standard of physical and mental health.

Residents are cared for in a holistic manner that nurtures and strengthens all areas of their wellbeing, including taha tinana, taha hinengaro, taha whānau and taha wairua[7].

All necessary steps to ensure the wellbeing of residents are taken. Residents are listened to, and their health, disability and wellbeing needs are effectively identified and addressed. Residents receive timely care and support from appropriate professionals, and have access to the range of services and supports they need. Health is understood in its broadest sense, and all aspects of life at the facility are conducive to the positive wellbeing of residents.

Continuity of care is assured through close work with health services in the community. As patients residents are treated with dignity, respect and kindness. Their right to privacy and medical confidentiality is respected. Preventive health services are implemented, and staff are aware of their role in documenting and reporting concerns.

Examples of areas of interest

General care

Residents receive the care and support they require in a manner that is person-directed, demographically appropriate, trauma-informed and maintains dignity.

Care planning and reviews

Residents' participation and preferences are central to care and support planning. Residents, their authorised representatives, and whānau (as appropriate) are given the time and assistance to understand and contribute to the planned care and support, including reviews, which includes thinking about and planning for the future. Care plans are provided to residents in an accessible format.

Support to overcome barriers to decision-making is given.

[7] The four pillars of health under the Te Whare Tapa Whā model. Taha tinana (physical health), taha hinengaro (mental health), taha whānau (family health), taha wairua (spiritual health).

Medical care

Residents have equitable access to medical care. Their mental and physical health is supported by suitably qualified health professionals, who are available when residents need them. Residents, their authorised representatives, and whānau (as appropriate) are able to access health professionals (including health and disability advocacy services) and discuss the resident's health, care and support needs.

Preventive healthcare practices, including education, are implemented effectively including relation to communicable diseases, and the maintenance of hygiene and infection control standards.

Health assessment

Residents have comprehensive health assessments as needed, this includes assessing and recording any evidence of prior ill-treatment and identifying any physical or mental health condition requiring medical attention in a timely manner. Health examinations are conducted in a private setting, in a manner which is appropriate and comfortable for the individual and their needs.

Residents, their authorised representatives, carers and whānau (as appropriate) consent to, and are informed about and engaged in health assessments, their processes and outcomes.

Medication and health treatments

Residents' medication and treatment needs are met by staff who are qualified and competent to do so.

Residents, their authorised representatives, and their whānau (as appropriate) are helped to understand the clinical actions and effects, limitations, and potential side effects of the medication or treatment the resident has been prescribed and to contribute to decisions about these.

Medication and other treatment changes are discussed with residents, their authorised representatives, and their whānau (as appropriate) and any changes agreed before they commence. Records are kept where a resident does not or is unable to consent to medication.

Medications are prescribed safely, in accordance with evidence-based practice, are reviewed regularly and are administered at clinically appropriate times by qualified staff. Residents receive their medications confidentially and from a secure environment. Records are kept where residents do not or are unable to consent to medication or treatment.

Activities and therapeutic interventions

Residents are able to spend active and meaningful time with other people of their choosing.

Residents, their authorised representatives and their whānau (as appropriate) are consulted about the resident's interests and preferences. Suitable and meaningful activities are offered and available for residents throughout the day.

Time away from the facility

Residents have the opportunity to leave the facility regularly, based on their personal preferences and needs, in the company of whānau or staff who are able to provide orientation and support where required.

Responding to complex behaviours

Complex behaviours, including those which may be referred to as Behavioural and Psychological Symptoms of Dementia, are addressed with an emphasis on humane, individual, and compassionate interventions based on current, evidence-based best practice.

There is awareness of the relationship between complex behaviour and unmet needs of residents. Responses to complex behaviour consider how to identify and address those needs, as well as how these are best met in the future.

Referrals to services

Residents are referred, with the resident's (or authorised representative's, as appropriate) consent, having been fully informed of the reasons for the referral (unless urgent/emergency care is required), to appropriate physical and mental health services and specialists in a timely manner.

Access to services

Residents are supported to access services, activities, groups and resources of their choice, including those that are associated with specific cultural, spiritual or other practices.

5. Living environment

Expectation: Residents live in an environment that promotes their safety, independence, dignity, and wellbeing.

Residents enjoy a safe and healthy physical environment, which is fit-for-purpose for aged residential care. The accommodation promotes resident wellbeing, dignity, and independence.

Residents are able to have control over their living environment to the greatest extent possible, including personalisation of their private space.

Design and resourcing of the facility ensures an environment that is appropriate for the varied needs of the residents living there.

Residents have ready access to the natural environment, and are able to spend time outdoors, according to their preference. Spending time outside or away from the facility is encouraged and supported for those who wish to.

Residents' basic needs are met, including adequate and nutritious food, clothing, activities and entertainment.

Examples of areas of interest

Physical environment

Residents live in an appropriate (eg. dementia-friendly) building that is well maintained. The physical and sensory (what can be seen, felt, heard, smelt or tasted) environment promotes the comfort, health and wellbeing of residents and their enjoyment of daily life. The facility is recognised to be a place where people live, and so is 'home-like'.

Residents can physically access the building and facilities, and their physical, sensory and learning needs are accommodated. Care is taken to ensure signage and information is presented in languages and formats suited to the needs of residents.

Outside space, fresh air, and nature

Residents can freely access safe outside areas or gardens, and are supported to do so as desired. The outside area/garden provides space for social interaction and exercise.

Outside spaces enable engagement with the natural environment to the greatest extent possible (residents are able to see, and ideally feel, elements such as the sky, plant and wildlife, and earth).

Food, drink, and nutrition

Safe drinking water and nutritious food are available to residents in sufficient quantity and quality. Food and drink options are varied. Residents have input into the options provided and when to eat.

Meals and food served provide for residents' dietary needs, cultural or religious norms, and are nutritionally sufficient and well balanced. Meals are well prepared, and served at an appropriate temperature and times.

Residents have independent access to food and drink options. Any restrictions are based on individualised risk assessment. Drinking water is freely available to every resident.

There is a clear understanding of how food can bring people together, and help residents feel at home, but also recognition of the challenges food and eating can bring to residents for a variety of reasons. Food and drink are recognised to be important to residents for cultural, emotional or other significant reasons.

Personal possessions and property

Residents can personalise their space and have possessions that are familiar or important to them, especially in their personal space (such as bedroom). Residents' personal possessions and property are respected and appropriately cared for.

Residents have the basic requirements of a decent life met, including access to a range of toiletries, clothing and personal hygiene materials. Disability aids, where needed, are available to residents, these are individualised and well maintained.

There are adequate cleaning and laundry facilities and practices. Items that need to be washed, such as clothing and bedding, are kept clean and in good condition.

Bedrooms and sleep

Residents have a dedicated and comfortable place to sleep, securely store their belongings, and relax in privacy. In all circumstances, residents are accommodated in designated bedrooms that meet all their health requirements, including adequate floor space, and appropriate temperature and ventilation.

Emergency preparedness

There are clear, site specific, comprehensive strategies for dealing with disasters and emergency situations, preventing infection, and managing potential infection outbreaks. Policies and practices appropriately prioritise residents' rights, needs, and preferences. These are well communicated, tested and understood.

6. Staffing and quality improvement

Expectation: Residents are cared for by skilled, motivated, and engaged people.

Staff reflect the diversity of Aotearoa New Zealand society, are appropriately trained, and employed in sufficient number.

Staff are conscientiously selected and trained, recognising that the residents' safety and wellbeing depends upon the staff members' integrity, humanity, knowledge, skills, and personal suitability.

Staff are supported and equipped to provide the highest attainable standard of care.

Continuous quality improvements and innovation are evident. Transparency and openness among staff and residents support this. Findings and learnings, including from incidents, complaints, and developments in best practice, are disseminated to prevent future incidents and promote ongoing commitment to providing the best outcomes for residents

Examples of areas of interest

Staff resourcing

Sufficient permanent staff, with the appropriate training and knowledge, are employed to ensure the facility is safe, and resident needs are met, including residents' cultural responsiveness/responsivity.

Staff resourcing prioritises residents' safety, independence and wellbeing. Residents are never unsafe due to staffing shortages. Staff shortages do not prevent residents from receiving care or having access to meaningful activities.

Staff recruitment, training, and development

Staff are recruited and supported to provide a high standard of care and support to every resident. Facility and role specific training is provided. Records of training are kept up to date.

Staff receive training on, and are familiar with, residents' rights under Aotearoa New Zealand law, and relevant international law, including on the prevention of torture, and cruel, inhuman and degrading treatment or punishment. They are informed on the rights of particular groups such as Māori, women, LGBTQIA+, people with disabilities, and older people.

Cultural education is valued at all levels within the facility and organisation, and is reflected in training opportunities being provided and required for all staff. This training includes the principles within the articles of the United Nations Declaration on the Rights of Indigenous Peoples and te Tiriti o Waitangi / the Treaty of Waitangi. Staff are able to demonstrate an understanding of tikanga Māori values, te reo Māori and principles relating to Māori health practice.

Staff are aware of the important role they play in the treatment and conditions of residents. Their work is acknowledged and they receive the support and supervision necessary to be able to do their best for residents.

Quality improvement

There are quality improvement strategies, including at the facility level, used to continuously assess and improve the care and support of residents. Strategies include responding to actions and learnings arising from past issues, incidents and complaints, and keeping good records. Best practice models and up to date research are used to improve care and support.

There are processes to ensure that staff, residents, authorised representatives, and whānau are able to influence and contribute to quality improvement initiatives.

Sufficient information is gathered and analysed to ensure that management is aware of any concerns about the conditions or treatment of residents, and to address these.

Appendix 1. Overview of OPCAT Legal Framework

The Optional Protocol to the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is an international human rights agreement that Aotearoa New Zealand ratified in 2007[8].

OPCAT establishes international and national monitoring mechanisms to inspect places where people are detained, with the overall aim of preventing torture and other cruel, inhuman or degrading treatment or punishment (ill treatment).

Monitoring places of detention, including through inspections, helps to ensure that people who are deprived of their liberty are treated humanely, and their rights are respected, protected and fulfilled. It also ensures Aotearoa New Zealand is seen nationally and internationally as a good global citizen, adhering to agreed international human rights conventions.

The Crimes of Torture Act 1989 (COTA) was amended by the Crimes of Torture Amendment Act 2006 to enable Aotearoa New Zealand to meet its international obligations under OPCAT.

Places of detention

Section 16 of COTA identifies a *'place of detention'* as:

> *…any place in New Zealand where persons are or may be deprived of liberty*

Pursuant to section 26 of COTA, an Ombudsman holding office under the Ombudsmen Act 1975 (Ombudsmen Act) was designated a National Preventive Mechanism (NPM) by way of Gazette Notice for certain places of detention, including health and disability places of detention[9]. In 2018 the wording of the designation was amended to explicitly include privately-run aged care facilities.

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

[8] Both OPCAT and the UN Convention it supplements – (the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment) are on the UN Human Rights Office of the High Commissioner's website (www.ohchr.org).

[9] Gazette Notice 2020-go2845, Designation of National Preventive Mechanisms, 2 July 2020 available at https://gazette.govt.nz/notice/id/2020-go2845

- 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 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.

Appendix 2. Examples of evidence sources

- Observation of facility and daily activities
- Observation of interactions amongst staff and residents
- Observation of daily routines such as scheduled activities and provision of care
- Observation of meetings and review of minutes
- Discussions with residents
- Discussions with authorised representatives
- Discussions with whānau
- Discussions with staff, including volunteers and outside agencies or services, e.g. Chaplain
- Discussions with advocacy services
- Survey responses (for those who are sent a survey, eg staff and whānau)
- Review of resident files and clinical notes
- Review of policies and procedures
- Review of documentation such as complaint registers, restraint logs and incident reporting
- Review of post-incident debrief documents
- Review of staffing data, including rosters
- Review of staff training records
- Review of menus, activities schedules
- Review of documentation held by parties such as Ministry of Health, District Health Boards or Service providers, which may inform how the expectations are being met.

Appendix 3. Domestic legislation & international conventions, standards and guidance

These lists are not exhaustive:

Table 1: New Zealand legislation, standards and guidance

Full title	Type	Abbreviation
Crimes of Torture Act 1989	Legislation	COTA
New Zealand Bill of Rights Act 1990	Legislation	NZBORA
Protection of Personal and Property Rights Act 1988	Legislation	PPPR Act
Human Rights Act 1993	Legislation	HRA
Mental Health (Compulsory Assessment and Treatment) Act 1992	Legislation	Mental Health Act
Te Tiriti o Waitangi / the Treaty of Waitangi	Treaty	Te Tiriti o Waitangi / the Treaty of Waitangi
Ngā Paerewa Health and disability services standard NZS 8134:2021	Standards	

Table 2: International treaties, standards and guidelines

Full title	Type	Abbreviation
UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Treaty	'Convention against Torture' or 'the Convention'
UN Optional Protocol to the Convention Against Torture and other Cruel, Inhuman, and Degrading Treatment	Treaty	OPCAT
United Nations Universal Declaration of Human Rights	Treaty	UDHR
UN International Convention on the Elimination of All Forms of Racial Discrimination	Treaty	CERD
UN International Covenant on Civil and Political Rights	Treaty	ICCPR
UN International Covenant on Economic, Social and Cultural Rights	Treaty	CESCR
UN Convention on the Rights of Persons with Disabilities	Treaty	UNCRPD

Full title	Type	Abbreviation
UN Convention on the Elimination of All Forms of Discrimination against Women	Treaty	CEDAW
UN Declaration on the Rights of Indigenous Peoples	Declaration	UNDRIP
UN Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment	Principles	BOP
UN Principles for Older Persons	Principles	
Yogyakarta Principles and Yogyakarta Principles plus 10	Principles	
Institutional Treatment, Human Rights and Care Assessment (2010)	Guidance	The ITHACA Toolkit
Practice Guide to Monitoring Places of Detention (2004) – Association for the Prevention of Torture	Guidance	APT guidelines
World Health Organisation QualityRights Tool Kit: Assessing and Improving Quality and Human Rights in Mental Health and Social Care Facilities (2012)	Guidance	WHO QualityRights Tool Kit
World Health Organization Freedom from Coercion, Violence and Abuse: WHO QualityRights Core Training: Mental Health and Social Services (2019)	Guidance	WHO QualityRights Tool Kit