

Report on an unannounced follow-up visit to
Department of Corrections'
Auckland Prison
Directed segregation facilities
Under the Crimes of Torture Act 1989

17 April 2012



Dame Beverley Wakem
Chief Ombudsman
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 detainees in New Zealand prisons.
2. On 17 April 2012, Inspectors Greg Price and Jacki Jones (to whom I have delegated authority to carry out visits of places of detention under COTA) made an unannounced short visit to Auckland Prison to follow up on a visit in September 2011 which looked at the conditions and treatment for prisoners on directed segregation (DS).
3. The visit in September 2011 did not result in a formal report, but issues were raised during an informal discussion with the Custodial Systems Manager (CSM). The issues included:
 - That certain prisoners on DS were not being treated the same as others; for example, one prisoner only received one hour's exercise/recreation whilst others received considerably more.
 - That showering and telephone calls were included within the permitted hour's exercise/recreation, thereby reducing the time available for actual exercise/recreation.
 - That the documentation relating to prisoners on DS was poor, and an improvement to the recording of activities taken or declined by prisoners needed to be implemented.

Progress since visit in September 2011

Treatment

4. On the day of the visit, nine prisoners were on DS (s 6(c) [REDACTED]). All nine prisoners had equal access to exercise and recreation, cell cleaning materials, shower facilities, and the opportunity to use the telephone.
5. (s 6(c) [REDACTED]) log book was checked for the period 1 April – 14 April 2012. There was an average of just over seven prisoners on DS during the period.
6. All prisoners received substantially more than their minimum entitlement with regards to exercise and recreation (time out of cells).
7. Showers, cell cleaning and telephone calls were in addition to exercise time.
8. (s 6(c) [REDACTED]) log book clearly recorded all activities undertaken, or declined, by prisoners on DS.

9. Segregation paperwork is placed in prisoners' files with copies held by the CSM. The Inspectors checked the paperwork being held by the CSM, for all prisoners on DS.
10. Forms M.0.1.0.3 (08 and 09) (Prison Manager's notification to the prisoner of placement on segregation, and confirmation of minimum entitlements), were not signed and dated by the prisoners in seven instances. Prisoners' signatures were also missing from their management plans.

Recommendation - Treatment

- No recommendations to make.

House keeping point

- Segregation paperwork should be completed in full before copies are taken. This should include prisoners' signatures and dates.

Good practice

- The log book on § 6(c) which records prisoners' minimum entitlements is a good initiative.

Material conditions

Accommodation

11. There are three areas currently being used to house prisoners on DS; § 6(c), which can hold a maximum of 12 prisoners; the high care facility, which has two cells; and the separates area, which has six cells.
12. With the exception of high care, we have made previous recommendations about § 6(c) and the separates area as not being suitable facilities for prisoners undergoing a period of segregation or cell confinement (see COTA reports dated 2-4 August 2010 and 10 August 2011). Nothing has changed with regards to the suitability of either facility to house segregated prisoners and or prisoners on cell confinement.
13. The high care cells, located in the old drug testing suite, are used as an alternative to § 6(c) DS cells. Both cells have a toilet and hand washing facilities but no power points. When a prisoner is housed in the unit, an extension cable can be passed under the door, but this is not ideal (see photographs over the page).
14. It was, therefore, pleasing to note that work is due to begin on the construction of a new management unit in October of this year. This new facility, which will accommodate 20 prisoners, will go a long way to assisting staff and management in dealing with what can sometimes be very difficult individuals. It should also

substantially improve the treatment and conditions for prisoners undergoing a period of segregation or cell confinement.



Cell in high care (having new flooring laid)

15. Whilst there is an exercise yard and recreation room in the high care area, the facilities are not ideal, especially the exercise yard.



Exercise yard



Unfurnished recreation room

Recommendations – Material conditions

- Given that a new management facility will be under construction later this year, I have no recommendations to make.

House keeping point

- As a minimum, a table and chair should be placed in the recreation room of the high care facility.

Consultation

16. 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 below.

Acknowledgements

17. I appreciate the full co-operation extended by the managers and staff to the Inspectors during their visit to the Prison.

Prison Service Comments

Thank you for the opportunity to comment on the above report.

I note that the issues raised during the informal meeting with the Custodial Systems Manager (CSM) during the visit in September 2011 have been addressed.

The report does not make any recommendations but mentions two house keeping points which I will address individually.

a) Segregation paperwork should be completed in full before copies are taken. This should include prisoners' signatures and dates.

This issue has been addressed. The CSM has implemented an enhanced segregation documentation process to ensure signed copies are now placed on file.

b) As a minimum, a table and chair should be placed in the recreation room of the high care facility.

A table and chair has been made available in the recreation area of the high care facility. The two cells in this area are only used on rare occasions (for highly disruptive prisoners or for emergency placement).

Management Unit

In relation to the work due to begin on the construction of a new management unit in October of this year (paragraph 14), planning for the construction of the new or refurbished facilities at Auckland Prison is well underway. As it is likely that the

project requires Central Government approval, milestones are still being developed with stakeholders. It is anticipated by August 2012 (or earlier) the Department will be in a position to respond to you with confirmed dates for the next stages.

A handwritten signature in black ink, reading "Beverley A. Wakem". The signature is written in a cursive style with a large, looping initial 'B'.

Dame Beverley Wakem DNZM, CBE
Chief Ombudsman
National Preventive Mechanism

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).