

1 December 2022

Summary of the Office of Inspectorate's review

First and foremost, the Chief Inspector acknowledges the tragic loss of Malachi Subecz and expresses her deepest sympathy to his mother and wider whānau.

This is a summary of aspects of the desktop review undertaken by the Office of the Inspectorate | *Te Tari Tirohia* of the management of Malachi Subecz's mother by the Department of Corrections | *Ara Poutama Aotearoa*. This summary does not include parts of the Inspectorate's report that relate directly to the management of Malachi's mother, in order to protect her privacy interests.

Malachi's mother was remanded into custody on 21 June 2021, at Auckland Region Women's Corrections Facility (ARWCF). Malachi was left in the care of Michaela Barriball.

On 1 November 2021, Police informed ARWCF that Malachi had been injured and was receiving medical care at Starship Hospital, having been transferred from Tauranga. Malachi passed away on Friday 12 November 2021. His mother was with him at the time of his death.

The Inspectorate's review did not find any evidence that custodial staff at ARWCF held any information that should have alerted them that Malachi was not safe in Ms Barriball's care. The Probation Officer preparing the mother's pre-sentencing report did have concerns, as set out below, which were appropriately shared with Oranga Tamariki.

The concerns of the Probation Officer

The Probation Officer preparing Malachi's mother's pre-sentencing report had concerns about Ms Barriball using Malachi as leverage, as Ms Barriball's mother had a non-association order with Malachi's mother. On 22 July 2021, the Probation Officer contacted an Oranga Tamariki social worker to raise these concerns. The Probation Officer was advised, and recorded, that the concerns were beyond Oranga Tamariki's scope as an organisation and that the file had been closed as there were no care and well-being concerns.

The Probation Officer was not satisfied with Oranga Tamariki's response and followed up with the ARWCF Intelligence team, by telephone and email. An Intelligence Officer shared the email with their supervisor, who suggested that the Probation Officer should contact the Police. This was not relayed back to the Probation Officer, who did not contact Police. Notwithstanding this, the Inspectorate has reviewed the information documented by the Probation Officer and considers that Oranga Tamariki was the more appropriate agency to raise a concern.

Dedicated resources for contacting Oranga Tamariki

Corrections has a dedicated 0508 telephone line and email address for staff to raise concerns with Oranga Tamariki. The Probation Officer contacted an Oranga Tamariki social worker directly, rather than using the dedicated telephone line or email address. As part of this review, the Inspectorate spoke to a manager in the Probation Officer's office, who said that the usual approach for these types of concerns would be to escalate them to Oranga Tamariki and the Police. The Manager said that when probation officers use the dedicated telephone line they speak with an administrator who

is able to provide general information on the file, and there are delays. The manager said probation officers have good relationships with local social workers and usually contact them directly.

To illustrate Corrections' use of the 0508 telephone number, analysis of Department records showed that it was used on 69 occasions over a four year period. Five calls came from prison sites while the remainder were from Community Corrections. Only one call originated from ARWCF, which was not related to Malachi.

We searched the use of the Oranga Tamariki email address over a six month period in 2021 with the key words 'Report of Concern'. This produced 3202 emails from Corrections to the Oranga Tamariki email address. We reviewed some of these emails, which were for common matters such as requests for information, general enquiries and referrals. It was clear that this email address is a common communication channel between both agencies.

Corrections staff are also able to make a referral to Oranga Tamariki through Corrections' REFER Online system, which is designed for Community Corrections and Case Management to make electronic referrals to external providers. This may be for the purpose of requesting information, releases, or reports of concern.

Induction documentation

When Malachi's mother arrived at ARWCF, Malachi was not recorded as a dependent in any of the documentation that was completed as part of the induction process, or in the ARWCF database that records prisoners' children and is shared with ARWCF social workers.

Applicable legislation

Given Malachi's age when his mother arrived at ARWCF (four years nine months), the provisions in sections 80A-81C of the Corrections Act, about young children living with their mothers in prison, did not apply. The Corrections Regulations specify procedures where children seek to visit a prison, but these provisions were not engaged because in-person visits ceased on 17 August 2021 due to Corrections' operational response to COVID-19.

Applicable policies

Corrections' Child Protection Policy (June 2021) sets out guidance that applies when staff are interacting with children, and the expectation that staff can identify indicators of abuse or neglect, share concerns with managers and involve other professionals, where appropriate, in keeping children safe. The policy imposes obligations for promoting its awareness among departmental staff. This information appears to be primarily directed at Community Corrections staff.

Corrections has close links to Oranga Tamariki to ensure information is shared to keep children safe. The agencies have signed a 'Relationship Agreement', dated November 2018. Clause 8 provides for a review at least once every two years. The Relationship Agreement between Corrections and Oranga Tamariki had not been reviewed for four years.

Inspection Standards and United Nations Bangkok Rules for the Treatment of Women Prisoners

In completing its report, the Inspectorate had regard to its Inspection Standards and the Bangkok Rules for the Treatment of Women Prisoners, which were adopted by the United Nations General Assembly on 20 December 2010. Rule 3 paragraph 1 of the Bangkok Rules provides that "*The number and personal details of the children of a woman being admitted to prison shall be recorded at the time of admission. The records shall include, without prejudicing the rights of the mother, at least the names of the children, their ages and, if not accompanying the mother, their location and custody or guardianship status*".

The Inspectorate's Inspection Standards provides, in Standard 116, that "*The safety of a prisoner's children and other dependents is assessed and action is taken by staff to promote their safety*", and

Standard 141 states that *“A prisoner’s family situation is identified and support planning undertaken to proactively assist them in maintaining contact with family”*.

Findings and recommendations

The Inspectorate review found that Corrections staff provided a high level of support during the period Malachi was in Starship Hospital and after his death. The review found that while there was no evidence that custodial staff at ARWCF had any information to alert them that Malachi was not safe in Ms Barriball’s care, the Probation Officer did have concerns, raised these with Oranga Tamariki, and separately with the ARWCF Intelligence team.

The Inspectorate review made the following recommendations:

- Corrections must undertake a review of the Relationship Agreement with Oranga Tamariki, and thereafter ensure a review is undertaken every two years.
- Corrections must review and refresh its induction processes to ensure that information about a prisoner’s dependent children in the community is identified and recorded. Corrections must consider the Bangkok Rules and the Inspection Standards as it refreshes its induction processes.
- Corrections must review its processes for approving telephone numbers, particularly for prisoners with dependent children in the community.
- Corrections must remind staff of the requirement to follow the practice guidance for video calls at all times.
- Corrections must review and refresh its processes in cases where there is a report of concern about a child. As part of this review, Corrections must engage with key agencies, including Oranga Tamariki and NZ Police.
- Corrections must remind staff of the responsibility to ensure that prisoner information is appropriately recorded and stored.
- Corrections must remind staff of best practice when correcting errors in official documents.
- Corrections must ensure that review risk assessments are completed in accordance with the Prison Operations Manual.

The Inspectorate made other findings and recommendations, arising from the way Malachi’s mother was managed during this period, which have not been included in this summary to protect her privacy.



Janis Adair
Chief Inspector