



**Optional Protocol to the  
Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Subcommittee on Prevention of Torture and Other Cruel,  
Inhuman or Degrading Treatment or Punishment**

**Visit to New Zealand undertaken from 29 April to  
8 May 2013: observations and recommendations  
addressed to the State party**

**Report of the Subcommittee\***

**Addendum**

**Replies of New Zealand\*\***

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\* In accordance with article 16 (1) of the Optional Protocol, the report of the Subcommittee was transmitted confidentially to the State party on 5 November 2013. On 25 August 2014, the State party requested the Subcommittee to publish the report, in accordance with article 16 (2) of the Optional Protocol.

\*\* The present document is being issued without formal editing.

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## **I. Introduction**

1. New Zealand welcomes the report of the Subcommittee on the Prevention of Torture received 5 November 2013. This report responds to the recommendations made by the Subcommittee, and to the extent possible, follows the structure of the Subcommittee's report. For ease of reference, this report includes a brief summary of the recommendations made by the Subcommittee. Please refer to the report of the Subcommittee for the complete recommendations.

## **II. National Preventive Mechanism**

### **A. Functional autonomy of the National Preventive Mechanisms**

2. The Subcommittee recommended the New Zealand Government ensure the National Preventive Mechanisms have complete autonomy when carrying out their functions and are free to determine how they use the resources available to them. The Crimes of Torture Act 1989 protects the functional independence of the National Preventive Mechanisms. They are independent both from the Government and the detaining agencies they monitor. For example section 26(2) of that Act requires the Minister of Justice to have regard to matters set out in Article 18 of the Optional Protocol when designating the National Preventive Mechanisms.

3. Each National Preventive Mechanism also has its own legislation governing matters such as membership, functions and independence. The Human Rights Commission, Children's Commissioner and Independent Police Conduct Authority are independent Crown entities and their independence is protected by the Crown Entities Act 2004 as well as specific legislation for each organisation. The Ombudsmen are Officers of Parliament established under the Ombudsman Act 1975 and are accountable directly to Parliament. The Inspector of Service Penal Establishments is appointed by the Registrar of the Court Martial of New Zealand who is appointed independently under the Court Martial Act 2007.

### **B. Resources and expertise available to National Preventive Mechanisms**

4. The Subcommittee recommended the New Zealand Government ensure the National Preventive Mechanisms have adequate resources to carry out their functions, including access to relevant expertise. The Government acknowledges that the National Preventive Mechanisms face the same funding challenges confronting all government-funded organisations. The Government is committed to adequate funding for the National Preventive Mechanisms and will continue to work with them to ensure New Zealand can continue to meet its obligations under the Optional Protocol.

5. The National Preventive Mechanisms are not funded collectively for their activities under the Optional Protocol. Each is funded separately through the Government's Budget process, as it applies to their type of organisation. The Budget process does not include separate funding for their activities under the Optional Protocol.

6. Baseline funding for each National Preventive Mechanism is determined during the Budget round and it is up to each agency to determine how they prioritise their spending within that baseline. This includes determining the number of staff and what expertise to retain internally. For example, the Independent Police Conduct Authority has indicated it is

not necessary to have medical and mental health expertise on staff but it must be able to draw on external advice when required.

7. Chief Executives and Boards are responsible for the discharge of their statutory responsibilities and must have regard to efficient and effective management.

### **C. Mandate of the National Preventive Mechanisms**

8. The Subcommittee recommended that the New Zealand Government organise a meeting with the National Preventive Mechanisms to discuss their challenges, including gaps in their respective mandates. Officials from the Ministry of Justice have met with the National Preventive Mechanisms and will continue to do so as part of their ongoing relationship with government. The National Preventive Mechanisms have identified areas in their respective mandates that could be clarified. For example:

- Which National Preventive Mechanism is responsible for dementia units in private establishments, and other private and state-run residential care facilities where persons with disabilities have been placed
- Whether joint responsibility of the Ombudsman and the Children's Commissioner for youth justice residence is still required or can be placed solely with the Children's Commissioner, and
- Clarification of the mandate for monitoring of court cells (where detainees can be under the control of the Police or the Department of Corrections).

### **D. National Preventive Mechanisms working together**

9. The Subcommittee recommended the New Zealand Government take steps to enhance the status and recognition of the National Preventive Mechanisms, support them to develop a collective identity, and encourage dialogue and better connectivity between the National Preventive Mechanisms and civil society.

10. The National Preventive Mechanisms remain committed to working better collectively and are exploring ways to do so. For example, the Ombudsman and the Office of the Children's Commissioner are currently working together in relation to Mothers and Babies units in prisons.

11. The National Preventive Mechanisms continue to develop consistent practices and ways of working more collaboratively. This has been informed by a review of the first five years of their operation, OPCAT in New Zealand: 2007-2012, which is available on the website of the Human Rights Commission: <http://www.hrc.co.nz/human-rights-environment/monitoring-places-of-detention>.

12. The review helped to inform a two-day strategic planning workshop, facilitated by members of the Association for the Prevention of Torture. The workshop built on the five-year review findings to identify weaknesses and challenges, define collective priorities and began developing an Action Plan for the coming year. The Action Plan covers outreach activities, securing resources, building the collective evidence base, leadership and coordination, and general operations (for example access to expertise, multidisciplinary teams, and cultural diversity).

13. The National Preventive Mechanisms meet several times a year to share information and discuss key issues. A representative of the Ministry of Justice attends meetings as an observer to ensure the National Preventive Mechanisms and the Government remain in constant contact.

14. As part of their strategic planning, the National Preventive Mechanisms will consider whether, and if so how, to develop a communications plan and use this as the basis for updating existing information and raising awareness about their activities.

### **III. Overarching Issues**

#### **A. Legal Framework**

15. The Subcommittee recommended the New Zealand Government consider withdrawing its reservations to Article 14 of the Convention Against Torture, which relates to compensation for torture, and Article 37(c) of the Convention on the Rights of Child (CRC), which relates to age-mixing in places of detention. The Subcommittee also recommended that the Government reconsider the Bail Amendment Bill (reversing the burden of proof for some bail decisions) and the Immigration Amendment Bill (related to mass arrivals).

#### **Compensation for Torture**

16. New Zealand maintains a reservation to Article 14 of the Convention Against Torture, making compensation available only at the discretion of the Attorney-General. At the time New Zealand entered the reservation, there was no statutory remedy for torture victims. Since the reservation was entered, however, the Bill of Rights Act 1990 has been enacted. Courts have held that compensation may be awarded for breaches of the Bill of Rights Act.

17. The consent of the Attorney-General is required for prosecutions for alleged acts of torture. This reflects the serious nature of the crime and ensures that such a significant charge is properly administered. If there are clear allegations that an act of torture may have been committed, the Attorney-General would consent to prosecution.

#### **Non Age-Mixing Provisions**

18. The Ministry of Health has issued guidelines to assist district health boards (DHBs) and mental health service providers to comply with the non-age-mixing provisions of article 37(c) of the CRC. The guidelines also describe the Ministry's expectations in situations where it is considered in the best interests of a child or young person under 18 years to be placed in an adult ward, including that:

- Services should have protocols for referral of young people to adult facilities
- A child and adolescent psychiatrist or senior clinician be involved in determining whether the child's best interests are met post-assessment and work closely with the adult mental health clinicians for the duration of the admission
- The service should ensure access to age appropriate specialist care via child and adolescent mental health services, paediatric services, or other services with expertise in caring for children with disabilities
- A precautionary plan in age-mixing situations must include awareness of the young person's potential physical, emotional and sexual vulnerability
- The young person will have access to appropriate therapeutic and recreational activities and their education needs will be met

19. Directors of Area Mental Health Services are required to report any instances of age-mixing in mental health units to the Ministry of Health. Notifications must include a

justification for age-mixing that confirms it is in the best interests of the child. A common reason for admitting a young person to an adult unit is when it is not possible to immediately admit them to a youth mental health facility, and it was considered in the best interests of the young person to be assessed in an inpatient setting while the service was arranging transfer to a youth mental health service. This information is collected by the Ministry of Health.

20. In cases where it is unclear whether age-mixing has been in the best interests of the child or young person, the Director of Mental Health may intervene. District inspectors of mental health also advise the Ministry of Health when they become aware of possible breaches of a child or young person's rights under the Mental Health (Compulsory Assessment and Treatment) Act 1992 or article 37(3) of CRC. District inspectors are independent lawyers appointed under the Mental Health (Compulsory Assessment and Treatment) Act to uphold the rights of patients under the Act.

### **Bail Amendment Act 2013**

21. The Bail Amendment Bill (now enacted) reversed the burden of proof for some groups of defendants who have been shown to have the highest rates of offending on bail. The Bill also removed the presumption in the Bail Act for bail for defendants aged 18 and 19. The presumption was retained for defendants aged 17 and under, except where they have previously been sentenced to a term of imprisonment. The decision to grant bail in an individual case, however, remains with the court and is subject to section 24(b) of the New Zealand Bill of Rights Act 1990. The amendments contained in the Bail Amendment Act, which related to other groups of defendants in addition to youth, improve public safety and ensure the overall integrity of the bail system.

### **Immigration Amendment Act 2013**

22. The Immigration Amendment Act 2013 defines a mass arrival as an arrival of 30 or more people coming on one craft, or in a group of craft, or separately but within a time period or circumstances that shows intention to be part of the same group.

23. The Act contains safeguards that ensure that detention is not mandatory or arbitrary. The Judge must be satisfied that the warrant is necessary before issuing the warrant of commitment, has discretion to issue a warrant for a shorter period of detention than six months, and can require an immigration officer to report to the court at specified periods on whether the warrant is still necessary. Detention will enable the relevant agencies to enquire as necessary into the backgrounds of the asylum seekers pending decisions on refugee or protection claims. This will help confirm identity, and assess whether the asylum seekers pose a risk to national security or public safety. Once the identities and circumstances within the group are understood their immigration status can be regularised as appropriate, and detention would no longer be necessary.

## **B. Institutional framework**

### **Security classification system**

24. The Subcommittee recommended the New Zealand Government review the system for categorisation of prisoners and the conditions of remand prisoners and youth. A key priority for the Department of Corrections is to ensure that all prisoners have access to rehabilitation, education, employment and exercise. The security classification system is important for achieving these objectives and Corrections is reviewing it to ensure youth and remand prisoners have increased access to programmes.

25. Corrections' security classification system was designed to ensure that sentenced prisoners are managed appropriately for their risk profile. It takes account of a range of factors, including previous escape attempts and incidents involving violence, in order to minimise risk. Corrections recognise that classification systems need to be regularly reviewed in order to ensure that no unnecessary limitations are being placed on prisoners' access to rehabilitation programmes, education and employment opportunities. In 2013, adjustments were made to give under 25 year-old prisoners more opportunities to work outside prisons, without compromising public safety. Corrections is now reviewing the whole security classification system so that front line staff are better able to tailor management approaches to the needs and risks presented by individual prisoners. The review will also ensure that decisions regarding classification are transparent to prisoners.

26. Corrections are also piloting a remand management tool, which is intended to provide a more detailed assessment of individual remandees' risk profile. It is expected that this will lead to more remand prisoners being treated as low security, enabling them greater access to education, training and rehabilitation. The tool will be rolled out nationally later this year. In the meantime, programmes designed specifically for remand prisoners have been introduced and expanded. These include alcohol and other drug treatment, education assessments, language, literacy and numeracy programmes and short motivational programmes.

### **Parole**

27. The Subcommittee recommended eliminating all barriers to parole. All prisoners who are sentenced to two or more years of imprisonment are entitled to a parole hearing at their parole eligibility date and, if parole is denied, within 12 months of their last hearing. Access to the parole board is not dependent on prisoners having completed rehabilitation programmes or any other activity. Corrections recognise, however, that the parole board considers how much progress prisoners have made in their rehabilitation when it is making decisions about release. A considerable amount of work is underway to expand the range of programmes available to prisoners as early as possible. For example, Corrections has committed to ensuring that all offenders who need drug and alcohol treatment have access to it.

28. A Parole Amendment Bill has been introduced to Parliament. The proposed legislation is intended to give the parole board the ability to align future hearings with the completion of milestones designed to reduce an offender's risk of re-offending. It will also enable the parole board to bring parole hearings forward where these milestones are achieved earlier than expected. This is expected to strengthen the link between the rehabilitation activities of prisoners and the expectations of the parole board.

### **Gazetted jails**

29. The Subcommittee asked New Zealand to consider alternatives to the use of the police stations as jails until they are renovated prioritise the renovations of police stations gazetted as jails and ensure that there are appropriate means of segregating detainees when new facilities are built or existing facilities renovated.

30. Gazetted police cells are used to ensure prisoners travelling long distances between court and prison are transported humanely. Sometimes the distance between the court and the prison can be considerably lengthy, requiring breaks or overnight stops. Women prisoners in particular use gazetted police cells for breaks or overnight stops as there are only three women prisons in New Zealand. Gazetted police cells are also used when there are not enough places in individual prisons to house prisoners with specific needs or, in the unusual event when Corrections may not have the capacity to house a remand prisoner. As

noted by the Subcommittee, all efforts are made to reduce the time spent by prisoners in a police cell to a minimum.

31. Corrections and Ministry of Justice are currently working on a project to introduce Audio Visual Linking (AVL). This will mean that prisoners will not always need to make a physical appearance in the Court room. This initiative may reduce prisoner movements nationally by up to 70% and a corresponding reduction in the use of police jails as holding facilities when detainees are on remand, or who are required to travel significant distances for court appearances.

32. Gazetted jails generally form part of major stations, which are prioritised within the Police property replacement programme. The Police intend to replace four of the custodial facilities visited by the Subcommittee (Hastings, Porirua, Auckland Central and Nelson) within the next four or five years. Decisions to replace or refurbish custodial facilities are made based on the condition of the whole property.

33. In addition to the properties mentioned above, Police expect to replace or refurbish Hamilton, Napier, Whanganui, and Whakatāne stations when funding is available. Police will assess the gazetted jail portfolio and examine any facilities unlikely to be renovated in the next few years. Consideration will be given as to the best way to address any identified shortcomings. It is anticipated that capital expenditure over the past ten years combined with the above proposed expenditure, will result in the majority of stations gazetted as jails having upgraded detention facilities. New refurbishment plans take into account the need to segregate detainees.

#### **Pretrial detention**

34. The Subcommittee recommended New Zealand ensures pretrial detention is used as the last resort and pretrial detention is not excessively prolonged. The starting point of New Zealand law is that the defendant should be released on reasonable conditions unless there is just cause to remand him or her in custody. The factors that the court must consider in deciding whether there is just cause to detain the defendant are set out in section 8 of the Bail Act 2000 and mirror the issues identified by the Subcommittee. There have been significant changes to criminal procedure in recent years as a result of the Criminal Procedure Act 2011 which have simplified and streamlined court processes to reduce the time needed for a case to be completed. These changes will help ensure that pretrial detention is not excessively prolonged.

#### **Imprisonment rate**

35. The Subcommittee recommended that New Zealand investigate the reasons for the high incarceration rates; explore the possibility of expanding the use of non-custodial measures, and place greater emphasis on reintegration programmes.

36. New Zealand's imprisonment rate has been the focus of multiple government projects over the last ten years. The imprisonment rate by population in New Zealand is linked to relatively high crime resolution rates and prosecutions. The imprisonment rate in proportion of convicted offenders imprisoned (approximately 8%) is not unusual by international standards. New Zealand also has one of the highest rates of non-custodial sentencing of any country in the developed world.

37. An important outcome of the projects was the introduction of several new community sentences, which were made available to judges as sentencing options in October 2007. Combined with recent changes to policing practice through Policing Excellence, the expansion of offender rehabilitation services and an increase in re-integrative services in the community, there has been a significant decline in the number of

people being imprisoned. However, this reduction has been less pronounced for serious offending which has a more significant effect on the prison population.

38. There is limited potential for further reductions in the prison population by the introduction of additional non-custodial measures as these tend to be used for less serious offending, for which there is already a wide range of sentencing options. Measures to address over-representation of Māori in the criminal justice system are discussed at paragraphs 60 to 59 of this response.

### **Staff and prisoner safety**

39. The Subcommittee expressed concern about safety of prison staff and prisoners. The safety of staff and prisoners is of paramount importance. Corrections have programmes and initiatives in place to create a safe environment for everyone.

40. Corrections have dedicated considerable resources over the past 18 months to investigating and addressing prison violence. Departmental research has shown that the total number of serious prisoner-on-staff assaults is relatively stable, averaging around 7 per annum for the last decade. Although rates of staff assaults are comparatively low by international standards, Corrections promotes a culture in which violent or anti-social behaviour is challenged and changed. To this end, Corrections last year set up an expert advisory panel on staff safety to inform the development of a Staff Safety Plan. Members include experts from the public and private sectors. The advisory group consulted with a diverse range of interested parties, including many justice-related non-government organisations and the Office of the Ombudsman. The resulting three year staff safety plan — Keeping Each Other Safe — contains concrete actions to take place in year one, including:

(a) Setting up staff safety forums to ensure staff is listened to by managers when they raise safety concerns;

(b) Incorporating new course content on staff safety into the initial training for Corrections officers, which has recently been extended from 6 to 9 weeks;

(c) Improving the reporting of ‘near miss’ incidents so that there is a clear focus on stopping violence before it escalates.

41. Under the strategy, Corrections has also developed a set of resources promoting a culture change in the way prisoners and staff relate to one another. These focus on: staff and prisoners treating each other with respect, staff communicating clearly with prisoners, prisoners communicating when something is not right, and violence by those at prison is unacceptable. Posters outlining these expectations are displayed in all prisons, with additional information provided through booklets and DVDs.

42. Several other initiatives are also expected to have a positive impact on prison culture. These are:

(a) Right Track, a more active management approach to daily interactions with offenders, which is about supporting them to make progress against their offender plans and make positive life choices;

(b) Tactical communication, a set of principles and tactics that will enable Corrections Officers to use ‘presence and words’ to generate compliance and de-escalate difficult prisoners. The skills taught through tactical communications are designed to redirect the behaviour of hostile prisoners and diffuse potentially dangerous situations. All Corrections Officers are trained in the use of tactical communications and take competency-based assessments every two years:

(c) Improvements to the selection process used to recruit Corrections Officers.

43. As a result of the initiatives described above, by 2016 Corrections aims to achieve an overall reduction of 50 percent in the rate of serious prisoner assaults on staff, and a year-on-year reduction in the rate of serious prisoner assaults on other prisoners. Inter-prisoner violence prevention is discussed at paragraphs 45 to 49 of this response.

#### **Prisoner sanctions**

44. The Subcommittee noted that only those responsible for incidents in prisons should be penalised as a result. Prisoners are only sanctioned if they are found to have committed an offence against discipline. When a potentially dangerous situation is unfolding with an individual or group of prisoners, it can be necessary to lockdown entire units. This is only done when warranted by the need to ensure the safety of staff and other prisoners and every effort is made to restore the units to being fully operational as soon as possible.

#### **Prison violence**

45. The Subcommittee recommended that New Zealand intensify efforts to tackle inter-prisoner violence. Research undertaken by Corrections as part of its violence reduction work (as discussed previously) has found violence in prisons is caused by a wide range of factors. Corrections is making significant investments in preparing prisoners for a successful return to the community to meet its goal of reducing re-offending by 25% by 2017. As a result, by the end of June 2014 all prisoners at three of our prison sites will be engaged in education and training for 40 hours each week — an initiative we are extending across our network of prisons.

46. Corrections have also increased the number of places available on its medium intensity suite of rehabilitation programmes. These programmes are designed to teach offenders how to alter the thoughts, attitudes and behaviour that led to their offending, and help them maintain positive changes. These increased opportunities, coupled with more comprehensive initial training for staff described earlier, will contribute to a constructive prison culture and help tackle inter-prisoner violence.

47. Corrections are working to address prisoners' substance abuse issues. Over the past year, Corrections implemented a prison-wide alcohol and drug strategy, which has increased the availability of group-based motivational programmes for prisoners in need of them. The programme helps prisoners to identify the issues of drug use, enhance motivation to change, and discuss options to change. Eligible prisoners can also enter a drug treatment unit, which provides a three or six month group-based programme in a therapeutic environment.

48. Corrections acknowledge that gang membership is a challenge for New Zealand's prisons, as it is one of the strongest predictors of ongoing violence and criminal activity amongst prison populations. Corrections are currently developing an action plan to reduce re-offending by gang members. Key themes include increasing gang members' participation in interventions and supporting offenders and their whānau/family to exit gangs. It also focuses on better identifying gang members in prison and on community-based sentences, and better protecting prisoners without gang connections from intimidation and recruitment, particularly young and first-time prisoners who are especially vulnerable.

49. Corrections are also closely involved in the development of a national gang strategy, which is being led by the New Zealand Police.

## C. Fundamental Safeguards

### Right of accused or detained persons

50. The Subcommittee made recommendations about ensuring people arrested or detained by Police are aware of their rights. Existing legislation, case law and standing Police Instructions provide that any person who is detained (or who is being spoken to in such a way that leads them to believe that they are detained) must be advised of their rights. Police carry notebook cards with the Rights Caution wording. Persons taken into Police custodial areas are reminded of these rights. Police will consider other methods to remind detainees of their rights during their time in Police custody.

### Complaint Mechanisms

51. The Subcommittee recommended New Zealand clearly differentiates requests and complaints by prisoners. Corrections will review the complaints process to differentiate between requests and complaints. This review will ensure records of all requests or complaints, and their outcomes, are available to monitoring bodies.

### Staff training

52. The Subcommittee recommended New Zealand conduct regular training to ensure that law enforcement personnel can use the Integrated Offender Management System (IOMS) confidently and effectively. Corrections have recently introduced the Corrections Officer Development Pathway, a training package for new staff that blends on-the-job and classroom-based learning for Corrections officers and offender employment instructors. The Pathway represents a significant change to the way custodial officers are trained. This new approach will support the on-going training and use of the IOMS. In addition, training documents in the form of simple User Guides and online help is provided with every IOMS upgrade or enhancement release.

53. Police have recently developed an on-line training package for the Police National Intelligence Application (NIA) Custody Module and associated Custody Management Console. This training is available to all staff. All new custodial officers undertake the tutorial package as part of their initial induction. Existing custodial staff has been made aware of the package and are encouraged to use it to refresh their knowledge.

### Detainee records

54. The Subcommittee recommended New Zealand improve record keeping, particularly in police stations and take measures to ensure the confidentiality of medical information.

55. Detainee records currently exist in paper and electronic form. Paper copies of NIA entries are made to ensure business continuity in the event that the application becomes unavailable. Other documents such as personalised Health and Safety Management Plans for Person in Custody and Record of Medical Examination forms are attached to the printed Custody Sheet while that individual is under Police supervision. This correspondence is securely filed once the person is no longer in Police custody.

56. Health information that has been presented to Police about a detainee since his or her time in custody is available for any officer responsible for the management of the detainee. With shift changes and multiple officer teams this means the health information may be reviewed by several officers over the time the detainee is held by Police. This may be necessary for the health and safety of the detainee. Police monitor access to detainee electronic records using periodic and random auditing processes of the NIA. Any breach of the Acceptable Use of Technology policy initiates an employment investigation.

57. Police are considering the extension of the on-line training package for the Police Custody Module to include information currently held in paper forms. The advantage of electronic systems is that information fields can be mandated.

58. Police acknowledge the importance of keeping full and complete records. In 2014 Police are developing training that covers record keeping that will be initiated for front line and custodial staff.

## D. Māori Issues

### Māori focussed initiatives

59. The Subcommittee recommended that New Zealand further develop existing programmes, including Māori literacy programmes, aimed at reducing Māori recidivism. Corrections note the Subcommittee's commendation of the Māori Focus Units at Hawke's Bay Regional Prison in Hastings and Rimutaka Prison in Wellington. Corrections has a work programme underway to enhance and expand the Māori Focus Units so prisoners have structured pathways to gain qualifications, rehabilitate and reintegrate into the community. The programme is underpinned by a whānau-centric (wider family) approach aimed at involving positive family in the rehabilitation and reintegration of prisoners. Other Māori focussed initiatives include:

- **Whare Oranga Ake** — 16 bed reintegration units located outside the fence of two prisons. Whare Oranga Ake helps prisoners near release to train for employment, find work, find accommodation on release, and form supportive pro-social networks with iwi, hapū and community organisations. Māori practices, language and values are incorporated into the day-to-day running of the units.
- A **Tikanga Māori programme** which uses Māori philosophy, values, knowledge and practices to motivate prisoners to address their offending needs.
- **Kōwhiritanga** — a group-based rehabilitation programme for female offenders that is designed to help examine the causes of offending and develop skills to prevent re-offending. The programme is designed to be responsive to Māori women.
- **Kaiwhakamana** — Māori elders that provide cultural and spiritual support to offenders.
- **Papamauri at the Auckland Regional Women's Correction Facility** — a cultural space where prisoners participate in cultural and spiritual rehabilitation programmes.
- **Kaitiaki** — local iwi representatives that were actively involved in the development and construction of four prisons (Northland Regional Corrections Facility, Auckland Regional Women's Corrections Facility, Spring Hill Corrections Facility and Otago Corrections Facility). The kaitiaki connect to the prison through the rehabilitation programmes, providing on-going support and cultural guidance.
- **Mauri Tū Pae** — therapeutic programmes tailored specifically to medium to high risk Māori male offenders. The programmes are based on cognitive behavioural therapy integrated with tikanga Māori and are delivered in the five Māori Focus Units and the Northland Regional Corrections Facility. These programmes are designed and delivered by Māori treatment providers.

60. Departmental analysis indicates that Māori prisoners perform equally well in mainstream prison-based programmes, including literacy, and they are prioritised for inclusion in all mainstream programmes.

## **E. Juvenile justice**

### **Age of criminal responsibility**

61. The Subcommittee recommended that New Zealand consider increasing the age of criminal responsibility. While the age of criminal responsibility begins at 10 years old, the situations in which children under the age of 14 can be prosecuted are limited. Children aged 10 to 11 years can be prosecuted only for murder or manslaughter. As a result of reforms in 2010, children aged 12 to 13 can now be prosecuted for all serious offences punishable by at least 14 years imprisonment, or at least 10 years imprisonment for repeat offenders. The reforms were introduced to address situations where children aged 12 to 13 were committing serious repeat offending. The Family Court was considered insufficiently equipped to deal with such cases.

62. In practice, the ability to prosecute children under 14 years old is exercised sparingly. Between 1992 and 2012 there were no prosecutions of 10 to 11 year olds. Less than one percent of children and young people charged in court are 12 to 13 years old. The New Zealand Government does not therefore consider that there is a need to increase the age of criminal responsibility at this stage.

### **Remandees**

63. The Subcommittee also noted that exceptions to the requirement to separate remand and convicted juveniles could be made in prisons, to allow those on remand to participate in organised activities. The separation of remandees from convicted prisoners is a long-standing feature of New Zealand's justice system and is incorporated in the Corrections Act 2004. Corrections accepts the importance of providing education, employment and training opportunities for young remandees, as succeeding with this group presents the best opportunity to prevent a lifetime of recidivism and other negative outcomes. As discussed at paragraph 25, Corrections is in the process of amending its remand classification system so that a wider range of activities are available to all remand prisoners, including young remandees.

## **F. Mental health in places of detention**

64. The Subcommittee has made several recommendations in respect of the mental health of persons in places of detention. In summary:

- (a) Develop a comprehensive national policy for access to health care and mental health care services across the criminal justice system;
- (b) Ensure an adequate referral systems is established;
- (c) ensure all officers are provided with adequate training;
- (d) To the extent possible, make sure a full-time, on-site nurse be available to follow-up and monitor the mental health status of persons in custody;
- (e) Audit the healthcare needs in institutions and ensure adequate access to mental health care services, and
- (f) Provides adequate support residences to enable them to meet the mental health needs of those detained, including a youth mental health forensic service.

**Overview**

65. Mental health services are contacted to assess any person in police custody when police have reason to believe this is necessary for the person's well-being. Police establish necessity through: information gathered from others, such as family members, police observation and the formal risk assessment tool. Mental health services do not generally attend police custody centres unless there is an identified risk.

66. In October 2013, Police established a mental health intervention team to improve collaboration between police and mental health services. The project aims to improve all detainees' access to mental health services. Nurses in four police custody centres are a good example of steps taken to provide detainees with routine access to mental health services.

67. New Zealand has a well-established system for the mental health care of people in prisons, which is based on the fundamental principle that mentally ill prisoners have the same right of access to mental health services as other people with mental illness in the community.

68. Where a prisoner has moderate to severe mental health problems that require assessment and treatment in a hospital setting, they can be transferred to one of five forensic mental health services across New Zealand.

69. The Ministry of Health is developing a national forensic mental health framework to guide the future development of forensic services. The framework will also focus on ways in which general adult mental health services can increase efficiency in forensic mental health services, by better managing individuals prior to and following treatment.

70. The Ministry of Health and Corrections are working closely to address service pressures. The Ministry of Health has commissioned an additional five beds at Capital and Coast DHB to relieve immediate pressures on the forensic services in Waitemata DHB. The Ministry is also working with the Northern Regional Authority and the Waitemata DHB to further manage pressures on inpatient beds. Waiting lists for forensic mental health services in the Northern region (the region of particular concern) have decreased considerably.

71. In June 2012, Corrections implemented the mental health screening tool for all newly received male prisoners. Packages of care for prisoners with mild to moderate mental health needs are now in place at all prisons.

72. Corrections have commenced a trial of a Mental Health In-Reach Clinician role at three prisons. Clinicians provide education and support to custodial and health staff to support improved identification and management of prisoners with mental health needs. They also support the effective transition for prisoners returning from inpatient mental health facilities and from extended periods in the At-Risk Unit. They will also support referral to community based primary mental health providers for prisoners on release.

73. Corrections are also in the process of reviewing how at-risk prisoners (prisoners at risk of self-harm or suicide) are managed with a view to providing a pathway to wellness. The review will be completed by June 2014.

**Staff training in mental health recognition**

74. Corrections Officers are fully supported in the day-to-day role of managing detainees by Corrections health staff. Training for Corrections Officers in mental health recognition, response and referral is being further developed following a successful pilot in 2013. The training is based on a Ministry of Health sponsored programme that was piloted by Corrections and Police jointly. Further work is underway to improve training for probation and Corrections staff on suicide awareness, with training to be rolled out in 2014.

75. In 2013, Police established a mental health intervention team to improve the overall Police response to people with mental illness. A significant work stream for the project is to provide mental health training to all frontline staff, including staff working in custody centres, with training to start by July 2014. Training will cover technical aspects of law, policy and recording standards. Attendees will learn to recognise basic signs and symptoms of mental illness, and respond appropriately, including access to support services.

76. The mental health intervention team project is developing a referral system for people with mental illness who come into contact with Police. This will include promoting the need for referral and providing contacts at a local level.

#### **Mental health nurse support**

77. The Ministry of Health has a close working relationship with the New Zealand Police, which is mirrored at DHB and Police district level. The Ministry requires DHBs to look at ways in which they can effectively support Police in managing people with mental health problems, in ways that reflect local needs and resources. All DHBs provide advice and assistance to their local Police, and some DHBs provide nurses in Police watchhouses on a full-time or part-time basis, depending on need.

78. Four police custody centres have mental health nurse support. Evaluation of the nurses in custody centres initiative has been positive. Police are looking to expand this initiative.

#### **Corrections facilities**

79. Corrections are working closely with the Ministry of Health and Regional Forensic Mental Health Services to improve access for prisoners to mental health facilities. Waiting lists for beds have improved significantly over the last five years. Corrections health centres are accredited by the New Zealand College of General Practitioners under its Cornerstone accreditation programme. This process involves external assessors spending time in prison health centres reviewing every aspect of service delivery.

80. As part of the redevelopment of Auckland Prison, Corrections has worked with forensic experts to develop a new operating model for mental health care in prisons that will mitigate the need to transfer prisoners to inpatient care. The new model will be in place in 2017.

81. Corrections opened the High Dependency Unit at Rimutaka Prison in December 2012. The unit is designed to support prisoners who require additional support in prison due to their physical or cognitive functioning, including aging prisoners. The 20-bed unit will be expanded to 30 beds by mid-2014. In addition, work is underway to develop a plan for supporting aged prisoners along the continuum of health needs. The plan will be completed in 2014.

82. The mental health intervention team project will improve collaboration between Police and mental health services. The goal is to increase access to mental health services for all detainees.

83. The Ministry of Health is working with Corrections and Waitemata DHB to develop new models of care within prisons. This work will increase the options for earlier and alternative management of prisoners with mental health needs to reduce the requirement for admission to hospital and potentially enable an earlier discharge to prison. This also involves working with Corrections to facilitate forensic mental health services' access to prisons.

### **Youth forensic mental health services**

84. Youth forensic mental health services are provided regionally by DHBs, as are adult forensic mental health services. The regional services are based in Auckland, Hamilton, Wellington, Christchurch and Dunedin.

85. The Ministry of Health is working with DHBs to implement a range of new youth forensic mental health services in youth courts, youth justice residences and the community. These services will include multi-disciplinary mental health teams in all four youth justice residences providing assessment, treatment and support for transition back to the community in conjunction with primary care, education and youth justice practitioners working in the residences. An additional 25 fulltime equivalent (FTE) clinicians were recruited in 2012/13, and a further 15 FTEs will be recruited by June 2015 to fully implement these new services. This will take the specialist youth forensic workforce to 75 FTEs.

86. Plans are also underway for a new 10 bed secure youth forensic in-patient unit to be opened by the end of 2015.

## **IV. Situation of persons deprived of their liberty**

### **A. Police detention**

87. The Subcommittee recommended that steps be taken to improve the quality of Police cells, with priority given to those gazetted as jails, and that national standards be developed. The Subcommittee made recommendations to improve the privacy of Police cells, including blocking peepholes in non-at-risk cells and placing monitors out of public view in the custody suite.

88. The Subcommittee also recommended that notices setting out the rights of people detained be placed where they can be easily seen, that procedures for proper record keeping be strictly adhered to and all police stations serving pre-packed frozen food make sure the contents, manufacture and expiry date are clearly labelled.

### **Upgrading of Police cells**

89. Gazetted jails are prioritised within the Police property replacement programme. Issues like ventilation, dampness and sanitary facilities will be fixed during the refurbishment or replacement process. Improving non-gazetted jails will take longer, as Police will need to consider the financial viability of such a project when compared to other priorities. Police will ensure that cleaning of custodial facilities is carried out to a uniform standard across the country and that graffiti is regularly removed.

### **Privacy**

90. Police have been working in conjunction with Corrections and Ministry of Justice under the banner of 'Joining Forces' to review a range of operational activities, systems, processes and facilities. A set of agreed standards for shared custodial facilities is being developed, although Police currently have national standards for custodial cells. All facilities offer a level of privacy which is balanced with the need to provide a level of security for the safety of the prisoner.

91. Police have undertaken a national cell upgrade project. While predominately focused on eliminating self-harm points, lack of privacy in facilities is being considered during upgrading.

92. It is not appropriate to provide blinds that can be controlled by detainees in cells. Custody staff must be able to see into cells. However toilets in cells do have privacy screens and these screens do not have peepholes. Where peepholes into cells exist in older facilities these can be blocked, providing this does not create additional risk.

93. Where cells are covered by CCTV, the toilet privacy screen provides adequate privacy. It is not possible to remove CCTV coverage of these areas, as it would create blindspots and therefore increase risks to staff.

94. CCTV is used to both view and record activities in custodial areas. The monitors are not visible to the general public. Inspection windows and ports are used to view detainees in cells and are a necessary security precaution; allowing staff to conduct checks without causing disruption. Police accept the recommendation to locate CCTV monitors in the custody suite and out of public view. This will be incorporated into Police's national custodial standard.

#### **Detainee rights**

95. Please refer to paragraph 50 of this report for a full description of what Police currently do to ensure detainees are aware of their rights. Police will be considering other methods to remind detainees of their rights during their time in Police custody.

#### **Detainee property**

96. Police policy clearly stipulates the requirement and methods to securely store and account for detainee's property. Authorised Property Rules clearly detail the personal items a detainee may bring into a police jail. The rules include the quantity and acceptable content of the literature that may be kept and may be made available.

97. Police undertake to re-emphasise to staff the importance of compliance with the rules including accurate recording concerning the personal property in a training package currently under development.

#### **Detainee meals**

98. Police will discuss this recommendation with the different Districts and look at methods for providing detainees with the original packaging of the pre-packed frozen meal that provides a label listing the contents and the manufacture and expiry or best before date.

### **B. Court cells**

99. The Subcommittee recommended that simple registers be kept for court cells, which include times of arrival and departure, as well as other relevant information. Records relating to prisoner details including detention times and disposition are maintained by Corrections and Police, depending on who is responsible for the prisoner in the relevant court. Police will work with Corrections to check that this procedure is common practice throughout New Zealand.

### **C. Penitentiary institutions**

100. The Subcommittee recommended that New Zealand ensure the consistent application of rules on exercise and outdoor activities, all accommodation (including at Mount Eden prison) meets the requirements of natural light, and that the quality, variety, nutritional value and that meal times be reviewed.

101. The Subcommittee recommended New Zealand suspend the construction of the proposed management cells at Auckland Maximum Security Prison and ensure management cells are kept in a clean and decent state of repair. The Subcommittee also recommended not holding prisoners in disciplinary cells for a prolonged time on the basis of perceived security risks, ensuring an effective appeal process against disciplinary measures, and removing any impediments to the right to legal counsel.

#### **Prisoner exercise**

102. The Corrections Act 2004 provides that every prisoner may, on a daily basis, take at least one hour of physical exercise, which may be taken in the open air if the weather permits. Corrections accept that the amount of exercise time that prisoners receive above this minimum entitlement can vary according to a prisoner's risk profile. As discussed earlier, the security classification review currently underway is expected to result in greater flexibility in the way that prisoners are managed. This will potentially increase out-of-cell opportunities, although the safety of staff and prisoners will remain of paramount importance.

103. The quality of exercise facilities and extent of natural light inevitably varies across New Zealand's prison system, reflecting the age and design of individual prisons. There is a comprehensive programme of capital improvement across the entire prison estate and improvements being made to older facilities.

#### **Prisoner meals**

104. All meals are prepared in accordance with food safety standards and meals produced in prisons are assessed on a regular basis. Prison menus were developed with input from a New Zealand Ministry of Health dietician. The menus provide adequate amounts of all food groups and vitamins and minerals, and rotate every four weeks. In instances where prisoners will receive dinner early, extra food is provided to tide them over until morning.

105. In regards to the items for purchase, the list is developed carefully to ensure the items cannot be used to manufacture contraband (such as fermenting fruit into alcohol) that can impact on the good order of the prison. The cost of the items reflects the overhead costs of running the Distribution Centres.

#### **Management unit cells**

106. The two management cells that the Subcommittee viewed at Auckland Prison are prototypes. The final design of the management cells will be at least 40%-70% larger and have better natural lighting and ventilation. The units will also have built-in showers and their own exercise yards. The upgraded unit will include areas for programmes including rehabilitation and constructive activities.

107. Corrections have one prisoner detained for a prolonged length of time in a Management Unit cell due to his history of destroying all other types of cells and his high risk of escape. While the prisoner in question is housed in the Management Unit at night, he can associate with other prisoners during the day and receives his full entitlements. Corrections are working with the prisoner to progress him into other units.

108. All prisoners, including those detained in the Management Unit cells, can appeal segregation decisions by applying to the Inspector of Corrections, the Regional Operations Manager, an Ombudsman or a Visiting Justice (an independent official appointed by the New Zealand Governor General). There are processes and timeframes in place to ensure all appeals and complaints are considered in a timely manner.

109. In regards to cleanliness at Mt Eden Prison, managing prisoner movements and maintaining expected cell cleanliness standards is an ongoing challenge given the often transient nature of newly remanded prisoners. A process involving daily cell and yard inspections and a cleaning schedule has been put in place to address this issue.

#### **Communication between prisoners and lawyers**

110. All prisoners are provided the opportunity to communicate with their lawyers or have the ability to see a duty visiting lawyer. In regards to the report, the impediments to appropriate communication between prisoners and their lawyers at Auckland Prison are not outlined by the Subcommittee. However, modifications have been made to the visit room which will allow documents to be passed directly from lawyers to prisoners where appropriate.

### **D. Institutions for children and adolescents**

#### **Youth Crime Action Plan**

111. In October 2013 the New Zealand Government announced the Youth Crime Action Plan (YCAP) which aims to reduce the escalation of young people into and through the youth justice system. One action within YCAP supporting this is a reduction in the use of custodial remands. In line with YCAP, there are no plans to increase the capacity of our Youth Justice Residences, but instead YCAP has a number of actions, such as increased use of Supported Bail and Electronically Monitored Bail; and the development of an assessment centre approach to focus on an early return to the community of young people on custodial remand, where it is safe to do so. We are also working with NZ Police and the Ministry of Justice on tools to improve the consistency of decision making regarding bail applications. The YCAP will strongly encourage a reduction of the total number, and average length, of young people remanded through the Youth Court to Youth Justice Residences.

#### **The Joint Thematic Review of Young Persons in Police Detention**

112. The Joint Thematic Review of Young Persons in Police Detention was conducted by the Independent Police Conduct Authority; the Office of the Children's Commissioner and the Human Rights Commission and is the first joint review to be done as part of the independent monitoring mandate under the Optional Protocol to the Convention Against Torture in New Zealand. This report was released in October 2012, while in November 2012 a joint NZ Police/Child, Youth and Family work plan responding to the Thematic Review recommendations was agreed.

113. The joint Police/Child, Youth and Family Action Plan in response to the Joint Thematic Review aims to reduce the number of young people placed into Police custody for over 24 hours. For those young people who are placed into Police custody, the total duration for each young person will be minimal, the young people will remain in an appropriate environment, and the services delivered to each young person will ensure their safety and wellbeing. The Children, Young Persons, and Their Families Act 1989 require a section 236 Joint Certificate for the continued detention of a young person in Police custody for more than 24 hours and until appearance before the Youth Court.

114. The Joint Thematic Review noted that residential bed capacity was only one of a number of factors that can lead to a young person being detained in a police cell. The joint Police/Child, Youth and Family plan addresses each of the 24 recommendations.

115. The number of young people who were detained in Police custody for more than 24 hours has reduced significantly over the last two years.

### **Youth justice residences**

116. The Subcommittee has asked about Māori literacy programmes in Youth Justice residences. The Youth Justice residential schools adhere to Te reo Māori, which has a special place in the New Zealand Curriculum. Eight curriculum principles underpin curriculum decision making in New Zealand, and one of these principles is headed “Treaty of Waitangi”. Te reo Māori is included in learning languages, which is one of the eight learning areas in the curriculum.

117. Ka Hikitia was launched in 2008. It is an education strategy designed to ensure that all Māori students have the opportunity to realise their potential. There are two mainstream schools and one other education provider delivering education services in the four Youth Justice residences. These residential schools are responsible for leading and supporting the changes that will allow Māori students to achieve education success as Māori. Changes are already underway through integration of Māori language and culture across the curriculum and school, increasing the number of Māori staff, and promoting Māori role models.

118. Within the structured day of the Youth Justice residences, Child, Youth and Family continue to develop Te Ao Māori based programming. These programmes support young people to develop their sense of identity, belonging, cultural connectedness and Māori literacy.

119. A new Māori assessment tool, “Profile for Potential” is being developed in collaboration with one of New Zealand’s leader’s in Māori mental health. The tool is aimed at identifying potential and developing a plan (Interactive programme) which will allow the potential of each young person to flourish. The process is led by a Māori mentor who will create the Te Ao Māori space and attempt to reconnect our Māori young people with their heritage.

## **E. Military institutions**

### **Devonport Naval Base Corrective Cells, Royal New Zealand Navy**

120. The Subcommittee recommended that New Zealand ensure records are properly kept at the premises of a Naval Base and are readily available for inspection by monitoring bodies. The RNZN has confirmed that all records of detention are maintained by the Fleet Naval Police Officer at HMNZS Philomel and will be readily available for inspection by monitoring bodies.

121. Incidences of detention onboard HMNZ Ships are rare. Records show that four personnel (all members of the New Zealand armed forces) have been detained at sea over the last five years — the maximum length of detention at sea was four days. Arrest and detention of members of the New Zealand armed forces, including those detained at sea, is in accordance with the Armed Forces Discipline Act 1971, the Commanders Handbook on Military Law (DM69 Vol 1), and applicable Orders. Formal training for the Officer of the Day (duty officer) role is undertaken, reinforced, and examined during on the job training in the specific context of each Ship.

122. In relation to foreign captured personnel, the NZDF follows NATO doctrine concerning detention, namely Allied Joint Publication 2.5(A), which contains specific policy guidance on detention at sea. In addition, Standard Operating Procedures are developed for specific operational deployments of RNZN Ships. No individual has been detained at sea in respect of any operational deployment in the last five years.

**Burnham Camp, Camp cells**

123. The Subcommittee recommended that deficiencies in sanitary infrastructures be remedied, giving due consideration to international standards. A project is underway to provide toilets and basins for the Burnham Cells in order to align with international standards. The project has an expected completion date of 31 May 2015.

**F. Centre for accommodation of refugees and asylum seekers****Mangere Refugee Resettlement Centre**

124. The Subcommittee recommended New Zealand expedite rebuilding the Mangere refugee centre and improve record keeping at the centre. As part of Budget 2013, the New Zealand Government committed \$5.5 million of operating expenditure over the next four years towards the cost of the rebuild of the Mangere Refugee Resettlement Centre (MRRC). A project team to oversee the rebuild has been established. A concept design to indicate requirements for MRRC has been developed. Expressions of Interest (EOI) from parties wishing to engage in the rebuild were released on the Government Electronic Tenders Service website in March 2014. The Requests for Proposal is expected to be released in May 2014 to short-listed EOI respondents. The rebuild of the MRRC is anticipated to be substantially completed by the end of 2015.

125. The record keeping at the Mangere Refugee Resettlement Centre follows audit record keeping processes, which allows for efficient and consistent retrieval of information when required. All financial records (including general financial administration and financial records pertaining to the payment of allowances to individual asylum seekers) are held in centralised hard copy record keeping folders and electronically in secure folders. Individual hard copy client files are also maintained and contain documentation relating to day-to-day activities individuals undertake, such as leave requests, appointments, warrant of commitments etc. As a result of the Subcommittee's recommendation, copies of individuals' financial records will also be held in their individual hard copy client file.

**Transportation of detainees**

126. The Subcommittee recommended that New Zealand assess the conditions of transportation of prisoners to ensure they are not subject to the unnecessary physical hardship or restraint, and that decisions regarding the use of restraints are made on the basis of individualised assessments.

127. Corrections are reviewing all aspects of how it transports prisoners, so that it maintains public safety while ensuring that prisoners are transported safely and humanely. This review will build on the existing practices that addressed recommendations from the Ombudsman following his report on the death of Liam Ashley, a young prisoner, in transit in 2007. These practices include the use of waist restraints and single cell compartments. Transporting multiple prisoners together in vehicles poses an increased risk of prisoner-on-prisoner violence, escape (when prisoners are unloaded from vehicles) and assaults on staff, and restraints are considered a necessary safety precaution.

128. The Ministry of Health has published guidelines for forensic services on the transportation of special patients, and has recommended these guidelines to other mental health services.

129. Police policy requires that a risk assessment is undertaken for each prisoner prior to transportation (either by road or air). Factors such as necessity for restraint, type of restraint, type of vehicle and mode of transit are considered. Police do not have a routine practice of using mechanical restraints during conveyance.