

CONFIDENTIAL

**Report on an unannounced follow-up inspection of
Department of Corrections'
Waikeria Prison's West North & West South Units
Under the Crimes of Torture Act 1989
22 September 2011**



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National Preventive Mechanism**

Background

1. In 2007, the Ombudsmen were designated one of the National Preventive Mechanisms (NPMs) under the Crimes of Torture Act (COTA), with responsibility for examining and monitoring the general conditions and treatment of prisoners in New Zealand prisons.
2. On 22 September 2011, Inspectors Greg Price and Jacki Jones (to whom I have delegated authority to carry out visits to places of detention under COTA) made an unannounced visit to Waikeria Prison's West North and West South units to follow up on some of the recommendations made in a previous inspection report dated 22-23 September 2010.
3. This report addresses a number of the recommendations from the September 2010 visit, as well as some findings and recommendations from the follow up visit.

Progress since the last report (September 2010)

Treatment:

Privacy screens need to be installed in double-bunked cells.

4. **Not achieved.** Although the Department has proposed a programme of improvements to shared cells across all sites, it is unclear if Waikeria double-bunked cells will be part of the improvements due to the age of the cells.

Response from the Department

A business case for the installation of the privacy screens will be developed and presented for the approval of funding by 30 November 2011. Once funding is approved, the preferred option for the privacy screens will be discussed with your office before the actual work commences.

Consideration needs to be given to allowing prisoners in the high medium units to take their meals out of their cells.

Consideration needs to be given to splitting yard time to also allow prisoners to associate in the units (when showers can be taken).

5. **Achieved.** ^{s6(c)} [REDACTED] is trialling indoor recreation on a landing by landing basis that will also see small groups of prisoners dining out of their cells on a rotational basis (see photograph below). This seems to be working well and there are plans to roll it out across all the high security units within the coming weeks.

s6(c)



Dining tables, T.V and table tennis facilities in s6(c)

Material conditions:

There should be an auditable renewal process for mattresses on each of the units.

6. **Achieved.** The mattresses checked on the day of the visit were in a much better state of repair and appeared relatively new. Managers have the responsibility to ensure a renewal process for mattresses is implemented in their units.

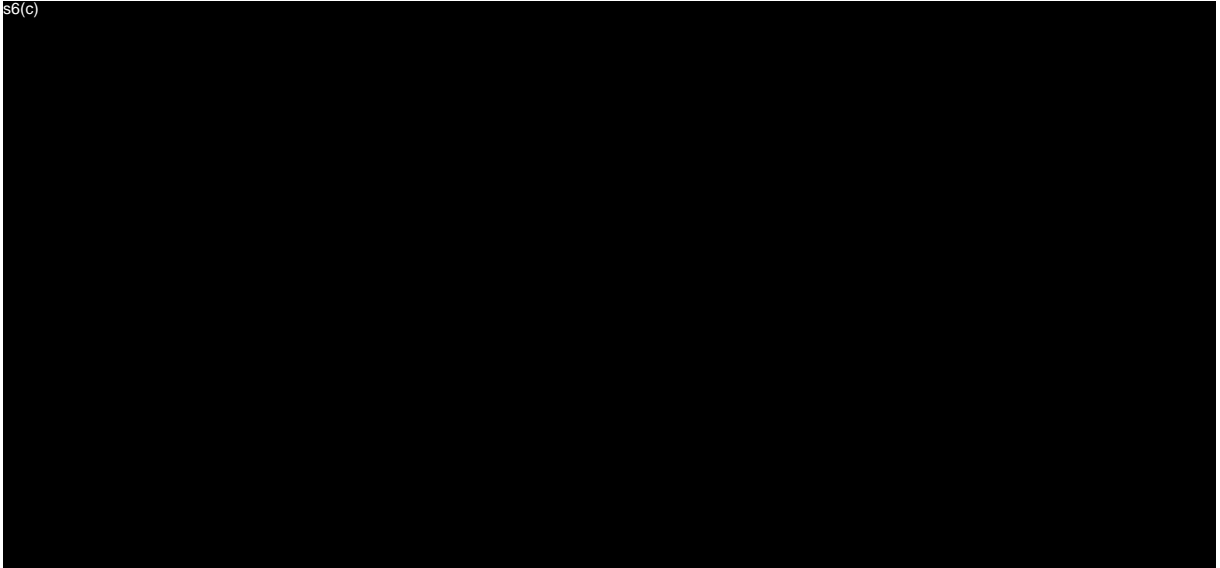


Regimes and activities:

The provision of some sports equipment would go some way to meeting the United Nations requirement that some of the time prisoners spend outside their cells should involve physical activity. Suitably qualified physical trainers could provide this activity.

7. **Achieved.** Pull up bars have been added in the high medium yards (see photograph below) and there were basketballs and rugby balls in use on the day of the visit.

s6(c)



Pull up bar and dip bar in the centre of the picture

8. Furthermore, high medium prisoners also have access to the prison gymnasium, on a rotational basis, under the supervision of an officer. There were seven prisoners using the facility on the day of the visit.



Food services:

Custodial managers and CIE staff should work together to find a resolution to the issue of continuity of prisoner employment in the kitchen and bakery. This should free up time for staff to supervise prisoners and monitor quality control.

9. **Not achieved.** In June 2011, the kitchen work force was replaced with 42 segregated prisoners from ^{s6(c)} [redacted]. Of the 42, only five are the original prisoners from June, which is perhaps why the quality of the sandwiches has not really improved – see photographs below.



Sample from ^{s6(c)} [REDACTED]



Sample from ^{s6(c)} [REDACTED]



Sample from the kitchen – slightly better

(Prepared for a prisoner going to court the following day)

Response from the Department

Since the closure of the ^{s6(c)} all the workers for the bakery and kitchen are now accommodated in the ^{s6(c)}. The option for these prisoners requesting to change their employment regularly is removed as workers for other work parties are now selected from different low secure units. This arrangement will be monitored closely and further action will be taken if required to ensure continuity of prisoner employment in the kitchen.

The issue of sandwich quality and preparation is acknowledged. The catering Principal Instructor is now based into the main kitchen which will increase the supervision of both prisoners and instructors. Ongoing quality checks of sandwiches have also been put in place.

All damaged thermo trays need to be replaced.

10. According to kitchen staff, none of the thermo-trays have been replaced since our last visit. The first three trays picked up by the Inspectors were covered in graffiti.



Response from the Department

All trays that were damaged (60 in total) were replaced this financial year. Trays are monitored for damage on a regular basis and will be replaced if any damage is identified.

Trays with considerable graffiti on them will be replaced with high priority, while all other trays with graffiti will be replaced in the next 12 to 24 months. Staff will be checking trays during collection and charging prisoners, when appropriate, to minimise the graffiti issue.

Findings from the follow-up visit (September 2011)

Treatment

Segregation

11. The Operational Support Manager informed the Inspectors that those prisoners on directed segregation are managed in their units, not in the separates area.
12. The Inspectors checked one remand prisoner on directed segregation and found that he was receiving less than his minimum entitlements.

13. Unit staff informed the Inspectors that prisoners on directed segregation were only entitled to one hour's exercise and in that time they were required to have a shower, use the telephone and clean their cell.
14. The Inspectors noted that the documentation relating to prisoners' entitlements whilst on directed segregation was poor.
15. The separates area (used for prisoners undergoing a period of cell confinement) was empty on the day of the visit. There are nine punishment cells in the separates area.
16. Six cells have toilet facilities but no natural light and three cells have natural light but no toilet facilities (see photographs below).



No natural light (with toilet)
(toilet just out of the picture)



Natural light (no toilet)
(window just out of the picture)

17. I note that cells used for prisoners on whom a penalty of cell confinement has been imposed must have natural lighting, and must, so far as is practicable, have a toilet (regulation 157(1)(a) and (b) of the Corrections Regulations refer).
18. The chief executive may nevertheless approve the use of non-compliant cells for prisoners under penalty of cell confinement if he is "*satisfied that it is not practicable in the circumstances to avoid using those cells*" for that purpose (regulation 157(2) refers).
19. I understand the required approval is in place for use of non-compliant punishment cells at Waikeria Prison. However, I remain concerned about the lack of natural light in some cells, and the lack of toilet facilities in others.
20. I intend to seek from the Chief Executive separately information in support of his decision that it is not practicable in the circumstances to avoid using the non-compliant cells for prisoners under a penalty of cell confinement.
21. Following receipt of that information, it may be necessary to make further recommendations.

Recommendation – Treatment

For prisoners on directed segregation, their minimum entitlement to one hour exercise a day should not include shower time, telephone calls and cell cleaning opportunities.

Documenting the minimum entitlements of prisoners on directed segregation needs to improve.

Response to recommendations

For prisoners on directed segregation, the issue has been addressed. All staff were informed of this requirement by the Prison Manager on 14 September 2011.

The Minimum Entitlement form has been updated by the site to ensure robust documentation of prisoner entitlements. The Custodial Systems Manager will check the Minimum Entitlement Form every time a prisoner is placed on directed segregation to ensure compliance in this area.

General comments

22. ^{s6(c)} [REDACTED], a 60 bed low medium unit closed in August 2011 because none of the cells had toilet facilities. This was pleasing to see.

23. Despite its age, the Prison grounds and units are clean and tidy.

24. The Inspectors will continue to monitor the site.

Consultation

25. A draft copy of this report was provided to the Prison Services National Office for comment as to fact, finding or omission prior to finalisation and distribution. Acting General Manager Prison Services' comments have been included at the end of each recommendation.

Acknowledgements

26. I appreciate the full co-operation extended by the prison Manager and his staff to my Inspectors during their unannounced follow-up visit to the Prison.



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Appendix 1: Overview of OPCAT – Prisons

1. In 2007 the New Zealand Government ratified a United Nations convention called the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*OPCAT*). The objective of OPCAT is to establish a system of regular visits undertaken by an independent national body to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.
2. The Crimes of Torture Act 1989 (*COTA*) was amended by the Crimes of Torture Amendment Act 2006 to enable New Zealand to meet its international obligations under OPCAT. Section 16 of COTA identifies a “*place of detention*” as:

“...any place in New Zealand where persons are or may be deprived of liberty, including, for example, detention or custody in...”

(a) a prison
(c) a court cell.
3. Pursuant to section 26 of COTA, an Ombudsman holding office under the Ombudsmen Act 1975 was designated a National Preventive Mechanism (NPM) for certain places of detention, including prisons and court cells.
4. Under section 27 of COTA, an NPM’s functions, in respect of places of detention, 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;
 - for preventing torture and other cruel, inhuman or degrading treatment or punishment in places of detention.
5. To facilitate the exercise of their NPM functions, the Ombudsmen have delegated their powers to inspect places of detention to Inspectors (COTA). This is to ensure that there is a separation between the Ombudsmen’s preventive monitoring function under OPCAT and the Ombudsmen’s investigation function under the Ombudsmen Act by using separate visits and staff for each function.
6. Under COTA, NPMs 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 persons they want to interview.

Appendix 2: Process of site visits

1. Under COTA, NPMs can visit, at regular intervals or at any other time the NPM may decide, any place of designation for which they are designated. Site visits can be unannounced.
2. As part of the visit preparation, the Inspectors may request some information beforehand and request that other information be provided at the time of the visit.
3. At the commencement of each site visit, there will normally be a meeting with the manager of the unit, or that person's delegate, during which the Inspectors will indicate how the visit should proceed.
4. During the visit, informal interviews and discussions will be undertaken with staff and one or more of the detainees, and a tour of the facility, preferably in its entirety, should take place.
5. Because of the wide scope of issues to be considered, it may not be possible to address them all during each visit. Accordingly, visits could focus on one or more of the following areas:
 - reception areas;
 - isolation facilities (such as management units, punishment areas, and segregation facilities);
 - sanitary facilities;
 - cells/accommodation;
 - medical facilities;
 - accuracy of relevant documentation; and
 - a review of any matters drawn to the attention of the Visiting Team prior to the visit or during the visit.
6. Visits will be followed by a report by the NPM which will include findings and recommendations (if any) aimed at improving the treatment and conditions of detention of persons deprived of their liberty. Implementation of any recommendations will be closely monitored.

Appendix 3: Standards relevant to a prison or court cell against which they will be measured

1. There are a number of Acts which can result in someone being held in detention or otherwise detained in a prison or a court cell, including:
 - Criminal Justice Act 1985
 - Corrections Act 2004
 - Immigration Act 1987
 - Sentencing Act 2002.
2. Some of the key issues to be examined during a visit could include treatment, protection measures, material conditions, regimes and activities, medical services and personnel.
3. Article 1 of OPCAT explains that the objective of OPCAT is to *“establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.”*

The purposes of the monitoring and reporting regime include:

1. *“...strengthening, if necessary, the protection of [detainees] against torture and other cruel, inhuman or degrading treatment or punishment”* (article 4.1 OPCAT refers); and
2. *“...improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations”* (article 19(b) OPCAT refers).

Part 2 of the Crimes of Torture Act, which relates to the Prevention of Crimes of Torture, makes it clear that one of the purposes of the Act is to enable New Zealand to meet its international obligations under OPCAT (section 15 Crimes of Torture Act refers).