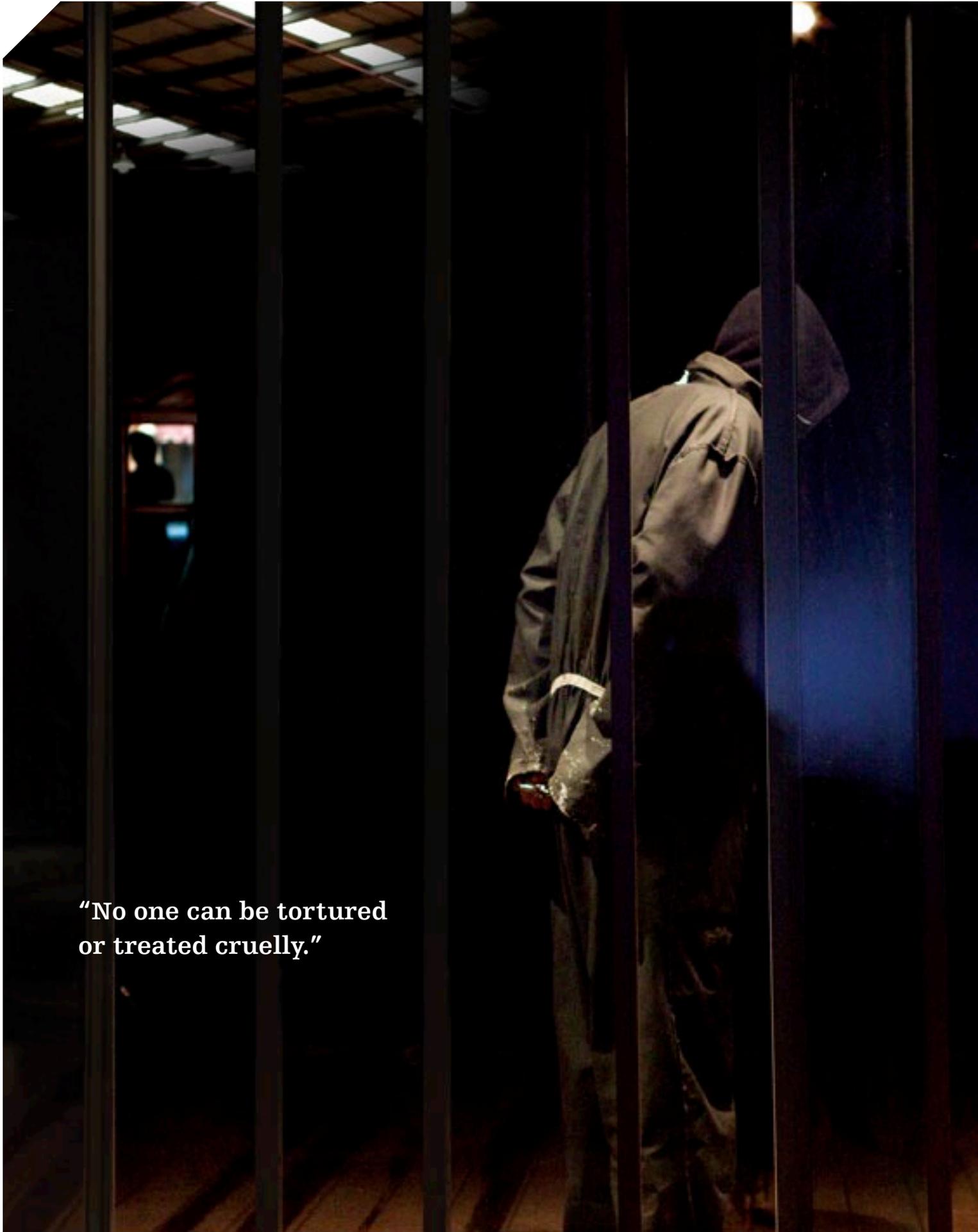


22. Rights of People Who Are Detained

Tikanga o ngā Tāngata Mauhere



**“No one can be tortured
or treated cruelly.”**

No one can be tortured or treated cruelly.

Universal Declaration of Human Rights, Article 5

Introduction Tīmatatanga

Detention occurs where a person is not free to leave a particular place. In New Zealand, people may be detained in a range of contexts, including prisons, police custody, military detention, mental health facilities, secure care facilities for people with intellectual disabilities, or children and young persons' residences.

The Commission's 2004 review of human rights found that the vulnerability of people in detention was one of New Zealand's most pressing human rights issues. The report found that while New Zealand legislation complies in most respects with international standards, issues of concern were apparent, particularly in relation to the capacity demands on facilities, the safety of detainees, the use of segregation, the need for external monitoring, and the lack of data collection and reporting.

International context Kaupapa ā taiao

INTERNATIONAL STANDARDS

The Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture (CAT), the

Convention on the Rights of the Child (UNCROC), the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention relating to the Status of Refugees (Convention on Refugees) all make provisions for the rights of people in detention, including the following:¹

- Everyone has the right to liberty and security of the person.²
- No one shall be deprived of his or her liberty except in accordance with law.³
- Everyone, including refugees,⁴ has the right to freedom of movement.⁵
- No one shall be subject to arbitrary arrest or detention.⁶
- Following arrest, a range of rights are recognised in the ICCPR, including the right to be informed of the reason for the arrest and the right to test the lawfulness of any arrest or detention.⁷
- All persons deprived of liberty shall be treated with humanity and respect for the dignity of the human person.⁸
- Accused persons (i.e. remand prisoners) shall, except in exceptional circumstances, be kept separate from convicted persons and be treated in a manner appropriate to their status.⁹
- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.¹⁰

1 International human rights instruments are accessible online at the website of the Office of the High Commissioner for Human Rights, <http://www.unhcr.ch/>. Many of New Zealand's human rights obligations are summarised in Ministry of Foreign Affairs and Trade (2003), *Handbook on International Human Rights* (2nd ed, Wellington: MFAT).

2 UDHR, Article 3; ICCPR, Article 9(1); CRPD, Article 14

3 ICCPR, Article 9(1); UNCROC, Article 37(b); CRPD, Article 14(1)(b)

4 United Nations Convention Relating to the Status of Refugees, Articles 26 and 31 – Note that the latter Article requires that restrictions be placed on the movements of refugees only as necessary.

5 UDHR, Article 13; ICCPR, Article 12(1) (though this Article limits the right of movement to those lawfully within the state territory). Also see CERD, Article 5(d)(i), and CRPD, Article 18.

6 UDHR, Article 9; ICCPR, Article 9(1); UNCROC, Article 37(b); CRPD, Article 14(1)(b)

7 ICCPR, Articles 9(2)–(5); UNCROC, Article 37(d); CRPD, Article 14(2)

8 ICCPR, Article 10(1); CAT, Article 16(1); UNCROC, Article 37(c)

9 ICCPR, Article 10(2)(a)

10 UDHR, Article 5; ICCPR, Article 7; CAT, Article 16(1); UNCROC, Article 37(a); CRPD, Article 15

- No one shall be subjected without his or her free consent to medical or scientific experimentation.¹¹
- The State must take all effective legislative, administrative, judicial and other measures to prevent acts of torture.¹²
- The existence of a disability shall not justify a deprivation of liberty.¹³
- The arrest, detention or imprisonment of children shall be used only as a last resort and for the shortest appropriate period of time.¹⁴
- The State must take all appropriate legislative, administrative, social and educational measures to protect children from all forms of physical and mental violence, injury, abuse, neglect and maltreatment by those who have the care of children.¹⁵
- Young persons accused of criminal offences shall be separated from adults.¹⁶
- Children who are detained shall be treated in a manner that takes into account the needs of persons of their age and shall have the right to maintain contact with their family.¹⁷

NON-BINDING INTERNATIONAL STANDARDS

The principles that underpin the instruments discussed above are (subject to any reservation) binding upon New Zealand. In addition to these binding instruments, there are other instruments that provide important guidance on various detention issues.

Relevant international instruments include:

- Standard Minimum Rules for the Treatment of Prisoners
- Basic Principles for the Treatment of Prisoners
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- Rules for the Protection of Juveniles Deprived of their Liberty
- Standard Minimum Rules for the Administration of Juvenile Justice ('the Beijing Rules')
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Code of Conduct for Law Enforcement Officials
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care.¹⁸

New Zealand context Kaupapa o Aotearoa

RATIFICATION OF INTERNATIONAL STANDARDS

New Zealand is a party to the ICCPR, CAT, UNCROC and other key human rights treaties, but has made several reservations to the conventions that apply to detention. These concern the mixing of juvenile and adult prisoners; ex gratia payments to people who suffer a miscarriage of justice by being punished, following conviction that is later reversed, or a pardon; and compensation for torture. While work has been undertaken towards removing these reservations, they remain in place.

Optional Protocol to the Convention Against Torture (OPCAT)

The OPCAT entered into force in 2006. It provides for regular, independent visits to all places of detention, with the aim of ensuring that conditions and treatment meet human rights standards, as well as preventing torture and other forms of cruel, inhuman or degrading treatment or

11 ICCPR, Article 7; CRPD, Article 15(1)

12 CAT, Articles 2(1) & 5(1)(a); CRPD, Article 15(2)

13 CRPD, Article 14

14 UNCROC, Article 37(b). See also Article 40(4).

15 UNCROC, Article 19(2)

16 ICCPR, Articles 10(2)(b), 10(3). New Zealand has made a reservation to these Articles. See also UNCROC, Article 37(c).

17 UNCROC, Article 37(c)

18 These documents are accessible online at <http://www2.ohchr.org/english/law/index.htm#core>

punishment. New Zealand ratified the OPCAT in 2007 and, following the enactment of amendments to the Crimes of Torture Act 1989, established national preventive mechanisms (NPMs) to give it effect.

The Ombudsmen, the Independent Police Conduct Authority (IPCA), the Children's Commissioner and the Inspector of Service Penal Establishments have each been designated as NPMs to inspect and monitor specific categories of places of detention. The Human Rights Commission has been appointed to a co-ordinating role as the designated 'central national preventive mechanism'.

International review

New Zealand has recently been examined by the United Nations Human Rights Council and several other UN treaty bodies on its implementation of its human rights obligations.

The New Zealand Government appeared before the Human Rights Council to present its first report under the Universal Periodic Review mechanism in 2009. The over-representation of Māori in prison (and in the criminal justice system) was one of the issues highlighted in the review and recommendations.¹⁹ Other recommendations related to ensuring the humane treatment of prisoners if prisons become privately managed, and ensuring that all juvenile offenders are held in separate facilities from adults.

In 2009, the Committee Against Torture commented positively on the reviews of corrections and policing legislation which have resulted in improvements to the law in those areas.²⁰ The committee also welcomed New Zealand's ratification of the CRPD and OPCAT. A range of challenging issues were also highlighted, including: high imprisonment rates and over-representation of Māori in prison; detention of asylum seekers; youth justice issues; investigation and prosecution of complaints; detention conditions; the use of Tasers; human rights training; and data collection.

A number of these issues were reiterated when the UN Human Rights Committee examined New Zealand's compliance with the ICCPR in March 2010.²¹ The committee's recommendations included that New Zealand should:

- withdraw its reservations to the ICCPR regarding the mixing of adult and young offenders
- consider stopping the use of Tasers while such weapons remain in use, intensify efforts to ensure that stringent guidelines are adhered to, and undertake research on the effects of Tasers
- closely monitor any measures of privatisation of prisons to ensure that the State's responsibility for guaranteeing the rights of people detained is met
- strengthen efforts to reduce over-representation of Māori in prisons; and increase efforts to prevent discrimination against Māori in the administration of justice
- ensure that asylum seekers and refugees are not detained in prisons or with convicted prisoners.

LEGISLATION

The New Zealand Bill of Rights Act 1990 (BoRA) contains protections for those detained. Section 22 provides that everyone has the right not to be arbitrarily arrested or detained. Section 23 sets out the rights of those who are arrested or detained. In respect of detention, these include the right to be treated with humanity and with respect for the inherent dignity of the person. Section 9 of the BoRA provides the right not to be subjected to torture or to cruel, degrading or disproportionately severe treatment or punishment. Section 27(1), which provides for the right to natural justice (including fair procedure), and Section 21, which provides protections in relation to search and seizure, are also relevant to the issue of detention.

The UN Committee against Torture has expressed concern that the BoRA is not a supreme law that takes higher

19 Human Rights Council (2009), Report of the Working Group on the Universal Periodic Review: New Zealand (12th session: A/HRC/12/8/Add.1). Accessed 22 November 2010 from <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-8-Add1.pdf>

20 UN Committee Against Torture (2009), Concluding Observations of the Committee against Torture: New Zealand, (42nd session: CAT/C/NZL/CO/5)

21 Human Rights Committee (2010), Concluding observations of the Human Rights Committee: New Zealand, (98th session: CCPR/C/NZL/CO/5)

status than other domestic law. This “may result in the enactment of laws that are incompatible with the convention”.²²

The Crimes of Torture Act 1989 also applies to all forms of detention. In 2006, the act was amended to meet the requirements of the OPCAT. A new part 2 of the act was inserted to provide for visits by the United Nations subcommittee and for the designation of NPMs and a central NPM.

Other legislation and policy relating to particular forms of detention are discussed further below.

PRISONS

There are currently 20 prisons under the remit of the Department of Corrections. The 17 men’s prisons and three women’s prisons can accommodate up to 10170 prisoners. On average they hold around 8500 prisoners.

Source: Department of Corrections www.corrections.govt.nz

New legislation

The Corrections Act 2004, which came into force on 1 June 2005, repealed and replaced the Penal Institutions Act 1954. Positive features of the new legislation include:

- the explicit reference in the act’s purpose statement (Section 5) to compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners and the inclusion of prisoners’ minimum entitlements in the legislation
- the clear reference to the role of the corrections system in providing rehabilitation and reintegration
- the expansion of complaints provisions and their elevation to primary legislation
- improvements to the disciplinary offence regime
- more regular review of decisions to segregate prisoners for security or protection reasons.

The Corrections Act also ended contractual arrangements that allowed for the private management of prisons,

which had been a matter of concern to the UN Human Rights Committee when it examined New Zealand’s compliance with ICCPR in 2002.²³ However, this issue has since been revisited, with legislation enacted in 2009 to once again enable prison management to be contracted to private parties. The Corrections (Contract Management of Prisons) Amendment Act 2009 includes requirements that contractors comply with relevant international obligations and standards. They must also report regularly to the chief executive of the Department of Corrections on a range of matters, including staff training, prison programmes, prisoner complaints, disciplinary actions, and incidents involving violence or self-inflicted injuries. Contract management is to be implemented at Mt Eden/Auckland Central Remand Prison, with tendering processes under way in 2010 and the transfer of management to the successful contractor to take place in 2011. In April 2010, the Government announced that a proposed new prison in Wiri, in the former Manukau City, is to be designed, constructed and operated under a public–private partnership (PPP).

Other recent changes to the Corrections Act have included the Corrections Amendment Act 2009, which prohibits the use of ‘electronic communication devices’ by prisoners, provides for the detection and interception of radio communications, and expands search powers. The Corrections (Use of Court Cells) Amendment Act 2009 enables court cells to be used to temporarily house prisoners during accommodation shortages.

A further amendment to the Corrections Act through the Corrections (Mothers with Babies) Amendment Act 2008 extended the period that children of female prisoners may be accommodated with their mothers for the purposes of breastfeeding and bonding – extending the upper age limit from six to 24 months. The act does not come into force until appropriate facilities are available. Pending the upgrading of facilities (expected to take place in 2011–12), a change to the Corrections Regulations (regulation 170) has enabled children up to the age of nine months to remain with their mother in prison.

The Prisoners’ and Victims’ Claims Act 2005 deals with the awarding of compensation to prisoners for breaches

²² UN Committee Against Torture (2009), para 4

²³ Human Rights Committee (2002), Concluding Observations of the Human Rights Committee: New Zealand, (75th session: CCPR/CO/75/NZL). Accessible online at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.75.NZL.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.75.NZL.En?Opendocument)

of their rights under the BoRA, the Human Rights Act 1993 (HRA) and the Privacy Act 1993. The Prisoners' and Victims' Claims Act restricts compensation awards so they are reserved for exceptional cases and used only if, and only to the extent that, they are necessary to provide effective redress. If compensation is awarded, the act requires it to be paid to the Secretary for Justice, and subject to deduction of legal aid, reparation and victims' claims. A 'sunset clause' limiting the duration of the act's provisions dealing with prisoners' claims has been extended,²⁴ while further legislation is planned by the Government to make the regime permanent.

A range of amendments have also been made to bail, sentencing and parole legislation. Significant among these was the introduction of the new community sentences under the Sentencing Amendment Act 2007. This saw a slowing in growth of the prison population, but placed pressure on the Department of Corrections Community Probation and Psychological Services. The Parole Amendment Act 2007 introduced changes, including establishing residential restrictions that may be imposed on all offenders subject to parole or release; monitoring of offenders' compliance with release conditions; powers to issue summons for information and evidence; implementation of confidentiality orders; and the ability of the Commissioner of Police to make a recall application.

The Sentencing and Parole Reform Act 2010 introduced a new three-stage regime for repeat violent offending, in relation to specified qualifying offences. On a first conviction for a qualifying offence, the court issues a first warning. Offenders convicted of a second qualifying offence receive a final warning and must serve the sentence without parole. Offenders convicted of a third qualifying offence must receive the maximum sentence and, unless it would be manifestly unjust, serve the sentence without parole.

Policy framework

The 'Prison Service Operation Manual' sets out policies from induction to release, covering: security (including

searches); prisoner movements; prisoner property, finances and activities; communication; visits; disciplinary processes; and complaints.

POLICE DETENTION

Detention in police cells

There are more than 400 police stations in New Zealand. They contain 525 overnight cells and 38 holding cells. Of these, 474 police station cells are open 24 hours a day.²⁵

In 2009, 177,933 people were held in police cells following arrest, while on remand after sentence pending hearings, or while on transfer.²⁶

Police cells are used for detaining people following arrest, people on remand and some sentenced prisoners in certain locations. People who are intoxicated may also be detained in certain circumstances, for their own or others' protection.²⁷

Legislation and policy

The Policing Act 2008 replaced the Police Act 1958. This followed a major review of policing legislation in 2006 to 2008, involving significant public consultation. The UN Committee Against Torture commented positively on the review, noting that it has resulted in improved human rights provisions.

Positive developments were the inclusion of a set of principles in the new Policing Act, including the principle that "policing services are provided in a manner that respects human rights", and the subsequent development of a code of conduct for all police employees.

The Corrections Act 2004 confers a general duty of care upon the Police Commissioner to ensure the "safe custody and welfare of prisoners detained in police jails".²⁸ It sets out minimum entitlements to beds and bedding, food and

24 Prisoners' and Victims' Claims (Expiry and Application Dates) Amendment Act 2010

25 Independent Police Conduct Authority (2009), *Annual Report 2008–2009* (Wellington: IPCA)

26 NZ Police (2009), *Annual Report 2009* (Wellington: NZP)

27 Policing Act, section 36

28 Corrections Act, section 9

drink, access to legal advisors, medical treatment and access to statutory visitors.²⁹

Police general instructions, policies and guidelines contain further provision for the treatment of those in custody, including in relation to searches, interviewing, treatment and rights of prisoners. They also contain measures to prevent harm to persons in custody, such as custodial suicide risk management and the separation of certain prisoners.³⁰

Monitoring

Independent monitoring of the police has been enhanced through the amendment in 2007 of the Independent Police Conduct Authority Act 1988. The amendments included expanding membership of the the Independent Police Conduct Authority (IPCA) from a single person to a board of up to five people; and providing the IPCA with the same powers as commissions of inquiry, including powers to receive evidence, examine documents and summon witnesses.

These changes, along with the IPCA's designation as an NPM, have expanded and strengthened the powers and capacity of the IPCA to conduct its own independent investigations and monitoring of police.

HEALTH AND DISABILITY DETENTION

Disabled people may be detained for any of the reasons noted in this chapter, if they meet the criteria for detention under the applicable legal frameworks.

Two key areas are the focus of this section. The first relates to people detained as a result of, or for the treatment of, mental disorder under the Mental Health (Compulsory Assessment and Treatment) Act 1992 (MH(CAT) Act). The detention of any person within a mental health institution is for the purpose of treatment and the assurance of safety, not for any punitive reasons. It should be noted that only a minority of people being treated for a mental illness are detained. This section also considers the detention of people with a mental or intellectual disability who have been the subject of criminal proceedings.

Legislation

Legislation establishes powers of detention in clearly defined circumstances. The key pieces of legislation include:

- Mental Health (Compulsory Assessment and Treatment) Act 1992
- Criminal Procedure (Mentally Impaired Persons) Act 2003
- Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

Other relevant legislation relating to the quality and safety of health services, training and competency of health professionals, and rights of service users includes the Health and Disability Commissioner Act 1994, the Health and Disability Commissioner (Code of Health and Disability Consumer Rights) Regulations 1996, the Health and Disability Services (Safety) Act 2001 and the Health Practitioners Competence Assurance Act 2003.³¹

Mental Health (Compulsory Assessment and Treatment) Act 1992

The MH(CAT) Act provides the State with significant powers to deprive people of their liberty should they be found to be mentally disordered and a danger to themselves or others. It defines the circumstances and the conditions under which people may be detained and subjected to compulsory assessment and treatment. People can be detained for initial assessment to determine whether they are mentally disordered and require compulsory treatment. If they require further treatment, then the MH(CAT) Act allows a Family Court or District Court judge to make a compulsory treatment order (CTO). It also provides comprehensive procedures of review and appeal of decisions about the patient's condition and legal status, and establishes a procedure for the review of the detention of people under CTOs.

The rights of individuals detained under the act are defined. These include rights to respect for cultural identity, treatment, be informed, independent psychiatric

29 Correction Act, section 69. Section 69(3) allows for prisoners held in police jails to be denied some minimum entitlements – to exercise, mail, phone calls, visitors, information and education – if their provision is not practicable in light of available facilities and resources.

30 New Zealand Government (2007), Fifth Periodic Report of the New Zealand Government on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/NZL/5). Accessible online at <http://www2.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT.C.NZL.5.pdf>

31 See also the chapter on the right to health.

advice, legal advice, company and seclusion, and the right to complain about breaches of these rights; as well as rights relating to visitors, letters and telephone calls.³²

The MH(CAT) Act was developed in line with the international human rights standards that existed at the time. Unlike the previous legislation, the act includes a presumption that treatment will be delivered in the community wherever possible. This is seen as the least restrictive intervention in individuals' rights and freedoms. Compulsory treatment can take place in hospital where appropriate.

Section 71(2) defines the conditions under which compulsory patients can be placed under seclusion. Seclusion involves isolating patients in secure rooms for a period of time. Under the MH(CAT) Act, seclusion is seen as a 'treatment' or form of protection for other patients.³³ It is not legal to use seclusion as a punishment,³⁴ and all facilities are required to keep a seclusion register.³⁵

The Director of Mental Health can apply to the court for any patient who is under a CTO to be made a restricted patient.³⁶ A restricted patient is one who presents special difficulties because of the danger he or she poses to others.³⁷ This category is subject to the same restrictions as apply to 'special patients' (see below).³⁸

The MH(CAT) Act provides for clinical, judicial and tribunal review of the condition and status of persons detained for mental health reasons. Under section 16, patients can apply for a review of their condition by a District Court judge when they are detained under the act for

assessment. The process is inquisitorial and designed principally to review the patient's mental condition.³⁹

Section 84(3) confers on a High Court judge the power to consider the legality of a patient's detention. The power is potentially very broad and designed to provide a protective and supervisory function for people detained in hospital. A judicial inquiry under section 84 does not preclude the availability of a writ of habeas corpus.⁴⁰

The act also provides for the appointment of district inspectors.⁴¹ These are lawyers who can inspect hospitals, wards or any place in which psychiatric treatment is given, at any time they wish. They also investigate complaints by patients about breaches of their rights and can instigate wider inquiries if necessary.

Criminal Procedure (Mentally Impaired Persons) Act 2003

The Criminal Procedure (Mentally Impaired Persons) Act 2003 (CP(MIP) Act), together with the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (IDCCR Act) regulates the management of intellectually disabled and mentally disordered offenders. It sets out the procedures whereby persons who are the subject of criminal proceedings may be found unfit to stand trial or acquitted on the grounds of insanity, and the consequences of such a finding or acquittal.

Under the CP(MIP) Act, the court can order people involved in criminal proceedings to be assessed and treated under the MH(CAT) Act,⁴² including those acquitted by reason of insanity.⁴³ In addition, individuals may be transferred from penal institutes for assessment

32 MH(CAT) Act, sections 64 to 76

33 MH(CAT) Act, section 71(2)(a)

34 section 71(2)(a) states that seclusion can only be used where it is "necessary for the care or treatment of the patient, or the protection of other patients".

35 MH(CAT) Act, section 129(1)(b)

36 MH(CAT) Act, section 54

37 MH(CAT) Act, section 55(3)

38 MH(CAT) Act, section 55

39 *Re BWA [mental health]* (1994) 12 FRNZ 510; [1994] NZFLR 321

40 *MM v D-G of Mental Health Services* [1998] NZFLR 900(CA)

41 MH(CAT) Act, section 94

42 CP(MIP) Act, sections 24, 25, 31 and 34

43 CP(MIP) Act, section 24

and possibly treatment in a forensic bed within a mental health facility.⁴⁴ A 'special patient' is someone detained under the mental health legislation who has come into the mental health service via the criminal justice system, as an offender or alleged offender.⁴⁵ For treatment purposes, special patients are required to be given the same care as patients subject to CTOs,⁴⁶ and therefore the provisions of the MH(CAT) Act apply.

The CP(MIP) Act provides a framework for the protection of the rights of individuals subject to the act. These include general rights to information, respect for cultural identity, independent health and disability advice, legal advice, rights to send and receive mail, and rights as set out in the Code of Health and Disability Services Consumers' Rights.

Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003

The IDCCR Act provides for the compulsory care and rehabilitation of people with intellectual disabilities who have been charged with or convicted of an offence. It is intended to ensure that intellectually disabled offenders are provided with appropriate compulsory care and rehabilitation while recognising and safeguarding their rights.

The act contains statutory powers to require care recipients to comply with their care order and to seclude, restrain and medicate under certain circumstances.

Policy on seclusion

Along with the Ministry of Health's guidelines to the MH(CAT) Act,⁴⁷ national guidelines on seclusion have been developed to assist mental-health services interpret the provisions of the act and identify best practice.⁴⁸ Revised Health and Disability Services Standards 2008 and Restraint Minimisation and Safe Practice⁴⁹ standards have also been issued. The latter cover the actual conditions in which seclusion can be used and mostly

reflect international best practice: seclusion is to be used for safety rather than therapeutic reasons, its use should be regularly reviewed, and it should be used only as a last resort.

MILITARY DETENTION

The primary facility for detention of military personnel is the Services Corrective Establishment (SCE) located in Burnham Military Camp, south of Christchurch. In addition, there are a number of holding cells in each of the more significant defence-force base or camp facilities, which are used to confine members of the armed forces for short periods. The SCE is in a purpose-built facility, with the capacity to detain up to eight people at any one time.

The New Zealand Defence Force (NZDF), which includes the army, navy and air force, has close to 10,000 regular forces personnel.⁵⁰ The administration of discipline and justice within the NZDF is provided for under the Armed Forces Discipline Act 1971 and Court Martial Act 2007.

Recent changes to the legislation reflect the results of a major review of the military justice system. The review was commissioned by the Chief of Defence Force in 2002, and aimed at modernising the system to take into account developments such as the BoRA. The new system was introduced on 1 July 2009. Key changes relate to: the summary trial system (now across all three services), rights of appeal and the establishment of a permanent, independent court martial.

The Court Martial Act 2007 provides for the appointment of an Inspector of Service Penal Establishments (ISPE),

44 MH(CAT) Act, section 46

45 MH(CAT) Act, section 2

46 MH(CAT) Act, section 44

47 Ministry of Health (2000), *Guidelines to the Mental Health (Compulsory Assessment and Treatment) Act 1992* (Wellington: MoH).

48 Ministry of Health (2010), *Seclusion under the Mental Health (Compulsory Assessment and Treatment) Act 1992* (Wellington: MoH).

49 New Zealand Standard: Restraint Minimisation and Safe Practice, NZ 8131:2008.

50 NZDF (2010) Personnel statistics, in *Statement of Intent*, accessed 3 November 2010 from <http://www.nzdf.mil.nz/public-documents/soi/2010/section-8/personnel-stats.htm>

whose role includes acting as an NPM under the OPCAT. Establishment of the post of ISPE to monitor NZDF detention facilities is a significant development, as prior to OPCAT ratification, military facilities were not subject to regular external monitoring or review. The ISPE visits the SCE regularly – up to eight times per year – and without advance notice.

DETENTION OF CHILDREN AND YOUNG PEOPLE

Legislation and policy

The Children, Young Persons and their Families Act 1989 (CYPF Act), is the key piece of legislation relating to detention of children and young people. The CYPF Act has two main parts; one deals with care and protection and the other with youth justice. Under the CYPF Act, children and young people can be removed and detained for their care and protection in various circumstances.⁵¹ They can be placed into the custody of Child, Youth and Family (CYF).⁵²

Proposed changes through the Children, Young Persons and their Families Amendment Bill (No 6) (2007) would extend the protection measures under the CYPF Act to include 17-year-olds. However, progress of the Bill through the legislative process has stalled, despite urging from the UN that the law change be adopted.⁵³

The CYPF Act makes a distinction between children (those aged 10–13) and young persons (aged 14–16). Offending by children (aged 10–13) is generally dealt with by the Family Court under the act's care and protection provisions, while young people (aged 14–16) are subject to the act's youth justice provisions and are dealt with by the Youth Court.

The passage of the Children, Young Persons and their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 extended the Youth Court's jurisdiction to cover 12- and 13-year-olds in relation to certain serious offences. This effectively lowered the age of criminal responsibility, in contrast to UN committee's recommendations that the age in New Zealand should be raised.

The CYPF Act deals with the issues of when and where children and young people who are accused or convicted of committing criminal offences can be detained. Part 4 of the CYPF Act lists guiding principles, one of which is that a child or young person who commits an offence should be kept in the community so far as is practicable and consonant with the need to ensure the safety of the public.⁵⁴ Following arrest, they can be detained by police⁵⁵ or given into the custody of others, including CYF.⁵⁶

A child or young person can be sentenced by the Youth Court to supervision with residence requirement.⁵⁷ Children and young persons who are sentenced to imprisonment can be detained in a residence approved by CYF, or in certain circumstances, if the court considers there is no other suitable option, a prison.⁵⁸ In prisons, young people are accommodated separately from adults, although the mixing of prisoners under 18 with those aged 18 or 19 may be approved where it is safe to do so and in the best interests of the prisoners concerned.⁵⁹ A 'test-of-best-interest' has been developed for this purpose.

When a child or young person is detained for their care and protection, their welfare and interests are the first

51 CYPF Act, sections 39, 40, 42

52 CYPF Act, sections 78, 101, 67

53 UN Committee Against Torture (2009), para 8

54 CYPF Act, section 208; there is also a presumption in section 15 of the Bail Act 2000 that young offenders will be allowed bail rather than remanded in custody.

55 Criminal Justice Act 1985 (CJA), section 142(2A)

56 CYPF Act, sections 234–236

57 CYPF Act, sections 283(n), 311

58 CJA, section 142A. A memorandum of understanding between the Department of Corrections and CYF also makes it clear that young offenders should be remanded or serve their sentence in a prison only as a last resort.

59 Corrections Regulations 2005, Regs 179–180

and paramount consideration.⁶⁰ When they are detained under the youth justice provisions, guiding principles in

CHILD YOUTH AND FAMILY RESIDENCES

Eight residences have been established under Section 364 of the CYPF Act – four youth justice residences (including a newly opened residence in Rotorua), and four care and protection residences.

Care and protection residences:

- Whakatakapokai in South Auckland – up to 20 young people
- Epuni in Lower Hutt near Wellington – up to 10 young people
- Te Oranga in Christchurch – up to 10 young people
- Puketai in Dunedin – up to eight young people.

Youth justice residences:

- Korowai Manaaki in South Auckland – up to 40 young people
- Lower North in Palmerston North – up to 30 young men
- Te Puna Wai o Tuhinapo in Christchurch – up to 40 young people
- Te Maioha o Parekarangi in Rotorua – up to 30 young people.

There is also a specialist unit for young people who have displayed sexually inappropriate behaviour. Te Poutama Arahi Rangatahi (TPAR) in Christchurch is a 12-bed unit operated by Barnardos under a contract with CYF.

the CYPF Act require that they be dealt with in a way that acknowledges their needs and that will give them the opportunity to develop in responsible, beneficial and socially acceptable ways.⁶¹

The Children, Young Persons, and their Families (Residential Care) Regulations 1996 provide comprehensive rules for the treatment of children and young people detained in CYF residences, and require a high standard of professional care.⁶² These include limitations on powers of punishment and discipline, and processes for inspections and review, including the functions of an independent grievance panel. Corporal punishment or other physical force is prohibited, as is discipline or treatment that is cruel, inhuman, degrading or humiliating, or is likely to induce an unreasonable amount of fear or anxiety.⁶³ The regulations are also supplemented by standard operating procedures and practice frameworks.⁶⁴

New Zealand today Aotearoa i tēnei rā

PRISONS

Growth in prisoner numbers

The Commission's 2004 report highlighted the need to upgrade and increase the capacity of prisons and alternatives to prisons. Since that research was undertaken, the prison population has risen by a further 30 per cent approximately, despite some initiatives which have attempted to curb New Zealand's high imprisonment rate. At 185 per 100,000, New Zealand's rate of imprisonment per head of population is one of the highest in the OECD.⁶⁵

The increase in the prison population has been linked to a rise in some recorded crime rates, particularly with regard to serious drug offending and family violence; increased

60 CYPF Act, section 6

61 CYPF Act, section 4(f)

62 Reg 3

63 Regs 20 and 21

64 Accessible online at <http://www.practicecentre.cyf.govt.nz/index.html>

65 The imprisonment rate of 185 per 100,000 population is high compared with Australia (about 126 per 100,000), England and Wales (153 per 100,000) and many European states (with rates under 100 per 100,000). See International Centre for Prison Studies [n.d.], World Prison Brief. Accessible online at <http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/>

police officer numbers; trends in the denial of bail; the use of longer sentences; and the “tightening of parole release decisions”.⁶⁶

Several pieces of new legislation make detention more likely. The Bail Act 2000 increased the numbers of people serving time on remand; the Sentencing Act 2002 altered minimum non-parole periods in relation to a number of offences and abolished the former presumption against imprisonment for property offences; and recent amendments to the Parole Act 2002 established release on parole as a privilege, and not a right.⁶⁷ The dominance of custody is also asserted in new legislation, such as the Sentencing and Parole Reform Act 2010.

Sentencing statistics show a general trend of increasing use of imprisonment over the past decade. Although growth is predicted to slow slightly over the next eight years,⁶⁸ there are expected to be 10,314 prisoners by 30 June 2017 – a 23 per cent increase from 30 June 2009.

Four new prisons have been opened in the past five years to try to meet the growth in prisoner numbers. Further, there is a proposal to build a new 1000-bed prison in Wiri, South Auckland. The development of a ‘container unit’ at Rimutaka Prison and increased use of cell sharing (‘double bunking’) has also been implemented. The Corrections (Use of Court Cells) Amendment Act 2009 enables court cells to be more readily used to house prisoners temporarily during accommodation shortages.

While these responses focus on trying to accommodate the rising prison population, there have also been some attempts to address the high imprisonment rate itself.

In 2007, the ‘Effective Interventions’ package was introduced. The sentences of home detention, community detention and intensive supervision were introduced in October 2007, with the passage of the Sentencing Amendment Act 2007 and the Parole Amendment Act 2007. In 2009, they accounted for about 8 per cent of all sentences.⁶⁹ While placing increased strain on the

Total number of correction facilities:	20
Total number of prisoners as at 30 June 2010:	8816
Percentage of male prisoners:	93.6%
Percentage of female prisoners:	6.3%
Percentage of Māori prisoners:	50.9%
Percentage of Pacific prisoners:	11.5%
Average remand prisoner population (2009–10):	1828
Average sentenced prisoner population (2009–10):	6587
Average youth prisoner population (2009–10):	76

Source: Department of Corrections www.corrections.govt.nz

Community Probation Service, these sentences have had some effect in slowing the growth of the prison population. In 2005, 11 per cent of all offenders were sentenced to periods of imprisonment; by 2008 this had decreased to 8 per cent. The Department of Corrections also noted that the implementation of these new community-based sentences was estimated to have reduced the prison population by around 700.⁷⁰

In April 2009, the Minister of Justice and Associate Minister of Corrections convened a meeting on the ‘Drivers of Crime’ to identify and suggest ways of addressing the causes of crime. There was general agreement that the key solution lay in early intervention, and that this required a co-ordinated approach across a range of government sectors, rather than the justice sector alone. The Government has since announced an

66 Department of Corrections (2008), *Briefing for the Incoming Minister*, November 2008 (Wellington: Department of Corrections), p 11

67 section 28(1AA) was inserted by section 17 of the Parole Amendment Act 2007.

68 This is due partly to improved court processing times, which are expected to reduce the duration of remands in custody. See Ministry of Justice (2010), 2009–2017 *Criminal Justice Forecast Report* (Wellington: MoJ).

69 Ministry of Justice (2010), *Conviction and Sentencing 2000 to 2009*. Updated bulletin, accessible online at <http://www.justice.govt.nz/publications/global-publications/c/conviction-and-sentencing-2000-to-2009>

70 Department of Corrections (2008)

approach aimed at improving services for those at risk of being the offenders or victims of the future and their families. There is increased focus on addressing the issues that lead to the high number of Māori who are apprehended, convicted and imprisoned. The Government has identified four priority areas for cross-government action:⁷¹

- antenatal, maternity and early parenting support
- programmes to address behavioural problems in young children
- reducing the harm caused by alcohol
- alternative approaches to managing low-level offenders and offering pathways out of offending.

The impact of these initiatives is to be monitored by the Ministry of Justice, and a review of progress will be carried out in 2011.

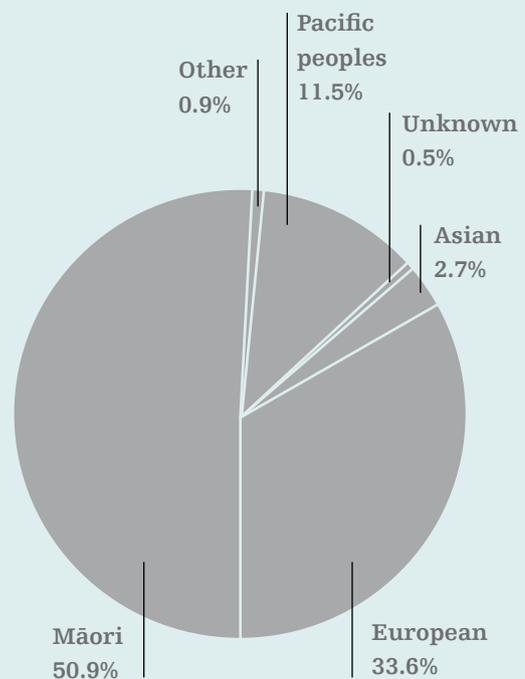
Disparities in imprisonment rates

Māori make up approximately 12.5 per cent of the general population aged 15 and over, but account for over half of the male prison population and around 60 per cent of the female prison population. The Department of Corrections recently noted: “Research shows that more than 30 per cent of all Māori males between the ages of 20 and 29 years have a record of serving one or more sentences administered by the Department of Corrections; the corresponding figure for non-Māori is around 10 per cent.”⁷²

The over-representation of Māori within the prison system has been the subject of much international comment. The UN Human Rights Council, the Committee Against Torture and the Committee on the Elimination of Racial Discrimination have each recommended that New Zealand focus its attention on combating over-representation and discrimination within the criminal justice system.

Recent research by the Ministry of Justice on bias in the criminal justice system⁷³ notes that the key elements of disproportionate representation are differential involvement in offending, direct discrimination, and indirect discrimination in the criminal justice system. All

ETHNICITY OF PRISONERS (JUNE 2010)



Source: Department of Corrections, ‘Prison Facts and Statistics’, http://www.corrections.govt.nz/about-us/facts_and_statistics/prisons/march_2011.html

three may operate together to result in disproportionate outcomes.

The research identified features of successful responses, which include:

- involvement of the disproportionately affected groups in programme design, implementation and governance
- a holistic approach that addresses broader structural inequalities (beyond the criminal justice system)
- inclusion of cultural components
- monitoring, while recognising that positive changes may take time to emerge
- addressing the different aspects of the problem (offending and reoffending, direct discrimination and indirect discrimination).

71 ‘Drivers of Crime: a whole of government priority’, NZ Government media release, 17 December 2009. Accessed 3 November 2010 from <http://www.beehive.govt.nz/release/drivers+crime+whole--government+priority>

72 Department of Corrections (2008), p 27

73 Ministry of Justice (2010), *Identifying and Responding to Bias in the Criminal Justice System: A Review of International and New Zealand Research* (Wellington: MoJ)

The research concluded that a comprehensive policy approach should involve:

- addressing the direct and underlying causes of ethnic minority and indigenous offending
- enhancing cultural understanding and responsiveness within the justice sector (including through participation and accountability)
- developing processes that identify and seek to offset the negative impacts of neutral laws, structures, processes and decision-making criteria on particular ethnic groups.

A range of initiatives aim to reduce the rate of Māori imprisonment. The Ministry of Justice has developed initiatives to reduce Māori offending, and the issue has been a focus of the Drivers of Crime initiative. The Department of Corrections has a Māori strategic plan and five Māori focus units, with 300 available beds. A 2009 evaluation report on Māori focus units and Māori therapeutic programmes indicated that the units and programmes had had a positive impact on the likelihood of reconviction and re-imprisonment for those who completed the programmes.⁷⁴ In 2010, budget funding was announced for two kaupapa Māori reintegration units, 'Whare Oranga Ake', to be established to provide support prior to release in gaining employment, securing suitable accommodation and improving family and wider social relationships.

Detention conditions

Rising prisoner numbers are a key factor that can potentially undermine many of the advances that have been made. Access to employment, education, health services, treatment programmes, recreation and visitors can all be affected by capacity and staffing pressures. Lack of appropriate facilities may lead to a number of other human rights issues, such as mixing of remand and sentenced

prisoners, age mixing and increased lock-down periods.

Despite efforts to upgrade and develop the prison estate, growth in the prisoner population has placed continued pressure on facilities and has meant that old, obsolete or inadequate facilities continue to be used. Measures such as double-bunking and increased lock-down hours have the potential to exacerbate the negative effects of poor conditions.

In 2009, the Committee Against Torture expressed concerns about the forecast growth in prisoner numbers and the risks of violence that could result from overcrowding. In 2010, the Government reported back to the committee that it had taken steps to manage capacity pressures.⁷⁵ Those steps include building additional facilities, as well as initiatives to reduce imprisonment rates.⁷⁶

Safety

Rates of assaults and unnatural deaths in New Zealand prisons compare favourably with other jurisdictions. In 2009/10, there were six unnatural deaths in prisons, all apparent suicides. There were 32 serious prisoner-on-prisoner assaults (a rate of 0.36 per 100 prisoners) and two serious prisoner assaults on staff (a rate of 0.02 per 100 prisoners). These figures represent an improvement on the previous year when the assault rate rose slightly, after several years of stable and decreasing assault rates.⁷⁷ Though small in number, serious assaults, a number of prisoner deaths in custody and the 2010 death of a staff member have highlighted ongoing concerns of managing violence within prisons.

Following the death in 2006 of a young prisoner while being transported in a prison van and the subsequent Ombudsmen's investigation into the transport of prisoners,⁷⁸ the Department of Corrections has introduced a number of measures aimed at preventing prisoner assaults during transport. The Department is in

74 Department of Corrections (2009), *Māori Focus Units and Māori Therapeutic Programmes: Evaluation Report* (Wellington: Department of Corrections)

75 Response of the New Zealand Government to the Committee Against Torture, CAT/C/NZL/CO/5/Add.1, 18 May 2010, pp 1–2. Accessible online at <http://www2.ohchr.org/english/bodies/cat/docs/followup/CAT-C-NZL-CO-5-Add1.pdf>

76 Such as the Drivers of Crime approach discussed above.

77 Department of Corrections (2008), *Annual Report 2007-2008* (Wellington: Department of Corrections); Department of Corrections (2009), *Annual Report 2008–2009* (Wellington: Department of Corrections)

78 Office of the Ombudsmen (2007), *Ombudsmen's Investigation of the Department of Corrections in Relation to the Transport of Prisoners*. (Wellington: OO)

the process of replacing its prisoner transport fleet with new vehicles fitted with single-occupant compartments for prisoners in order to prevent prisoner-on-prisoner violence.

The Department has also introduced waist restraints for use during prisoner transport in multi-occupant compartments. While aimed at preventing assaults during transport, the routine use of such a restrictive measure has itself prompted human rights concerns.⁷⁹ In its 2009 report on New Zealand the UN Committee Against Torture expressed concerns regarding the use of restraints and recommended that their use be kept under constant review.⁸⁰

Employment, education and training

Considerable advances have taken place in the increased provision of training and employment in prisons since 2004. There have been significant improvements in numbers of prisoners involved in employment activities, vocational training, literacy and educational courses. There is also an expanded range of units and focussed programmes that specifically attend to the diverse needs of prisoners.

As at March 2010, 55 per cent of sentenced prisoners were engaged in rehabilitation activity and 67 per cent of sentenced prisoners were engaged in employment activity, up from 38 per cent in 2006.

Opportunities for education and training are of particular importance. Many prisoners have poor labour-market attachment and low literacy and numeracy levels. For example, in 2008, 55 per cent of prisoners reported that they had not had a job before they went to prison.⁸¹ Up to 90 per cent of prisoners had low literacy skills,

below those needed to participate fully in a knowledge society (compared with around 43 per cent of the general population). Up to 80 per cent of prisoners had low numeracy skills at a similar level (compared with 51 per cent of the general population).⁸² Many young prisoners do not have basic literacy skills because of untreated sight or hearing difficulties (e.g. glue ear), or because they could not cope with the school system or have learning difficulties.⁸³

Health services

Prisoners are entitled to receive a standard of healthcare that is reasonably equivalent to that available to the general public.⁸⁴ The Department of Corrections provides primary healthcare (which includes primary medical, nursing and dental care), while secondary and tertiary healthcare services are provided by district health boards.

Prisoners have a higher number of health-related issues than the general population. Many prisoners enter prison with existing and sometimes chronic health problems, serious mental illnesses or substance-misuse problems. Research undertaken by the National Health Committee (NHC) highlights the comparatively poor health of prisoners and makes recommendations to improve the health of prisoners, their families and whānau, and the wider community.⁸⁵

The report notes that more than half of prisoners have experienced a serious mental-health condition; 64 per cent have had at least one head injury; and 89 per cent have had a substance-abuse disorder at some time in their lives. Many have had infrequent contact with the health system, despite being among those with the highest and most complex health needs.⁸⁶

79 Office of the Ombudsmen (2008), *Annual Report 2007/2008* (Wellington: OO), p 19; Human Rights Commission (2009), 'Comments of the New Zealand Human Rights Commission on New Zealand's Implementation of the United Nations Convention Against Torture'. Accessible online at http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/18-May-2009_11-04-40_CAT_HRC_comments_Mar_09.doc

80 UN Committee Against Torture (2009), para 9; Human Rights Commission (2009)

81 Department of Corrections (2009), *Prisoner Skills and Employment Strategy (2009–2012)* (Wellington: Department of Corrections). Accessible online at <http://www.corrections.govt.nz/news-and-publications/statutory-reports/prisoner-skills-and-employment-strategy-2009-2012.html>

82 *ibid*

83 Baragwanath S (2009), 'Boys in Prison: What about their Education?', in Maxwell G (ed), 'Assessing the Causes of Offending: What is the Evidence?' (Wellington: Institute of Policy Studies)

84 Corrections Act 2004, section 75

85 National Health Committee (2010), *Health in Justice: Improving the health of prisoners and their families and whānau* (Wellington: MoH)

The NHC recommendations include the transfer of responsibility for prison primary healthcare from the Department of Corrections to the health sector. The report also recommends significant additional investment in mental-health, addiction-treatment or other services; changes to minimise the negative effects of incarceration; and improvements to healthcare delivery.

Expansion of drug and alcohol treatment units has increased the number of prisoners who can be treated each year from 500 to 1040.⁸⁷ While representing a substantial improvement, these figures still show that a significant number of prisoners are not accessing these programmes. It suggests there is still considerable scope for further expansion and improvement.⁸⁸

The Commission's 2004 report identified issues regarding the conditions for people in prisons who have disabilities or mental illnesses. Among the concerns raised were the availability and accessibility of appropriate facilities and services, and the lack of data on disabled people in prison.

Since then, a mental-health screening tool has been developed and trialled by the Department of Corrections and Ministry of Health. Its implementation will begin in 2011–12, and is expected to significantly enhance the availability of quality data on prisoners' mental health needs.

Rising prisoner numbers have added to pressures on mental health services, and there have been ongoing concerns about the availability of sufficient places in

forensic services to meet demand.^{89 90 91} Waiting lists for forensic inpatient services can mean some prisoners remain in prison while waiting for specialist mental-health care.

The need for timely access to services has also been highlighted, particularly for those with mild to moderate mental illness, women, those with personality disorders and Māori.⁹² It has also been noted that improving access to mental-health services is particularly important, given the potential of the mental-health screening tool to identify more prisoners with mental-health needs.⁹³

Staffing

There have been increasing concerns about staff safety. In May 2010, Corrections Officer Jason Palmer was killed at Spring Hill Corrections Facility, in the first fatal attack against a member of prison staff in New Zealand. In 2008–09, there were 11 serious prisoner assaults on staff – a rate of 0.14 per 100 prisoners. This was an increase on the 2007–08 rate of 0.08, against a stable and downward trend over the previous five years. In 2009–10 the number of serious assaults against staff fell to two.

Concerns about prisoner attacks against staff have led to the introduction of new personal protective equipment and tools. These include stab-proof vests, shields, helmets and batons. A pepper spray device is also being tested. In addition, prison staff have been trained in comprehensive tactical-communication techniques to provide the primary means of diffusing difficult prisoner behaviour.

86 *ibid.* See also 'Poor Prisoner Health is a Problem for Everyone', National Health Committee media release, 16 July 2010. Accessible online at <http://www.nhc.health.govt.nz/moh.nsf/indexcm/nhc-news-poor-prisoner-health-problem-everyone>

87 Online at <http://www.corrections.govt.nz/news-and-publications/magazines-and-newsletters/corrections-news/2010/corrections-news-jul-aug-2009/budget-round-up.html>

88 A range of factors that may result in lack of engagement in employment, education or rehabilitation programmes include the availability of places on programmes; availability of programmes in certain locations; difficulties in providing programmes for prisoners serving shorter sentences; levels of access across different security classifications and for remand and segregated prisoners; scheduling of programmes and competing priorities on prisoners' time; and the willingness of prisoners to participate.

89 Since 2004, this issue has been raised repeatedly by the Office of the Ombudsmen (OO). See OO (2005), *Ombudsmen's Investigation of the Department of Corrections in relation to the Detention and Treatment of Prisoners*, p 55; OO (2007), *Investigation into Issues involving the Criminal Justice Sector* p 95; OO (2008), *Report of the Ombudsmen 2007/08*, pp 8–9; and OO (2009), *Report of the Ombudsmen 2008–9*, p 31.

90 Controller and Auditor General (2010), *Performance Audits from 2008: Follow-up report* (Wellington: Officer of the Auditor General), pp 28–31; Controller and Auditor-General (2008), *Mental Health Services for Prisoners* (Wellington: Officer of the Auditor General)

91 Simpson S (2008), 'New Zealand Provision of Forensic Mental Health Services', RECAP Newsletter 35, April. Accessible online at http://www.rethinking.org.nz/Print_Newsletters/Issue_35.pdf

92 *ibid*

93 Controller and Auditor-General (2010), p 31; Controller and Auditor General (2008)

The ongoing growth in the prison population has increased the pressures on staff, and the Department of Corrections has undertaken major recruitment in order to address staffing issues. Staff-to-prisoner ratios have improved slightly since 2004. In 2008–09, the ratio of prisoners to full-time equivalent frontline staff in New Zealand was identified at 2.3:1.

POLICE DETENTION

The review of policing legislation and expansion of the role of the IPCA have strengthened protections for those detained in police custody. There have also been improvements in terms of reducing detention of young people in police cells.

Police cells provide minimum accommodation for people awaiting a court hearing and those on remand. They are suitable for a very short period only. The nature and standard of facilities varies, with some older facilities requiring replacement.

Mental-health pilot initiatives

Placement of mental-health nurses in police stations has been shown to be successful in assisting the police to better manage the risks of those in their custody who have mental health, alcohol or other drug (AOD) problems.

A watch-house nurse (WHN) initiative was piloted in Christchurch central and Counties-Manukau police stations from 2008 to mid-2010. An evaluation found that the WHNs' presence had helped police with the management of detainees with mental health or AOD issues and had lessened the risk of harm to detainees and custodial staff.⁹⁴ The initiative was considered to provide timely intervention for detainees with suspected mental health and AOD issues, and had also served to enhance relationships between DHBs and the police. The WHNs

checked on detainees and upgraded or downgraded detainees' monitoring regimes, as appropriate. They provided informal training to help custodial staff identify and manage detainees with mental health and addiction disorders. The evaluation noted that WHN coverage would ideally be extended to 24 hours a day, seven days a week, or to provide greater coverage at nights and on weekends.

A similar initiative in Rotorua was regarded as very effective for the timely assessment and facilitation of treatment for detainees, and was thought to have contributed to better outcomes.⁹⁵

Weapons and equipment

The introduction of Tasers in 2008 represented a departure from New Zealand's tradition of a police force that does not routinely carry arms. However, a number of incidents involving the use of firearms against police have renewed public debate on the arming of police. The Police Commissioner is reviewing police access to firearms and is due to report to the Minister of Police by the end of 2010.

In August 2008, the Police Commissioner announced the nationwide introduction of the Taser X26, following a 12-month trial. While the trial evaluation report⁹⁶ indicated support for the introduction of Tasers among police and the public, some significant concerns were raised by those who opposed its use.⁹⁷ Both the UN Human Rights Committee and the Committee Against Torture have cautioned against the use of Tasers and have stressed the importance of strict monitoring of their use.

In the four months following their nationwide introduction, 648 Tasers had been deployed and Tasers had been discharged 29 times.⁹⁸

A number of other new restraints and technologies have been recently introduced, including restraint boards,

94 Paulin J and Carswell C (2010), *Evaluation of the Mental Health/ Alcohol and Other Drug Watch-house Nurse Pilot Initiative* (Wellington: NZ Police)

95 Paulin J and Carswell C (2008), *Evaluation of the Mental Health Initiative at the Rotorua Police Station* (Wellington: NZ Police)

96 New Zealand Police (2008), *Operational Evaluation of the New Zealand Taser Trial* (Wellington: New Zealand Police)

97 See, for example, Auckland District Law Society Public Issues Committee, 'Think Twice about Tasers', 14 December 2007; Campaign Against the Taser (2007), *Stun guns in Aotearoa New Zealand? The Shocking Trial* (Wellington: CAT). Accessible online at <http://www.converge.org.nz/pma/tasertrial.pdf>. These concerns were borne out to some extent by the trial data, which indicated that 21 per cent of incidents involved people with mental health issues and 58 per cent involved Māori or Pacific people.

98 Collins J, 'Speech notes to National Party Conference', 18 July 2010. Accessible online at: <http://www.beehive.govt.nz/speech/speech+notes+national+party+conference>

spitting hoods and leg restraints. Restraint boards are available in 27 overnight holding facilities, for the purpose of restraining people who are at high risk of violence and self-harm.

DETENTION OF PEOPLE WITH DISABILITIES

Compulsory treatment

In the 2008 calendar year, 6424 patients spent time in New Zealand adult mental-health units, and 3921 compulsory treatment orders (or extensions to a compulsory treatment order) were issued.⁹⁹

The Commission's 2004 report noted the need for published, accessible data to be available on a regular basis on people detained under mental-health legislation. Since 2005, the Office of the Director of Mental Health has released annual reports containing data regarding compulsory treatment and the use of seclusion and electroconvulsive therapy (ECT). Data collection and availability has also been improved through the Mental Health Information National Collection. A programme for the integration of mental-health data, under development by the Ministry of Health, will create a single national database of mental-health services and outcomes.

Monitoring

In addition to the role provided by district inspectors, the introduction of the OPCAT monitoring system has strengthened independent monitoring of people detained under health and disability legislation. The Ombudsmen have responsibility for monitoring health and disability facilities.

In the course of these monitoring activities, the Ombudsmen have identified some specific situations involving patients subject to excessive periods of seclusion. Other issues raised by the Ombudsmen have included lack of valid documentation for detention; and some patients being held in secure care for longer than necessary

because of a shortage of suitable community-based accommodation.

Capacity

The issue of capacity and the tension between compulsory treatment and the right to refuse mental-health treatment, to make an informed choice and to give informed consent were also identified in the Commission's 2004 report.

The CRPD provides that states must recognise that people with disabilities enjoy legal capacity on an equal basis with others in all aspects of life, and that appropriate measures should be taken to provide access to support them in exercising their legal capacity.¹⁰⁰ Safeguards should ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review.¹⁰¹

The MH(CAT) Act itself was designed to comply with the UN Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (MI Principles). For the most part, it meets the necessary standards.

The legislation is silent on the issue of capacity. As the admission criteria under the MH(CAT) Act does not differentiate between people who have capacity and those who do not, people with a mental disorder may be treated against their will despite retaining decision-making capacity.¹⁰² While the clinician may choose not to treat a competent person without their consent, no direct link is established under the MH(CAT) Act between a person's decision-making capacity and their right to refuse treatment.

99 Ministry of Health (2009), *Office of the Director of Mental Health: Annual Report 2008* (Wellington: MoH), pp.17, 21. Of these, 1808 were compulsory community treatment orders and 1397 were compulsory inpatient treatment orders – requiring a person to be detained in a hospital. A combination of compulsory community and compulsory inpatient treatment orders were made for 99 cases.

100 CRPD, Article 12 (2) and (3)

101 CRPD, Article 12 (4)

102 Part 5 of the act affirms the basic principle that a patient can refuse consent to treatment for mental disorder (section 57), and not accept treatment (section 59). However, the act then goes on to limit these rights (sections 57, 59), effectively depriving a person of any power to refuse treatment within the first month of compulsory treatment. While there is a duty on the responsible clinician to seek to obtain the consent of the person to any treatment "wherever practicable" (section 59(4)), if consent is not forthcoming, the responsible clinician may still authorise the treatment.

An examination by the Human Rights Commission¹⁰³ of the issue of capacity as a criterion for compulsory treatment found that the MH(CAT) Act is potentially discriminatory in that it singles out people with mental disorder and allows them to be treated differently. The legislation allows mentally disordered individuals to be detained and treated on the basis of ‘risk of harm’, regardless of their capacity, while members of other groups are not subject to such controls until they breach criminal law. It has been suggested that the MH(CAT) Act should be amended to ensure that it recognises that people with mental disorder do not automatically lose their capacity to consent to treatment.

Seclusion

In the Commission’s 2004 report, an issue of concern was the use of seclusion – in particular, indications that many service users were held for lengthy periods with limited freedom of movement, isolated from others and subjected to sensory deprivation.

A report by the Mental Health Commission in 2004 also raised concerns about seclusion practice in New Zealand and recommended that it be reduced, with a view to its eventual elimination.¹⁰⁴

In 2008, the Human Rights Commission and Mental Health Commission published *Human Rights and Seclusion in Mental Health Services*.¹⁰⁵ The report emphasised that, given the potential for abuse of human rights, the use of seclusion should be restricted to very limited, clearly specified circumstances. It noted that although the wording in the MH(CAT) Act implies that seclusion may be justified as a form of treatment, international comment suggests that it lacks therapeutic value. Therefore, if seclusion is used for treatment at all, this should be only where there is strong evidence of therapeutic benefit, and in other cases only where there is a significant threat

to the patient’s or others’ safety. It also noted the need to increase understanding of the relevant human rights issues and standards.

Revised Ministry of Health guidelines on seclusion were issued in 2010 as part of its ongoing commitment to achieving a decrease in its use. The guidelines identify best practice methods for using seclusion, in line with the New Zealand Health and Disability Services Standards.¹⁰⁶ The guidelines note that seclusion should be used for as short a time as possible, and that the decision to seclude should be an uncommon event, subject to strict review.

Instances of seclusion are now routinely reported on by DHBs, following the introduction of a new reporting template in 2006. National seclusion statistics are now annually reported by the Director of Mental Health. The 2006–08 statistics show a slight decline in overall use of seclusion.¹⁰⁷

In 2008, 1023 patients in mental-health units were secluded, involving 2946 seclusion events.¹⁰⁸ In addition, 179 people were secluded in forensic units (1366 seclusion events). Duration of seclusion events ranged from two minutes to 365 days, with average duration varying across DHBs from 21 to 50 hours. Use of seclusion varied considerably across different DHBs, with the highest use 13 times the lowest. While there has been an overall decrease in the incidence of seclusion, there is also some evidence that for a very small number of patients, the duration of seclusion has increased.

There have been increasing efforts to reduce the use of seclusion and restraint. A project aimed at reducing the use of seclusion has produced case studies highlighting implementing tools and approaches that can reduce the use of seclusion.¹⁰⁹ One of the aims of the project is to work collaboratively with DHBs to support, pilot and test

103 Human Rights Commission (2008), *Capacity and the Right to Refuse Psychiatric Treatment: A non-discriminatory approach* (Unpublished paper)

104 Mental Health Commission (2004), *Seclusion in New Zealand Mental Health Services* (Wellington: MHC)

105 Human Rights Commission (2008), *Human Rights and Seclusion in Mental Health Services* (Wellington: HRC)

106 Ministry of Health (2010), *Seclusion under the Mental Health (Compulsory Assessment and Treatment) Act 1992* (Wellington: MoH)

107 Ministry of Health (2009)

108 *ibid*

109 For more information, visit the case study site, accessible online at <http://www.tepou.co.nz/page/398-Our-projects+Seclusion-Time-for-change>

ideas and practices that reduce the use of seclusion. It also has a significant focus on training.

Electroconvulsive therapy

Electroconvulsive therapy (ECT) is used for therapeutic purposes in New Zealand. The conditions under which it can be administered are found in the MH(CAT) Act. Under section 60(a), ECT may be given with the person's written consent. If the person does not consent, ECT may still be administered if it is considered to be in their interest by a psychiatrist appointed by the Review Tribunal.¹¹⁰ The independence of this second opinion process is intended to provide protection for the patient. However, concerns have been raised about how effective this process is in practice, and whether more stringent controls are required.¹¹¹

There have been two reviews of the administration of ECT, in 2004 and 2007.¹¹² Their recommendations included that ECT should not be administered to a competent person who objects to it; strengthening guidelines and standards; restricting the use of ECT as treatment of last resort; and ensuring that ECT is administered only with consent or on the basis of a truly independent second opinion.

While not all of these recommendations were accepted by the Government, actions taken in response to the reviews have included publication of annual reports on the use of ECT; amended guidelines to recognise 'advance directives'; publication of an information resource for consumers and their families, dealing with what ECT is and why it is recommended as a treatment option; the informed consent process; and treatments that may be alternatives

to ECT.¹¹³ The second opinion required where a patient refuses consent to the administration of ECT must now be obtained from a specialist who practises independently of the clinical team providing the treatment.

A total of 203 people received ECT during the year ending June 2008 (a rate of five per 100,000 population). This represents a continued reduction from 2005 and 2006.¹¹⁴

Monitoring and review of IDCCR

Since 2004, a reporting mechanism has been established whereby the Director IDCCR/Chief Advisor Disability Services has a responsibility to monitor and report on the IDCCR Act. District inspectors appointed under the act visit all facilities and report to the Director IDCCR on a quarterly basis.

The Commission's 2004 report noted that under the Act, it is possible to impose indefinite detention for relatively minor offences, on grounds that would not normally be considered relevant in determining the length of a sentence. The act is currently the subject of litigation in relation to the adequacy of statutory direction about what criteria will justify extending an order under the act.¹¹⁵

While this may provide an opportunity to examine and clarify aspects of the IDCCR, the IHC has called for a more comprehensive review of how the act is working in practice.

DETENTION OF CHILDREN AND YOUNG PEOPLE

In accordance with international standards, the guiding principles of the CYPF Act emphasise that:

110 MH(CAT) Act, section 60(b)

111 Mental Health Foundation (2008), Submission to the Universal Periodic Review relating to the situation in New Zealand of people living with mental illness, 10 November. Accessible online at <http://webcache.googleusercontent.com/search?q=cache:5Ydt3vhoiM4J:www.mentalhealth.org.nz/file/Policy-Advocacy-etc/Documents/Submission-Universal-Periodic-Review-10-November-2008.doc+Health+Select+Committee+on+Electroconvulsive+Treatment+in+2007&cd=1&hl=en&ct=clnk&gl=nz>

112 Ministry of Health (December 2004), *Use of Electroconvulsive Therapy (ECT) in New Zealand: A Review of the Efficacy, Safety and Regulatory Controls* (Wellington: MOH); and an inquiry by the Health Select Committee on Electroconvulsive Treatment in 2007. Health Committee (2007), Petition 2007/162 of Helen Smith – Report of the Health Committee, 27 November. Accessible at http://www.parliament.nz/NR/rdonlyres/ECAACD9B-EDAC-49C4-B8AA-5DA1B263C398/69774/DBSCH_SCR_3911_5618.pdf

113 Ministry of Health, *Electroconvulsive Therapy (ECT) in New Zealand: What you and your family and whānau need to know* (Wellington: MoH). Accessible online at: <http://www.moh.govt.nz/moh.nsf/indexmh/ect-in-new-zealand>

114 Ministry of Health (2009)

115 VM v RIDCA Central HC WN CIV-2009-485-541 [8 December 2009]

- where public interest allows, criminal proceedings should not be used if there is an alternative means of dealing with the matter
- young people should be kept in the community
- sanctions should be the least restrictive possible and should promote the development of the child in the family.

The CYPF Act has played a role in increasing diversion, decreasing the numbers of Youth Court cases, and decreasing the rates of incarceration for young people. The majority of young offenders (approximately 80 per cent) are diverted from the formal court system.¹¹⁶

There has been ongoing concern about the under-utilisation of 'supervision with activity' orders,¹¹⁷ which are an alternative to custodial placement at a youth justice residence. In 2008, 81 young people received supervision with activity, while 152 received supervision with residence.¹¹⁸ One reason for this has been the unavailability of suitable programmes. However, CYF have recently confirmed funding for 125 'supervision with activity' places for the next four years.¹¹⁹ The continued development of rehabilitation programmes has been welcomed by the Principal Youth Court Judge, who noted: "These are the programmes that can form the basis of the historically underused supervision with activity sentence. It is the hope of all within the system that supervision with activity orders increase with a consequent reduction in the numbers of supervision with residence orders."¹²⁰

The Children, Young Persons and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 also provided for a number of new and/or expanded orders

that may be imposed by the Youth Court. These include mentoring or rehabilitation programmes.

The introduction of military-style camp programmes among the new sentencing options attracted criticism, in the light of evidence on the limited effectiveness of such programmes, and concern that they represent a move towards a more punitive approach to dealing with young offenders.

There is a growing body of information on what works to address offending and reduce reoffending. Evidence shows that early intervention, wrap-around services and restorative approaches are more likely to effectively address offending by young people, and should remain the focus of New Zealand's youth justice system.¹²¹ A range of positive initiatives, such as Te Kooti Rangatahi / The Rangatahi Court, the Christchurch Youth Drug Court, and the Intensive Monitoring Group operating in Auckland, appear to be working well.

Particular gaps have been identified in the provision of mental-health services, forensic, residential placement, and alcohol-and-drugs services for children and young people.¹²² Recent research notes improvements in funding, staffing and access to mental-health services. Despite progress, there is a continued need to broaden the range of services and support available, and to reduce inequalities and improve access to services for Māori and Pacific peoples.¹²³

In 2010, the Children's Commissioner released a report on the quality of services provided to children in the care of CYF, including those detained in residential facilities. The report contains an extensive range of recommendations, highlighting the need for improvements in order to better

116 Sturrock F and Preeti C Q (2009), *Effectiveness of Youth Court Supervision Orders: Measures of Re-offending* (Wellington: MSD), p 22

117 CYPF Act, section 283(m)

118 Ministry of Justice (2010), *Identifying and Responding to Bias*

119 Becroft A (2009), Speech to Local Government New Zealand Conference. Accessible online at <http://www2.justice.govt.nz/youth/publications/speeches.asp?inline=speeches/local-government-nz-conference.asp>

120 Becroft A (2010), Child Youth and Family report on key youth justice objectives after two years of increased funding, Court in the Act 45, February 2010, p 2. Accessible online at <http://www2.justice.govt.nz/youth/publications/CIA-Issue-45.pdf>

121 McLaren K (2000), *Tough is not Enough – Getting Smart about Youth Crime* (Wellington: Ministry of Youth Development).

122 Office of the Children's Commissioner (2008), *Report on the Implementation of the United Nations Convention on the Rights of the Child in New Zealand* (Wellington: OCC). Accessible online at http://www.occ.org.nz/_data/assets/pdf_file/0009/6894/OCC_UNCtte_211108.pdf

123 The Werry Centre for Child and Adolescent Mental Health Workforce Development (2009), *The 2008 Stocktake of Child and Adolescent Mental Health Services in New Zealand*. (Auckland: The Werry Centre, The University of Auckland)

meet the health, education, recreation and cultural needs of children in care.¹²⁴

Residential capacity

Since 2004, three new residences have been opened. Youth justice beds have increased from 75 to 140, and care and protection beds from 34 to 50.

Detention in police cells

There has been significant improvement in addressing the issue of young people being held in police cells. In 2006, the situation was described as reaching 'crisis point'.¹²⁵ The UN Committee Against Torture expressed its continued concern over the detention of young people in police cells.

Considerable efforts made to address this issue have included the increased availability of places in CYF facilities, and close monitoring by the Children's Commissioner, the Principal Youth Court Judge, CYF and the police. The use of supported bail was shown in trials to be successful, particularly when the right community supports were in place.¹²⁶ It has been extended and is included as part of the 'Fresh Start' package.

The Children's Commissioner has noted a decline in the number and duration of detentions of young people in police cells since 2006. In 2009, 77 young people were detained in police cells for an average duration of 1.9 days.

Difficulties in obtaining a judge on a Sunday when a young person is arrested on a Saturday evening may be a factor in the length of detention in police cells during weekends. The recent development of CYF-run escort services to take young people from their place of arrest to the nearest residence will help to ensure that young people are not detained in police cells due to lack of transport.¹²⁷

In 2010–11, as part of OPCAT monitoring, the Office of the Children's Commissioner, IPCA and the Human Rights Commission are conducting a joint review of policy and

practice in relation to the holding of young people in police detention.

There have also been improvements in relation to preventing age mixing in other detention contexts, particularly in prisons, at the border, under military law and in mental-health facilities. Lack of specialised youth facilities for girls in prison and age mixing in police custody are among the challenges that need to be addressed.

Conclusion

Whakamutunga

Since 2004 there have been some notable developments which provide improved protections for the human rights of people in detention.

Legislation and policy is well developed and generally consistent with international standards, and recent reviews have strengthened human rights protections in corrections and policing legislation.

Ratification and implementation of the preventive monitoring system under the OPCAT provide further national and international scrutiny of places of detention. The preventive monitoring involves a proactive, collaborative approach and has resulted in a number of practical improvements. Establishment of the post of Inspector of Service Penal Establishments to monitor military detention facilities has been a significant development, as military facilities had not previously been subject to regular external monitoring or review.

Prisons

There have been a range of improvements and positive initiatives since 2004. The legal framework has been further strengthened with the enactment of the Corrections Act and Regulations. There have been considerable advances in the provision of training and employment, rehabilitation and drug-and-alcohol treatment. Other positive initiatives in this period – such

124 Atwool A (2010), *Children in Care: A report into the quality of services provided to children in care* (Wellington: OCC). Accessible online at http://www.occ.org.nz/__data/assets/pdf_file/0007/7693/CC_ChildreninCare_09.09.2010.pdf

125 Becroft A, 'Police Cell Remands Reach Crisis Point', *Court in the Act* 19, November 2006

126 Mossman E (2007), *Supported Bail Pilot Programme: Final Research Report* (Wellington: CYF)

127 Children's Commissioner (2010), *Report of the New Zealand Children's Commissioner to the United Nations Committee On The Rights Of The Child 2010* (Wellington: OCC). Accessible online at http://www.occ.org.nz/__data/assets/pdf_file/0005/7682/CC_UNCROCREPORT_02.09.10.pdf

as the 'Mothers with Babies' legislation and a mental-health screening tool – will soon be fully implemented.

New Zealand's imprisonment rate is high by international standards. Ongoing growth in the imprisonment rate is a significant human rights issue, since risks to human rights are raised in environments where there is overcrowding, stretched resources and services, or where staff are overloaded.

The continued growth of the prison population has the potential to undermine advances that have been made. Several pieces of new legislation have made custody more probable.

The Drivers of Crime initiative signals a more holistic approach to trying to reduce offending. The need to reduce the rate of Māori imprisonment is recognised, and is a focus of Drivers of Crime and a number of other initiatives.

People in detention often come from vulnerable sectors of society. Realisation of their rights has not often been a reality prior to their detention. Once they are detained, the nature of the custodial environment and pressures on resources, services and staff pose further risks to the enjoyment of these basic human rights. There is an opportunity, however, to address these issues. It is incumbent upon the State not only to ensure minimum standards are met – prisoners are treated with humanity and dignity and are protected from harm – but also to take additional steps to address the disparities in the enjoyment of rights, such as the right to health, education and work.

Other issues include:

- Despite efforts to upgrade and develop the prison estate, growth in the prisoner population has placed continued demand for facilities and has meant that old, obsolete or inadequate facilities continue to be used.
- Measures such as double-bunking and long lock-down hours have the potential to exacerbate the negative effects of poor conditions, and require safeguards and continued careful monitoring.
- There is a need for continuing efforts to ensure the well-being and safety of prisoners and staff.
- There have been considerable efforts to increase access to employment and training opportunities, opening of

new drug-treatment units and expansion of rehabilitation programmes. Despite these gains, there is still scope for further improvement and expansion, including by identifying and addressing potential barriers to access.

- In the light of prisoners' poor health status on entry to prison and their high needs, there is a particular need to further develop prisoner access to healthcare and mental-health services.

Police detention

The review of policing legislation and expansion of the role of the IPCA have strengthened protections for those detained in police custody.

Police cells provide minimum accommodation for people awaiting a court hearing and a remand. They are suitable for a very short period only. The nature and standard of facilities varies widely.

Some positive initiatives to assist police to deal with detainees with mental-health issues and drug or alcohol problems appear to be successful.

A number of new restraints and technologies have been made available to police; these should be subject to monitoring with regard to their use and effects.

Health and disability detention

There have been improvements in reporting and transparency, including closer monitoring and regular publication of data on the use of ECT and seclusion.

New guidelines are part of ongoing efforts to reduce the use of seclusion. There has been a decrease in the incidence of seclusion, although there are still indications that a small number of patients are secluded for lengthy periods. There are also some concerns that safeguards around the use of ECT could be further strengthened.

While mental-health legislation was developed to comply with human rights standards, there are some areas that require review to ensure that it fully reflects the CRPD. There are also issues to be resolved regarding the concept of capacity, and the criteria for continued detention under the IDCCR.

Detention of children and young people

New Zealand legislation relating to when children and young people can be detained is generally consistent with

international standards, including UNCROC. However, further reduction of the minimum age of criminal responsibility during this period represents a retrogressive step. Some remaining inconsistencies – such as the consistent definition of a child as being under 18 years of age, and age mixing – need to be addressed.

The CYPF Act has been successful to a large degree in steering children and young people away from custody and the criminal justice system. There are indications of an increasing focus on adopting a ‘therapeutic’ approach to dealing with children and young people who offend. There is a growing body of information regarding ‘what works’ to reduce youth offending, and many positive initiatives – including Te Kooti Rangatahi/The Rangatahi Court, the Christchurch Youth Drug Court, and the Intensive Monitoring Group operating in Auckland. There is evidence that early intervention, wrap-around services and restorative approaches are more likely to effectively address offending by young people and should remain the focus of New Zealand’s youth justice system. An ongoing issue has been the availability of appropriate facilities and treatment for young people.

There have been significant improvements in terms of reducing detention of young people in police cells. However, this is an issue that requires continued attention and monitoring to ensure that young people’s rights and best interests are protected.

The Commission consulted with interested stakeholders and members of the public on the draft of this chapter. The Commission has identified the following areas for action to advance the rights of people who are detained:

Rate of imprisonment

Committing to a reduction in the rate of imprisonment and addressing the drivers of crime.

Māori imprisonment

Committing to specific targets and timelines for reducing the disproportionate number of Māori in prison. There also needs to be a systematic, comprehensive, long-term approach to addressing entrenched inequalities with explicit targets and clear indicators of progress made.

Young people

Increasing the availability of and access to appropriate mental health, drug and alcohol treatment and services for children and young people.

Legislation

Ensuring international human rights standards are adequately reflected in mental-health legislation, and resolving uncertainty around the criteria for continued detention under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.