

OPCAT Expectations for court facilities

Independent Police Conduct Authority and Ombudsman expectations
for the conditions and treatment of people detained in court facilities

Version 1 – May 2024

National Preventive Mechanisms

Monitoring the conditions and treatment of people in places of detention 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 New Zealand adheres to international human rights standards, to which all people are entitled.

The Ombudsman and the Independent Police Conduct Authority (IPCA) are both designated by the Minister of Justice as National Preventive Mechanisms (NPMs) to monitor court facilities.¹ This involves the Ombudsman and the IPCA making recommendations to improve the conditions and treatment of detainees. They may also identify good practice.

Central to this monitoring function is conducting visits and inspections of court 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).

The Ombudsman and IPCA's expectations

This document sets out the Ombudsman and IPCA's expectations for the conditions and treatment of people detained in court facilities (detainees).

This 'expectations' document is intended to provide detainees, their whānau, all agencies involved in detention in court facilities, Parliament, and the public with an understanding of some of the matters the Ombudsman and the IPCA consider when monitoring court facilities.

These expectations will also guide the Ombudsman and the IPCA when conducting inspections. However, inspections are not a 'check list' exercise and the Ombudsman and the IPCA must respond flexibly to issues affecting detainees. Accordingly, these expectations are indicative only and are not intended to be exhaustive. These expectations are informed by, and are to be read in conjunction with, the IPCA's expectations for the OPCAT monitoring of Police facilities and the Ombudsman's [expectations](#) for the OPCAT monitoring of Corrections facilities.

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

The expectations are informed by te Tiriti o Waitangi | the Treaty of Waitangi² and its principles, including those outlined in the Waitangi Tribunal's report *Tū Mai Te Rangi! The*

¹ [Designation of National Preventive Mechanisms, Gazette Notice 2023-go2676](#), 22 June 2023

² The Ombudsman and the IPCA recognise there are two texts with different meanings.

Report on the Crown and Disproportionate Reoffending Rates (Wai 2540). The IPCA and the Ombudsman acknowledge te Tiriti o Waitangi | the Treaty of Waitangi and are committed to being responsive to Māori as tāngata whenua. Monitoring of court facilities will include consideration of how detaining agencies demonstrate their respective commitments to Māori and te Tiriti o Waitangi | the Treaty of Waitangi in respect of the care, conditions, and treatment experienced by Māori detainees.

These expectations must be accessible and responsive to the rights and needs of particular groups and informed by law, policies, standards and best practice for upholding rights and ensuring that the needs of these groups are met. Any person deprived of their liberty is in a situation of vulnerability. However, certain groups and people commonly face a particular risk of ill-treatment and have specific needs related to factors such as their sex and/or gender, age, ethnicity, gender identity or expression, sexual orientation, migration status, nationality, economic status, disability or addiction.³⁴

Each NPM is independent. Their opinions and recommendations will be influenced by their own areas of experience and expertise. These will be based on evidence, and guided by these expectations.

Detention in court facilities

Aspects of detention in court facilities are unique to the process of appearing in court. These include:

- The short-term nature of detention.⁵
- Stress related to appearing in court.
- Travel from Police or Corrections facilities to Court facilities.
- Transfers of custody between agencies.

The Ombudsman and the IPCA recognise that a number of agencies work together in court facilities, and may be involved in various ways in the conditions and treatment of detainees. While acknowledging that this can present logistical challenges, the Ombudsman and the IPCA expect that agencies will be mindful of the potential impacts of court appearances on detainees, and that agencies will work collaboratively to ensure the highest possible standard of care is provided to detainees.

³ Individuals and groups with specific rights and characteristics include Māori, Pacific peoples and other ethnic groups, refugee status claimants and migrants, women, pregnant people, LGBTQIA+ persons, young and older people, and disabled people.

⁴ APT and APF (2021) [Preventing Torture: An Operational Guide for National Human Rights Institutions – Updated Edition](#)

⁵ Generally detainees do not stay in court facilities overnight and are only detained in court facilities during the day in order to facilitate their appearance in court

Court cells are generally located below court buildings. Cell conditions vary from facility to facility. While it is understood that buildings and procedures cannot be changed overnight, the Ombudsman and the IPCA will be monitoring the conditions of cells, and tracking progress to improve them. There is also an expectation that steps are taken in the interim to minimise the impact of poor conditions.

Expectations

The Ombudsman and IPCA's expectations are set out against the above background considerations.

Leadership and culture

- Detainees' rights are a focus at all levels of the agencies operating in the facility.
 - The roles and responsibilities of all agencies operating in the facility are clear, are understood by all staff and well communicated to detainees.
 - Agencies involved in operations within the facility, or transporting detainees to and from the facility, communicate, collaborate and cooperate to ensure that detainees are provided with the highest possible standard of care.
 - Dedicated, rights-promoting leadership, policy and governance is evident in management and operations within the facility and the agencies generally.
 - There is a clear and active understanding of, and commitment to, te Tiriti o Waitangi | the Treaty of Waitangi and ensuring equitable treatment of Māori detainees, including building and maintaining relationships with mana whenua, and the protection and promotion of te ao Māori, te reo Māori and tikanga Māori.

Safe Custody

- Detention status
 - Detention in a court facility only occurs pursuant to lawful authority.
 - Detainees are fully informed, in a manner that they can understand, about their legal and detention status, including legal options available to them. Interpreters, including sign language interpreters, are used when required.
 - Accurate records of the lawful authority to detain people are kept and are readily accessible.
 - Detention in court facilities is for the shortest appropriate time. Detainees do not stay overnight, or for prolonged periods of time, in court facilities.
 - Every detainee has the opportunity and choice to inform their whānau or any other designated contact person about their detention, transfer to another institution, or any other relevant information, such as in the event of significant illness or injury.
- Use of force and restraint
 - Force or restraint is never used unless strictly necessary in the circumstances, and only as a measure of last resort in accordance with the principles of legality,

- necessity, proportionality, accountability, and non-discrimination. Any use of force or restraint is for the shortest possible period of time, is never inherently degrading, humiliating or painful, and is never used as a punishment.
- The use of force or restraint is monitored and recorded.
 - Restrictions
 - Safety and security are preserved with no more restrictions than are allowed for by the principles of legality, necessity, proportionality, accountability, and non-discrimination.
 - Robust oversight of restrictions and decision-making and approval processes are in place.
 - Searches are conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality and necessity, accountability, and non-discrimination.
 - Risk of harm and safeguarding
 - Detainees are not subjected to discrimination, coercion, harassment, violence, bullying, or any forms of exploitation or neglect. All concerns regarding such matters are promptly documented and investigated or referred to the appropriate authority for investigation.
 - Risk of harm is well-managed and understood in all spaces within the facility. Risks of harm to individual detainees are identified and managed, with a focus on their specific characteristics and risk factors.
 - Detainees are separated according to their gender identity.
 - Young people are kept separate from adults.
 - Complaints and feedback
 - Feedback from detainees and their whānau is sought, considered, and used to improve governance arrangements and operations.
 - Each detaining agency has an effective, thorough, culturally safe, impartial and confidential complaints process. The complaints process is promoted and accessible for all detainees, and explained in a manner that detainees can understand. Responses should be timely, documented, explained in a manner that the detainee can understand, and offer the possibility of review.
 - Feedback and complaints processes include age and disability-appropriate options, and are responsive to young people.
 - Access to legal representation and support
 - Detainees have unobstructed and confidential access to legal representatives, in a timely manner, throughout their detention.

- Where a detainee has an authorised representative or identified support person or service in place⁶ they are able to have unobstructed and confidential access to them, in a timely manner, throughout their detention.
- Interviews between detainees and their legal representative are in private.
- Detainees are able to access interpreters, if required, when meeting with legal representatives.
- Young people are able to meet with their legal representative or support person in the presence of whānau or a parent or guardian, where appropriate.
- Transport and reception
 - Detainees are transferred to and from the courts in clean, safe, and secure vehicles, which are adequately ventilated. Vehicles are adjusted, as necessary, to meet individual needs.
 - Detainees are offered comfort breaks, food, and drink during transfer as necessary.
 - All relevant handover information is provided, risks are identified, and immediate needs met before their journey begins and before people are placed in cells.
 - All property belonging to a detainee which they are not allowed to retain upon their admission is placed in safe custody so it can be returned upon release.
 - Systems and procedures for the admission of detainees are implemented effectively and courteously. Information about the court facility and processes are available and well communicated to detainees in a manner that they understand.
 - Options are available to appear in court by audio-visual link in appropriate cases.

Dignity and respect

- Detainee experience
 - Staff treat all detainees with respect and dignity for the duration of their detention.
 - The facility has all key information available, for example, about detainees' rights and obligations, and associated laws and regulations. This information is available in a variety of languages and formats, including easy-read, te reo Māori and New Zealand Sign Language
 - Reasonable accommodations⁷ are provided for disabled people.

⁶ This may include support such as a social worker, or an authorised representative such as a Welfare Guardian or attorney appointed under an enduring power of attorney

⁷ "Reasonable accommodation" is defined in Article 2 of the Convention on the Rights of Persons with Disabilities to mean '*necessary and appropriate modification and adjustments not imposing a disproportionate*

- Detainees are able to maintain cultural and spiritual practices and rites throughout their detention, including, but not limited to, karakia and prayer.
- Contact with whānau is enabled for detainees, particularly youth, where this is possible and appropriate.
- The best interests of young people are at the forefront of all decisions and actions affecting them.
- Detainees have access to adequate clothing, including footwear, throughout their detention.
- Detainees can undertake their ablutions in privacy.
- Detainees have access to necessary toiletries and washing facilities for their health and cleanliness, including menstrual products.

Environment

- Facility environment
 - All facilities are clean, tidy and well-maintained.
 - Cells have adequate light and ventilation.
 - Cells have areas to comfortably sit and lie down.
 - Cell temperatures are within a reasonable range, i.e. not too hot or too cold.
- Food and beverage
 - Detainees have independent access to clean drinking water.
 - Detainees are provided with nutritious food at appropriate intervals (including at normal meal times).
 - Dietary requirements are reasonably accommodated.
 - Eating and drinking arrangements are hygienic and culturally appropriate for detainees.

Care and treatment

- The relevant health needs of detainees received into custody at court are identified and documented on reception.

or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms’.

- The relevant health needs of detainees already in custody are clearly communicated and documented during handover periods, for example on arrival and before any travel to other facilities.
- First aid supplies are available, and staff are trained in first aid.
- Detainees' medications are safely dispensed to them as required and in private.
- The individual health needs of detainees are identified and provided for, with an awareness of the psychosocial needs of detainees and trauma-informed care. Detainees have access to health care and services on an equitable basis, or of an equitable standard, as the general population. Detainees requesting or requiring medical attention have timely, direct, and confidential access to competent healthcare professionals for triage, assessment, and follow-up as appropriate.
- The detaining agency monitors, and keeps accurate records of, the provision of health care and treatment, with a particular focus on the humane and equitable treatment of detainees and continuity of care.

Staffing and quality improvement

- All staff are aware of the important role they play in conditions and treatment experienced by detainees. Their work is acknowledged and they receive the support, training, and supervision necessary to be able to do their best for detainees.
- Facility and role specific induction and training is provided to staff. Training is developed with people and organisations who have relevant experience in these areas, including tangata whenua, NGOs and NPMs.⁸
- Staff feel free to raise any concerns, in particular about the conditions or treatment of detainees. Concerns raised are dealt with properly, fairly and in a timely manner.
- There is a quality improvement strategy, and regular quality assurance checks, used to continually assess and improve the care of detainees in court facilities.

⁸ The Ombudsman's expectations for the conditions and treatment of people in prisons or otherwise in the custody of the Department of Corrections and the IPCA's expectations for the OPCAT monitoring of Police facilities further detail specific expectations in respect of training, support and supervision of the staff of detaining agencies.

Appendix. 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
Human Rights Act 1993	Legislation	HRA
Corrections Act 2004	Legislation	Corrections Act
Corrections Regulations 2005	Legislation	Corrections Regs
Policing Act 2008	Legislation	Policing Act
Courts Security Act 1999	Legislation	
Mental Health (Compulsory Assessment and Treatment) Act 1992	Legislation	MHCAT
Criminal Procedure (Mentally Impaired Persons) Act 2003	Legislation	CP(MIP)
Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003	Legislation	IDCCR
Criminal Procedure Act 2011	Legislation	CPA
Immigration Act 2009	Legislation	Immigration Act
Privacy Act 2020	Legislation	PRA
Search and Surveillance Act 2012	Legislation	
Te Tiriti o Waitangi Treaty of Waitangi	Treaty	Te Tiriti o Waitangi Treaty of Waitangi
Prisons Operations Manual	Guidelines	POM
People in Police Custody policy	Police Instructions	

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
UN 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
UN Convention on the Elimination of All Forms of Discrimination against Women	Treaty	CEDAW
UN Convention on the Rights of the Child	Treaty	UNCROC
Un Convention Relating to the Status of Refugees and its 1967 Protocol	Treaty	The Refugee Convention
UN Standard Minimum Rules for the Treatment of Prisoners	Standards	Nelson Mandela Rules
UN Standard Minimum Rules for the Administration of Juvenile Justice	Standards	The Beijing Rules
UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders	Standards	The Bangkok Rules
UN Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment	Principles	BOP
UN Basic Principles for the Treatment of Prisoners	Principles	BPTP
UN Basic Principles on the Role of Lawyers	Principles	BPRL ('Havana Rules')
UN Principles for Older Persons	Principles	
Yogyakarta Principles and Yogyakarta Principles plus 10	Principles	
UN Declaration on the Rights of Indigenous Peoples	Declaration	UNDRIP

Kiev Declaration on Women's Health in Prison 2009	Declaration	Kiev Declaration
UN Office on Drugs and Crime (UNODC) Handbook Series	Guidelines	
UN High Commissioner for Refugees (UNHCR) Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention 2012	Guidelines	UNHCR Detention Guidelines