

Judicial visits to places of detention

CHECKLIST 3

For Chief Justice

Judge, Magistrate and Court Staff



NEW ZEALAND
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**FEDERAL COURT
OF AUSTRALIA**



Purpose Statement and User Guide

This is the 3rd in a series of six Human Rights Checklists designed to support coordinated “best practice” actions to apply human rights in the daily practice of judges, magistrates and court staff. The Checklists provide practical step-by-step guidance for applying relevant human rights standards to particular groups of court users and for making courts more inclusive and welcoming.

Each checklist has separate sections containing guidance for judges/ magistrates and court staff which can be ticked off by the user as each step is taken. While not every recommended action will be attainable for all courts from the outset, Courts are encouraged to also use the checklists as an end-point for guiding ongoing reform of court processes.

The Checklists are designed to be used alongside the PJSI Human Rights Toolkit, (available here <https://www.fedcourt.gov.au/pjsi/resources/toolkits/Human-Rights-Toolkit.pdf>), which provides further background about the human rights standards that the recommended actions in the checklists are based upon. The Checklists are designed to provide general guidance for Pacific court actors and not specific legal advice. Court actors should always ensure that the actions they take are also consistent with national laws and in accordance with the guidance and direction provided by Chief Justices.

Full Series of Human Rights Checklists

- **Checklist 1** Minimising Pre-Trial Detention
- **Checklist 2** When juveniles/children come to court
- **Checklist 3** Judicial visits to places of detention
- **Checklist 4** When victims of family or sexual violence come to court
- **Checklist 5** When people with disabilities come to court
- **Checklist 6** Creating welcoming, inclusive courts

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For Chief Justices to consider

- Judicial inspections and visits to places of detention and imprisonment are provided for by law in most Pacific jurisdictions yet are often under utilised. Such visits provide a powerful means for supporting the transparency and accountability of detention and prison conditions and help to prevent unlawful detention and mistreatment. Judges benefit from such visits through being exposed to the realities of detention and imprisonment, while detainees and prisoners benefit from the opportunity to raise their concerns and receive redress if their complaints are made out.
- Support from Chief Justices for a roster of regular and unannounced judicial visits and follow-up of arising complaints, can be a very effective way of supporting cultural and systemic change in place of detention and imprisonment.
- Consider endorsing this Checklist and encouraging or directing judges, magistrates and court staff to use this checklist in their daily practice to create an “all of court” coordinated response.

RECOMMENDED ACTIONS



Delegate a staff member to map all places of detention, noting their location, capacity and purpose/demographic (ie for pre-trial/sentenced prisoners/for men, women, boys, girls).



Ensure a regular roster of prison/detention visits by all judges/magistrates at all places of detention/imprisonment. This should occur every two or three months, and at least every six months and more frequently in places identified as having continuing issues.



Establish a process for judges/magistrates to report back to you/other delegated senior judge any issues detected and monitoring of follow up steps regarding directing complaints/issues to relevant authorities.



Make direct representations to senior authorities as needed on individual cases and especially regarding systemic issues detected regarding conditions of, or mistreatment in detention/imprisonment environments.



Ensure establishment and maintenance of a record keeping system regarding all judicial visits and follow up complaints/steps taken arising out visits. Appoint Court staff member with responsibility for this.



Ensure all judges/magistrates receive training and regular fresher training on conducting judicial visits to places of detention/imprisonment.



Judge and Magistrate responsibilities

Overview of responsibilities

A routine program of regular and unannounced judicial visits to places of detention and prisons can be a very effective means for the court to support cultural and systemic improvements in accountability for the treatment and conditions of detention. The following actions are recommended for three stages:

- 1 Preparing for the visit;
- 2 During the visit;
- 3 After the visit.

RECOMMENDED ACTIONS

Preparing for the visit

- Know your mandate and powers: which law/delegation are you conducting your visit under?
- Set aside adequate time (depending on size, at least a half day or full day).
- What to take:

- ▶ Any letter of authorisation/delegation for the visit;
- ▶ Your Judicial Officer ID;
- ▶ Charged telephone (camera);
- ▶ This checklist;
- ▶ Notebook and pen;
- ▶ Small empty cardboard box, extra pens.



During the visit

Setting things up

Introduce yourself to the police/corrections staff and explain the purpose of your visit. Always be polite and comply with all directions which do not interfere with your role. Politely resist any ones that do (ie resist requests not to take in with your telephone/camera, not to see detainees/prisoners in a particular section etc.)

Introduce yourself to the detainees/prisoners

▶ Explain that the court has a role and powers to ensure detention/imprisonment conditions are humane and that detainees/prisoners are not mistreated.

▶ Assure detainee/prisoner they are safe to disclose any issues concerning their detention or treatment without fear of retribution, including by court staff, police, guards or other detainees.

▶ Explain that you are available to speak to individuals on a confidential and entirely voluntary basis. Explain that you will obtain their consent (agreement or permission) before taking up any complaint they disclose to you with any authorities.

▶ Invite them to approach you directly to talk to them or invite them to write their name on a small note and place it in the card board box to allow them to privately indicate they would like to meet you.

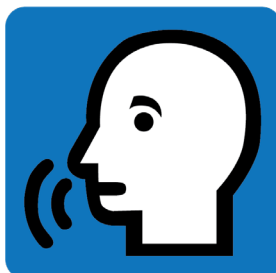
▶ Meet with each person in a private place or at least out of earshot of others.



Conducting the investigation/making inquiries

Identify situation of detainee

- Ask the person how they are. Then take down name and date of birth of each person you speak to and telephone contact details (if they are allowed to have phone with them or landline you can call them on).
- Ask detainee if they are in pre-trial detention or a sentenced prisoner.
- Note/observe if detainee may be under 18 years of age and ask further questions re their age.
 - ▶ If under 18, ask them whether they are being detained/imprisoned only with others under 18 years old or if they are mixed in/have contact with adult detainees/prisoners
- Note/observe if detainee/prisoner is female. If so, ask whether they are being:
 - ▶ detained/imprisoned in a separate facility from men, or if within the same facility, entirely separately from men
 - ▶ guarded by only women, or male guards always accompanied by a female guard.
- Note/observe If detainees/prisoner may have a mental or disability, ask whether the centre/prison is aware of this and whether necessary facilities/treatment/equipment is being provided to support them. Physical and mental disabilities to watch out for may include:
 - ▶ Difficulty communicating or understanding/being understood;
 - ▶ Difficulty concentrating or remembering;
 - ▶ Difficulty moving around, walking or climbing steps;
 - ▶ Difficulty seeing, hearing or speaking;
 - ▶ Difficulty with self-care including washing or dressing.



Details to get: Pre-trial detainees ask them

- If he/she is held with other pre-trial detainees or with sentenced prisoners.
- Charges faced;
- Stage of the process;
- Length of time detained;
- Whether person has legal representation;
- Time since last time taken before court;
- Note if detention reviews have occurred at relevant intervals or whether detention may be unlawful.

Details to get: Sentenced prisoners ask them

- If the prison has separate sections for different categories of prisoners and restrictions/privileges which apply to each.
- Any issues with individual's current classification.
- If they are required to work and how they are recognised/compensated for this.

Details to get from both pre-trial detainees and sentenced prisoners

- Ask detainee/prisoner if they feel safe where they are. Get details of any factors/people making them feel unsafe.
- Ask detainee/prisoner if anyone, including guards, police or other detainees has physically harmed or threatened them since being detained, including during questioning. If so obtain:
 - Chronology and details from detainee/prisoner, exactly what physical treatment or threats occurred;
 - Who was involved (names or identifying features such as rank or position of perpetrator/s and details of any witnesses);
 - Any injuries incurred, any medical treatment provided and place of treatment, any ongoing medical needs (take photographs of any injuries with person's consent);
 - If detainee/prisoner consequently signed any statements or made admissions and if questioning/incident was audio or video recorded.
- Ask them if the guards/police treat them with dignity and respect. Get a general understanding of the dynamics between guards/police and detainees/prisoners.

Ask to see detainee/ prisoner's living quarters (sleeping, bathroom and communal areas)

- Take photographs of any issues raised if possible.
- Check/ask if he/she has:



- ▶ Adequate space per person in the room;
- ▶ Adequate natural and artificial light (sufficient for reading without strain);
- ▶ Adequate ventilation and heating;
- ▶ Own bed and sufficient, clean bedding;
- ▶ Sufficient clothing suitable for climate, regularly cleaned;
- ▶ Clean drinking water available at all times;
- ▶ Nutritious meals three times a day, hygienically prepared and served;
- ▶ Privacy in showering and toileting;
- ▶ Cleanliness of facilities;
- ▶ Well maintained and safe facilities and any safety issues addressed;
- ▶ Access to water in bathroom facilities sufficient for showering at frequency needed to maintain hygiene; and
- ▶ Adequate essential items (like toothbrush, toothpaste, soap, comb, means to shave/cut hair, sanitary items for women or if they need any of these).







Ask detainee/prisoner about other aspects of their detention Do they have:

- Daily opportunity to exercise in the open air for at least one hour.
- Access to adequate medical treatment, medication, and dental treatment as required.
- Experience of any punishments for disciplinary offences in the centre (noting any corporal punishment, punishment by placing in a dark cell, solitary confinement or in small space, reduction of food, use of restraints including handcuffs, chains, irons and strait-jackets).
- Ability to immediately inform family where held, ongoing access to visits, all reasonable facilities for communication with family, others.
- Anyone visiting them?
- Access to religious lead and place/means to worship.
- Adequate light and ventilation during transfer/transportation to other places.



If they are a minor (under 18 years old) also ask:

-  If they have received family visits, mail, communication or contact;
-  Double check that they have legal aid or lawyer to assist them;
-  Find out if family have any capacity to post bail, where person would live if released, openness to reporting conditions; and
-  If they are receiving any regular education, training, sport or other activities.

Discussing with detainee next steps

If issues with treatment or conditions of detention arise during your visit:

- Ask detainee for their consent to raise the issue in a way that identifies them. Confirm you will respect their wishes, and explain what you plan to do with their information
- If you are not yet sure of next steps, tell them when you will contact them to discuss options
- If they do not want to be identified, ask if they consent to you raising the issues in a de-identified way and explain what you plan to do with their information.
- Manage expectations and never make promises you may not be able to keep.
- Ensure you keep dated/detailed/legible report/records of all contacts you have with detainees/prisoners. Ideally each Court will have a template report you can use.



"Do no Harm": Factors to Consider in Following up Complaints

- Always place the safety and protection of the detainee first (ie: if directly raising the issue may put them at risk of further mistreatment or abuse, then seek advice from the Chief Justice as to the best approach. Don't rush your decisions around how to proceed).
- Carefully consider the full range of options and the pros and cons of each option. Never try to address issues to junior officers, always communicate with person of your rank or higher.



Follow up options to consider

- Provide Chief Justice with a report of all issues raised (identifying and de-identifying complaints based on consent of complainant).
- Refer detainees without legal representation to legal aid, especially any minors who should all have legal representation.
- Raise general issues directly with senior police/corrections in charge of the facility (Eg: de-identified complaints relating to general conditions for multiple detainees/prisoners).



- Raise issues relating to individual prisoners where you have consent to do so and have established that this will not place personal security of the detainee/prisoner at risk.
- Consider requesting Chief Justice to raise any particularly sensitive issues (ie: physical or sexual abuse of detainee/prisoner by guard/police/other prisoner or where a person is particularly fearful of retribution from guard/police/other prisoner).
- Prepare a contemporaneous statement regarding details of any specific incidents reported to you of mistreatment/coercion/duress used to procure admissions or statements, as you may become a witness in the case.
- Consider whether to raise issues with other authorities (in consultation with Chief Justice) which may include:
 - ▶ Police oversight or internal investigations unit;
 - ▶ Corrections oversight or internal investigations unit;
 - ▶ Ombudsman;
 - ▶ National Human Rights Institution;
 - ▶ Minister of Justice;
 - ▶ Legal Aid service; and/or
 - ▶ Human rights organisations.

After the visit

- Make sure you have completed all your notes/records as soon as possible after the visit.
- Discuss with Chief Magistrate/Justice as soon as possible any follow up steps needed and agree on a plan.
- Be reliable in following up with detainees as you have committed to, including within the timeframes you said. This is key to building trust with detainees/prisoners and the integrity/reliability of the inspection process.
- Check in (by telephone) within a week of your visit to check that no negative consequences have occurred for detainee since you met with them/raised a complaint. If so, then immediately inform the Chief Justice for his/her follow up.
- Follow up in a timely way to progress follow up plan agreed with Chief Magistrate/Justice, subject to consent/wishes of detainee
- Key detailed records of all follow up steps taken (file note all telephone conversations, correspondence, follow up visits, discussions with Chief Justice/Magistrate etc.)
- Ensure that all records/notes regarding the visit/follow up steps are filed according to procedures in place.
- Ensure that detainees are kept updated/informed as to progress of any complaints/follow up and the outcomes.



Court staff responsibilities

Overview of responsibilities

Court staff play an important part in supporting a program of regular and unannounced judicial visits to places of detention and prisons. These can help ensure that the basic rights of detainees and prisoners are consistently upheld and help to prevent any lapses in these standards.

RECOMMENDED ACTIONS

- Manage support for roster of visits and ensure judges/magistrates have what they need to conduct the visits including transportation, access to a phone etc.
- Establish and maintain detention visit/follow up record keeping system regarding all judicial visits and follow up complaints/steps taken arising out visits.
- Follow up with judges/magistrates:
 - Soon after their visits to ensure all documentation is completed and filed
 - Concerning documentation for ongoing follow up and complaints.
 - Ensure that outcomes of complaints are recorded and that detainees have been informed of these.
- Support arrangements for training of judges/magistrates on conducting judicial visits to places of detention/imprisonment.

