

# Human Rights and Prisons

A review to the  
Human Rights  
Commission

Elizabeth Stanley



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## Preface

This literature review sets out some of the principal human rights issues that concern the detention of adults, children and young people. The report deals specifically with those detained by the Department of Corrections.

In approaching this work, it is useful to bear in mind that the review is primarily based on information that is publicly accessible. Useful information was also provided by members of the Advisory Group (that included members of the Department of Corrections, the Ombudsmen's Office, the Ministry of Justice, Office of the Children's Commissioner, the Public Services Association, Corrections Association New Zealand, Rethinking Crime and Punishment and the Howard League for Penal Reform) who gave feedback on a previous version of this report. Nonetheless, there will undoubtedly be gaps in the material. It is hoped that readers will view this document as a contribution to further debate and research on human rights and prisons.

The author would like to thank Andrea Leersnyder, who collated some of the documentation for this review. Charles Sedgwick gave useful feedback on the report. In addition, Jessica Ngatai from the Human Rights Commission provided significant help, by drafting the material on legislation and relevant legal cases as well as assisting the report-writing process.

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## Executive Summary

This literature review examines human rights issues relating to New Zealand prisons, primarily in relation to the period 2004-2010. The period has been one of significant change. The report includes an outline of the legal and regulatory framework; developments in legislation and case law; and discussion of human rights issues and debates raised in international and domestic fora. The review shows that real progress has been made since 2004, with regard to building and maintaining human rights standards in penal institutions.

Recent positive steps include:

- The consolidation of human rights considerations within penal legislation, regulation and policy;
- The increase in prisoners involved in vocational/accredited industries as well as literacy and educational courses;
- The expansion of drug and alcohol programmes;
- The development of Units and Programmes that specifically attend to the diverse needs of prisoners;
- The forthcoming application of a mental health screening tool;
- The imminent implementation of the Mothers with Babies legislation;
- Further assistance for prisoners preparing for release;
- The increasing access to volunteers and cultural advisors across institutions;
- The establishment of the Professional Standards Unit within the Department of Corrections;
- Developments in monitoring and inspection provisions.

### *Rates of Detention*

The continued growth of the prison population is an overarching challenge. Rising prisoner numbers are a key factor that can undermine many of the advances that have been made. Several pieces of new legislation have made custody all the more probable.

### *Material Conditions*

Despite efforts to upgrade and develop the prison estate, the growth in the prisoner population has placed significant 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.

Issues concerning the provision of minimum entitlements such as heating, ventilation, lighting, sanitation, food and access to property continue to be raised. While there have been improvements since 2004, material conditions in prisons remain a concern.

### *Treatment and Safety*

Rates of assaults and unnatural deaths in New Zealand prisons compare favourably with other jurisdictions. Nonetheless, serious assaults, the number of prisoner deaths in custody, as well as the 2010 death of a staff member, have highlighted ongoing issues of managing violence within prisons. There is a need for continuing efforts to ensure the well-being and safety of prisoners and staff.

There are concerns about the potential negative effects of double-bunking practices. Double-bunking must be undertaken with great care – particularly in relation to the size of cells that must accommodate two prisoners; decision-making processes on the safe placement of prisoners; and availability of rehabilitative initiatives to counter damaging experiences.

A number of new restraints and technologies have been introduced since 2004, which should be subject to monitoring with regards to their use and effects.

### *Protection Measures*

In 2004, legal and policy protections were found to be generally well developed and consistent with international standards. Protection measures are set out in a range of legislative and policy provisions, and cover matters such as induction, registers, disciplinary procedures and complaints. The framework has been further strengthened with the enactment of the Corrections Act 2004 and Corrections Regulations 2005 – including in relation to complaints processes and disciplinary procedures. A range of organisations are able to access prisons and deal with prisoner complaints. The ratification and implementation of the preventive monitoring system under the Optional Protocol to the Convention Against Torture provides further national and international scrutiny of places of detention.

However, prisoners' access to redress has been curtailed by the enactment of the Prisoners and Victims' Claims Act 2005. There is also a continued need for further data on, and specific monitoring of, provisions for diverse groups, particularly young people, older prisoners, women, transgender prisoners, refugees and asylum seekers, prisoners with mental health problems, prisoners who have physical or intellectual disabilities and recently released prisoners.

### *Activities*

There have been advances in the provision of training and employment in prisons since 2004. There have been improvements in the numbers of prisoners involved in employment activities, vocational training, and literacy or educational courses. There is also an expanded range of Units and focussed Programmes that specifically attend to the diverse needs of prisoners. There

are concerns about educational provisions for those under 19, and educational / library provisions generally.

Concerns about excessive periods of lock-down remain. An '8am to 5pm' unlock regime is routine in high-security units and is also undertaken, for operational reasons (such as staff shortages), in other units. There are also ongoing issues around the scheduling of programmes, and a need to reflect on expectations about what such programmes may achieve.

There has been progress with regards to a more 'joined-up' approach to community reintegration, which should be continued and enhanced. There are examples of progress in advancing prisoners' contact with family/whānau. These require consistent implementation and expansion.

### *Health Services*

Prisoners' right to health is an ongoing issue. Prisoners are entitled to receive a standard of health care that is reasonably equivalent to that available to the general public. Prisoners tend to have more complex health needs and 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.

In light of these health issues, there is a particular need to further develop prisoner access to medical treatment (including access to dental care), as well as to establish further primary or preventive care with regards to mental health. Relatedly, there is a need for increased attention and ongoing monitoring and review of self-harm and unnatural deaths, both during imprisonment and in post-release periods.

### *Staffing*

Staff-to-prisoner ratios have improved slightly since 2004, but still need improvement. The ongoing growth in the prison population has increased pressures on staff.

There remains a need to further develop staff training in terms of enhancing skill-sets with regards to particular groups (eg working with female prisoners) and issues (such as human rights training or specific mental health training).

### *General Concerns*

The review shows that social, cultural, legal and institutional practices can all undermine human rights standards in prisons. Overall, the the current use and growth of imprisonment in New Zealand is concerning.

# 1. Introduction

The protection of inmates' rights demands urgent attention. If we are as a community at all concerned about human rights then it must be recognised that inmates are at a greater risk than any other group. They are vulnerable because they are out of sight and without credibility in the public's eyes, which makes it all the more important that the rights of prisoners should be strictly observed (Ministerial Committee of Inquiry, 1989:26.3).

Prisoners tend to be those who have not previously enjoyed secure access to human rights. They are predominantly poor, badly educated, in poor physical and mental health, and from situations of unemployment and underemployment (Scott, 2008; Smith and Robinson, 2006). In New Zealand, over half of prisoners are Māori, and Pacific people are also overrepresented in the prison estate.

Given these issues, it is evident that many prisoners represent some of the most disadvantaged members of society. Indeed, there are numerous commentators (Carlen and Worrall, 2004; Coyle, 2001; Owers, 2006, 2008; Scott, 2008; McCulloch and Scraton, 2009) who argue that imprisonment is used as a means to respond to wider social, economic or cultural violations of rights – prisons are used to 'mop up' those who have ongoing mental health problems, those who cannot find secure work due to poor education or those who arrive at the borders seeking asylum.

At the same time, there are increasing expectations that prisons should be able to do, and provide, everything. Prisons are, for instance, expected to punish, deter, rehabilitate and reform. These punishment principles have each been critiqued in terms of what can actually be achieved within a prison environment. From this, it is worth stating from the outset that we might have a bigger discussion about the function of prison and to 'bring into check' our assumptions about what prisons can actually do.

This literature review evaluates human rights issues in the penal context, focussing primarily on the period 2004-2010. It details some of the laws, legal decisions, policies and practices that underpin day-to-day life in Correctional institutions. In doing so, it sets out some of the main concerns with regards to the detention of adults and young people in New Zealand prisons. These issues are important to address, not only for those detained or working within the penal estate, but also for our families and communities.

The review is principally based on publicly available material. However, on a number of topics, current New Zealand data and literature is not available. Where this is the case, the review highlights relevant debates from jurisdictions with similar custodial cultures and practices (such as the UK or Australia) – the purpose of this approach is to illustrate key issues that may well have resonance at a local level. Nonetheless, the limits on local material is less than ideal and points to the need for further research on many aspects of penal practice and experience in New Zealand.

## 2. The Cultural and Legal Context

Reflecting on the cultural framework of punishment is vital to an understanding of human rights and prison issues. Here, New Zealand has shown glimmers of a liberal approach (seen, for example, in how New Zealand engages in restorative practices with a range of different offenders) however the dominant response to the problem of 'crime' has been one of penal populism.

Professor John Pratt (2007, 2008) has charted the rise of the current punitive approach to offenders and punishment in New Zealand. Among other aspects, his work has built on the ideas that economic restructuring and depleted welfare provisions, the lack of egalitarianism and declining trust in criminal justice 'experts' have all led to more punitive and exclusionary attitudes to those who break the law. Penal populism can be identified in approaches that: overemphasise or distort crime and punishment in media reporting; make political capital out of law and order; build new policy on the basis of ad hoc, albeit concerning, cases of victimisation; exclude or 'monster' offenders; or, harden responses to offenders so much so that imprisonment appears as the only option.

In New Zealand, these approaches may be observed at many levels. Numerous examples may be found of fearful accounts of prisoner escapes, perceived 'unjust' early releases, prisoners continuing to offend within prison, and so on. These accounts, that overwhelmingly cast prisoners as continually threatening the 'rest of us', perpetuate notions of exclusion. At the same time, commentators regularly question the conditions under which prisoners are kept – emphasising that prisoners enjoy 'hotel conditions' or that prisoners should not have access to heating or televisions. The public discourse about 'crime' and offending behaviour has resulted in a rather skewed public sense of what constitutes the 'crime problem'. Public awareness studies in New Zealand have shown that the public has an inaccurate and negative view of crime rates, including the general belief that the crime rate is rising rapidly and that a high percentage of crime involves violence (see Paulin et al, 2003).

Public commentators and campaigners can also approach rights as a finite resource – proposing that if offenders have rights, then victims do not; or, that if victims' rights are to be secured, then offenders must forfeit their rights (see Jenkins, nd). These ideas have also been picked up by politicians. For example, in response to the *Taunoa* decision that certain prisoners were not treated with humanity or respect and should be compensated, then Minister Phil Goff stated that he found the case to be 'personally offensive' (Dye and NZPA, 2004). This case, in which prisoners attempted to assert their rights faced serious political opposition and, ultimately, led to the implementation of the Prisoners' and Victims' Claims Act 2005 that restricts access to compensation for prisoners who have been harmed in prison. Within this approach, of course, is a distancing from the fact that offenders and prisoners can also be victims.

These discourses and practices reflect a position that prisoners are, or should be, 'civilly dead' (Brown, 2008). From these perspectives, prisoners ought to be placed outside common rules of citizenship, they should forfeit their rights on arrival at the gate; and, they should be disqualified or disentitled from full citizenship. This notion that prisoners are less eligible for rights is commonplace. For prisoners, as Moore (2008) reflects, there is a constant reminder of this, irrespective of whether or not you have been convicted. Despite a fundamental tenet of human rights being that all rights are accorded to individuals/groups on the basis of their 'being human', the exclusion of prisoners from the list of those afforded rights can be readily undertaken.

In 2010, this exclusion was exemplified by local debates on the rights of prisoners to vote. Until recently, all New Zealand prisoners serving a sentence of more than three years have been unable to vote while incarcerated. In this respect, those serving longer sentences forfeited the right to vote as part of their punishment. In 2010 the *Electoral (Disqualification of Sentenced Prisoners) Amendment Bill* was passed. This Amendment disenfranchises all sentenced prisoners; and is inconsistent with the Bill of Rights Act. In most western states, all prisoners have the right to vote. For instance, Canada and 18 European states have no restrictions on prisoner voting. Yet, the disenfranchisement of prisoners remains an ongoing issue for countries like the USA, Australia and the UK. For instance, the European Court of Human Rights [*Hirst v UK*, 6 October 2005] ruled that the UK government's barring of all convicted prisoners from voting was unlawful. In 2011, the coalition government announced that this UK ban was to be removed for prisoners serving less than four years<sup>1</sup>.

Such denial of civil rights extinguishes prisoners as 'legal persons'. Historically, the denial of voting rights was 'intended to mark the loss of honour of the convicted person, to form part of his or her social degradation and humiliation' (Ridley-Smith and Redman, 2002:284). It was a symbolic punishment that excluded prisoners from social life (and thereby was also detrimental to the rehabilitation of prisoners).

Of course, this denial of rights is time-limited and prisoners may be cast as 'conditional' or 'partial' citizens (in that they might redeem their status on release). Yet, it can also be observed that 'civil death' may even follow prisoners into the community. For example, when media and official accounts have converged around the risks of certain offenders, such as sex offenders, the harassment of some ex-prisoners has been unbearable. In this respect, prisoners can almost become permanent outcasts (Brown, 2008).

## **2.1 The Legal Framework**

Prisons are often experienced as disempowering environments and, even in contexts where internal monitoring and accountability measures are strong, prisoners do not always view these measures as impartial or independent. In

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<sup>1</sup> Following this announcement however, in February 2011, the UK Parliament passed a motion to confirm the existing policy, notwithstanding the ECHR's ruling.

this context, the law is one crucial means that prisoners can gain protection (Livingstone, 2008).

Legislation can reassert that prisoners have rights rather than privileges and while the use of law may occasionally be seen as an irritant it offers a sense of justice that is essential for the legitimacy of the prison order. Fundamentally, law can provide a means of opening up the closed world of prisons to public scrutiny; it provides a set of standards against which to evaluate prison rules and practices; and reaffirms the principle that prisoners should not be 'subjected to any hardship or constraint other than that resulting from the deprivation of liberty' (UN Human Rights Committee, 1992:3).

There is a range of international standards and instruments that relate directly to imprisonment. These include:

- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- The Convention on the Elimination of All Forms of Racial Discrimination
- The Convention on the Elimination of All Forms of Discrimination against Women
- The UN Standard Minimum Rules for the Treatment of Prisoners
- The Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment
- The Standard Minimum Rules for the Administration of Juvenile Justice

New Zealand has taken many steps to bring domestic law into compliance with these international human rights obligations.

At the same time, the UN Committee against Torture (2009:4) has recently shown concern that the New Zealand Bill of Rights Act 1990 is not a supreme law that takes higher status than other domestic law. As they note (ibid), this 'may result in the enactment of laws that are incompatible with the Convention'. Indeed, on a number of occasions, legislation that has been inconsistent with the Bill of Rights Act has been passed (Geiringer, 2009). Some of this new legislation has undermined rights standards in relation to prisoners.

Appendix One summarises some of the recent (2004 – 2010) changes that have been made to the legislative framework that guides policy and practice in prisons. The most significant of these has been the enactment of the *Corrections Act 2004* (and *Corrections Regulations 2005*) which replaces the former *Penal Institutions Act 1954* and associated regulations.

Positive features of this new legislation include:

- The explicit reference in the Act's purpose statement (s5) to compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners;

- 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. This issue has since been revisited, with recent legislation that once again enables 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 and 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.

Other recent amendments have included the *Corrections Amendment Act 2009* which, among other things, prohibits the use of 'electronic communication devices' by prisoners and 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.

The *Crimes of Torture Act 1989* was amended to meet the requirements of the Optional Protocol to the Convention Against Torture, ratified by New Zealand in 2007. A new Part 2 of the Act was inserted to provide for visits by the Subcommittee and for the designation of National Preventive Mechanisms and a Central National Preventive Mechanism.

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

The *Sentencing and Parole Reform Act 2010* establishes 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.

Significant New Zealand case law has included the series of decisions culminating in *Taunoa v Attorney General* [2008] 1 NZLR 429 (SCNZ). The Behaviour Management Regime, that had operated at Auckland Prison between 1998 and 2004, was found (by the High Court, Court of Appeal and Supreme Court) to have breached prisoners' rights to be treated with humanity and respect for their inherent dignity (affirmed by s23(5) of the New Zealand Bill of Rights Act 1990). In one case, the impact of the regime was such that its application to a particular prisoner amounted to disproportionately severe treatment in breach of s9 of the Bill of Rights Act. The Supreme Court set a high threshold for triggering these rights and reduced the amount of damages awarded to the affected prisoners. The original award of damages made in 2004 was met with significant political objection, and prompted the introduction of the *Prisoners' and Victims' Claims Act 2005*.

The *Prisoners' and Victims' Claims Act 2005* deals with the awarding of compensation to prisoners for breaches of their rights under the New Zealand Bill of Rights Act 1990, the Human Rights Act 1993 and the Privacy Act 1993. The Act restricts the awarding of compensation so that it is reserved for exceptional cases and used only if, and only to the extent that, it is necessary to provide effective redress. Restrictions on compensation include that the plaintiff has first made reasonable use of available internal and external complaints mechanisms and that other remedies are used if they could 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, was extended by amendments in 2007 and 2010, so that these provisions now expire at the end of June 2012.

### 3. The Institutional Context

There are currently 20 prisons under the remit of the Department of Corrections. Altogether the 17 men's prisons and three women's prisons can accommodate 9,131 prisoners.

Data on prisoner numbers are published in the Department's annual reports and in the Offender Volumes Report (which has replaced the prison census series). In the year ending June 2010, prisons held an average of 8,415 prisoners (an average of 1,828 remand prisoners and 6,587 sentenced prisoners) (Department of Corrections, 2010b).

Department of Corrections statistics, providing a snapshot of the prison population as at 30 June 2010, show that:

- 6.3% of prisoners were female.
- 50.9% of prisoners were Māori, 33.6% were European, 11.5% were Pacific Peoples, and 3.6% identified as Asian or another ethnicity.
- The types of offences for which prisoners had been convicted were: Violence offences (40.6%); Sexual offences (20.3%); Dishonesty (18.3%); Drugs and Anti Social Offences (9.9%); Traffic (6.5%); Property offences (2.2%); Administrative offences (1.1%); Justice offences (0.9%).

The Offender Volumes Report (Department of Corrections, 2010a) also highlighted a number of trends, including that:

- The prison population has been steadily growing for most of the last 30 years. During that time, the growth in the numbers of sentenced prisoners has been largely driven from the growth in older (30 years plus) offenders (from 20% to 60% of the sentenced prisoner population).
- Longer-term prison sentences (two years or more) have increased since 1980 with very rapid growth since 2004.
- The number of remanded prisoners has increased markedly since 1998.
- Māori are overrepresented in prison: There were twice as many 25 year old Māori males in prison than European males of the same age. Three per cent of all Māori men aged 25 were in prison as at 30 June 2009.

It is clear that some offenders are returning, time and again, to prison. Department of Corrections (Nadesu, 2009) data on reconviction patterns illustrates that, with regards to prisoners released between 2002-2003, 52% were reconvicted and returned to prison in a five year period. Of those who were reimprisoned, about half were returned to prison within a year.

Reconviction and reimprisonment rates tend to be higher for younger offenders (those under 20) and for those whose offences (such as burglary, theft and car conversion) are more common. Those who 'survive' outside prison – and are not returned – are often those who have served just one sentence of imprisonment. Conversely, 'the more time in the past someone has been in prison, the more likely they are to return to prison following any given release' (ibid:19).

Part of the problem, here, may be that sentencers use custody too readily, without a real understanding of the consequences. For instance, drawing on British data, Hedderman (2008:34) details that sentencers are employing custody less effectively – by sending those convicted of relatively minor offences (theft or handling) to prison for short periods of time. The resultant disruption to offenders' lives – such as with employment, accommodation and the strain on family lives – contributes to a situation in which reoffending is more likely to occur. Indeed, recent UK Ministry of Justice (2011:4) analysis, from a sample of 180,746 offenders, has determined that custodial sentences of less than twelve months are 'less effective at reducing re-offending than both community orders and suspended sentence orders – between 5 and 9 percentage points'.

### **3.1 *The Growth in Prisoner Numbers***

The 2004 Human Rights Commission Report – 'Human Rights in New Zealand Today' – detailed that, in June 2003, the total prison population was 6,115. The report highlighted the need to upgrade prisons, to avoid situations of over-capacity, and to increase the availability of alternatives to prisons. Since that time, prisoner numbers have continued to grow steadily, rising by around a further 30 per cent. Figures from 30 June 2010 show the prison population at a new peak of 8,816.

When, in 2007, prisoner numbers reached what was then an all time high of 8,484 (a figure which has since been surpassed several times), they reflected an imprisonment rate of over 190 per 100,000 population. Compared to Australia (about 126 per 100,000) and many European states (that have rates under 100 per 100,000), these rates were significant and they were regarded as a source of shame by many government officials and commentators (Palmer, 2006). As then Justice Minister Mark Burton (New Zealand Parliament, 2007:2) noted

New Zealand locks up people at the second-highest rate in the Western World. That is something we are not proud of. No one in this country should be proud of that.

Such statements underpinned the roll-out of the 'Effective Interventions' package that focused on, among other things, bolstering community-based responses to offenders. In October 2007, the sentences of home detention, community detention and intensive supervision were introduced and, in 2008, they accounted for about 7% of all sentences (Ministry of Justice, 2009a).

While placing increased strain on the Community Probation Service, these sentences had some effect in slowing the growth of the prison population. For instance, 11% of all offenders were sentenced to periods of imprisonment in 2005; by 2009, this had decreased to 9% (ibid; Ministry of Justice, 2010c). In 2009, the majority of convictions resulted in a monetary penalty (42%) or community work (27%). The Department of Corrections (2008) also noted that the implementation of these new community-based sentences was estimated to have reduced the prison population by around 700.

Despite these developments, prison numbers do not look set to decline. One significant issue is that most of the rise in prison numbers is linked to the growth in remand prisoners, who make up about a fifth of the prisoner total (Department of Corrections, 2008). Less than half of these individuals will be sentenced to a term of imprisonment which, as Ombudsman Mel Smith pointed out, raises the question 'as to why they were remanded in custody in the first place' (The Ombudsmen's Office, 2007:45).

The latest forecast predicts growth will be slower over the next decade, compared with the 40% growth rate over the previous eight year period. This is partly due to improved court processing times which are expected to reduce the duration of remands in custody (Ministry of Justice, 2010). There are expected to be 9,890 prisoners in June 2020, a 13% increase from June 2010.

A number of different explanations have been offered to explain this continuing growth. Aside from the cultural sway of penal populism, detailed above, these include:

- The rise in some recorded crime rates, particularly with regard to serious drug offending and family violence (Department of Corrections, 2008). These increases may not necessarily reflect increased rates of actual crime but could also reveal attitudinal changes within the New Zealand population, increased reporting to the police as well as changes to policing practices with regards to the recording and processing of crimes.
- Increased police officer numbers. Over the last few years, a further 1,000 officers have been added to the NZ Police. This will invariably lead to higher rates of resolution of crime.
- New legislation that makes custody all the more probable. For example, the *Bail Act 2000* dramatically increased the numbers of people serving time on remand (Ombudsmen's Office, 2007); 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 (Morrison et al, 2008; Tolmie, 2007); recent amendments to the *Parole Act 2002* have constructed release on parole as a privilege and not a right; and, the *Sentencing and Parole Reform Act 2010* sets an automatic maximum sentence without parole for offenders convicted of a third serious offence. The

dominance of custody is also asserted in proposed new legislation such as the *Courts and Criminal Matters Bill 2010* that would make imprisonment a penalty for non-payment of fines.

- Court practices in which offenders who breach community sentences are subsequently up-tariffed and sentenced to periods of imprisonment.

The increase in the prison population has been generally linked to upwards trends in some types of crimes, the denial of bail, the net-widening of offences that may result in custody, the use of longer sentences, the use of prison to underpin the completion of community sentences and the 'tightening of parole release decisions' (Department of Corrections, 2008:11).

### **3.2 The Institutional Response**

As might be expected, these decisions have had a profound effect on the prison system. There have been recent periods in which Corrections have operated under significant stress. Information provided as part of New Zealand's report to the UN Committee Against Torture (Ministry of Justice, 2009b) illustrates that, in the week ending 1 February 2009:

- Two prisons (Manawatu and New Plymouth) operated at 100% capacity;
- Six prisons (Auckland Central Remand, Auckland, Christchurch, Invercargill, Otago and Wanganui) operated at over 90% capacity;
- Six prisons (Mt Eden, Northland, Rimutaka, Rolleston, Waikeria and Auckland Women's) operated at over 80% capacity;
- Overall, the prisons across New Zealand were 85% full, and they housed 8,069 prisoners.

On current forecasts, the growth in the prison population, together with the need to replace around 1,700 obsolete beds, will require an additional 2,500 beds over the next nine years (Collins, 2010). More restrictive approaches to bail or parole, a widening of offences that become liable to imprisonment, or the application of longer sentences, would increase these estimates. Given this potential future, some commentators including Chief Justice Sian Elias have called for the consideration of alternative approaches – including the use of early release amnesties or the relaxation of bail and parole measures (Dye, 2009).

Government however, has pursued a different track and a range of practices have been operationalised to meet demand, such as:

- The development of new prisons and units: Over the last five years, four new prisons (at a cost of around \$1bn) have opened to add a further 2,400 beds to the system. Mt Eden prison and the Auckland Central Remand Prison have been substantially extended.. A controversial container unit that accommodates 60 low-security prisoners opened, in June 2010, at Rimutaka Prison. A new prison is

to be built in Wiri, South Auckland, and there are also plans to develop further units at existing prisons.

- The re-opening of previously mothballed facilities: A number of facilities have also been reopened to cope with growing demand. Wellington Prison re-opened on 6 July 2009, offering 120 beds. Two 60-bed units were re-established at Tongariro/Rangipo Prison in September 2009. There are also plans to re-open units at Waikeria Prison.
- The increased use of 'double-bunking': This occurs when two prisoners are housed in one cell, often 'designed for one prisoner' (Ombudsmen's Office, 2005:26). Increased double-bunking has been rolled out across numerous prisons (including Auckland Women's, Spring Hill, Otago, Ngawha and Mt Eden) to create space for 1,000 more prisoners. In 2009, Corrections Minister Judith Collins estimated that double-bunking was already done in a fifth of prison space (Gower, 2009). The Corrections Association unsuccessfully took legal action against the Department in the Employment Court (and to the Court of Appeal) on the basis that double-bunking breached their collective agreement.
- The use of police cells (and occasionally court cells) to accommodate prisoners: During the capacity crisis in 2005/06, prisoners spent over 57,000 bed nights in police cells, at a total cost of \$15.8 million (Power, 2007). Prisoners were also held in court cells at that time. Since then, the number of nights that prisoners have spent in police cells has fallen, to 17,181 in 2009/10. Many prisoners are now held in police cells for purposes other than managing prison capacities, such as to facilitate court appearances, particularly in courts that are distant from the nearest prison. A Memorandum of Understanding between the Department of Corrections and Police provides that a total of 175 cells are available for holding prisoners. Of these, there are 133 Police cells across 18 sites in which prisoners can be safely and humanely held for more than 24 hours. While police officers are provided with guidance on appropriate practices – such that prisoners are entitled to: appropriate bedding, appropriate food and drink, sanitary facilities, statutory and specified visitors, send and receive mail, and make telephone calls (Ministry of Justice, 2007) – these are not always practically possible.
- The use of other unsuitable spaces to accommodate prisoners: With regard to Christchurch Men's prison, the Ombudsmen's Office (2005) noted that between 1 January to 14 October 2005, over 100 prisoners had been placed in punishment cells because ordinary cells were not available. These cells have austere and very limited facilities. More recently, in relation to the same prison, the Howard League for Penal Reform (2007) detailed that officials had been forced to open 'disaster recovery beds' to cope with numbers.

On a financial level, this increasing prisoner population has notable implications. In 2009/10, the cost of imprisoning a person for one day was \$249.14 (increased from \$155.68 per day in 2003/04); this results in an annual cost of \$90,936<sup>2</sup> (Department of Corrections, 2008b, 2010b). The Treasury (2010) estimated that, during 2010-2011, Corrections would spend over \$750mn on the detention of sentenced and remand prisoners. Treasury also warned that the growing prison population could cost up to \$1.566bn over the next nine years (Gower, 2009). In 2009, Corrections were provided with \$145.8mn to implement further double-bunking; \$255.4mn to cover operational costs (such as employing more frontline staff, and providing more programmes, food, bedding, clothing, healthcare and transportation); and \$24mn to expand prison capacity (Department of Corrections, 2009a). While these are, undoubtedly, sizeable sums – particularly when compared to community-based sentences – the Department is operating under financial restraint.

The Department of Corrections (2008:22) detail that this expansion is dovetailed with the need to renovate a 'significant proportion' of the prison estate as certain 'facilities can no longer be regarded as fit for purpose, with some being at risk of non-compliance with relevant building standards'. This expansion also impacts on the range of facilities required within the prisons – such as receiving offices, prisoner health units or at-risk units. As the Department (ibid) further noted, 'At some prisons such facilities are already inadequate, relative to the total number of prisoners on the site'.

### **3.3 The Re-introduction of Private Prisons**

Concerns about rising costs, in the face of increased prisoner populations, are among the reasons leading to the reintroduction of private enterprise in prison management. The *Corrections (Contract Management of Prisons) Amendment Act 2009* enables prison management to be contracted to private parties. In the 2010/11 financial round, it is estimated that \$12.9mn will be dedicated to prepare for and manage contracts for private prisons (The Treasury, 2010). Related prison construction, between 2009 and 2018, is expected to cost over \$1.5bn.

Thus far, two main sites will be contracted out. These will be the new prison at Wiri (a 1,000 bed male prison that is expected to be operational by 2014) and the redeveloped Mount Eden/Auckland Central Remand Prison. In the latter case, two new accommodation buildings, one being eight storeys high, opened in March 2011 and the prison is run by Serco.

The application of a business model to the running of prisons has been the subject of much debate, not least because it raises a major ethical question – to what extent should private companies profit from the pains of imprisonment? In the USA, UK and Australia, a number of firms – such as

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<sup>2</sup> This is compared to the costs of a community-based offender. In 2007/08, the daily cost of community-based sentences was \$10.04 (increased from \$8.65 in 2003/04). This results in an annual cost of \$3,664 (Department of Corrections, 2008b).

Wackenhut Corrections Corporation, Cornell Corrections, Group 4, Serco, Kalyx, and Corrections Corporation of Australia (a subsidiary of Corrections Corporations of America) – have enjoyed significant financial returns from their management of penal establishments. This situation has led many to argue that such punishments should be solely inflicted by state agencies. In New Zealand, this stance led the Labour Party to stop the contract of Australian Correctional Management (ACM), who ran the Auckland Central Remand Prison (ACRP) from 1999 to 2005.

The introduction of private prisons has raised numerous issues. These relate, among other things, to:

- The Treatment of Prisoners – Drawing primarily on the US experience, the edited collection by Coyle et al (2003) demonstrates that private prisons have led to degrading prison conditions, the increased misuse of force, decreased security and inadequate services (relating to health, education, work and programmes for prisoners). Overall, contributors all claim that private prisons have resulted in the widescale violation of prisoners' human rights. While the US case is generally cast as one *in extremis*, these charges have also been made against private prisons in Australia and the UK (George, 2003; Nathan, 2003; Taylor and Cooper, 2008, see also Inspectorate Reports). The UN's Human Rights Committee (2010) has also shown concern at prison privatization in relation to whether private companies will meet the human rights protections accorded to New Zealand prisoners.
- The Treatment of Staff – International literature is fairly consistent in terms of arguments about the treatment of staff. Private providers tend to employ fewer and younger/less experienced staff than public prisons, and privatization is regularly determined to be detrimental to staff pay and conditions (Mehigan and Rowe, 2007; Taylor and Cooper, 2008). Sachdev (2008:89) notes that 'The evidence that the pay and conditions in private prisons are markedly inferior to those in the public sector is overwhelming and mostly uncontested'. He also presents data to show that, as a consequence of pay conditions, labour turnover rates in private prisons are ten times higher than public prisons.

In May 2009, the PSA surveyed its Corrections members on the issue of private prisons in New Zealand. Over 70% respondents (the survey response rate is unclear) had a strongly negative view of privatised prisons. Over half of all respondents were particularly concerned about staff safety, pay and conditions, staff turnover, costs, prison performance, prison accountability, the ability of private prisons to respond to particular groups and prison culture.

- Costs – Concerns about prisoner and staff treatment generally revolve around the idea that private companies make expenditure cuts to secure a profit. Yet, lower costs are a key motivating factor for governments to pursue private tenders. For instance, Infrastructure Minister Bill English said that the public-private partnership in New

Zealand 'will offer savings of between 10 and 20 per cent' over the 25-35 year life of Wiri prison (English and Collins, 2010). From the literature, data on financial benefits is rather unclear. For instance, US-based meta-analyses have found that private prisons are no more cost effective than public prisons (Lundahl et al, 2009; Pratt and Maahs, 1999). Closer to home, the Public Service Association (PSA, 2010) has argued that, between 2000 and 2005, the privatised ACRP cost \$7,000 more per remand prisoner than equivalent service in the public sector.

Certainly, there are a number of issues at play: (i) it is very difficult to compare prisons as they each operate with different populations; (ii) privatised prisons have often tended to be remand (as in the case of ACRP) or low security establishments. This has meant that contractors are often shielded from the most resource-intensive prisoners – such as sentenced prisoners who will access expensive rehabilitation programmes or higher-security prisoners who may require increased staff interventions; (iii) private prisons may involve 'hidden costs' to governments – for instance, what happens if a private prison has a major disturbance?; and, finally (iv) the small number of contractors can mean that competition is quickly eroded (Mehigan and Rowe, 2007).

- Monitoring – The previous points infer that monitoring is very important in a privatised environment. Private prison staff, like their public counterparts, have significant discretion in how they treat prisoners – from day to day interactions, to classification or early release processes. Accountability, then, is crucial. The Corrections Amendment Act 2009 does include requirements that contractors comply with relevant international obligations and standards and report regularly to the Chief Executive of Corrections on a range of matters including staff training, prison programmes, prisoner complaints, disciplinary actions, and incidents involving violence or self-inflicted injuries. Reports are provided by a fulltime prison monitor based in each contract managed prison. The Prison Inspectorate and the Office of the Ombudsmen also retain their investigative powers.

Yet, it is clear that not all private prisons are the same. While the lowest performing private prisons may rank amongst the worst (BBC News, 2008), the best private prisons can outperform public prisons. A few private companies have run prisons that: were regarded by monitors as very safe and humane; opened up prisoner access to 'outsiders'; engaged in innovative programmes; and, enjoyed freedom from entrenched negative prison cultures (Mehigan and Rowe, 2007). Some of these results have, however, been short-lived. In the UK, for instance, several private prisons enjoyed good reports in their early years – new staff and new buildings contributed to relaxed and positive regimes. Over time, as cultures changed and buildings deteriorated, these prisons have faced significant problems (Shefer and Liebling, 2008).

It must also be remembered that private prisons do not reduce systemic pressures. 'Building your way' out of 'overcrowding' just does not work – principally because it leads to the increased use of imprisonment. In practice, 'prison spaces will invariably be filled once they are built' (Mehigan and Rowe, 2007:372). Further, companies involved in the prison 'business' do have a real interest in ensuring that prisoner numbers continue to rise (Feeley, 2002). And, ultimately, continual increases in prison populations, whether they are housed by state officials or private contractors, result in a range of negative outcomes, some of which are identified in this report.

### **3.4 The Impact of Increased Prisoner Numbers**

Increasing populations represent one of the most significant restraints on attaining human rights standards in prisons. 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 the mixing of remand and sentenced prisoners, age mixing, and increased lock-down periods.

#### *Double-bunking*

Initiatives such as 'crisis management' double-bunking<sup>3</sup> have faced ongoing criticisms on a number of grounds. Local and international academic writers such as Anthony Taylor (2008) and Roberts and Cobb (2008) highlight that such 'doubling-up' practices invariably lead to increased stress, anxiety and fear in the prison. In sharing a confined space for extended periods, prisoners lose any right to privacy – in which, for instance, they might relax their prisoner identity – and they must endure the (sometimes disagreeable) habits of fellow prisoners (Taylor, Anthony, 2008). Further, following in-depth (US-based) research on the issue, Franklin et al (2006) proposed that prisoners under the age of 25 are significantly more likely to develop stress and subsequently misbehave in crowded environments.

Double-bunking must, therefore, be undertaken with great care – the size of cells that must accommodate two prisoners is crucial; decision-making processes on the safe placement of prisoners must be stringent; and further emphasis should be placed on rehabilitative initiatives to counter damaging experiences (Taylor, Anthony, 2008).

In New Zealand, Clayton Cosgrove, the Labour Party's Law and Order Spokesperson has argued that double-bunking would increase attacks against prisoners and officers alike – a point that has reflected anecdotal evidence from its use in English and Welsh prisons. Bevan Hanlon, President of the Corrections Association of New Zealand, has reflected that overcrowding poses a danger for prisoners with mental illness as they are made more vulnerable to harms from other prisoners (NZPA, 2008).

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<sup>3</sup> In some circumstances, prisoners may prefer to share a cell. 'Doubling-up' may be a positive experience when prisoners request it, and when accommodation is suitable.

In response to such criticisms, the Department of Corrections points out that double-bunking has been used in New Zealand for around 140 years, and that in New Zealand, there are no indications to date of increased incidents resulting from double-bunking (Department of Corrections, 2011). The Department advises that analysis of incidents in prisons over the period November 2009 to March 2011, when double-bunking was increased, indicates that the rate of incidents remained stable, and in some units slightly decreased (ibid.).

In a bid to mitigate the risks associated with cell sharing, the Department has developed a Shared Accommodation Cell Risk Assessment (SACRA) process.

### *Impacts of Increased Prisoner Numbers*

Increasing prisoner numbers – and the related issues of increased lock-down periods, staff shortages, limited spending per prisoner<sup>4</sup> and stretched facilities – means that the ability to meet even minimum human rights standards is more likely to be undermined (see National Health Committee, 2008; Office of the Auditor-General, 2008; Ombudsmen’s Office, 2005, 2007; Roberts and Cobb, 2008; Taylor, Anthony, 2008). For example:

- The right to employment and the right to education can be downgraded as lockdown periods mean that activities are compressed into a shorter ‘working day’;
- The right to health is relegated as growing numbers of prisoners requiring professional forensic care are made to wait in prisons (with custody-focused rather than therapy-focused staff) until they can access the services they need. Prisoners may struggle to access drug/alcohol programmes or general health care in a timely manner; and prisons may be faced with increases in communicable diseases or sanitation problems;
- The right to access exercise, sports, cultural or religious activities, vital components of relieving stress and maintaining good health and order in the prisons, can be weakened;
- The right to access others is constrained as programme hours are cut back (as staff are required to work elsewhere or because of lockdown requirements), and visits from counsellors, support persons or volunteers are reduced. In these circumstances, rehabilitative strategies are undermined;
- The right to family/whānau is challenged for all sorts of reasons: prisoners find that they cannot have ready access to telephones because there are too many others fighting for the line; family/whānau

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<sup>4</sup> The Department of Corrections (2008:3) is currently funded to deliver services to just an ‘adequate’ standard, rather than one of ‘best practice’.

days become more difficult to organise because staff are too busy with other tasks; prisoners are transferred across regions for logistical reasons, causing massive disruption to their families trying to negotiate visits (as well as impacting on other important activities such as any sentence planning, or access to health care or programmes);

- The right to life and security of person can also be tested as overcrowding amplifies stress levels for prisoners and officers alike. Longer periods of lock down, together with increases in prisoner numbers, are related to higher incidences of prisoner depression and anxiety, as well as increased disturbances and attacks – including fatal attacks – against prisoners and staff. Reflecting on the concerns posed by double-bunking to safety in prisons, the Law and Order Committee (2009) noted that ‘We were told that staff will receive an extra three days training on volatile situations and that pepper spray, spit-masks, and stab-proof vests will be available when necessary’.

Overcrowding impacts heavily, therefore, on the well-being of prisoners and officers alike. As the Department of Corrections (2008) put it, between 2005-2007, the Department operated under high pressure, with a significant degradation of services. During this period, there were also times when the Department operated ‘at a high risk of failure, and a significant negative impact on staff’ (ibid: 23).

Staff have been placed under significant stress in recent years. In response to rising prisoner populations, the Department has undertaken a major recruitment initiative. In 2008, over 40% of frontline Corrections Officers had less than two years experience (Department of Corrections, 2008); in 2009, this had reduced to 29% of staff (Department of Corrections, 2009c). This new workforce has placed pressure on experienced staff who mentor and train new officers.

In summary, as Lord Chief Justice Woolf, the investigator of the Strangeways riot in England stated, overcrowding ‘debilitates the whole system’ (cited in Taylor, Anthony, 2008:69). Given such conditions, the UN Committee Against Torture (2009:9) has recently recommended that the NZ State ‘should undertake measures to reduce overcrowding, including consideration of noncustodial forms of detention in line with the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)’.

### ***3.5 Securing Rights at the Operational Level***

Thus far, it is made apparent that cultures of penal populism, as well as burgeoning prisoner numbers, can lead to struggles to maintain positive rights-based practices for prisoners and prison staff. These issues are generally directed from outside the penal estate – as, for example, the prison service cannot control the number of people they receive. However, it is also clear that rights standards can be undermined within the prison environment.

For instance, overseas studies (Crawley, 2004; Piacentini, 2004) have illustrated that prison officers are not always keen to engage with rights, for varied reasons, including that:

- Officers view that prisoners have ‘too many rights’ – that prisoners get more rights than they do, or that rights should be ‘earned’ privileges;
- Human rights signify external or managerial interference – it is not a part of the remit of officers ‘on the ground’, who are ‘doing the job’. Instead, rights are viewed as part of the ‘do-gooder’ agenda, established by people who do not understand the prison culture or who want to ‘shame’ prison officials. Subsequently, rights standards are to be ignored, circumnavigated or met with defensiveness;
- To secure rights can be seen as an act of weakness or of ‘social work’; it contradicts the prison ethos of security and control. Human rights standards can be undermined through the conflicts of interests between respective providers of care and control;
- Human rights may represent more work. They are viewed by officers as an administrative burden – officers become concerned about the numbers of complaints; the completion of forms; the need for further meetings, and so on. Further, maintaining rights standards often requires extra effort or creativity. From this perspective, human rights reform is a commodity, rather than a way of thinking about the prison experience;
- Human rights can be a frustrating experience – prison officers can become dispirited when some prisoners are provided with opportunities that they do not, then, develop. For example, an officer may invest large amounts of time and energy on certain prisoners – to, say, develop their employment options – and then find that the prisoner returns to prison soon after release. In these circumstances, some officers might think ‘why should I bother?’;
- Human rights are viewed as window-dressing and become a ‘tick box’ exercise. After all, even if we have prisons that can tick all the boxes – and that can cover all minimal standards – that does not necessarily mean that prisons will have positive outcomes in terms of rehabilitation practices or the long-term attainment of rights at community or societal levels. Given this, it seems useful to consider rights practices in prisons in terms of *outcomes* and not just *process* (Coyle, 2007; Owers, 2008).

From these arguments, some of which may have resonance in New Zealand, it is evident that human rights policies (that can, on paper, appear as a rational and appropriate means of attaining positive relations) may face hurdles at an operational level. Prisons are places of discretion and human rights are continually contested. Thus, while prison managers certainly ‘set the tone’ for rights standards, human rights are established and maintained on the ground level. Rights are, after all, about relationships between people. In

the context of the prison, as elsewhere, a focus on practice (and not just policy) is vital.

### *The Context of Managerialism*

At the same time, it also appears that the Correctional shift towards a remit of efficiency, security and risk-management, may well have a bearing on the operational attainment of rights. Many Western governments have realigned themselves to models of managerialism. Managerialism simply refers to the privileging of bureaucratic and managerial principles within governmental agencies, such as Corrections (Coyle, 2007). On one level, it is an enticing idea as it promotes innovation, autonomy, quality standards, flexibility and performance (while meeting consumer needs); it places an emphasis on 'strategies, mission statements, visions and goals' (Scott, 2007:58).

Yet, academics have also argued that managerialism challenges the implementation of rights standards within prisons. The remit of managerialism – to embed 'performance cultures'; to prioritise cost-effectiveness and value for money; to audit and measure effectiveness and efficiency; to 'contract-out' prison services and management; to approach the management of prisoners as a technical challenge; or, to rationalise the policy process around risk-management – can result in negative consequences (Coyle, 2007; Garland, 1990; Scott, 2007). Claims for efficiency can 'bring in its wake moral indifference' (Liebling, 2008b:71) in which prisoners are no longer addressed as moral, economic, social or psychological beings but are depicted as an 'unruly risk group' that must be identified, classified, incapacitated and risk-managed at low cost (ibid; Feeley and Simon, 1992).

Internationally, much has been written about the movement of criminal justice systems along risk-management lines. Ericson (2007) highlights how governments and criminal justice actors have increasingly presented the notion that any risks of crime, or harm, can be eradicated by more effective punishment practices. As a consequence, an appetite for security 'is legitimated and given much freer rein' (Loader, 2009:247) to ensure that 'they' who risk or threaten 'our' lives are securely managed (cf Pratt, 1997). At the same time, the chimera of a risk-free life can mean that the public, and organisations, become less concerned about the impact of securitisation on those who 'receive' it – such that longer sentences and increased prisoner restrictions are readily accepted. This can be dovetailed with a reluctance to articulate other values that are mistakenly thought to threaten security – such as human rights, statutory oversight or legal redress (Loader, 2009). This is a 'treadmill' 'of "tough" action/new criminal outrage/renewed public anger/more "tough" action' (ibid:252), and results in increasingly harsh responses to social problems.

The New Zealand realities of managerialism in punishment practices can be observed in new developments, including:

- Community punishments (such as home detention, community detention and extended supervision) have been directed towards the

surveillance, control and management of offenders. Probation work has simultaneously changed, from a basis of welfare and rehabilitative values, to meet this new ethos;

- The 2009 Corrections 'value for money' review has emphasised prisoner rehabilitation alongside staffing efficiencies. The review recommended the removal of correctional officers from rehabilitation processes and redirection of these tasks to other specialist staff. A Rehabilitation and Reintegration Services group was subsequently established as the focal point for Corrections' rehabilitation and reintegration work;
- The re-introduction of private prisons that will most likely contribute to a reduction in conditions and staff pay;
- Opportunities afforded to prisoners – such as in relation to family visits or working outside the prison walls – have been eroded in the name of security;
- The reworking of Corrections policy to emphasise aspects of security, risk management and centralised administration processes. In 2010, Corrections introduced the Prison Service Operations Manual (PSOM). The PSOM focuses upon management processes related to induction, risk assessments for double-bunking, the secure movement of prisoners, the correct processing of property, some prisoner activities, prisoner communications and visits, prisoner misconduct rules, complaints, and prisoner releases<sup>5</sup>.
- The tightening of Parole Board decision-making on the basis of risk-management.

Each of these measures may be developed and sustained in an ongoing climate of economic uncertainty and penal populism (indeed, the criminal justice system has been subject to constant legislative reform by different government administrations over many years). However, these factors contribute to an institutional structure of imprisonment, and punishment, in which human rights are more likely to be 'squeezed out'. In their focus on economic efficiencies, standardised reporting and prisoner recording, technical alignment, risk management and securitisation, these measures may direct thought, imagination and practice away from a rights framework. After all, these approaches tend to concentrate on 'processes and outputs rather than outcomes' (Coyle, 2007:513).

A related concern about this approach is that human rights are implicitly presented as being antithetical to prison security. In reality, this is not the case. Imprisonment concerns go way 'beyond effectiveness and efficiency' (Coyle, 2007) and large international studies (Liebling, 2004) indicate that human rights are deeply connected to the maintenance of security. Prison officer and institutional values of decency, fairness, support, well-being, respect, humanity, trust and personal development are highly significant in reducing conflict, developing well-being, creating harmony and enhancing security within prisons (ibid; Coyle, 2008). As Zinger (2006:127) argues,

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<sup>5</sup> Issues such as family support, mental and physical health, education and work all feature in the new Prison Service Offender Management Manual. However, this focuses on classifying prisoners' needs and making prisoners responsible for their progress.

'compliance with human rights obligations...is more conducive to positive change' among prisoners and this, in turn, 'enhances public safety'. Conversely, prisons that lack rights-based values ultimately change prisoners, staff and institutions for the worst.

This is, undoubtedly, challenging work. Nonetheless, as Liebling (2004:491) argues, '...it is surely important to try and preserve (or try to generate) a notion of citizenship' within and without the prison walls. Generating a commitment to civic virtues must be a better strategy...than crowding them out'.

## 4. Material Conditions

Material conditions are very important to the prisoner experience. After all, during incarceration, prisoners lose the ability to influence matters that greatly affect their well-being and health, including their access to fresh air, food, water, sanitary facilities, heating or decent clothing (Nowak, 2009).

### *Law and policy framework*

The Corrections Act 2005 details its compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners. Sections 70 to 78 of the Act establish the minimum entitlements that prisoners can expect. These include:

- Physical exercise – at least one hour per day in the open air, weather permitting;
- A separate bed/mattress and sufficient clean bedding for warmth, health and reasonable comfort;
- Food and drink – a sufficient quantity of wholesome food and drink (based on the food and nutritional guidelines issued by the Ministry of Health and drinking water standards); as far as practicable, allowing for religious, spiritual, medical and cultural needs;
- Access to private visitors – at least one private visitor per week for a minimum of 30 minutes (all visitors are to be approved through an application process);
- Access to statutory visitors and specified visitors – which include Inspectors, Ombudsmen or Visiting Justices, consular representatives, MPs and members of the Human Rights Commission;
- Access to legal advisors – they may visit at any time; if the proposed time is unsuitable, the manager must nominate a reasonable, alternative time; interviews must be out of hearing of others and (with prison manager's agreement) out of sight of others;
- Medical treatment – entitled to receive medical treatment that is reasonably necessary; the standard of health care must be reasonably equivalent to that available to the public;
- To send and receive mail – may send/receive as much mail as prisoner wishes, subject to some restrictions;
- To make outgoing telephone calls – at least one outgoing call of up to five minutes per week, at prisoner's own expense;

- Access to information and education – to have reasonable access to news; access to library services as far as practicable; access to education that will assist in rehabilitation or reintegration.

The denial of minimum entitlements can be made in the following circumstances:

- In the event of an emergency, security threat or threat to health/safety of any person (s69(2));
- When prisoners are subject to cell confinement or segregation orders (s69(4)). While in cell confinement, prisoners may be denied the right: to private visitors, to make telephone calls, to use other forms of communication, and to access information or education;
- When prisoners are detained in police cells. Entitlements – to exercise, private visitors, mail, phone calls, other forms of communication, and information / education – may be denied due to the facilities and resources available (s69(3)).

In addition, a prisoner has no legitimate expectation of being provided with similar accommodation conditions or programme opportunities throughout their detention (r196). The conditions of detention are subject to institutional discretion and change.

## **4.1 Accommodation**

### *Law and policy framework*

The Prison Service Operations Manual (PSOM, F.02) attends to Cell Standards. This Policy sets out how cells must be maintained, and the items that are allowable within individual cells.

As far as practicable, prisoners must be accommodated in individual cells. Exceptions to this regulation (r66) can be made if the cell used is designed and equipped to accommodate more than one person (r66(3)). Exceptions can also be made if the manager believes that the sharing of cells will facilitate prison management, or it is necessary to relieve a temporary shortage of accommodation, or to assist in an emergency of any kind. A 2009 amendment to the regulations has provided for greater use of cell sharing in circumstances where a single cell is not reasonably available and in accordance with instructions issued by the Chief Executive (r66(2A)).

A Shared Accommodation Cell Risk Assessment (SACRA) process has been developed by the Department to manage the placement of prisoners in shared cells. Chief Executive's Instructions are also currently being drafted.

### *Issues*

The accommodation for prisoners in New Zealand is greatly varied. Some of the older prisons have been subject to stinging criticisms. For example, the Ombudsmen's Office (2005:25) stated that prison conditions 'in all older higher security units are extremely cramped and cannot be described as pleasant in any sense'. A 2009 report for the Corrections Association, described conditions in Auckland prison as 'putrid' and stated that Mount Eden was 'archaic' (NZPA, 2009). As the Department of Corrections (2008:22) has already identified, a proportion of the prison estate is approaching, or has reached, the point of obsolescence, 'some facilities can no longer be regarded as fit for purpose, with some being at risk of non-compliance with relevant building standards'. In 2009, 1,170 prison beds were officially considered to be obsolete, with around 1,700 beds expected to become obsolete by 2016 (Collins, 2009). The Corrections Association estimates that 1,500-1,800 cells are currently obsolete. Newer prisons will undoubtedly provide modern, and often light-filled, spaces for prisoners, however they have also faced criticisms on account of double-bunking issues.

One might argue that, given recent claims that double-bunking aggravates conflict within the prison (cf Franklin et al, 2006), effective prison management is not facilitated by current double-bunking<sup>6</sup>. Burgeoning numbers can also negatively impact upon prisoners' opportunities to access programmes, workshops, activities, services, and so on. This can further aggravate problems of isolation or mental health concerns. Overall, it is clear that prisoner accommodation, and the impact of increased prisoner numbers, need to be continually monitored. The use of double-bunking – and how such practices impact upon prisoners and staff – also needs to be carefully evaluated over time.

## **4.2 Lighting, Heating and Ventilation**

### *Law and policy framework*

The Corrections Regulations (Schedule 3) set out the mandatory features of cells and requires that both new and existing cells are to include heating as appropriate for climatic conditions and fresh or conditioned air.

### *Issues*

In 2005, the Ombudsmen's Office noted problems about the heating and cooling of cells. In summertime, some cells are oppressively hot, and while fans were supplied they were provided at the prisoner's own expense<sup>7</sup>. Those

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<sup>6</sup> The Department of Corrections has noted that, on two recent occasions at Christchurch prison, suicide attempts were prevented by the prisoner's cell-mate calling for help. From one perspective, therefore, double-bunking may have some positive effects. Yet, these events also raise questions about the context of the suicide attempt, the burden of the 'duty of care' imposed upon cell-mates to attend to suicidal prisoners, as well as the impact of those events upon them.

<sup>7</sup> Departmental permission for fans is also contingent on the prison having suitable electrical facilities and that there are no safety or security concerns.

without the means were unable, therefore, to enjoy reasonable conditions. The Ombudsmen subsequently recommended that, where necessary, the Department should provide prisoners with fans. This concern was reiterated by the Ombudsmen in 2009 (Human Rights Commission, 2009b). Taking into account circumstances such as increased 'lock down' periods and double-bunked cells, the Ombudsmen were concerned that excessive temperatures could amount to ill-treatment. The Ombudsmen continue to monitor the issue and have received assurances from the Department of Corrections that prisoners without sufficient funds will be provided with fans.

In 2005, the Ombudsmen's Office demonstrated concern about the lack of natural light in some cells, specifically twelve maximum security cells in Auckland East Prison. Newer prisons – such as the Otago Correctional Facility – have been constructed to allow lots of natural light into the prison.

### **4.3 Sanitary Facilities and Personal Hygiene**

#### *Law and policy framework*

Prisoners are expected to keep themselves, their cell, furniture, clothing and property clean and tidy. They are to be provided with the means to comply with this requirement (r69). All prisoners should be provided access to a working toilet and a hand-washing sink, with hot running water. Prisoners should be able to access shower facilities everyday. Unit staff can compel a prisoner to shower for hygienic reasons (PSOM, P.04.03).

Upon reception, all prisoners are to be issued with a basic hygiene kit that will include: toothpaste, a toothbrush, soap, 60ml shampoo, comb, ballpoint pen, paper and envelopes and, for females, sanitary supplies.

Prisoners can choose their own hairstyle however they may not grow a beard or moustache, without first seeking approval from the prison manager (r70). Head and previously established facial hair must be removed if a medical officer directs on the grounds of health, safety or cleanliness.

Inspectors of Corrections review the arrangements that prisons have in place to ensure that regular sanitation and hygiene inspections by an independent specialist are carried out and any arising issues are addressed. The system is considered to be 'critical to the safe, fair and humane treatment of prisoners' and is annually recorded by the Inspectorate.

#### *Issues*

Complaints and enquiries to the Human Rights Commission have included approaches relating to sanitary issues. Over the last few years, there have also been concerns that some units – at Mount Eden and Tongariiro/Rangipo – have continued practices of 'slopping out'. The 22 bed wing at Mount Eden that did not have toilets was recently demolished as part of the redevelopment of that site. The Larch Unit at Tongariiro/Rangipo that does not have toilets in individual cells is listed as obsolete, to be used only for disaster recovery.

However, it has been used for periods when other units in the prison have had to be vacated for repairs and maintenance.

#### **4.4 Clothing and Bedding**

##### *Law and policy framework*

All sentenced prisoners will be issued with one tracksuit, one pair of shorts, one T-shirt and footwear that is deemed appropriate for work or accommodation (PSOM, P.04). Remand prisoners may be permitted to wear their own clothing, unless that clothing is deemed unfit for use or if the prisoner requests prison clothing. Clothing that is provided to accused prisoners must be different from clothing given to other prisoners.

Prisoners, with prison manager approval, may wear their own clothing/footwear when on transfer or temporary release, at Court or Parole Board appearances, or on other occasions (for example, while resident in self care units).

Clothing or footwear provided by the prison must be suitable for prisoner activities, and adequate for safety, warmth, comfort and health (r68). Prison-issue clothing is to be laundered at least twice a week (PSOM, P.04.03).

Sufficient bedding for warmth, health, and reasonable comfort must be provided. On arrival, prisoners will be provided with a mattress, one pillow (and case), two sheets, a duvet inner and cover, and a towel. A prison can issue two blankets, instead of a duvet. Blankets, duvets and mattress covers are to be laundered every four months; bed linen will be laundered each week or as required (PSOM, P.04.03). All bedding must be laundered before use by another prisoner (r71). Any additional bedding will be issued only at the written instructions of Health Services.

##### *Issues*

Prison clothing is of a highly variable quality. The Ombudsmen's Office (2005:25) highlighted that some prisoners were provided with shabby and sometimes seasonally-inappropriate clothing. This was regarded as being 'demoralising' and undermining of 'self respect' for prisoners. In addition, it might disadvantage the prisoner when they presented themselves to others, such as Parole Board members.

In March 2006, a prisoner, David Cox, died from pneumonia in Christchurch Prison. During his short illness, Cox asked for further bedding but this was denied; he was given paracetamol for a cold. Attempts by his sister, to provide warm clothes and medication, were refused by prison authorities. Following his death, Christchurch Coroner Richard McElrea made a number of recommendations including that:

- Prisoners should not be deprived of the means to keep warm;
- Basic items, such as clothing and warm bedding, should be made available to prisoners without delay following admission;

- Prisoners should receive clear information on how to request further bedding;
- Prisoners' families should be made aware of the rules concerning clothing and bedding;
- Prisoners should be assigned a liaison person with whom to communicate with (The Press, 2008).

The continued monitoring of clothing and bedding practices is necessary.

## **4.5 Food and Water**

### *Law and policy framework*

Provided food and water is based on the nutritional, and drinking water, standards issued by the Ministry of Health. Prisoners will all receive the same meals. Exceptions to this can be made on the basis of religious, spiritual, cultural and medical needs. Minimum entitlement provisions detail that breakfasts must be served 'no more than 14 hours from the previous evening meal, unless food for supper has been provided with the evening meal' (PSOM, F.01.01). One meal a day must be hot and drinking water should be available 'at convenient locations throughout the prison' (ibid).

### *Issues*

Food plays an important part in any culture. In prisons, where prisoners have limited access to material resources and money, food has immense value. The type and amount of food can be important – particularly when this departs from what prisoners have previously experienced in the community. Food has value in terms of building healthy bodies but it can also be used as a tool of exchange, and it can also be a source of conflict.

Levy (2009) highlights that prisons, in England and Wales, tend to have menus that are high in fat (particularly saturated fat), salt and sugars. Inspectorate reports in England and Wales continually detail concerns about prison food, for instance with regards to: (i) food being of highly variable quality; (ii) the dominance of processed and stodgy food; (iii) food being served cold; (iv) food not meeting religious or cultural requirements; (v) the lack of diversity of food on offer; (vi) food-servers not dressed to appropriate hygiene standards; (vii) unclean kitchens; (viii) transferred prisoners having to wait long periods without food or water; (ix) no policies for prisoners who refused food; and, (x) the budgetary pressures placed on prison caterers to produce healthy, nutritious food (HM Chief Inspector of Prisons, 2010, 2009a, 2009b).

In New Zealand, little has been written about the nature of prison food, or how it is prepared and served. More public information and research would be welcome. The Prisoner Health Survey (Ministry of Health, 2006) noted that two-thirds of prisoners consumed two servings of fruit and three servings of vegetables per day. The Department of Corrections has advised that standard prison menus are prepared by a panel which includes a Ministry of

Health dietician who provides input on nutritional value. Menus are planned over four week cycles to reduce repetition.

There do appear, however, to be examples of inconsistent application of prison policies with regards to access to different foods. For instance, while the policies detail that, in providing food and drink, allowance must be made for the various religious and spiritual needs of prisoners, this has not always been consistently observed in practice. Between January 2002 to April 2009, the Human Rights Commission received 17 complaints with regards to religious beliefs, many of which focused on dietary concerns relating to religious observance. Corrections have attempted to address kosher diet requirements, including consultation with a Rabbi on different options. Corrections have also recently confirmed that their food is now 100% halal accredited. Beyond these issues, the Commission has received complaints from prisoners related to their food allergies or intolerances that were not being accommodated.

A further concern has been that prisoners are eating meals in their cells, rather than a communal dining space. As the Ombudsmen's Office (2005:29) remarked, 'In our view prisoners are entitled to eat at tables in civilised dining conditions'. Eating food in cells increases the social isolation of prisoners; further, many prisoners have to eat in the same room as they toilet in. Another issue has been the long period that some prisoners may face between their evening meal and breakfast.

#### **4.6 Access to Personal Property**

##### *Law and policy framework*

Parts P.01-P.10 of the Prison Service Operations Manual relates to property. Schedule One of the Corrections Regulations establishes permissible prisoner property. Prisoners are allowed: eye glasses and contact lenses, a watch, legal papers, a reasonable amount of personal papers and correspondence, approved study material and equipment (such as study guides, textbooks), up to 13 books (including religious texts), up to 10 magazines, up to 12 cassette tapes, up to 12 CDs, religious material (such as Muslim headcover or prayer mat, Jewish headcover, Buddhist prayer beads, crucifix), stationery, posters, normal purchase items, toiletries, approved medication and medical assistance, personal and family photographs, bedding, a mat, a mirror and a reasonable amount of hobby materials.

Prisoners are also permitted electronic items, which may include: one radio/cassette/CD player or similar, one TV set, one radio/clock, one electric razor, one personal computer, one electric fan, one multibox, one hairdryer, one bed lamp and one electric jug. Conditions are placed on the stereosystem (relating to size, form and power) and the personal computer (that it is required for an educational course; that other computers are not available; that loaded material will relate directly to the course; and that the computer will be removed on completion of educational tasks). All electrical equipment must be subject to an electrical check, at the prisoner's expense.

A prisoner can have these permissions revoked if it is suspected that an item may be used to injure another person or to commit an offence, or to record the security features of the prison, or if the item has been obtained through improper behaviour or coercion, or if the item is objectionable. Authorised property can also be forfeited as a consequence of penalties or mental health decisions. This can also be the case if a prisoner is detained in a police cell.

### *Issues*

The safe storage of their property remains an ongoing worry for prisoners. In 2005, the Ombudsmen's Office highlighted that there was no standardised system for the storage and transfer of prisoner property, and that many items appeared to go missing. As they (2005:38) remarked, the 'present record keeping of the Department upon property claims is in a state of disarray'.

Increasing pressures on receiving officers – who have a whole host of processes to be completed in the first hours of a prisoner's admission and departure – may impact on this requirement to securely hold prisoner property. Moreover, prisoners often receive rejections of their complaints on these matters, and there is no compensation system, so many prisoners do not complain as a result.

It appears that such property concerns remain. For instance, the Ombudsmen's Office received over nine hundred complaints concerning property during the year to 30 June 2009. This was the most common area of complaint, comprising 19% of all prisoner complaints (Ombudsmen's Office, 2009). In 2009, the Inspectors of Corrections also noted the long-standing issue and detailed that it required 'a significant overhaul of the way the Department approaches and manages prisoner property' (Department of Corrections, 2009c:139). The report states that a review was scheduled for 2009/10. Continued monitoring of this issue, and the outcomes of any property management changes, is necessary.

## 5. Activities

### *Law and policy framework*

The Correction Act's purpose statement (s5) notes the role of the corrections system in providing rehabilitation and reintegration. Section 5 provides that 'the chief executive must ensure that, as far as is practicable, every prisoner is provided with an opportunity to make constructive use of his or her time in prison'. It also establishes that a purpose of Corrections is 'assisting in the rehabilitation of offenders and their reintegration into the community, where appropriate, and so far as is reasonable and practicable in the circumstances and within the resources available, through the provision of programmes and other interventions' (s5(1)(c)).

### *Issues*

The issue of funding and resources are particularly significant. The available budget for activities such as rehabilitative programmes, work and training, education, leisure facilities or community reintegration remains relatively small – it is estimated to constitute less than 12% of Correctional spending in 2010/2011 (The Treasury, 2010). In this respect, Corrections have clear fiscal limitations on what they are able to provide (this point must be borne in mind in relation to other aspects of prison life, such as material conditions or health services).

In addition, the use of imprisonment as a conveyor-belt (with large numbers of people serving short-term sentences) as well as the increased use of remand also raise concerns regarding activities. Those serving short-term sentences and those detained on remand usually have no access to rehabilitative practices such as education, employment and other programmes – although Corrections have recently expanded drug treatment programmes to include short-serving prisoners. Regardless of status, prisoner activities are also determined by others – prison life is routinised and restricted, with relatively few opportunities for prisoners to exert choice.

In 2005, the Ombudsmen's Office highlighted a disconnection between the Department of Correction's claims about rehabilitative programmes, education and work opportunities, and how these aspects of prison life were experienced by prisoners or front-line staff. Since that time, the Department of Corrections (2008) has stated that it has made improvements in a number of areas, with:

- increased number of prisoners in industries / temporary employment release;
- more prisoners involved in adult literacy/educational courses;
- the redesign of rehabilitation programmes;
- the expansion of rehabilitation activities;
- improved cross-agency services – to prepare prisoners for release.

In September 2009, a 'Rehabilitation and Reintegration Services' group was established. This group is tasked with streamlining service delivery and is responsible for sentence management and pre-release plans, rehabilitation programmes, psychological services, specialist treatments as well as prisoner employment and education.

## **5.1 Administration of Time**

### *Law and policy framework*

The administration of time is established through management plans, that apply to all prisoners who are detained for more than two months. Plans must be based on an assessment of the needs, capacities, and disposition of the prisoner; they must provide for their safe, secure and humane containment; they must outline how prisoners can make constructive use of their time in prison; and they must detail preparations for release and successful community reintegration (Corrections Act, s51(4)). The Prison Service Offender Management Manual outlines the assessment tools for this process.

An 8am to 5pm unlock regime is now standard policy for all high security units. This regime can also be operationalised in other units, and is principally dependent upon staffing levels.

### *Issues*

For most prisoners, prison life 'is essentially life on the landings' (McDermott and King, 2008:282). The 'pervasive mood', for staff and prisoners alike, is boredom (The Ombudsmen's Office, 2007:60). This mood is intensified with the use of long lock-down periods in which prisoners will have no access to social activities, prison facilities, visitors or phone calls. The NZ National Health Committee (2010:33) has recently noted that the boredom of imprisonment, and the isolation of prisoners, can lead to anger, frustration, anxiety and trouble. They detail that prisoners 'also described how a lack of meaningful activity weakened their mental health and encouraged drug taking, bad behaviour, and aggression'.

Lock-down times are dependent on a host of factors including security classifications (higher-risk prisoners have shorter unlock hours), prisoner safety (those deemed at risk from others/themselves can be locked down for longer), limited facilities (with lockdown used to keep remand and sentenced prisoners separated), and staff shortages and absences.

During 2007 and 2008, there were reports of early lockdowns at a number of prisons – Rimutaka, Arohata, Wellington and Waikeria – as a consequence of staff shortages and budgetary restraints (Cheng, 2007; Prison Fellowship, 2008). The Howard League for Penal Reform also reported increasing complaints about longer lockdowns during 2008-9 (Howard League, 2009). Prison Fellowship stated that the lockdown in Rimutaka had an impact on the (religious, educational, work or recreational) programmes that could be pursued in the Faith-based Unit. The use of lockdowns and their impact,

across the penal estate (and within particular units), requires continual examination and improvement.

## **5.2 Programmes**

### *Law and policy framework*

Section 52 of the Corrections Act states that rehabilitative programmes are to be provided to all those sentenced prisoners who will benefit from them. Access to programmes is, however, contingent on available resources and Chief Executive Instruction.

### *Issues*

### *Range of programmes*

The Department offers a range of motivational and rehabilitation programmes and courses for prisoners. At a nationwide level, these include:

- Short Motivational Programmes – that assist prisoners to identify and address their rehabilitation needs;
- Tikanga Māori Programmes – that focus on developing Māori identity and Māori practices among prisoners, to develop their awareness and responsibility for their actions (its impact on themselves, their whānau, hapū and iwi);
- Kowhiritanga Programme for Women – to assist female prisoners to examine the causes of their offending, and develop skills to prevent reoffending. Available at Arohata, Christchurch Women's, and Auckland Women's;
- Medium Intensity Rehabilitation Programme – that helps male prisoners to examine the cause of their offending and develop specific skills to prevent them re-offending;
- Short Rehabilitation Programme – that provides a condensed version of the Medium Intensity Rehabilitation Programme or Kowhiritanga programme, and can be accessed by male and female prisoners;
- Parenting Skills course - to improve the ability of prisoners to effectively parent their children;
- Living Skills course – that targets the specific social or environmental problems prisoners will face on release.

In addition, there are a range of specialist programmes that are offered within specific prison locations. These include:

- Faith-Based Programme - a Christian-based programme available to lower security prisoners generally in the last 18 months of their sentence. It is provided with Prison Fellowship. The programme can currently accommodate 60 prisoners, based in the Faith Based Unit at Rimutaka.
- Māori Therapeutic Programmes – combines cognitive behavioural therapy and Tikanga Māori concepts to facilitate change in the behaviour of Māori prisoners. Available to 60 prisoners at each of the following Māori Focus Units: Hawke’s Bay, Waikeria, Tongariro/Rangipo, Rimutaka and Wanganui. The programme is also delivered at Northland Prison.
- Saili Matagi Programme – a violence prevention programme targeted to Pacific adult male offenders. This programme can be accessed by 12 people at one time, and sits within the 44-bed Pacific Focus Unit (or Vaka Fa’aola) at Spring Hill.
- Focus Programme – to help young prisoners to acknowledge their offending and to learn how to break the offending cycle. The programme is undertaken within Youth Units based at Christchurch Men’s (40), Hawke’s Bay (30) and Waikeria (35)<sup>8</sup>.
- Violence Prevention Programme – to assist prisoners to live their lives without violence. The programme focuses on controlling violent impulses and conflict resolution. 30 prisoners can access this programme within the Violence Prevention Unit at Rimutaka. The programme also includes follow-up support on release.
- Drug Treatment Programmes – directed to prisoners, with identified alcohol and drug-related needs, who demonstrate high recidivism rates. The 24-week programmes are undertaken in Drug-Treatment Units at Waikeria, Christchurch Men’s, Hawkes Bay, Rimutaka, Arohata, and Spring Hill. In 2009, Corrections received further funding for three additional drug treatment units. New units opened in Otago and Auckland in 2010 and another in Whanganui will be operational from 2011. The Department of Corrections has noted that the addition of these new units will increase the number of prisoners who can be treated from 500 to 1,040 every year.
- Special Treatment Unit-Rehabilitative Programmes (STU-RP) – directed to high-risk male prisoners. These programmes are based on cognitive, behavioural and prevention therapies. 40 prisoners can be accommodated in both Waikeria (Karaka) and Spring Hill (Puna Tatari). In 2009, a further unit was established at Christchurch (Matapuna). The three units also include an adult sex offender treatment programme treating ten participants per year.

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<sup>8</sup> A fourth youth unit at Rimutaka is currently not operational as all youth prisoners are accommodated in the other units.

- Sex Offender Treatment Programme – directed to prisoners convicted of sex offences against children. The group-based treatment can be accessed by 60 prisoners at both Christchurch Men’s (Kia Marama) and Auckland (Te Piriti).

### *Availability and Scheduling*

Issues around programme availability may reflect increased prisoner numbers and the problems that prison staff face in accommodating more programme participants; however, it also relates to the timeliness in which prisoners are placed on programmes (such that prisoners may be placed on programmes in the last third of their sentence, despite the fact that they may be parole-eligible in the last two-thirds of their sentence) (The Ombudsmen’s Office, 2007; Human Rights Commission, 2009). As noted earlier, there are also issues about programme availability for those serving shorter sentences. Generally, these prisoners cannot access programmes.

Recent initiatives aim to address some of these barriers. The three new Drug Treatment Units have been specifically targeted to short-serving prisoners who have not previously been eligible for treatment by offering a shorter, but equally intensive, three month programme. Employment opportunities have also recently been expanded for higher security prisoners (Department of Corrections, 2011).

As part of their sentence plans, prisoners are guided towards particular programmes. Indeed, the completion of programmes is necessary in order to be granted parole. One apparent issue relates to prisoner access to planned programmes (particularly because of scheduling difficulties). The Human Rights Commission is receiving an increasing number of approaches from prisoners concerned that their inability to access certain programmes, prior to their parole eligibility date and parole hearing, is impacting on their likelihood of being granted parole.

### *Monitoring Effectiveness*

One ongoing topic relates to the impact of these programmes on recidivism rates. While a detailed analysis of evaluations cannot be given here, it is clear that – within wider criminological and psychological literature – there remain concerns about the benefits of nation-wide (‘one size fits all’) programmes. The key gains to be made, in terms of promoting non-offending behaviour, appear to revolve around specific, intensive programmes that attend to the particularities of individual prisoners, their needs and cultural backgrounds (Department of Corrections, 2008, 2009f). These programmes need to be delivered by specialist staff who have characteristics of empathy, respect, confidence, and warmth – and who view ‘participants as “clients in need of support” rather than “offenders in need of punishment”’ (Department of Corrections, 2009f:53; Newbold, 2008; Connolly and Ward, 2008). To achieve positive outcomes, the staff and the programme need to enjoy high levels of support, and programmes should include an ‘aftercare’ phase, for the released offender (Department of Corrections, 2009f).

The Department (2008:17) highlights that the more intensive programmes (such as drug-treatment programmes or the sex offender treatment programme) provide positive results. For example, the Department reports a 31 per cent reduction in the seriousness of new offending by Drug Treatment Unit participants, compared to the re-offending of matched comparison prisoners.

It must be borne in mind, however, that the measurement tool used by Corrections – the Rehabilitation Quotient (RQ) – cannot separate out the impact of particular programmes from other interventions made to prisoners' lives (such as gaining new skills in education, employment or reintegration assistance). In 2009, the Department (2009c:20) reported that 'a revised approach to integrity monitoring and reporting' had been developed, and would continue to be revised, and that an overall analysis of monitoring options would be completed in 2010. Further research on programmes – including studies on their effectiveness in terms of meeting rehabilitative needs, and how they are perceived and experienced by different prisoner and staff groups – would be welcome.

### *The Role of Programmes within Prisons*

Beyond these points, further questions have been raised (within local and international criminological literature) about the benefits of prison-based programmes. These arguments have revolved around several main issues:

- That, as Carlen and Tombs (2006) demonstrate in their study involving women prisoners across seven European jurisdictions, the rise of prison-based rehabilitative programmes has not corresponded to increased social inclusion for prisoners on their release, or to decreased recidivism rates.
- That, programmes can become a 'tick-box' exercise for prisoners who understand that completion is necessary for parole; 'programs become a tool for getting out of jail rather than staying out' (Newbold, 2008:396).
- That increases to prison-based treatment programmes have undermined community provisions. For instance, Malloch (2000) detailed that increases in prison-based drug treatment programmes in England and Wales was not matched with increased funding and support for community-based programmes. As a result of such changes, judges could send people to prison for treatment purposes rather than on the basis of their offending behaviour. In such situations, one might argue that community-based treatment centres should, first, be further extended and supported before provisions within the prisons. After all, as Maruna's (2001) work on desistance from crime highlights, what happens outside prison – in terms of housing, jobs and personal relationships – is much more strategic in facilitating law-abiding lives.

- That ‘therapeutic’ prisons remain dominated by an ethos of security and control. This perverts the other functions, including therapy, that are claimed for prisons. For instance, an anger management programme will be less likely to succeed if prisoners are continually frustrated or intimidated (Liebling, 2004). Similarly, prisoners who are removed from treatment programmes or reintegration assistance as a consequence of security or control needs (such as lockdowns or transfers to ease overcrowding) may well withdraw their support to future treatment attempts.

Despite the rehabilitative aims and functions of the corrections system, empirical evidence shows that imprisonment generally does not have a positive relationship with rehabilitation. In the wake of systematic reviews, it is clear that offenders are more likely to reoffend following imprisonment than with any other form of punishment (Lipsey and Cullen, 2007). Offenders receiving prison sentences are, at best, likely to exhibit a ‘modest...recidivism reduction’ but, at worst, ‘increased recidivism’ (ibid:314). Such findings raise broader questions regarding the expectations placed on prisons to rehabilitate offenders, and the role and use of imprisonment to achieve this purpose. Moreover, any positive impacts on recidivism can be undermined by lack of funding, inadequate staffing levels or overcrowding (ibid; Crawley, 2004).

A somewhat contradictory situation arises whereby prisons are required and expected to assist prisoners’ rehabilitation; yet the nature of imprisonment itself poses significant challenges to the successful rehabilitation of offenders. This raises questions about what imprisonment can be expected to achieve, and whether prisons, or other social institutions, are best placed to provide effective rehabilitation.

### **5.3 Work and Training**

#### *Law and policy framework*

Section 66 of the Corrections Act details that all prisoners may be employed in work (with the exception of those awaiting trial, on remand or detained under Immigration conditions, who may be employed if they request to be). Work should provide the prisoner with work experience, or assist their rehabilitation or community reintegration. It is also intended to offset establishment costs (for instance, by providing labour to keep the prison clean).

No prisoner should work more than 40 hours per week, across six days per week. Prisoners should not work on days that conflict with their religious beliefs or practices (s81). The International Labour Organisation details that prisoners should not be forcibly hired at the disposal of private companies or ventures.

## *Issues*

In recent history, the nature of training and employment opportunities for prisoners was a serious concern. Many programmes, across different institutions, were shut down, apparently on economic grounds. For instance, the Ombudsmen's Office (2005) highlighted that programmes in carving, horticulture and nurseries had closed because they failed to show a satisfactory financial return. The Department of Corrections (2009c) notes that prison employment programmes are not fully funded by government, and so are subject to the constraints of 'commercial viability' – with the result that poor performing industries are closed and resources are re-directed to activities that can be self-sustaining.

Over the last few years, the Department of Corrections has made noteworthy changes to practice on training and employment. In particular, the Prisoner Skills and Employment Strategy has provided a clear focus to assist prisoners to gain work skills and to acquire training-related qualifications. The Department of Corrections (2011) has reported that over 70 per cent of sentenced prisoners are currently involved in some form of employment or job training. The Department advises (*ibid.*) that, in 2010/11, prisoners undertook 7,022,878 hours of employment activity and spent 171,175 hours engaged in Trade and Technical Training. In the past 12 months, 533 prisoners have achieved a total of 780 National Certificate of Educational Achievement (NCEA) level 1-3 qualifications while participating in Corrections Inmate Employment's (CIE) industry sector and Trade and Technical Training activities. This is a 113 per cent increase from the previous financial year.

Good progress can be identified in a number of aspects, including:

- The development of work beyond that required to maintain the prison building (eg cleaning) or daily prisoner care (eg laundry). Since 2006, Corrections Inmate Employment (CIE) has actively worked to increase prisoner participation and the quality of employment training, focusing its efforts upon: expanding existing CIE prison-based industries such as farming, horticulture, engineering, forestry, catering and laundries; and developing new industries such as photocopier assembly and recycling, State housing refurbishment, organic vegetable gardening, grounds and building maintenance, and distribution and warehousing.

Examples include: the Habitat for Humanity programme involving Rimutaka prisoners; the Puppies in Prison Programme at Auckland Women's; Small Engine Maintenance at Wanganui Prison; the Construction Facility – that refurbishes around 40 state houses a year – at Spring Hill; or, the Pre-cast concrete business at Auckland. These initiatives develop significant skills that are transferable on release.

Other initiatives announced following the launch of the 2009-2012 Prisoner Skills and Employment Strategy in October 2009, include: the building of twelve new workshops, and expansion of training in motor mechanics, painting and decorating, horticulture, distribution, catering, building and construction, bricklaying and plumbing (Collins, 2009d).

- The consolidation of programmes that are connected to training certificates from nationally-recognised institutions such as Industry Training Organisations, Weltec or UCOL. This approach has a number of functions such as building prisoner confidence in their abilities and providing employers with an indication that the individual has reached a national standard of proficiency. The Department of Corrections (2010b) states that prisoners were assessed against a total of 80,199 New Zealand Qualifications Authority (NZQA) credits over the previous year. These credit achievement figures reflect a sustained growth over the last few years.
- The continuation of the Release to Work programme in which prisoners are placed in forestry, horticulture, construction and other industries. In 2008-09, Corrections sustained a level of 150 prisoners engaged in Release to Work programmes, however this number declined to 117 in 2009-10 (ibid). The reasons for this decline have been attributed to tightening economic conditions by the Department however commentators, such as the Howard League, have claimed that it is the consequence of increased risk-averse practices (Morning Report, 2011)
- The development of strategies to attend to the specific training and employment needs of Māori prisoners and young prisoners.

This training and employment approach taken by Corrections, since 2006 – aided by the injection of additional government funding – is commendable and must be developed. In building upon this progress, a few points might be made.

First, studies show that those who have participated in prison-based employment programmes have a higher chance of gaining employment, on release, than other prisoners. They also have lower recidivism rates (Department of Corrections, 2009f). International evidence (McHutchison, 2005) suggests that work that is (i) meaningful (ii) linked to vocational training and accreditation, and (iii) linked to social environments in which the prisoner will be released has a positive correlation with reduced re-offending rates. Further, work that develops prisoner responsibilities (for example, in organising activities, working in teams, prisoners instructing other prisoners, and so) is useful. However, much of prison work (such as cleaning or laundry work) is not proven to reduce reoffending rates – although, of course, it may reduce prisoner boredom, provide a wage for prisoners, decrease tension, and bring cost-savings to the institution. Thus, some work opportunities provide greater benefit than others.

Second, while the Employment Policy establishes a rationale for setting a commercial objective to prison industries, there is a strong argument to be made that employment opportunities should not be developed solely in terms of commercial viability. If work programmes can be directed along meaningful, pro-training and pro-community values, then they can bring long-

term economic benefits – such as in terms of reducing reimprisonment rates. Moreover, other rehabilitative programmes are fully funded and do not have to operate along commercial lines.

Third, that opportunities to work must be sustained across time for prisoners. There is a distinction between having work programmes on paper and operations in practice. At times, when prisons face stress in prisoner numbers or staff shortages, workshops and training opportunities may well be downgraded due to logistical difficulties. Similarly, if prisons pursue a dominant ethos of risk-aversion, valuable working opportunities could well be undermined. This could lead to what Keve (1974:30) called the ‘soft pretense of work’.

Fourth, although it is acknowledged that a significant number of prisoners lack literacy or numeracy skills and that this inhibits their involvement in certain employment routes, the Department might still increase opportunities for prisoners to pursue more high-tech, information-based programmes. There is more scope, for instance, for further IT-based training and employment opportunities.

Fifth, in line with the Department’s recognition of meeting the needs of certain prisoners, training and employment strategies that attend to the specific needs of women prisoners should be developed.

Sixth, that while work can be viewed as beneficial for prisoners, and society, the Department must be mindful of the potential of work to be experienced as exploitation or abuse (Reilly, 2009). It also appears that many prisoners struggle to pay for their weekly requirements – phone cards, cigarettes, and so on – out of their wages. Given these circumstances, the nature of payment for prison work is worthy of further examination. Similarly, further research on the perceptions and experiences, of prisoners and staff, towards work and pay practices would be welcome.

## **5.4 Education**

### *Law and policy framework*

Under s78 of the Corrections Act, prisoners are entitled to reasonable access to news, to access library services, and to access further education that will assist their rehabilitation, a reduction in their reoffending or community reintegration. Prisoners may receive free education when (i) they have an entitlement (eg under the Education Act 1989) or (ii) screening indicates low literacy and numeracy skills. Prisoners may also be able to work towards trade qualifications through classroom-based theory and/or on-job training.

Department of Corrections policies regarding Youth Offender Units also stipulate that all prisoners under the age of 16 must receive 20 hours of education per week, and that all prisoners in Youth Offender Units who are over the age of 16 should receive a minimum of 10 hours of education per week. Education in Youth Offender Units includes: National Certificate of

Educational Achievement (NCEA); Secondary Education (a component being te reo Māori); Literacy and Numeracy Courses; English as a Second Language; and Tertiary Education. The Department of Corrections (2009a) establishes that secondary education is provided to all those under 19 years of age (of which there are approximately 600 prisoners in prison custody).

The Prisoner Skills and Employment Strategy 2009-2012 provides a framework for the provision of education and training (Department of Corrections, 2009d). It outlines initiatives for improving education provision, which include:

- Increasing provision of literacy and numeracy education; schooling (NCEA); trade and technical training; self-directed tertiary education;
- Maintaining computer training; driver licence training and Te Reo training.

### *Issues*

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 (Department of Corrections, 2009d). Initial screening for literacy and numeracy indicates that up to 90 per cent of prisoners may have low literacy skills (compared with around 43 per cent of the general population) and up to 80 per cent of prisoners may have low numeracy skills (compared with 51 per cent of the general population) (ibid.). Baragwanath (2009) had detailed that many young prisoners in NZ do not have basic literacy skills due to sight or hearing (eg glue ear) difficulties, or because they could not cope with the school system, or have learning difficulties.

Literacy and numeracy education is provided through the Foundations Skills programme. Foundation Skills aims to develop prisoners' reading, writing, speaking, listening, critical thinking, numeracy and problem solving skills. In 2010, just over 1,500 prisoners participated in the programme.

The Department has also begun to deliver embedded literacy and numeracy education through Corrections Inmate Employment (CIE). Over the last two years, 45 CIE Instructors completed the National Certificate in Adult Literacy and Numeracy Education, with a further 15 Instructors due to complete the qualification by December 2011. Since July 2010, 615 prisoners have commenced training that included embedded literacy and numeracy.

The education of prisoners does have a rehabilitative function (Devine, 2007). Over the last decade, a number of studies have shown educational training as having positive outcomes – ex-prisoners who have been involved in educational programmes are more likely to be employed than others, and their recidivism and re-imprisonment rates are lower (Department of Corrections, 2009f). Education also increases self-esteem and leads to better prisoner behaviour. In a study of female prisoners in the Australian state of Victoria, Spark and Harris (2005) evidence the reasons why women participated in

education. These included: it provided something to do; was a way to positively focus the mind; developed positive mental health; bolstered self-esteem; gave confidence; improved relations with prison staff; improved relations with other prisoners; and built opportunities for the prisoner (and their family) on release. Educational classes had important short and long-term effects.

The UN Special Rapporteur on Education (2009:s4) has recently confirmed these outcomes for educational programmes but also argues that education is an 'imperative in its own right'. For the Special Rapporteur, education enables 'positive change and human capacity' (ibid:s10); it is a means for prisoners to fulfil their potential. For these reasons, education should be a central feature of prison life.

Despite the potential of education to secure a number of positive outcomes, international commentators have indicated that there remain many barriers to education in prisons. The UN Special Rapporteur (ibid), as well as Jones and Pike (2010) have noted:

- Negative attitudes – particularly of politicians and policy-makers, such that prisoners are viewed as not deserving of education services;
- Experiential barriers – that prisoners have low self-esteem, or learning difficulties that inhibit their progress;
- Institutional issues – education is undermined by: lockdowns; prisoner transfers; poor libraries; lack of educational material; long waiting lists for courses; lack of IT training; lack of teaching staff or support staff; the withdrawal of education as a punishment measure; prisoners having to self-fund education; discrimination of access dependent on sentence length, classification, and so on; dated vocational courses; and, the lack of awareness about learning difficulties and the means to approach them.

In New Zealand, Baragwanath (2009) argues that few young prisoners receive their educational entitlement, and that this breaches their educational rights. She notes a number of deficiencies, including that:

- Prison teachers do not work under a secondary school hierarchy;
- Prisoners have restricted school times and no formal homework time;
- Prisoners are given no incentive to continue learning post 16th birthday, and consequently those aged 17 or 18 tend to miss out on education;
- In January 2009, just 130 prisoners were enrolled in correspondence school;
- It is almost impossible for those on remand to receive education, even if they have lengthy remand periods;
- If prisoners wish to access courses with the Open Polytechnic, they have to get a student loan to assist with their fees. This impacts negatively on their situation post-release.

Ultimately, she argues for the establishment of schools within the prison system. This system would provide young prisoners with skilled teachers, and courses would meet general educational minimum standards. She proposes that the responsibility for that education should be placed on the Ministry of Education.

Further arguments on the provision of education in New Zealand include:

- That educational courses should provide comparable rates of earnings as work within the prison system (as highlighted by the Ministerial Committee in 1989). Prisoners who would benefit from academic study may forego that opportunity in a bid to make a prison wage. The Department has recently developed a Prisoner Incentive Framework to incentivise education by basing pay structures on the number of credits gained regardless of whether the prisoner is participating in a rehabilitative programme, education or employment.
- That progress should continue to be made to strengthen prison libraries (The Ombudsmen's Office, 2005, 2007).
- That Corrections might also advance the idea of education as a public or social good – that can bring an increased sense of personal esteem and advancement, and not just decreased reoffending (Devine, 2007). Under this ethos, there would be further provision and support for higher learning, including tertiary level learning.

## **5.5 Leisure**

### *Law and policy framework*

Corrections policies (PSOM, Section F) provide that 'Prisoners are to be given the opportunity to positively and constructively use their non-sentence plan time for educational, leisure, sport, recreation, cultural and spiritual activities'.

### *Issues*

Lippke (2007) establishes the diverse benefits to be gained by prisoner leisure and entertainment, such as that it:

- Enables prisoners to maintain or enhance their bodily condition (or to slow their bodily deterioration);
- Is a vital antidote to cell life, by providing for exercise, movement, or fresh air;
- Provides relief from boredom and stress;
- Encourages sensory stimulation and restores energy;
- Allows prisoners to access other people – to have conversations, build friendships, foster co-operation and break the isolation of prison life;
- Reduces prison disorder, conflict or violence;
- Promotes self-development – developing skills and interests, and nurturing creativity.

The approach to leisure and entertainment opportunities in NZ prisons appears to be quite ad hoc in nature. Examples of good practice include:

- The recent programme at Arohata Women's Prison, in which prisoners from various units prepared and held a kapa haka concert in late 2008; or when the Wellington Community Choir recently undertook a concert in the prison.
- The inclusion of Arts Access Aotearoa to implement arts programmes within different prisons, including a fabric art course in Auckland Women's.
- The showcasing of artwork undertaken by those held at Northland prison.

The move to develop a National Prison Arts Strategy is commendable. The roll-out and impact of this strategy should be subject to further attention.

## **5.6 Exercise**

### *Law and policy framework*

All prisoners may take at least one hour of physical exercise per day, in the open air, weather permitting (s70, Corrections Act). The Prison Service Operations Manual (F.13) establishes that, before participating in any physical recreation facilities, prisoners must have received a complete health screening assessment. All prisoners should receive training with regards to minimising injuries.

### *Issues*

Physical exercise can bring the same benefits as Lippke (2007) identified with regards to leisure (see above). In relation to New Zealand, prisoner access to exercise is not always guaranteed. The Ombudsmen's Office (2005:22) detailed that '...there appeared to be a dearth of adequate opportunity for recreation and sport'. Part of the problem is that many prisons lack adequate gym and sporting equipment however, even when good facilities are available, prisoners can not readily access them. Access is contingent upon unlock hours, staff availability and prison routines.

## **5.7 Access to Others**

### *Law and policy framework*

Prisoners are entitled to receive at least one private visitor each week for a minimum duration of 30 minutes (s73). Visiting times are set by individual prisons, and can only be removed if a prisoner is placed in segregation or has been subject to a penalty. Prisoners can make at least one outgoing call, of

up to five minutes per week (s77(3)). In addition, they may send and receive as much mail as they wish, subject to some restrictions (s76).

### *Access to Legal Advisors, Statutory and Specified Others*

#### *Law and policy framework*

The minimum entitlements include:

- Access to statutory visitors and specified visitors – which include Inspectors, Ombudsmen, Visiting Justices, consular representatives, Members of Parliament and members of the Human Rights Commission.
- Access to legal advisors. Legal advisors may visit at any time; if a proposed time is unsuitable, the prison manager must nominate a reasonable, alternative time. All interviews must be out of hearing of others and (with prison manager's agreement) out of sight of others.

The minimum entitlement of one weekly outgoing phone call does not include calls to an official agency or legal advisor. Sections 111-122 of the Act specifies that calls to official agencies, legal advisors and MPs may not be monitored. Similarly, mail that is to/from an official agency, MP or legal advisor may not be opened, read or withheld (s103A-110C).

#### *Issues*

The Ombudsmen's 2005 investigation found no systemic problems with regard to the visiting of prisoners by legal advisors. However, some issues that have been raised in recent years include:

- Difficulties with telephone contact – both in relation to lawyers being able to speak with clients in prison, and prisoners being able to reach their lawyers during the limited times that they have telephone access (Bott, 2007; Paulin et al, 2008).
- Access to legal advice for prisoners with mental illnesses – the UN Committee against Torture (2009:4) has expressed concern at 'the inadequate provision of...legal services to mentally ill inmates in prisons'.
- Access to legal advice in relation to civil matters – the Ombudsmen's Office (2005) have noted that prisoners' legal concerns go beyond the reasons for their incarceration, and stressed the importance of access to voluntary lawyer schemes in ensuring that prisoners are not deprived of the civil rights generally available in the community.
- Slow progress in implementing improvements to lawyers' access to clients – the Auckland District Law Society (2008) has worked with prison management to address issues regarding access to clients, but reported that limited resources (primarily staff shortages) were hindering progress.
- Procedures for verifying lawyers' identity and credentials – doubts over people visiting or telephoning prisoners posing as lawyers have

apparently led to a 'general policy for prisons to require identification demonstrating that a lawyer visiting a client is in fact a lawyer' (New Zealand Law Society, 2009). This followed reported problems whereby prisons were turning lawyers away because they were uncertain of their status (Auckland District Law Society, 2009).

## *Access to Religious Leaders / Cultural Advisors*

### *Law and policy framework*

The Corrections Act (ss79-80) requires that, so far as is reasonable and practicable, appropriate provision is made for the various religious, spiritual and cultural needs of prisoners.

### *Issues*

The Department of Corrections has continued to strengthen its approach to the provision of religious leaders and cultural advisors within the institutions. The Department notes that Christian, Māori and Pacific Island populations are able to access appropriate individuals (Chaplains, Kaiwhakamana and Fautua Pasefika Visitors), services and practices. Further, the Department has developed programmes and units (such as the Faith Based Unit, Māori Focus Units and the Pacific Focus Unit) in which prisoners have extensive access to religious leaders and cultural advisors.

## *Access to Volunteers*

### *Law and policy framework*

The Department of Corrections policy towards volunteers is contained in the Prison Service Operations Manual (V.02.Res.09). This policy includes a handbook for volunteers. There was a review of the Department's volunteer policy in 2007, this resulted in the establishment of volunteer coordinators and a Prison Volunteering Advisory Group (PVAG) in 2008. The Prison Volunteering Advisory Group includes representatives from Corrections, Prison Chaplaincy Service of Aotearoa New Zealand (PCSANZ), Prison Fellowship of New Zealand (PFNZ) and PARS. Issues considered by the group include approval processes, training, access and the development of a volunteer growth strategy.

Corrections has recently signed a Memorandum of Understanding with Prison Fellowship New Zealand (an organisation that accounts for a significant portion of volunteers in the prisons), and organisations such as Prisoners Aid and Rehabilitation Society (PARS) and the Salvation Army currently provide supports.

## *Issues*

Volunteers can provide a whole host of benefits – for instance, aside from supplying Corrections with an increased skill-base, they can mentor and befriend prisoners, and provide an important informal monitoring of prison life.

Previously, there had been some concern about the reduction in the number of outside workers who were able to access prisons and prisoners. Over the last few years, the prison service has begun to encourage more volunteers into the prison system – to teach basic life skills, to engage in cultural and religious activities, to develop arts and crafts, and so on. In 2008, the Department (2008:26) estimated that there were over 3,000 community volunteers working in the prisons. By June 2009, this figure had grown to over 4,700 (Prison Volunteering Advisory Group, 2009). This growing number of people who wish to positively engage with prisoners demonstrates that the culture of penal populism is, by no means, universal. Further consolidation of this approach, to systematise volunteer involvement rather than leaving it to institutional interest, would improve these interactions.

Difficulties with volunteers' access to prisons still appear to be a concern, with the PVAG noting problems with inconsistency and communication issues – for example, groups arriving at prisons only to find that visiting hours were changed, or that there was a lockdown or a staff meeting in progress (Prison Volunteering Advisory Group, 2009). Members of the group have also cautioned against placing too much emphasis on the quantity of volunteers at the expense of quality and effectiveness of the services provided, noting that 'there are often limited facilities which can impede growth in volunteer activities' (Prison Volunteering Advisory Group, 2009). In addition, there are concerns that volunteers can become overly controlled or 'claimed' by Corrections, to the detriment of their practice.

A 2010 report (Department of Corrections, 2010c), that evaluated the Faith-Based Unit and target communities programme, has highlighted a number of points about the use of volunteers. These included:

- 114 Prison Fellowship volunteers had been approved at Rimutaka prison and they worked 20,000 hours during the year (largely in the Faith Unit);
- A 'clash of cultures' existed between the Prison Service and Prison Fellowship;
- Prison staff had different expectations, of the programme and the role of volunteers, from Prison Fellowship;
- Prison staff were sceptical about the value of the programme, and the training and professionalism of volunteers;
- Volunteers 'commanded enormous respect from prisoners' (ibid:14) who felt that they were committed workers who treated them with respect.

With the announcement of cessation of the Corrections contract with PARS national office from March 2010, there has been uncertainty as to how this service would continue (Watt, 2010). In 2009, PARS operated 20 local

offices, with 40 paid staff and around 500 volunteers, providing support and reintegration services to an estimated 25,000 prisoners, ex-prisoners and their families. The announcement of changes in the distribution of funding drew criticism and raised concerns about the potential implications for prisoners' reintegration prospects and for recidivism rates (NZPA, 2010). The Department of Corrections has now established separate contracts with regional offices of PARS – with funding previously allocated to PARS national office now redistributed to regional offices. The Department assures that delivery of services has continued at the same levels and with the same total funding as previously provided.

### *Maintaining Contact with Families / Whānau*

#### *Law and policy framework*

Prisoners' statutory minimum entitlements include at least one 30 minute visit per week, as well as provision for telephone and mail contact. These matters are also covered in the Department's Operations Manual (eg, PSOM C.01-C.05; F.01).

#### *Issues*

Families/whānau face short and long-term difficulties in having a family member detained in prison. Generally, these 'outsiders' are often regarded as serving the 'second sentence' – they have the stresses of not having the right to full family life, of losing an income, of having to deal with extra costs of visits and of feeling (or made to feel) guilty by association (Codd, 2008).

Recent local and international literature has detailed that:

- Visits can be made difficult by problems of distance and inaccessibility – this can be compounded when a prisoner is moved from one prison to the next, sometimes without clear communication to family members (Brooks-Gordon and Bainham, 2004; Kingi, 2009).
- Some groups may experience family isolation more than others. For instance, female prisoners and young prisoners can be disadvantaged by issues of prison location. Certain groups, such as Pacific Island prisoners, can find that family members cease to contact them due to feelings of shame.
- Given the specific visiting hours of prisons, family members can face difficulties in juggling home and work commitments with visits. Family members can also feel threatened by prison procedures or personnel (Codd, 2008; Kingi, 2009).
- Access to family/ whānau can be denied, as a disciplinary or 'protective' act against prisoners. This can, in effect, punish the family as well as the prisoner (Brooks-Gordon and Bainham, 2004). Similarly, family/ whānau can find that their visit times are curtailed as a consequence of prolonged security checks at the entrance.

- There are concerns about telephone availability. Prison telephones are run on a commercial basis, and there are insufficient telephones to cater for the numbers of prisoners (Ombudsmen's Office, 2005). Prisoners also demonstrate concern at the cost of basic provisions, such as pens, paper and phone calls.
- In exceptional circumstances, such as bereavement, prison responses can be unnecessarily ad hoc and contingent on the reactions of individual custodial staff members, who are not trained in grief support (Hendry, 2009).
- Families face a host of social and economic costs by having a member in prison. In general, families who have a member in prison are the most socially and economically vulnerable within society. Imprisonment exacerbates pre-existing situations of poverty, housing problems, social stigma and childcare problems (Christian et al, 2006; Codd, 2008; Kingi, 2009).
- For many children (although not all), the removal of a parent to prison can be a fundamentally negative experience, instigating numerous behavioural and emotional difficulties that begin to shape their lives. Evidence suggest that children may experience physical and mental health problems, can become withdrawn and secretive, angry or defiant, exhibit self-destructive behaviour, eating disorders, lowered self-esteem and declining educational performance (Codd, 2008; Kingi, 1999; National Health Committee, 2008).

PARS estimates that 20,000 children each year have a family member in prison. The 2003 Prison Census indicated that about 26% of male prisoners and 47% of female prisoners had dependent children before being incarcerated (Kingi, 2009). Preliminary Year One results from a three-year study on the children of prisoners in New Zealand (Gordon, 2009) has detailed that children are often living more than an hour's drive away from their imprisoned parent and that more than a third of studied prisoners with children (n=98) had not received visits from their children.

- There are issues about the 'family-focused' nature of prisons. While the organisation PARS does supply toys and books to some prisons, and have child activity teams in a couple of prisons, visiting areas do not often have adequate facilities for children or other family members. As the Ombudsmen's Office (2005:17) noted, many visiting areas 'are anything but comfortable. Seating often consisted of four small plastic stools without backs, bolted to a low table and attached to the floor. We would not regard it as suitable for elderly or frail persons'. Further, at some facilities, visitors had to share a long table, meaning that there was no privacy for conversations. Other concerns related to the dominance of 'non-contact' visits for higher security prisoners; the use of disciplinary measures for prisoners who kissed children; comments

about the attitude of staff to some visitors and the intimidation / humiliation of search procedures.

Against this backdrop, the Department of Corrections has begun to make some progress in advancing contact with families and whānau. This can be seen in the new 'mothers and babies' policy (see section 8.3). However, it is also highlighted in schemes such as the Story Book Dads programme, introduced in Otago Corrections Facility and Northland Corrections Facility, that gives fathers an opportunity to read bedtime stories, that are recorded onto DVD and presented to the child along with a book. This kind of scheme builds family connections and encourages literacy, for both children and adults.

In addition, Corrections have developed family/whānau days that bring family members into the prison for a more extended time period. These days operate at the discretion of individual prisons – which has meant that some institutions are more accommodating than others. For instance, the Ombudsmen's Office (2005) highlighted that in the previous year, Christchurch Men's had operated 27 family/whānau days while Rimutaka had only undertaken two. Anecdotal evidence also suggests that Christchurch Men's no longer run family days. A more consistent application is required to ensure that prisoners receive more equal treatment. Consideration could also be given to how prisoners are treated on family days – for instance, some female prisoners have avoided family days as they do not want their family to see them in the required overalls.

New Zealand might consider the development of more family-friendly activities, as undertaken in the UK and Australian prison systems (Codd, 2008; Halsey and Harris, 2011). This might include:

- Visiting centres - for example, the Visitor's Centre at HMP Leeds allows families/visitors to access the Citizens Advice Bureau, religious leaders, counselling teams, healthy living project and other family support.
- Relationship courses – for instance, British organisations such as 'Relate' have run courses to ease the resettlement of prisoners into their families. This involves one day workshops in which prisoner and partners work through the emotional and practical consequences of living together. Couples can access further Relate courses on release.
- Child-focused visits - at HMP Wayland, all-day childrens' visits are operated on a monthly basis. Men can wear own clothes and can move around the visit halls. There are craft activities and games, and lunch is provided for prisoners and children. At HMP Wormwood Scrubs, the prison operates a 'homework club' on a weekly basis, where prisoners can assist their children.
- The provision of staffed play areas in all prisons.
- Extended visit times, at weekends and school holidays – at the Alexander Maconochie Centre in Canberra, half-day visit times are organised and families have access to barbecue areas as well as open and inviting visit spaces.

- The use of temporary release so that prisoners can attend school parents evenings, social services conferences or sports days.
- Spaces dedicated to family or conjugal visits.
- Allowing prisoners to make free or heavily subsidized telephone calls to their children and partners.
- Increasing time-limits on phone calls, and providing effective privacy during call times.
- Continuing support for prisoner literacy to allow for prisoner communications by post.

There are sound financial reasons to support these kinds of family-related practices. The costs of these activities could be returned if a small number of prisoners did not reoffend again. Family ties<sup>9</sup> can be a key factor in an offender's decision to stop offending. Thus, further attention to such practices would be worthy.

## **5.8 Community Reintegration**

### *Law and policy framework*

The Corrections Act 2004 notes the role of the corrections system in providing rehabilitation and reintegration. Section 5(1)(c) states that a purpose of corrections is 'assisting in the rehabilitation of offenders and their reintegration into the community, where appropriate, and so far as is reasonable and practicable in the circumstances and within the resources available, through the provision of programmes and other interventions'.

The Department of Corrections' sentence management processes (included in the Prison Service Offender Management Manual) deal with the assessment of reintegrative need and provision of programmes.

### *Issues*

International studies show that higher rates of re-imprisonment are associated with problems related to societal issues such as housing, finance matters or family support (Department of Corrections, 2009f). A 2006 report by Smith and Robinson details that, on release, New Zealand prisoners will struggle to find work or a place within society. In general, ex-prisoners will have far less 'access to health care, education, employment, financial services, housing, and social connectedness, than the general public' (ibid:47). Unfortunately, many people will also leave prison with very little in the way of support. While services are provided (see below), these remain limited, and prisoners are faced with social hurdles to sustain a law-abiding post-release life.

The National Health Committee (2008) has also detailed that prisoners are at far higher risk of death immediately after release, emphasising the need to

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<sup>9</sup> At the same time, it is obviously not useful to take a romantic notion of what constitutes the 'family'. Some family members may be unpleasant, abusive or harmful. The key, therefore, is to facilitate links with those members who offer more positive models of behaviour.

provide effective reintegrative policies and practices. Similarly, Australian research (Kinner et al, 2006; Segrave and Carlton, 2011) highlights the increased risk of hospitalisation or death post-release, particularly in the first few weeks, and particularly for indigenous ex-prisoners and female ex-prisoners.

In a small study of 26 women who had been released from Christchurch Women's Prison, Taylor (2008:173) details that the main protectors from further offending were, in order of priority: dependent children, sufficient income, managing addiction, having non-offending friends and partner, having interests and hobbies, employment, having a supportive non-offending family, being able to satisfy material wants and having a satisfying social life. Although small in scope, the study suggests that desistance from offending may be connected to opportunities to have a family life, to have an income and to work, to manage addiction (through methadone treatment or abstinence) and to be socially integrated into positive relationships and communities. These findings were also confirmed by a study of 100 female prisoners in the United States; although Green et al (2005) argued that desistance was also related to prisoners receiving supports to deal with trauma and victimisation experiences (particularly linked to previous sexual and physical violence against them).

Overall, it is clear that, to address offending behaviour, prisoners need to be able to access services that straddle the prison and post-release environments. The benefits of reintegration projects – in terms of stemming reconviction rates – tend to be most pronounced when prisoners have a 'continuity of care' from the prison to the community (for instance, so that employment training in prison is followed by job referrals and placements in the community) (Department of Corrections, 2009f). These kind of projects also need to be dovetailed with parole conditions that are do-able and reasonable, and that do not set those leaving prison 'up for failure' (Halsey, 2010).

Further, the most effective reintegration will take place in accepting and supportive communities. After all, 'desistance from crime is closely linked to the desistance of retributive attitudes which endure in the wider populous well after persons have been released from custody and which impact on the capacity for ex-prisoners to join the world of competent tyre fitters, carpenters or teachers' (ibid:9). Community reintegration is bound up with social perceptions of who can be part of the community as much as it is about material resources.

The Department of Corrections prepares for the reintegration of prisoners in a number of ways, particularly in the use of:

- Self-Care Units – these are available at a range of prisons (Arohata (16), Auckland Women's (32), Christchurch Men's (20), Christchurch Women's (20), Hawke's Bay (40), Northland (48), Otago (20), Rimutaka (20), Wanganui (40) and Spring Hill (80)). The Units allow longer-serving prisoners a chance to get used to living in a more residential-type environment, and to learn general 'living skills'.

- Reintegration Unit – currently available at Rimutaka (60 beds). This Unit can accommodate those in the last twelve months of their sentence. Prisoners are able to access Release to Work and vocational training, and they are helped in accommodation, employment and debt-management matters. A second reintegration unit at Mount Eden was demolished as part of the redevelopment of the site.
- Parenting Skills courses – to improve parenting practices among prisoners.
- PARS – who provide reintegrative services (such as information, advice and practical assistance, emotional support, development of self management skills).
- Supported Accommodation Services – to assist released prisoners in Auckland, Wellington, Christchurch, Hamilton and Hawkes Bay.
- Supported Accommodation Beds – there are currently 54 beds for prisoners leaving prison. These are available for three months on release, before prisoners find their own accommodation.
- Regional Reintegration Teams – Work and Income NZ staff work alongside Corrections staff on these teams, which include caseworkers, social workers and whānau liaison workers.

In May 2009, the Department of Corrections (2009g) undertook a cost effectiveness review. This indicated that current sentence management practices, undertaken by Corrections officers, was not functioning comprehensively. In response, the Department recommended the removal of Corrections officers from this work, which will instead be undertaken by specialist staff. The review recommends that a new model, to indicate which offenders should benefit from specialised services, should also be developed. Commentators, such as Kim Workman (2009), from *Rethinking Crime and Punishment*, have critiqued this review stating that:

- The review was undertaken without consultation and does not adequately provide for community engagement or utilise to full effect the experience and expertise of community agencies;
- The proposal will deskill/deprofessionalise corrections officers, by removing them from rehabilitation and reintegration processes;
- Rehabilitation services are overly focused on the management of prisoner risks rather than providing supports to those in need or focusing on prisoner strengths, desires and resources;
- The management of offenders is characterised by technical issues, rather than building effective and pro-social relationships.

For Workman (2009), the review emphasised a managerialist agenda (as detailed previously) that would undermine rights standards in rehabilitation

and reintegration processes and negatively impact on the nature of Correctional staff-prisoner relations.

In September 2009, a 'Rehabilitation and Reintegration Services' group was established. This group is tasked with streamlining service delivery and is responsible for sentence management and pre-release plans, rehabilitation programmes, psychological services, specialist treatments as well as prisoner employment and education. In the 2010/11 financial round, it is estimated that 11.87% (\$137.6mn) of Corrections spending will be directed to these services (The Treasury, 2010).

Overall, attention must be maintained on positive, and rights-regarding, rehabilitation processes. Enhanced provisions for those leaving prison – for example, by building reintegration officer capacity or by expanding supported accommodation on release – is vital to ensure a stronger through-care programme. This needs to be built across the prison estate and local communities, so that all prisoners have access to similar opportunities. Further, it is important – especially in the midst of growing prisoner numbers – that specific Units are used for their purpose and are not downgraded to meet population demand.

## 6. Health Services

### *Law and policy framework*

Prisoners are entitled to receive medical treatment that is reasonably necessary; the standard of health care must also be reasonably equivalent to that available to the general public (s75). Section 49 of the Corrections Act requires that every prisoner is assessed promptly after reception to identify any immediate physical or mental health, safety, or security needs. Regulations 71-81 contain further details of health care requirements, including dental services.

### **6.1 Health Needs of Prisoners**

It is clear that prisoners have a higher number of health related issues than the general population. As prisoners come predominantly from those who are poor, their health reflects their disadvantage (Keve, 1974; National Health Committee, 2008). At an international level, it is known that people arrive at prisons with histories of abuse (physical, sexual and emotional), poor diets (that have been long-established), poor dental health, mental health problems, previous neglect of health, and untended injuries (National Health Committee, 2008).

Many prisoners will enter the estate with existing and sometimes chronic health problems. In New Zealand, the Prisoner Health Survey (Ministry of Health, 2006) highlighted that:

- Over half of prisoners were overweight or obese;
- More than half reported a previous diagnosis of a chronic condition, such as asthma;
- Two-thirds were smokers;
- Almost half had experienced tooth pain in the previous month;
- One in three had a history of at least one communicable disease (STIs, scabies, hepatitis, tuberculosis);
- Almost two-thirds had previously suffered at least one head-injury.

Literature has also indicated that prisoners have significantly elevated mental health problems compared to community members – in particular, with regards to post-traumatic stress disorder, bipolar mood disorder, schizophrenic disorders, major depressive episodes and obsessive compulsive disorder (Brinded et al, 2001; Department of Corrections, 1999; National Health Committee, 2008).

In 1999, the National Study of Psychiatric Morbidity (Simpson et al, 1999) indicated that:

- Approximately 90% prisoners had substance/ dependency issues;

- Over 80% prisoners had a dual diagnosis of mental health problems and substance abuse issues;
- About 20% prisoners had high levels of suicidal ideation;
- Nearly 60% prisoners had at least one diagnosable personality disorder;
- 25% of all prisoners had suffered a major depressive disorder.

In 2001, Brinded et al (2001:171) estimated that 135 inmates would currently require 'hospital care for acute psychotic illness'. The Department of Corrections (2008) has recently considered that up to 20% prisoners required some level of specialist mental health care. The Ministry of Health estimates that prisoners are three times more likely to require mental health services than the general population, with almost a third of the prison population experiencing mild to moderate mental health problems (The Office of the Auditor-General, 2008). Further, the Ministry of Health (2008) indicates that Māori prisoners have higher levels of mental illness than the general prison population.

It is also known that prison conditions can undermine health conditions for prisoners (Ministerial Committee, 1989). While, for some individuals, imprisonment may offer opportunities to have shelter, regular meals and some access to health care (offering benefits that go beyond their societal experiences), many prisoners can experience a deterioration in their health conditions. As the National Health Committee (2008) details, the prison environment can increase stress, anxiety, aggression, hyper-vigilance and trigger memories of past abuse – all of which can exacerbate existing conditions or cause mental health problems to develop.

Mental health problems – that are dovetailed with issues of intellectual disability, prisoner status, dual diagnosis, and so on – can mean that prisoners are made more vulnerable to further victimisation within the prison environment (The Ombudsmen's Office, 2007). These problems can also continue on, post-release, making opportunities for rehabilitation (such as in terms of gaining employment) even more difficult.

### *Public attitudes and perceptions*

Recent media reports have noted some alarm at the rising costs of prisoner health care. The Dominion Post, for instance, has noted that medical costs have risen from \$8mn in 2002 to \$22mn in 2008 (Broun, 2009). The explanations for this increase include: rising prison numbers, rising treatment costs, higher pharmaceutical prices, high rates for GPs and medical specialists, and improved care standards set by Ministry of Health. In the wake of this information, a Sensible Sentencing Trust spokesman argued that prisoners deliberately access prison for free medical treatment and that they should not receive the same health entitlements as the general population, especially when it is regarded that health problems are the result of self-neglect or are self-induced (Broun, 2009).

In reply to such long-lived arguments, the Ministerial Committee (1989: s16.7) noted that many sections of the community have 'lifestyles that include minimal exercise, recreational drug use, poor eating habits, excessive alcohol consumption, smoking, stressful environments and poor relationships'. The same element of responsibility is not required of non-prisoner populations who seek health services as a consequence of their lifestyles. Further, the denial of health services can negatively impact on the experiences and the futures of prisoners and, in the end, our communities.

## **6.2 General Health Provisions**

### *Law and policy framework*

The Department of Corrections provides primary health care to prisoners. This includes primary nursing, medical, mental health, addiction, dental health and some disability support services (Department of Corrections, 2008b). The local District Health Board provides secondary and tertiary health services. Thus, prisoners that require specialist treatment or attention are referred to external providers.

Over the last two years, Corrections has worked to redefine its relationship with the Ministry of Health – a Memorandum of Understanding has been signed between the two departments. New protocols have been devised around the management of 'prisoners on the opioid substitution programme', prisoners who are 'actively mentally unwell' and pregnant prisoners (ibid:23).

### *Issues*

In response to an own-motion investigation by the Ombudsmen's Office in 2007, Corrections advised that 'The Prison Health Service has continued to develop and implement policies and procedures that meet professional standards for clinical practice in such topics as methadone, informed consent, medication administration, infection control, health promotion and health information management' (The Ombudsmen's Office, 2007:93).

Further, the Prisoner Health Survey (Ministry of Health, 2006) highlighted that prisoners had received a number of health-benefits, with two-thirds having consumed two servings of fruit and three servings of vegetables per day; while nine in ten prisoners had seen a prison nurse and two-thirds of prisoners had seen a doctor in the last year.

However, issues have remained. In 2009, the Ombudsmen's Office received 266 complaints about health services – around 6% of total complaints received from prisoners.

Between January 2002 and June 2009, the Human Rights Commission received 103 communications relating to physical or sensory health care issues. The majority were dealt with through the provision of advice, information or referral to an appropriate agency. The receipt and recording by

the Commission of these complaints therefore does not imply a finding in relation to the substance of the complaint, but does provide an indication of the type of issues of concern to prisoners and those acting on their behalf. Further, there was a rise in the number of health care complaints and enquiries received by the Commission during 2009.

At a national level, concerns have principally revolved around:

- Access to adequate medical treatment – the Human Rights Commission, Ombudsmen and the Health and Disability Commissioner continue to receive complaints and enquiries regarding health care issues. In response, the Ombudsmen’s Office is undertaking an own motion investigation in relation to the provision, access and availability of general prisoner health services.
- Dental Care – Prisoners (who are detained for more than one year) are entitled to the same level of dental care that they accessed in the community. This means that previous disadvantage is continued into the prisons. For many prisoners, this means that dental pain is generally relieved by extractions rather than other remedies (National Health Committee, 2010). The Ombudsmen’s Office (2005:58) noted that dental treatment was subject to delays and was ‘inadequate’.
- Health Care perceived as punishment or control - The National Health Committee (2010) raised particular concerns about the use of At-Risk units. These units are designed for short-stays (eg up to 7 days) however the Committee heard of prisoners being held for months including, in one case, a woman being held for 18 months. The Committee (2010) was particularly concerned about the isolation and very poor conditions that prisoners faced while in the units. Further, the Committee (ibid:35) detailed that, in some circumstances, the Units could be inappropriately used – for behaviour management, detoxification, ‘time-out’ or punishment. Overall, the units were thought to worsen mental health (a point also made, in the Northern Ireland context, by Scraton and Moore, 2005).
- Prisoner Health Information Management – Following the 2007 natural-cause death of James Kahu at Wanganui Prison, Coroner Carla Nā Nagara recommended that health staff should ensure that they review the entire medical file of the prisoners when considering their treatment plan. Further, she recommended that Corrections take annual prisoner health checks, for those serving more than one year, to ensure their health needs are appropriately identified and met. Finally, on prisoner transfers, processes should be in place so that a prisoner is still able to attend medical appointments and testing (Coroner’s Court, 2008).
- Staff training – Given that medical staff are not available at all times, Corrections staff are regularly placed in situations in which they have to deal with prisoners who have serious illnesses or who want to self-harm (Ombudsmen’s Office, 2005, 2007). Anecdotal evidence

suggests that Corrections staff are often not well equipped for these situations. Further training of staff, as well as guidelines about prison officer involvement in health decisions, are necessary (National Health Committee, 2010).

- Responsibility for health services – There remains a debate on whether the Ministry of Health should take responsibility for all health care across the prison estate (The Ombudsmen’s Office, 2007; National Health Committee, 2008, 2010). This move would reflect best practice elsewhere – such as in England and Wales, France, Norway, and four Australian territories (National Health Committee, 2010).

Other concerns have been reiterated within wider literature. Research indicates that prisoners: often feel that they do not receive empathetic medical treatment (and are viewed as complainers); regularly face long delays in obtaining medical attention; and, often endure disruptions in their prescribed medication or access to medical staff (Coyle and Stern, 2004; National Health Committee, 2010; Prison Reform Trust, 2008; van Wormer and Kaplan, 2006).

Having identified the lack of New Zealand focused information on the effects of prison on the health of prisoners and their families, the National Health Committee has undertaken research on these matters. In September 2007, the National Health Committee held a prisoner health workshop that was attended by health professionals, Corrections and Health Department workers, prison employees, ex-prisoners and their advocates. The workshop detailed that a health-promoting prison system would need:

- A shift in attitude among prison staff and the public – to take a non-judgmental delivery to health care;
- To place delivery of good health care as a top priority;
- To provide consistent access to health care and resources across penal institutions;
- To develop health policy and structures that attend to different needs of diverse prisoner groups – including the use of culturally appropriate assessments;
- To incorporate prisoners’ views in developing health care policies and strategies;
- To ensure literacy is not a prerequisite for receiving medical attention;
- The development of peer-teaching among prisoners;
- To improve dental and eye care;
- To promote mental health in prison;
- To provide prisoners with psychological support when required, not just at the end of sentence;
- To develop appropriate health staff selection and training;
- To ensure clear communication to prisoners about what medical care is available within the prison and also in the community –and, relatedly, to link them to health services in community, including screening programmes, on release.

In 2010, the National Health Committee (2010) further recommended that the prison health sector should adhere to the following principles:

- To attend to a principle of equivalence of care so that prisoners receive the same standard of care as everyone else – to ensure that service delivery can meet the needs of the prison population; to develop cross-agency collaborations and multi-disciplinary primary health care teams; to engage in the systematic identification, assessment and treatment of health conditions;
- To ensure that prison health services are aligned with current laws and standards – that prison officers and health professional are supported, trained and monitored to ensure these services are positively practiced; that health and disability issues are reported upon; that the quality assurance framework is strengthened;
- To pursue engagement with whānau, hapū, and iwi – to co-ordinate and integrate services to support wider communities (under the Whānau Ora approach); to ensure that there is continuity of care such that people leaving prison (and their families and whānau) can access appropriate care and treatment services;
- To place a priority on prevention and care – to ensure that a prisoners' health matters are prioritized over other practices such as prison transfers, or control and punishment practices;
- To improve the physical, social and institutional environments of prisons – to ensure that health effects are continually prioritized;
- To involve prisoners in decisions and design of health and disability services.

### **6.3 Mental Health Provisions**

#### *Law and policy framework*

The Prison Service Offender Management Manual (Part 1.Ch1.1) establishes a 'functional support' category of prisoner. This category covers prisoners with 'severe behavioural problems or disability', including those with psychiatric illness, intellectual disability, personality disorder and complex medical conditions. The manual focuses on how these prisoners can be managed, to increase the frequency of desirable behaviour and conversely to decrease undesirable behaviour.

Corrections indicate that prisoners with complex health needs are managed in partnership with Regional Forensic Psychiatric Services. Such prisoners may also be placed in 'at risk' units on a short-term basis.

Applications for the compulsory assessment or treatment of prisoners, or their hospital detention, must meet the requirements of the Mental Health (Compulsory Assessment and Treatment) Act 1992. The Mental Health Act 1992 notes that it is an offence for a person concerned with the care, oversight and control of mentally disordered people to neglect or ill-treat them.

Responsibility for mental health provisions are split between the Department of Corrections (for primary care) and District Health Boards (for specialist care through Regional Forensic Services). The Ministry of Health guides strategic direction.

### *Issues*

Recently, good-practice initiatives have included the opening of a 13-bed 'At Risk Unit' at Hawkes Bay Prison in 2008. This Unit is staffed by on-site registered nurses with mental health training as well as a forensic nurse from Hastings DHB. Prisoners can also access a psychiatrist on a weekly basis. This Unit, like others, is a useful tool for short-term stays.

In addition, it is clear that certain practices – such as the use of Forensic Mental Health Services (FMHS) to work with those with serious mental illness – provide very good service delivery. As Simpson et al (2006) have identified, these services are costly but offer very good outcomes in terms of lowering offending rates. Their study, of 105 patients (many of whom had psychotic disorders and a history of violent offending), demonstrated that at the end of the study, half were in independent living and half were in employment. Only five were reimprisoned. This illustrates that committed mental health services can produce high level outcomes. This is something that is not evidenced in other forms of care.

Despite these advances, there remain a range of concerns about provision for those with mental illness within the prisons:

- Capacity – Over recent years, forensic services have been operating at full capacity (and beyond). Still, many prisoners do not receive the treatment they need in a timely manner and prisoners who require urgent treatment for mental illness often have to remain in prison and wait for an available bed. This puts pressure on prison services, that are already stretched through prisoner numbers, to look after disturbed individuals (Brinded et al, 2001; Fennell, 2006; Office of the Auditor-General, 2008; Simpson et al, 2006). The Office of the Auditor-General (2008) detailed the situation of 59 prisoners on the Auckland prison waiting list (between July 2006-June 2007). Of the 59 prisoners, 34 waited ten days or less, 10 for 41-80 days, 15 waited longer than 80 days, and 10 prisoners waited more than 100 days for treatment.
- Limited funding for Primary or Preventive Care – There are few services for prisoners with mild to moderate mental health illness. More basic treatment options, such as counselling or therapeutic treatment, are not available (Office of the Auditor-General, 2008). The

lack of effective primary services loses an opportunity for a 'fence at the top of the cliff rather than an ambulance at the bottom' for prisoners who struggle with mental health concerns and who may well deteriorate within the prison environment.

- Dual Diagnosis Provisions – Evidence suggests that a large proportion (over 80%) of prisoners have both mental health and substance abuse issues (Department of Corrections, 1999). This dual diagnosis requires specialised, and integrated, services in which drug teams can work closely with mental health services. A range of best practice standards have been advanced on these issues elsewhere (see Livingston, 2009).
- Treatment and Diagnosis Issues – The psychiatric profession have been reluctant to treat 'those whom they do not believe are likely to respond to treatment' (Fennell, 2006:247). Those who are cast as 'untreatable' – principally those with personality disorders – are not 'well served' (Office of the Auditor-General, 2008:3.31). Those with severe personality disorders can pose considerable risk to themselves and others, however there is no policy on this group (ibid). The Department of Corrections and Ministry of Health are working to address this gap (Human Rights Commission, 2009).
- Specific Group Issues – It has also been observed that particular groups – notably Māori, women, young people or those with learning difficulties – may not have their needs met by current practices (Office of the Auditor-General, 2008). For instance, there is no specialist inpatient youth forensic facility in New Zealand. More monitoring, evaluation and expansion of services is required.
- Staffing – Concerns have also been raised about staff provisions and training. The Office of the Auditor-General (2008) detailed that some Corrections staff can provide very good support services to those with mental illness. Staff attend relevant education days, and can gather knowledge from other professionals in their interactions. Nonetheless, they do remain Corrections staff rather than mental-health specialists. Literature (Human Rights Commission, 2009; Office of the Auditor-General, 2008) has continually called for further staff training on mental health issues as well as increased levels of trained specialists.
- Tensions between Institutional and Individual Concerns – the Office of the Auditor-General (2008) highlighted concerns of the dominance of Correctional interests over prisoner health interests. For example, there are cases in which prisoners are transferred (to deal with overcrowding issues) and consequently miss their treatment. Similarly, prisoners may struggle to receive 'medication outside the usual prison routines or there can be delays in getting prisoners to clinics because there are not enough officers available for escort duties' (ibid:1.6). There are also concerns that prisoners' families are not always told

when a prisoner's mental health deteriorates. Further planning and consultation, to focus on prisoners' needs for rehabilitation, is required.

- **Fragmented Data** – It has been noted that data on prisoners with mental health needs could be recorded by Corrections in a more systematic way. Information systems could also be improved in terms of prisoner transfer – as prisoners can lose information between prisons (Office of the Auditor-General, 2008). A mental health screening tool has been developed and trialled, and its implementation will begin during 2011/12. This, together with further periodic screening of those held for more than one year, could improve quality data issues (Human Rights Commission, 2009).

Overall, those with mental health concerns do not have their needs adequately addressed by the prison service. In addition, prisoners with mental illness 'are more likely to violate prison rules leading to disciplinary hearings, inappropriate sanctions and segregation' (Birgden and Perlin, 2008). This can mean that these prisoners are more likely to be regarded as a 'control problem' rather than a population 'in need'. Many staff will however spend their working lives engaged in supporting and providing crisis management for prisoners with mental illness. Nonetheless, despite their best efforts, prisons are not essentially therapeutic places.

Prisons are, of course, a cheaper option than providing specialist care; however, they regularly do not offer the right kind of care that is required for many sick and ill people (Owers, 2006b). Many of those with mental health problems would have their needs (health, psychological and re-offending) addressed in a more effective way through a medical or social environment (Roberts and Cobb, 2008).

## **7. Treatment**

### **7.1 Torture and Ill-Treatment**

#### *Law and policy framework*

The Corrections Act states that the purposes of the corrections system include that sentences are administered in a 'safe, secure, humane and effective manner' (s5(1)(a)) and refers to the UN Standard Minimum Rules as part of the basis of correctional facilities (s5(1)(b)).

The Act also states that the corrections system must ensure the fair treatment of prisoners (s6(1)(g)) and that 'sentences and orders must not be administered more restrictively than is reasonably necessary to ensure the maintenance of the law and the safety of the public, corrections staff, and persons under control or supervision' (ibid). The role of prison managers and officers includes 'ensuring the safe custody and welfare of prisoners received in the prison' (s12(b), 14(1)(a)).

The New Zealand Bill of Rights Act (s9) establishes that 'Everyone has the right not to be subject to torture, or to cruel, degrading, or disproportionately severe treatment or punishment'. This asserts New Zealand's international obligations with regards to the UN Convention against Torture. The NZBORA also states (s23(5)) that 'Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the person'.

#### *Issues*

Following on from the violations through the Behaviour Management Regime and the Canterbury Emergency Response Unit, the Corrections Department and staff have been noted to 'have moved on' from such institutional ill-treatment of prisoners and inappropriate staff conduct (Ombudsmen's Office, 2005:4).

Currently, prosecutions of alleged acts of torture can be undermined by the 'public interest' discretion of the Attorney-General and police. The UN Committee Against Torture (2009) has recommended that where there is reasonable ground to believe that torture has been committed, investigations should commence immediately.

### **7.2 Use of Force, Weapons or Restraints**

#### *Law and policy framework*

The Corrections Act (ss83-88) regulates the use of force, weapons and restraints. The use of force by prison officers is prohibited except where there are reasonable grounds to believe that it is necessary for: self defence, protection from injury, in an escape, prevention of damage to property, or where there is active or passive resistance to a lawful order (s83(1)).

Restraints must be compatible with humane treatment; the benefits of use must outweigh the risks; and they must not be used for disciplinary purposes (s87).

Prison officers must not deliberately provoke prisoners (s84(1)) so that force can be used. If force is used, it must be no more than reasonably necessary in the circumstances (s83(2)). Further, aside from the use of handcuffs/waist restraints during transit, a prisoner who has experienced force must be examined by a health professional as soon as practicable afterwards (s83(3)). The use of force, weapons or restraints must also be recorded and reported (s88).

Firearms must not be used while prisoners are present, and must not be stored in a prison (s86). Any non-lethal weapons that are used – to incapacitate or temporarily disable – must be compatible with the humane treatment of prisoners (s85).

### *Issues*

In June 2009, Corrections Minister Judith Collins announced that Corrections officers were to receive body armour, batons and pepper-spray; tasers were also considered but were rejected. In February 2010, the Minister also launched a package of stab-resistant vests and 'spit hoods' that shield staff from communicable diseases (Collins, 2010).

Both the Human Rights Commission (2009) and the UN Committee Against Torture (2009) have remarked upon the use of restraints. In particular, they state concerns about the implementation of waist restraints during prisoner transport. Waist restraints were introduced following the death of Liam Ashley, in order to protect prisoners from prisoner-on-prisoner violence inside multi-occupant compartments. The Ombudsmen's Office (2007b) had previously recommended the use of separate compartments within prison vans<sup>10</sup>; the use of waist restraints, while a considerably cheaper option, may well cause pain and humiliation.

Information provided to the Human Rights Commission by the Department of Corrections (Department of Corrections, 2009e) states that, over the four year period 2005-2009, there were a total of 67 employment investigations as a result of allegations of assault or the use of excessive force - 11 in 2005/6, 27 in 2006/7, 17 in 2007/8 and 12 in 2008/9. These investigations resulted in 10 dismissals, 17 final warnings, two staff being placed on performance management, six written warnings, three verbal warnings, four resignations, eight cases where no action was taken and 15 cases where there was no evidence to support the complaint. Two other cases are still under investigation. Further monitoring and research on the roll-out and effect of new technologies, weapons and restraints within the penal environment would be worthwhile.

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<sup>10</sup> The Department is replacing its prisoner transport fleet with new vehicles fitted with single occupant compartments for prisoners as a more certain way of avoiding prisoner on prisoner violence.

## **7.3 Searches**

### *Law and policy framework*

Sections 89-103 of the Corrections Act deal with searches. Rub-down searches, scanner searches and cell searches can be carried out, at any time, for the purposes of detecting unauthorised items. Strip searches may be conducted where a prison officer has reasonable grounds for believing the prisoner has unauthorised item(s) and has obtained manager's approval for the search (although manager approval is not required if the health or safety of any person, or prison security, are endangered).

The Corrections Act (s98) states that every prisoner must be strip-searched on being admitted to a prison, and before transfer to another prison. Strip searches are allowed: immediately before a prisoner is locked down on a penalty of cell confinement; on return to prison; on return from work or an unsupervised part of the prison; immediately before leaving the prison; any time while being transferred to another prison; any time outside of the prison; immediately before being brought before a Visiting Justice, hearing, court or Parole Board; immediately before an alcohol or drug test; and, immediately before or after a visit.

Strip searches include the authority to conduct a visual examination of the mouth, nose, and ears (with the use of illuminating and magnifying devices), and to conduct a visual examination of the anal and genital areas (without the use of illuminating and magnifying devices), but does not authorise the insertion of any instrument into any of those areas (s90(4)(b)). The person being searched may be required to do things such as: open their mouth; lift or raise any part of their body; or spread their legs and bend their knees (s90(2)).

However, where an officer has reasonable grounds to believe that a prisoner has an unauthorised item in their possession, they may also require the person to squat with their buttocks adjacent to their heels and visually inspect their anal and genital areas, with the use of illuminating and magnifying devices (s90(4)). An x-ray search may be conducted where an officer has reasonable grounds to believe an unauthorised item is concealed on the prisoner (s98(9)).

During a rub-down search or strip search, the searcher must be of the same sex as the person being searched, and the search should be out of view of anyone not of the same sex. The searcher must be accompanied by another officer or member of the police. Strip searches must be out of the view of any other prisoners. Searches must also be carried out with decency and sensitivity and in a manner that affords the greatest degree of privacy and dignity (s94(2)).

Any person who enters a prison, or visits a prisoner, may be required to undergo a scanner search for the purpose of detecting unauthorised items (s99). If that person refuses to submit to the search, reasonable force may be

used. A rub-down of the person may be conducted, with their consent, if an officer has reasonable grounds to believe they possess an unauthorised item. Those who refuse these searches, must be refused admission or access to a prisoner.

In relation to staff, a staff member's locker may be searched for the purposes of detecting unauthorised items. Searches must have the prior approval of the prison manager, and must be undertaken by two staff (s100). The staff member must also be advised of the proposed search, and has the right to be present during the search.

If an officer has grounds to believe that a visitor or staff member is in possession of a controlled drug, they may detain that person, use reasonable physical force and promptly call the police. A person must not be detained for more than four hours (s103). Finally, any vehicle brought into a prison can be stopped and searched for unauthorised items or attempted escapees. Reasonable force can be used for the purposes of executing this search (s101).

### *Issues*

In 2009, the Ombudsmen upheld a complaint concerning a situation where prisoners were required to squat during strip searches in circumstances where that requirement was not permitted by legislation (Ombudsmen's Office, 2009:14). Further information on strip searches, with regards to women, can be found in section 8.3. There is clearly a need for further research across this whole area.

## **7.4 Segregation**

### *Law and policy framework*

The Corrections Act provides for the segregation of prisoners for the purposes of: medical oversight (s60), protective custody (s59(1)), and security, good order or safety (s58).

Segregation linked to medical oversight can be undertaken to assess or ensure a prisoner's mental or physical health (including the risk of self-harm). If this segregation is undertaken, the prisoner and chief executive must be informed, and given the reasons for segregation, in writing. Decisions to end segregation must be made by a medical officer. During segregation, the prisoner must be visited by a health professional at least once a day (twice a day if the prisoner is viewed as at risk of self-harm).

Protective custody segregation can be undertaken on a voluntary or a directed (non-voluntary) basis. Protective segregation may be instigated where: the prisoner requests it and the manager considers it is in the best interests of the prisoner; or the manager is satisfied that the safety of the prisoner has been put at risk by another person and there is no reasonable way to ensure the

safety of the prisoner without giving the direction. There will only be a small number of prisoners placed on non-voluntary segregation.

The segregation of prisoners for the purpose of good order and discipline can be undertaken if a prison manager is of the opinion that a prisoner endangers prison security, good order or the safety of another person. The prisoner, and Chief Executive, must be informed of this decision and the reasons for it. Prisoners can be segregated, on this basis, for extensive periods. While the initial order – for up to 14 days segregation – is made by the prison Manager, the Chief Executive can make monthly extensions for up to three months. Decisions to segregate for more than three months may be approved by a Visiting Justice, who must thereafter review the segregation direction every three months. It appears that the longer a prisoner is held under this segregation order, the less able they are to receive a review of their situation.

Corrections Regulations specify that the treatment of segregated prisoners should be under the same conditions as other prisoners (as far as practicable and consistent with the purposes of the segregation) (r62). Segregated prisoners should also retain their access to activities and property (r62(2)). Their minimum entitlements may, however, be affected (r62(3)).

Prisoners can also be subject to cell confinement, as a penalty for disciplinary offences (ss 128-131). Cell confinement of up to seven days may be imposed by a hearing adjudicator, while a Visiting Justice has the power to impose a penalty of cell confinement of up to 15 days.

While in cell confinement, prisoners may be denied some of the usual minimum entitlements: the right to private visitors, to make telephone calls, to use other forms of communication, and to access information or education (s69(4)). Regulations (r154-157) detail that a medical officer must be notified reasonably promptly after a prisoner has been placed on cell confinement; and that the prisoner must be visited daily by the prison manager or authorised staff officer. If a young prisoner is subject to segregation or cell confinement, they may nominate a person (parent, family member or other adult) who must be informed as soon as practicable of the segregation/cell confinement and the reasons for it (r183).

Cells used for cell confinement (set out in schedule 6 of Regulations) must include: natural lighting, appropriate heating, fresh or conditioned air, artificial lighting controlled only from outside the cell, ligature-free furniture and fittings, fire detector and a window that allows a complete view in from outside.

### *Issues*

At an international level, segregation has often involved prolonged solitary confinement. This has been subject to concerns from a range of international bodies (see Scharff Smith, 2009):

- The UN Basic Principles for the Treatment of Prisoners states that ‘the abolition of solitary confinement as punishment, or to the restriction of its use, should be undertaken and encouraged’ (principle 7).
- The UN Committee against Torture (CAT) has criticised isolation practices and recommended that ‘the use of solitary confinement be abolished...or at least that it should be strictly and specifically regulated by law (maximum duration, etc) and that judicial supervision should be introduced’ (Visit Report, Denmark, 1 May 1997, para 186).
- The UN Committee on the Rights of the Child has recommended that solitary confinement should not be used against children (CRC/C/15/Add273, Denmark, 30 September 2005, para 58a).
- The UN Human Rights Committee has indicated that prolonged solitary confinement can be a breach of Article 7 (that prohibits torture, cruel, inhuman or degrading treatment) and Article 10 (the right to be treated with humanity and dignity) of the ICCPR (Human Rights Committee, General Comment, 20/44, 3 April 1992).
- The European Committee for the Prevention of Torture (CPT) has stated, over time, that solitary confinement can amount to inhuman and degrading treatment. The CPT has stressed the importance of securing a high level of social contact for isolated inmates.
- The UN Special Rapporteur on Torture 2008 (General Assembly Report – A/63/175:80) has argued that ‘the use of solitary confinement should be kept to a minimum, used in very exceptional cases, for as short a time as possible, and only as a last resort. Regardless of the specific circumstances of its use, effort is required to raise the level of social contacts for prisoners: prisoner-prison staff contact, allowing access to social activities with other prisoners, allowing more visits and providing access to mental health services’.

More generally, segregation is subject to requirements of necessity. The UN’s Standard Minimum Rules for the Treatment of Prisoners provide that discipline shall be applied ‘with no more restriction than is necessary for safe custody and well-ordered community life’ (SMR27). Robinson (2002:216) outlines that the ethos of proportionality is also central to segregation practices. Aside from being segregated, the prisoner should not experience any reduction in regime provisions, in terms of diet, visits, and so on.

From international literature, there are concerns – from prisoners and their advocates – about actual practices of segregation (Carlton, 2009; OICSWA, 2002; Robinson, 2002; Scraton and Moore, 2005). Issues relate to: the denial of established privileges; inconsistent and punitive treatment by prison officers; the rise of anxiety, depression, self harm and suicide ideation among segregated prisoners; and, lower levels of scrutiny and monitoring of segregation practices. A principal concern relates to the idea that segregation units can become a ‘prison within a prison’.

In New Zealand, the *Taunoa* judgment established that the prisoners concerned did not receive adequate information about why they were in segregation, and the conditions of isolation amounted to punishment. The loss of entitlements for those segregated prisoners was deemed to be unjustified.

Following a review, Prison Inspectors recorded (Department of Corrections, 2009c:139) that the current segregation system is 'managed in a conscientious manner'. While 'some minor recording matters' were apparent, segregation was generally 'well documented' and the needs for segregation were 'appropriate'. The Inspectors did note that 'At smaller prison sites, limited segregation facilities may at times result in reduced opportunities for directed segregation prisoners in terms of unlock hours and access to some mainstream facilities'. Again, further research on these practices would be appropriate.

## **7.5 Personal Safety and Security**

### *Law and policy framework*

The Corrections Act states that the purposes of the corrections system include that sentences are administered in a 'safe, secure, humane and effective manner' (s5(1)(a)) and that prison managers and officers are responsible for "ensuring the safe custody and welfare of prisoners received in the prison" (s12(b), 14(1)(a)).

### *Physical Attacks*

In 2009/10, there were 32 serious prisoner on prisoner assaults (a rate of 0.39 per 100 prisoners) and two serious prisoner assaults on staff (a rate of 0.02 per 100 prisoners). These figures represent a decrease from the previous year (2008/09), and they reflect several years of stable and decreasing assault rates (Department of Corrections, 2010b). New Zealand compares 'favourably' with rates of prison assaults within other jurisdictions.

Over the last few years there have been a number of high-profile prisoner deaths. For instance, in 2006, Sonny Keremete was killed at Hawkes Bay, and Liam Ashley was beaten and strangled in a Chubb van travelling to Mt Eden prison. In 2009, the death of Tue Faavae in Auckland's maximum security prison highlighted the ongoing difficulties of managing violence within the prison environment.

In May 2010, a prison officer, Jason Palmer, was killed at Spring Hill Corrections Facility. This was the first fatal attack against a member of prison staff in New Zealand. Concerns about prisoner attacks against staff have continued to rise among prison staff unions – these have, as shown above, led to the introduction of new personal protective equipment and weapons.

As noted previously (Section 7.2), there have also been a number of incidents of assault or excessive use of force by staff towards prisoners.

As might be expected, the use and threat of violence has a detrimental effect upon prisoners and staff. For instance, investigations by the National Health Committee (see Roguski and Chauvel, 2009) have highlighted that prisoners faced heightened anxiety from aspects of prison life 'such as gang culture, standover tactics (blackmail for 'rent'), and the threat of violence' (National Health Committee, 2010:32). It was also apparent that those 'with mental health conditions were most vulnerable' (ibid).

Edgar (2006) details that a number of factors contribute to violence with prison environments: poor conflict management skills; theft and other forms of exploitation; racial and cultural tensions or misunderstandings; emotions of frustration, anger or shame; and, low self esteem exacerbated by a climate of high criticism. He further highlighted that institutional dimensions can exacerbate violence. These include: feelings of danger and threat in the prison; material deprivations; powerlessness and the deprivation of autonomy; distance between prisoners and staff; and, lack of legitimate conflict resolving opportunities – so that violence is seen as the way to resolve conflict.

From this analysis, Edgar (2006) suggests a conflict-centred approach to prevent prison violence occurring. This requires that:

- Prisoners' basic human needs (to have exercise, work, leisure, education, access to health services, and so on) are fulfilled;
- There is a focus on ensuring prisoner safety (for example, by ensuring that prisoners in conflict are not placed alongside each other);
- There are opportunities for the exercise of personal autonomy (so that both staff and prisoners are given some training in mediation/ conflict-resolution skills);
- Mechanisms are available for prisoners to resolve their conflicts and participate in decision-making (for example, through the use of prisoner representatives, to increase prisoner-officer contact and provide clear channels to deal with grievances. This might include 'prisoner councils' to bring conflicts to light in particular units).

Overall, he argues that prisons should work to create a culture that favours negotiation and fulfilment of basic human needs over coercive controls.

In October 2009, the Department of Corrections began the roll out of a three day Tactical Communications training programme to over 4,500 staff. Staff are provided with a tool kit to assist them in the de-escalation of aggressive behaviours rather than immediately resorting to control and restraint measures that may lead to excessive force. The programme emphasises that, as most prisoners get angry for reasons that usually relate to fairly basic needs, their behaviour can be de-escalated quite effectively without the use of

control and restraint. Publicly available research on safety within prisons, and the nature and impact of conflict-resolution practices, would be useful.

## *Self-Harm and Suicide*

### *Law and policy framework*

The Department of Corrections has a national policy (PPM B.14 Prisoners at risk to themselves) that set out processes for identifying, observing and managing at risk prisoners. This is referred to in the Prison Service Offender Management Manual (Part Two).

The Corrections Act 2004 enables prison managers to segregate a prisoner 'in order to assess or ensure the prisoner's mental health (including, without limitation, the risk of self-harm)' (s60(1)(b)). While in segregation, prisoners assessed to be at risk of self-harm must be visited by a registered health professional at least twice per day (s60(5)(b)).

### *Issues*

Within academic literature, there has been ongoing work on the concerns of suicides in custody. The following arguments are prominent:

First, that overcrowding and poor prison conditions dramatically raise the risk of prisoner suicide (Huey and McNulty, 2005; Liebling, 2006; Owers, 2006b; Sharkey, 2010). Huey and McNulty's (2005) study of 1,118 facilities in the United States detailed that overcrowding always undermined prisoner well-being. In the UK, Owers (2006b) notes that, in local prisons that faced overcrowding, suicides correlated with prisoner distress and prisoner sense of safety rather than prison officer vigilance in carrying out protective procedures.

Second, that the prison population is also selected to be 'at risk' (Borrill et al, 2005; Brown and Day, 2008; Haney, 2009; Liebling, 2006; Roe-Sepowitz, 2007; Simpson et al, 1999). Suicide attempters in prison are more likely to report:

- Family breakdown;
- Fewer school qualifications – often linked to truancy as a result of bullying (as opposed to boredom or peer pressure);
- Frequent experience of violence, especially sexual abuse experiences;
- Local authority placement as a result of family problems (as opposed to offending);
- Major alcohol and drug problems;
- Very short periods spent in the community between custody.

Third, that prisons can isolate prisoners and thereby increase self-harm and suicide attempts (Borrill et al, 2005; Liebling, 2006; Palmer and Connelly, 2005; Sandler and Coles, 2008; Sharkey, 2010). Those attempting suicide are also likely to report:

- An inability to cope with the initial stresses of prison life;
- Having experienced bullying by other prisoners and staff members;
- Being less likely to be engaged in activities, employment or the gym in prison;
- Being lonely – for example, through lack of visitors; or extended lockdown periods;
- Having little support with drug or alcohol withdrawal and detoxification regimes;
- Having suffered a bereavement and being unable to grieve properly within a prison environment;
- Being less likely to receive support from staff – as a consequence of poor staffing levels, staff reticence, or inadequate systems to identify risk of self-harm.

Fourth, that staff members can make very positive contributions to those at risk of self-harm and suicide (Sharkey, 2010). Effective staff: will not isolate the prisoner; they will listen to the prisoner; they will demonstrate empathy; they will encourage the prisoner to talk and seek help; and, they will not view self-harm as attention-seeking or bad behaviour (Borrill et al, 2005). Borrill et al's (2005) research with women prisoners in Britain, recommended training and support for staff; as well as making available specialist help for women with histories of abuse, mental illness, and following stressful life events. In Liebling's (2006) study, it was noted that prison officers did not receive enough training and instruction on how to deal with those at risk of self-harm or suicide. Most officers lacked confidence in dealing with these issues (although staff who had to deal with suicide did receive counselling, a service that was not necessarily available to prisoners who had also been directly affected).

Fifth, that when prison authorities fail to take reasonable steps to avert a known risk to a person, this can be regarded as a breach of the right to life (Livingstone, 2008). In the case of *Edwards v UK* [2002] 35 EHRR 487, the European Court of Human Rights concluded that member states had to refrain from the unlawful taking of life, but also had to take appropriate steps to safeguard the lives of those within its jurisdiction. Relatedly, in *Keenan v UK* [2001], 33 EHRR 38, the Court found that the UK had engaged in inhuman treatment by failing to provide adequate medical care for a prisoner who was deemed a suicide risk.

Sixth, that recently released prisoners are at a markedly higher risk of suicide than the general population (see section 5.8). Research by Pratt et al (2006), in England and Wales, concluded that there is a need to improve the continuity of care for people who are released from prison and for community health, offender and social care agencies to coordinate care for all ex-prisoners. While stressing similar points, Segrave and Carlton (2011) also argue for increased public monitoring and attention with regards to groups, such as female ex-prisoners, who are subject to increased disadvantage and marginalization.

Within New Zealand prisons, during 2009/10, there were six 'unnatural deaths' (a category that includes homicides and deaths by accidents, but are mostly related to suicides). In 2009/10, all deaths were regarded as suicide (Department of Corrections, 2010b). The rate of unnatural deaths was 0.07 per 100 prisoners. The National Health Committee (2008) stated that, from 2000-2008, there had been 49 apparent 'unnatural deaths' in New Zealand prisons. Citing Simpson et al (1999), the Committee (2008:20) records that 'New Zealand inmates were four-six times more likely to kill themselves than the general population. 84% of suicides were found to occur within the first year of custody, 64% of these in the first six months. Approximately 20% of prisoners had thought about suicide and 2.6% had already attempted it'. Māori and younger people were more likely to be overrepresented among prisoners who committed suicide.

These deaths are often preventable. Recent examples suggest that prisoners can commit suicide as a consequence of institutional factors. For example, the suicide of Murray Childs at Christchurch Prison in 2005 led Coroner Guy Evans to recommend a change in classifying processes (Steward, 2009). Childs, who was diagnosed with severe depression, psychosis, and a history of self harm, was transferred from a special care unit to a general cell. This decision was made without consulting those in charge of his mental health care; approval of the transfer was made without examination of Child's health file; and, against instructions, Childs was not checked on an hourly basis in the general unit.

The October 2009 apparent suicide of Michael Maxwell, a prisoner at Christchurch Men's Prison has also raised serious issues regarding prisoner safety (The Press, 2009). His family noted that they planned to sue the Department of Corrections for breaching health and safety regulations, and for not providing adequate mental health treatment (Eleven, 2009). The death is being reviewed by the Prison Inspectorate and monitored by the Office of the Ombudsmen.

In a study of 52 male prisoners in New Zealand, it was apparent that prisoners can be more reticent, than non-prisoners, to seek help for suicidal thoughts (Skogstad et al, 2005). Reasons for this included:

- That help-seeking prisoners received negative reactions from staff and other inmates (they were viewed as attention-seekers);
- Prisoners lacked trust in prison psychologists (who were seen as being more interested in Corrections policy rather than assisting individual needs);
- Prisoners were averse to prison procedures such as separating suicidal inmates from the general population (such that they did not want to be placed in a safe cell).

'Unnatural deaths' are however seen to be on the decline (Department of Corrections, 2008b). Corrections have also reported that, between 2004-2009, 190 prisoners were stopped from self-harming (Brennan, 2010). The Department detailed that staff training, as well as new policies (such as the

razor blade policy, under which high security, remand and youth prisoners are not permitted to keep blades within their cells) have assisted here. There are now also 14 'At Risk Units' within the prison estate. These units are staffed by on-site registered nurses with mental health training and visiting psychiatrists. Despite these positive advances, further attention to how certain cultural and institutional practices – that may underpin suicide attempts, or prevent prisoners from seeking help – could be mitigated would be valuable.

## 8. Treatment and Protection of Specific Groups

### 8.1 Children and Young People

It is twenty years since the introduction into New Zealand law of the Children, Young Persons and Their Families Act 1989 (CYPFA). This Act has played a role in increasing diversion, decreasing the numbers of Youth Court cases, and decreasing the rates of incarceration for children/young people. In terms of imprisoning children/young people, therefore, New Zealand has come a long way and is often regarded, at an international level, as a leading light in approaches to children/young people who are 'in trouble'.

This section deals specifically with those children and young people who are detained by the Department of Corrections. However, those under 17 are generally also detained at three youth justice residences (in Wiri, Palmerston North and Rolleston) that can currently accommodate 108 persons. In 2008, construction also began on a new 40-bed youth justice residence in Rotorua. Youth justice residences, operationalised by Child, Youth and Family Services, have different regulations, policies and practices from Correctional facilities. There is very little publicly available literature on these residences and further research in this area would be very welcome.

#### *Law and policy framework*

In New Zealand, children can be sentenced to adult prison from the age of 15. Corrections can be responsible for those aged 15 or 16 if they have been convicted of serious offences or if they cannot be safely housed in a youth residence (Department of Corrections, 2008). Most children/young people within prisons will, however, be 17 or older.

The Corrections Regulations 2005 require prisoners under the age of 18 to be separated from adults (r179), although the mixing of prisoners under 18 with those aged 18 or 19 may be approved where 'it is in the best interests of the prisoners concerned' (r180). A 'Test of Best Interest' has been developed for this purpose (PSOM, M.03.01). The Corrections Regulations also provide that young prisoners are entitled to an additional weekly phone call (r181), that visiting times for young prisoners should be as flexible as possible (r182), and that an adult nominated by the child/young person is contacted if they are subject to segregation or cell confinement (r183).

Within Youth Units, young male prisoners will not be subject to double-bunking, unless it is required for 'prisoner management purposes' (PSOM, M.03.01.03.06) such as when staff feel that a prisoner would benefit from being 'buddied up' with another prisoner. 'Buddying up' is a temporary arrangement that should only last a few days.

The Department has also issued a Directive prohibiting the transportation of prisoners aged 17 years or under in the same vehicle compartment as prisoners aged 18 years or older.

## *Issues*

### *Defining 'Children' and 'Young Persons'*

Currently, youth justice provisions make a distinction between children (those aged 10-13) and young persons (those aged 14-16). Children between 10-13 are generally dealt with under 'care and protection' provisions in the Family Court – they can be given warnings, placed in Police Youth Diversion schemes or filtered through Family Group Conferences. Under 'youth justice', children may be convicted of murder or manslaughter, but only if the child knew that the act or omission was wrong or that it was unlawful. In such cases, preliminary hearings will occur in the Youth Court and trial and sentencing are held in the High Court. Sentences of imprisonment can only be imposed in the District or High Court.

In 2009, the *Children, Young Persons, and their Families (Youth Courts Jurisdiction and Orders) Amendment Bill* was passed, making those aged 12 or 13 liable for Youth Court prosecution for serious offences (explained as attempted murder, aggravated robbery, sexual violation, wounding with intent, arson and burglary). Moving against UN recommendations, this has effectively lowered the age of criminal responsibility further. The UN Committee against Torture (2009) has continued to show concern at this, and argues that New Zealand should raise the age of criminal responsibility.

From the age of 14, young people are deemed fully criminally responsible. They are regarded as having full capacity to commit crimes, and can be charged with any offence. Those who reach the age of 17 are dealt with as adults, through the adult court system. The Youth Court is preserved for those who are below 17 at the time of offence. The UN Committee on the Rights of the Child (2003) and the UN Committee against Torture (2009) have argued that those under 18 are children and should be brought under the jurisdiction of the CYPFA, to ensure that all persons under 18 are accorded special protection in law as established under UN Conventions. In 2007, an *CYPFA Amendment Bill (No 6)* duly proposed to raise the upper age limit however this has not been passed.

### *Nature of Youth Offending and Young Offenders*

Youth offending has been relatively stable in recent years. Indeed, the Ministry of Justice (2010b:33) establishes that the period 2006-2008 had the lowest child (10 to 13 year old) and youth (14 to 16 year old) apprehension rates since 1995. The rates of certain offences have increased – for instance, youth apprehension rates for violent offences stood at 167 per 10,000 population in 1995 but had increased to 198 per 10,000 population in 2008.

Yet, overall, rates of crime by young people appear to have been in decline, or at the very least static (Ombudsmen's Office, 2007).

In terms of gender, there has been much public concern about the apparent growth in offending by girls. This is not borne out by the data. The Ministry of Justice (2010b: 40) note that, 'Since 1995 apprehension rates for both sexes have declined, but the decline has been more gradual for females; as a result a greater proportion of apprehensions is now attributable to females although their actual rate has changed little'. It is estimated that 83% of serious young offenders are male (Youth Horizons, 2009).

What is clear, however, is that Māori children and young people are apprehended far more than any other group. For those aged 13 or below, the 'apprehension rate is more than five times that of Pacific and NZ European or other children' while for those aged 14 to 16 years, the apprehension rate for Māori 'is more than three times that of Pacific youth and NZ European or other youth' (ibid). It is thought that 50% of serious young offenders are Māori; in some Youth Courts, in areas of high Māori population, the Māori appearance rate is 90% (Ombudsmen's Office, 2007; Youth Horizons, 2009).

As a group, young offenders (and similarly young prisoners) share a number of common characteristics. They are, as Goldson (2009:89) highlights, '...typically drawn from the poorest, most disadvantaged, structurally vulnerable and oppressed sections of their respective populations'. Most are not at school or even enrolled; some will have specific learning disabilities, such as dyslexia; most have histories of inadequate housing and transience; most have suffered abuse, trauma and neglect; most lack positive role-models; most have experienced few positive employment experiences; most have a history of chronic anti-social behaviours; and, most are dependent drug and alcohol users (see Goldson, 2009; Maxwell et al, 2004; McLaren, 2000, Youth Horizons, 2009).

### *Detention Rates*

Despite the overall decline of youth offending, it is apparent that youth prosecutions are trending upwards, with the proportion of apprehensions resolved by prosecution increasing from 13.2% in 1995 to 29% in 2008 (Ministry of Justice, 2010b:169). Through the District and High Court, sentences of imprisonment were imposed against 60 young people in 2004, 67 in 2005, 70 in 2006, 70 in 2007 and 32 in 2008 (Ministry of Justice, 2010b). In 2008, a fifth of all young people sentenced by the District or High Court received a sentence of imprisonment (ibid). As at 30 June 2009, 52 young people under the age of 18 were imprisoned: four females and 48 males (Department of Corrections, 2010b).

There are many reasons to explain why imprisonment sentences have increased over recent years. It may reflect: a growing scrutiny of, and hardening towards, young people who are deemed 'out of control'; changes in legislation that increase the propensity of imprisonment sentences generally; as well as some increase in violent offending by young people. However, it does appear that there are also notable regional variations in the sentencing

of young people. The Ministry of Justice (2010b:128) observes that, in 2008, some courts – Manukau, Napier and Hamilton – ‘sentenced the highest number of young people to imprisonment (5 young people each)’. In the same year, most other regions sentenced no, one or two young people to imprisonment. Explanations for these regional disparities are not clear but the issue is worthy of further examination (cf Ombudsmen’s Office, 2007).

### *Age Mixing*

The UN Committee on the Rights of the Child (2009:55) has established that

Every child deprived of liberty shall be separated from adults. A child deprived of his/her liberty shall not be placed in an adult prison or other facility for adults. There is abundant evidence that the placement of children in adult prisons or jails compromises their basic safety, well-being, and their future ability to remain free of crime and to reintegrate...State Parties should establish separate facilities for children deprived of their liberty, which include distinct, child-centred staff, personnel, policies and practices.

Apart from particular circumstances (such as being housed in adult prisons to attend Court appearances), boys and young men aged 17 and below are now detained in specially designed Youth Units attached to adult male prisons (currently in Hawkes Bay, Waikeria and Christchurch Prisons). These units will also house 18 or 19 year olds who are assessed as being vulnerable or ‘at risk’ in the mainstream – a practice that has been previously described as ‘a highly undesirable phenomenon’ by Judge Becroft (2004:57). The location of these Units means that young people will often be held far from their family/whānau.

The Ministry of Youth Development (2008:8.13) has highlighted that youth units cater for the specific needs of young prisoners, ‘providing a structured and supportive environment’. The Ministry details that non-core programmes and activities (such as parenting skills, art and music) are available, subject to funding. Further, that vocational training (including joinery, motor mechanics and catering) is available. The Ministry (2008:8.15) also notes that the Department meets ‘responsibilities under the Education Act 1989’ by providing those under 16 years old with education.

The treatment of boys and young men in prison has not been matched for girls and young women. There are no specialist facilities for young female prisoners and all young females are held alongside adult prisoners. The justification for this is that there are too few young women in prison. These practices have faced consistent criticisms from the UN Committee on the Rights of the Child and the UN Committee against Torture (2009). In their mixing, young women have fewer opportunities to experience child-centred provisions that might attend to their offending behaviour.

Goldingay’s (2007) small-scale research with 11 young women, held in Christchurch Women’s Prison, found that they had a mixed relationship with adult female prisoners. On one level, adult prisoners could provide support to

the young women, they could ease tensions, and occasionally manage their behaviour ('mothering' attributes that might be addressed by staff). Yet, the adult women also provided a role model that emphasised the centrality of prison life as a future. Inevitably, this impacted negatively on the young women.

Recently, there have been moves to review New Zealand's reservations to the UN Convention on the Rights of the Child, in relation to age-mixing in detention. This should be supported. Related to this are the issues of prisoner transport and police cell detention. Following a fatal attack against a young prisoner, Liam Ashley, it is now policy (from 28 August 2006) that no prisoner aged 17 or under shall be transported in the same vehicle compartments as adult prisoners. In addition, while there have been recent improvements in this area, there remain concerns about the detention of young people in police cells. Young people can be detained in police cells for many days (Lynch, 2008; UN Committee against Torture, 2009). Police cell-detention raises a number of issues: young people can be in contact with adult offenders, they cannot receive education, they have limited access to sanitary facilities, they have limited access to nutritional food, and family visits are very difficult to arrange.

#### *Impact of Detention on Children*

One element that drove New Zealand away from the extensive incarceration of children/young people was the realisation that detention is not shown to be effective in changing behaviours. Rather, at best, incarceration makes little impact on recidivism rates for children and young people and, at worst, it can increase offending (Lambie, 2009; Weatherburn et al, 2009).

Added to this, the experience of imprisonment is shown to have a deleterious effect on the physical and mental well being of children/young people. International literature shows that family relations become more strained (particularly as children/young people are often detained far away from home); negative behavioural traits can be reinforced; children/young people can be exposed to bullying, intimidation or violence; their sense of alienation can be compounded; they can face stigmatisation; they lose opportunities for education; they do not have their specific needs met; and they are at risk of institutionalisation (Goldson and Coles, 2005; HM Chief Inspector of Prisons, 2004). Children and young people are made more vulnerable by detention.

From this, it appears that New Zealand needs to continue to use detention as the absolutely last resort for this group. In addition, more consideration might be given to the establishment of small scale, dispersed Youth Rehabilitation Centres to end the detention of children/young people in police cells and adult prisons, and to intensively address serious youth offending.

Fortunately, research does show that strategies of early intervention and 'wrap around' services are more likely to bring positive benefits. Community-based sentences have more potential to reduce re-offending than custodial sentences (McLaren, 2000:47; Solomon and Allen, 2009). Lambie (2009) shows that international programmes such as multidimensional therapeutic

foster care, multi-systemic therapy, aggression replacement training, and drug and alcohol programmes have a well-documented positive impact on criminal recidivism. Similarly, Youth Horizons (2009) detail that community responses led by specialist youth workers, in which young people have access to educational and job training, are the most effective. Moreover, while these community-based programmes require long-term and intensive interventions, they can remain cost-effective (Youth Horizons, 2009).

In securing a positive rights agenda for children and young people in detention, a number of principles may be reiterated (from Scraton and Haydon, 2009), including that:

- There is an acknowledgement that children and young people require different responses from those with adult status;
- The welfare of children and young people is prioritised – so that treatment, support and guidance (that meets their needs) trumps punishment, retribution and deterrence. In this respect, social welfare interventions should work to assist children and young people to appreciate the seriousness of their actions and focus on changing behaviours;
- There must be full transparency of formal procedures and practices.

These principles, across youth justice detention units, are worthy of continued prioritization and enhancement.

## **8.2 Older People**

### *Law and policy framework*

There appears to be no relevant policies, or legal frameworks, that attend to the 'older prisoner' group.

### *Issues*

'Older' prisoners are regarded as those who are 55 years or above. This is usually based on the supposition that the typical prisoner will have the physical appearance and health problems of a person at least ten years older in the community (Wahidin, 2006). In terms of international numbers, the older prisoner population has grown as a consequence of longer-term and indeterminate sentences, underpinned by laws based on ideas of 'three strikes and you're out', 'preventive detention' and so on. Shifts in societal attitudes towards sex offenders have also led to increases in the imprisonment of older prisoners (Crawley, 2007). This latter issue has led to older offenders being imprisoned for the first time late in life.

There is currently little New Zealand data on the extent or experiences of older people within the prison system. However, given current sentencing

practices, the rights of an ageing population – exemplified in policy and practice – will require attention.

Over recent years, this group have become a matter of concern across different jurisdictions. Aday (2006), Crawley (2007), Crawley and Sparks (2005), Prison Reform Trust (2008), Stojkovic (2007) and Wahidin (2006) highlight that the growth of older prisoner populations has a number of ramifications that are rights-relevant, as well as challenging for prison management. These include:

- Concerns about depression and stress – The first-time imprisonment of older offenders can bring particular social and emotional impacts. Older prisoners who have not previously dealt with prison conditions, rules and cultures are more likely to feel anxious, stressed and depressed.
- Health Care Issues - The rising cost of providing adequate health care is a big challenge in meeting the needs of an ageing prison population. Research indicates that older prisoners will frequently suffer from a range of physical and mental/emotional problems, such as: arthritis, hypertension, heart problems, ulcers, diabetes, emphysema, strokes, hearing and vision problems, bladder problems, dementia, Alzheimer's, Parkinson's and short-term memory loss. They can have chronic and complex needs.

These realities raise issues of specialised medical care, including the care of critically or terminally ill prisoners. In addition, there are issues of more general health care. For example, given that prisoners have to be pay for specialist items – such as hearing aids – this would seem to place an extra burden on older prisoners who are more likely to require these items. The needs of older populations also require consideration in the design and build of prison facilities. Generally, the design and practices of prison life (the stairs, walkways, distances, queues, shower facilities and so on) are not constructed to meet the needs of elderly people.

- Programmes and Rehabilitation Issues – International evidence also suggests that older prisoners are disadvantaged in terms of their access to educational or vocational programmes. The reason for this is that these programmes are often already oversubscribed and prison staff can regard older prisoners as having a lesser eligibility compared to younger prisoners.
- Cultural Issues – Research has also pointed to the dominant approach taken by prison staff to older prisoners. For instance, Crawley and Sparks (2005) noted that while some prison officers approached older prisoners with enthusiasm, voluntary assistance and imagination, the majority tended to ignore them. As they put it, prison officers did not want to be 'working in an old folks home'; frailty was redesignated as attention-seeking or as a source of amusement; and the needs of older

prisoners were ignored. Such approaches also result in the bullying and intimidation of older prisoners by younger prisoners.

### **8.3 Gender**

#### *Law and policy framework*

Policies regarding the detention of women are set out in the Corrections Regulations (rr 24 and 65 which provide for the separation of female and male prisoners) and in national policies (PSOM, M.03.02) that pay attention the specific needs of women.

#### *Issues*

The imprisonment rates of women has continued to grow. Although the apprehension rates for women have been relatively stable over the last decade, women are being imprisoned at an escalating rate, 'approximately two to three times faster' than the rate for men (Tolmie, 2007:11.2.3). In 1983, the number of women in prison was approximately 110; by 30 April 2010, this had increased to 512 (including 122 women on remand).

Women make up just over 6% of the total prison population. In terms of ethnicity, the over-representation of Māori is acute within the female population. In 2010, 61% of female sentenced prisoners were Māori, 29% Pakeha, 4% Pacific peoples and 6% 'other' ethnicities (Rainford, 2010).

The reasons why women are being increasingly imprisoned are varied, reflecting shifts in attitudes towards female offenders. There are lower custody thresholds in relation to drug offences; increases in the use of short custodial sentences; increases in the numbers of women placed on remand; notions that women and girls should be treated the same as men (such that children are not used as mitigating factor to keep women out of prison, as was historically sometimes the case); and fears about new 'breeds' of violent girls and women, that, on investigation, have been seen to be subject to overstatement (Codd, 2008; Player, 2007; Tolmie, 2007).

The profile of women in New Zealand prisons reflects the nature of women imprisoned in other jurisdictions. As Kingi et al (2008:4) highlight, 'Women enter prison with a range of problems. They tend to be poor or welfare dependent, have few educational qualifications, have mental health problems, histories of drug and alcohol abuse and tend to have experienced high levels of victimisation'.

International research (Loucks, 1998) has also shown that the number of female prisoners who have suffered violent and, in particular, sexual abuse is very high. These factors highlight that female prisoners are in need of treatment and support systems that deal with both their previous victimisation as well as their offending behaviour.

A number of international academics and politicians have argued for changes in the imprisonment of women. For instance, in the UK, academics (including Carlen, 1990, 1998; Scraton and Moore, 2005) have continually called for the systematic decarceration of women. More recently, the reports by Baroness Corston (and affiliated parliamentarians) have made a number of recommendations, including that:

- Custodial sentences should be solely reserved for women who have engaged in serious violence;
- Women's prisons should be replaced with small (20-30 people) multi-function custodial centres that are geographically dispersed;
- Women unlikely to receive a prison sentence should not be placed on remand;
- Automatic strip-searches should be stopped;
- A woman-centred approach should be central to rehabilitation, resettlement, service and programme delivery (All Party Parliamentary Group on Women in the Penal System, 2010; Home Office, 2007).

### *'Small Numbers' Issues*

Currently, there are three women's prisons in New Zealand. These are:

- Arohata Prison, located just outside Wellington. This prison has capacity to house 154 women.
- Christchurch Women's Prison, that can accommodate 140 women.
- Auckland Region Women's Corrections Facility (ARWCF), which opened in June 2006, and has 286 beds.

Because of the small number of women held in the prison estate, women tend to be located further from their homes than their male counterparts. This is compounded when, as a result of capacity issues, women are transferred to a prison that can increase the distance from their home area. This issue has serious repercussions in terms of maintaining contact with their family members and social supports. For example, in economic and logistical terms, it is apparent that visits by children to their detained mothers can be made very difficult when a woman is located far from home. Anecdotal evidence suggests that, compared to men, women prisoners will spend large amounts of their funds and time trying to keep in contact with their family members.

International literature highlights a number of ways in which the small numbers issue also impacts on the treatment and services that women are provided. For example, women can be subsumed under policies and programmes that were designed with a male default in mind. Player (2007) argues that female prisoners are examined using risk assessments that have been developed with reference to male profiles and patterns of offending<sup>11</sup>. There is a presumption of gender neutrality that fails to address the particular reasons why women may become engaged in criminal behaviour. Relatedly,

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<sup>11</sup> In New Zealand, the risk-assessment tool (RoC\*RoI) is found to be 2% less accurate for female offenders than for male offenders.

in a study that exposed the limits of female compliance to and completion of community-based offending programmes, Martin et al (2009:879) note the current limited gender awareness in the construction and delivery of programmes, and the failure of correctional services 'to take into account gender-specific needs and risks'.

In earlier work, Easteal (2001) contends that women have fewer gender-focused programmes and supports available for them. The economies of scale that can be achieved across male institutions – in terms of providing focused programmes or 'throughcare' provisions – are not met in the same way for women. In New Zealand, for instance, female prisoners have far less access to specialist programmes than men<sup>12</sup> (see section 5.2). Women are placed at a disadvantage in terms of having their needs met.

Internationally, female prisoners can also find that they do not have the same ready access to medical, psychological or support staff as male prisoners. For example, women can face waits for health assistance because relevant staff are predominantly based at other male prisons, and make special trips to the female prison. Provision is not always be available when it is required. In New Zealand, women's prisons do have their own medical staff on site.

The male default can also be apparent in the construction of prisons, and their associated regimes. Over the last decade, women's prisons have become increasingly securitised, reflecting standards at male establishments. At an international level, this approach continues to face criticism on the basis that female prisoners, as a group, do not pose the same security risk to the wider community as men (Carlen and Worrall, 2004).

### *Mothers in Prison*

At an international level, it is estimated that between 50-80% of women in prison are mothers. As a group, they are far more likely than male prisoners to have lived with their children before imprisonment (Kingi et al, 2008). In 2003, the Department of Corrections estimated that 47% female prisoners had dependent children at the time of their imprisonment (Kingi, 2009). PARS estimates that about 20,000 children in New Zealand are affected each year by having a family member in prison.

Given the female role in the care of children, and the fact that women are often detained further away from home than men, children are faced with a serious loss of contact. While male prisoners can often rely on their partners to take care of their children, women often have to rely on substitute care-givers – grandparents, family members, whānau, foster families and CYF residences. In the UK, it has been recorded that only 5% of children with a mother in prison will stay in the family home when the mother goes to prison (Kingi, 2009). The issue of who looks after children is not simple, and there is often a lack of stability in care provisions. On release, women can also struggle to reassemble their families and homes (Codd, 2008).

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<sup>12</sup> The Department of Corrections does, however, run the Kowhiritanga programme that can target female-focused issues. Kowhiritanga is delivered in each of the women's prisons.

There is a growing literature on the impact of imprisonment on the children of prisoners. Kingi (1999) reported the extensive behavioural and emotional effects on children of imprisoned women in New Zealand. Children can face a range of developmental risks, including 'attachment disorders and disorganization in infants and toddlers, academic problems for school-aged children, and delinquency and behaviors that may place adolescents at risk for incarceration' (Craig, 2009:48).

The *Corrections (Mothers and Babies) Amendment Act 2008* extended the period of time that some mothers can keep their babies with them in prison to 24 months. This extension is dependent upon, among other things, the mandatory consideration of the child's best interests and the provision of appropriate facilities. In a recent Corrections report, almost 60% of 258 female prisoners approved of these provisions (Kingi et al, 2008). They highlighted that these provisions would assist bonding between the child and mother, and maintain continuity of care for those serving shorter sentences.

The Act does not come into force until appropriate facilities are available. New facilities are still required to meet the development needs of older children (that is, children between the ages of 9-24 months). Current facilities are considered unsuitable for children over the age of nine months. Pending the upgrading of facilities (expected to take place in 2011-12), a change to the Corrections Regulations (r170) has enabled children up to the age of nine months to remain with their mother in prison.

A number of children are also born to female prisoners. The Minister of Corrections stated that between September 2008 and November 2009, 17 prisoners gave birth (Collins, 2009c). The Minister also stated that all eligible mothers wanting their child or children to stay with them in prison, up until aged nine months, had been permitted to do so, noting that sentenced female prisoners spend an average of six months in prison.

To address concerns around mothers in prison, some European countries, such as Germany, now use 'half-way houses' where women are placed in community-based accommodation. During the day, the women will access prison education, training and support while their children attend community nursery. During the evening and night, they must stay in the house. This approach minimises the harm of separation, and minimises any negative impact of the prison setting on children (Codd, 2008).

### *Stripsearches*

Overseas literature has continued to detail the nature and use of stripsearching in women's prisons. In Northern Ireland, Scraton and Moore (2007) established that relevant standards and practices amounted to breaches of human rights legislation. In the Australian context, McCulloch and George (2009) have detailed the excessive use of strip searches (such that, during 2001-2002, there were 18,889 strip searches in a prison accommodating 200 women). They observe that these practices were particularly humiliating to a population in which many have suffered previous

sexual abuse. However, they also note that a recent pilot to reduce strip searching in the state of Victoria resulted in no change to the seizure of drugs but there was a reduction in the number of positive tests for drug use, and a decrease in assaults. In effect, officers became more involved in 'dynamic' security – that is, officers used their faculties to watch and listen to the women – and the decrease in searches led to a less stressful environment for the women.

Further research on the nature and extent of stripsearching, across male and female prison estates in New Zealand, would be appropriate.

### *Transgender People*

The Human Rights Commission recently completed an Inquiry into discrimination experienced by transgender people. This highlighted 'particular issues for trans people in prison, including: issues regarding their placement; search procedures; vulnerability to discrimination, harassment or abuse; and access to health services such as hormone treatments while in prison' (Human Rights Commission, 2009:3.48).

In the wake of this, the Corrections Regulations (r190) and Department policy (PSOM, M03.05.01) provide that transgender prisoners who have completed gender reassignment surgery will be accommodated according to their new gender. Policy (M.03.05.02) also details the transgender prisoners should not be subject to aggressive or humiliating acts; should be treated according to their new gender; are entitled to single-cell accommodation (if they are placed in a prison that conflicts with their new gender); can wear clothing that is suitable for their needs; must be respectfully searched; and can continue, at their own cost, any medical or hormonal treatment that was commenced prior to imprisonment.

## **8.4 Ethnicity**

### *Law and policy framework*

The Department of Corrections has a Māori Strategic Plan (2008-2013) as well as a Pacific Strategy (2008-2013). These documents establish Māori and Pacific Peoples representation in the prison system, and set out plans to reduce reoffending and enhance capabilities among these groups. Relatedly, the Ministry of Justice have developed initiatives to reduce Māori offending, and the issue has gained political attention through recent meetings on the 'Drivers of Crime'.

### *Issues*

There remain high levels of Māori and Pacific peoples sentenced to custody. 11% of the prison population are identified as Pacific Offenders (Department of Corrections, 2009c) and, given the growing Pacific population in New Zealand, this figure is expected to grow. Māori form approximately 12.5% of

the general population aged 15 and over, but they account for over 51% of the prison population (Human Rights Commission, 2009:3.50). This over-representation is even more acute within the female estate as Māori account for approximately 60% of women prisoners.

The Department of Corrections (2008:27) has recently noted that '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'.

The over-representation of Māori within the prison system has been the subject of much international concern. The UN Human Rights Committee (2010), the UN Human Rights Council (2009), the UN Committee against Torture (2009) and the UN Committee on the Elimination of Racial Discrimination have each recommended that New Zealand focus its attention on combating overrepresentation and discrimination within the criminal justice system.

Explanations for this over-representation are varied (see Bull, 2009; Department of Corrections, 2007). Beyond explanations of criminal justice bias, it does appear that differential experiences with regards to the attainment of rights within wider New Zealand communities contribute to the increased incarceration of Māori and Pacific Island people. Issues of inequalities along social, economic, educational, employment and health lines are all positively correlated with (i) offending behaviour (ii) police apprehension, and (iii) incarceration. Moreover, these factors – or social, economic and cultural violations of human rights – will also impact negatively on penal attempts to rehabilitate prisoners. For example, a prisoner who does not have a fixed address is disadvantaged in applications for parole on home detention; a prisoner with limited literacy will struggle to gain stable employment on release; similarly, a lack of job training and experience will disadvantage prisoners in the community.

In recent documentation, the Human Rights Commission (2009:3.53) has called for the government to commit to specific targets and timelines for reducing the disproportionate number of Māori in prison. As noted above, this call has been reiterated at international (United Nations) levels.

### *Culturally Specific Programmes*

The Department of Corrections offers specific provisions for Māori prisoners. These programmes and services have been developed in close collaboration with Māori service providers, community and iwi groups. They include:

- Tikanga Māori programmes that teach cultural knowledge, skills and identity. There is evidence that strengthening 'the cultural identity of Māori offenders improves their attitudes and behaviours, and motivates them to participate in other forms of rehabilitation' (Department of Corrections, 2008:28).

- Kaumatua have official standing as institutional visitors, and can readily access prisoners.
- Māori Focus Units that incorporate Māori cultural values in daily routines and programmes. There are five 60-bed Māori Focus Units at Hawke's Bay, Waikeria, Tongariro/Rangipo, Rimutaka and Wanganui which offer, among other things, Māori Therapeutic Programmes 'to change offending-related attitudes and behaviours' (ibid:28). A recent report from the Department of Corrections (2009b) concluded that Māori in Focus Units strengthened their cultural knowledge and enhanced their cultural identity. Prisoners displayed positive change in terms of offending attitudes and beliefs. Relatively small positive changes were found in terms of prisoner reconvictions and re-imprisonments and the Units are described as having 'yet to operate to their full potential' (ibid:4).
- A Māori Services Team has been established to support services for the rehabilitation and reintegration of Māori offenders, including effective linking to tribal and sub-tribal groups. The team comprises three Regional Relationship Managers and ten Area Advisers.
- Specialist Māori Cultural Assessment tools that identify the cultural needs and strengths of Māori offenders to effectively match prisoners to appropriate Māori interventions.
- A Bicultural Therapy Model that provides options for Māori offenders to undertake psychological treatment using western psychological services, tikanga Māori based treatment, or a combination of both. Service providers are endorsed through the participation of hapū and iwi representatives who participate at regional committee levels.
- Whānau Liaison Workers to establish links between prisoners, their whānau, hapū, iwi, and the local Māori community prior to release. Whānau Liaison Workers are based in the Māori Focus Units and at the Northland Region Corrections Facility.

In 2009, Associate Corrections Minister, and Māori Party co-leader, Pita Sharples sought to advance the Māori Focus Unit idea, by arguing for alternative rehabilitation centres for Māori prisoners 'who are determined to learn, heal and socialise' (Gower, 2009b). In 2010, funding was announced for two kaupapa Māori reintegration units, Whare Oranga Ake, to be established. These Units (to be constructed at Hawkes Bay and Spring Hill prisons) will place emphasis on reintegration services for Māori prisoners, not only by providing skills for living on the outside but also by taking prisoners into the community to assist them in establishing connections that will support them on release.

Following the apparent success of culturally specific interventions for Māori, there have also been similar advances made in relation to Pacific People:

- The Department of Corrections opened the first unit for Pacific Offenders, at Spring Hill. This unit includes a *fale*, a traditional meeting house, which aims to provide a specifically Pacific environment for cultural programmes as well as supporting the maintenance of positive relationships amongst staff, prisoners, their families and community.
- There is now a violence prevention programme for Pacific Offenders (the Sailsi Matagi Programme).
- Following requests for more Pacific programmes, Auckland Region Women's Corrections Facility (ARWCF) engaged in a Pasefika oral storytelling forum. This programme was also delivered in Mt Eden, ACRP and Spring Hill prisons.
- The Malaga Polynesia programme (Polynesian Journey) has been delivered as a constructive activity for prisoners in the Northern Region, including within the Pacific Focus Unit in Spring Hill.
- Establishment of specialist staff positions: two Regional Advisers Pacific (2005), a National Adviser Pacific (in 2007) and a Pacific Focus Unit Reintegration worker (2008).

Further research on the effectiveness of these programmes and developments, and the perceptions of prisoners and staff who experience them, would be valuable.

### *Asylum Seekers and Undocumented Migrants*

Asylum seekers continue to be held within the prison estate. In October 2006, the Labour Department confirmed that 23 people claiming refugee status were being held in prison, while 22 were held at the low security Mangere Refugee Resettlement Centre (Collins, 2006). New Zealand Immigration Service policy provides for the detention of asylum seekers either at the Auckland Central Remand Prison or at Mt Eden. The Human Rights Commission (2009:4.3) has observed that those refused residency can be detained for lengthy periods if they refuse to sign papers permitting them to be deported (similarly, the Auckland Refugee Council proposes that some asylum seekers are detained for more than a year). There is also the potential, under law, to detain children and young people.

The UN Committee Against Torture (2009) and the UN Human Rights Committee (2010) have demonstrated concern at the continued detention of asylum seekers and undocumented migrants in correctional facilities. They have also voiced concern about the use of classified information for the purposes of their detention, and potential removal. The Committees recommend the end of these detention practices. New Zealand should, according to the UN Human Rights Committee (2010:16b) 'ensure that no asylum-seeker or refugee is detained in correctional facilities and other places

of detention together with convicted prisoners, and amend the Immigration Act accordingly’.

## **8.5 Prisoners with Disabilities**

### *Law and policy framework*

The Corrections Act (s75) details that health care provisions to prisoners must be reasonably equivalent to health care enjoyed by the general population. Support services for prisoners with disabilities are provided by Prison Service staff. The Department of Corrections (2008b) maintain a Disability Implementation Plan in consultation with the Office of Disability Issues. During 2007, Corrections also established a Staff Disability Network. This network provides mutual support to staff that have a disability or an interest in disability issues. It enables staff to share ideas and experiences, and promote equality for staff with disabilities.

Staff should have information about prisoners with special physical and/or intellectual needs. Prison practices and routines, and the cell placement of prisoners, should be adjusted to meet these needs.

With regard to prisoners with intellectual disabilities, prisoners should:

- Have a Sentence Management plan;
- Be able to establish, and maintain, family communications;
- Be provided with advocate support in all formal meetings and hearings;
- Be communicated with in a form that is understandable to them;
- Have priority for placement close to their community networks, as far as practicable;
- Have their best interests promoted and be protected from exploitation;
- Not be segregated solely on the basis of intellectual disability;
- Provided with reintegrative programmes and services that meet their needs.

With regard to prisoners with physical disabilities, prisoners should:

- Be provided with suitable programmes and services to enable them to participate in prison activities;
- Have access to employment and programme opportunities;
- Be provided with special clothing and/or footwear to enable them to participate in activities;
- Be held in prisons that are able to cater to their needs;
- Have physical rehabilitation therapy that addresses their spiritual and cultural needs, and involves family/whānau as required.
- Have their participation in programme activities as a priority (this can involve additional visits from support people and agencies to encourage participation);
- Be provided with adequate exercise facilities and suitable equipment;
- Be able to access health staff and support personnel, during hours of lock-up.

## *Issues*

In the UK, HM Chief Inspector of Prisons (2009c) detailed that there was considerable under-reporting of disabilities within prison environments. They also reported that those with disabilities were more likely to feel unsafe and enjoyed less access to activities (in terms of leisure, education or work) than other prisoners. Disability liaison officers often lacked training and support and there was a lack of resettlement options for prisoners with disabilities. The Inspectors also commented that, given the ageing population within prison, disability issues were increasingly important.

In 2007, one British study found that 45% of prisoners had a borderline or full intellectual disability (Hayes et al, 2007), with borderline intellectual disabilities being linked to acquired brain injuries.

An Australian study on prisoners with intellectual disabilities showed that respondents found the prison to be a very threatening environment (Green, 2002). While wanting to be accepted by other groups, these prisoners often faced bullying, intimidation and violence by prisoners and staff. Their problems in accessing advocates also impacted on their capacity to access prison services, such as general health services. Prisoners with intellectual disability also faced increased hurdles on their release. Having fewer social networks than other prisoners, they struggled to access reasonable social support on release.

Relatedly, a UK-based study (Talbot, 2008) also indicated that prisoners with learning difficulties had difficulties in understanding prison information, so did not comprehend what was expected of them. This led to increased charges of misconduct against them. These prisoners had problems in completing forms – this led to them missing out on family visits and exercise as well as undermining their efforts to fulfil health or dietary requirements. Further, they rarely accessed programmes, and spent long periods on their own with little to do.

As yet, the author has found little recent information on Correctional practices towards prisoners with disabilities or learning difficulties. There are ongoing concerns about (i) the lack of data on prisoners with disabilities or learning difficulties (ii) the availability or accessibility of suitable facilities and services (Human Rights Commission, 2009). Currently, Corrections appears to be addressing issues of building compliance for disability access (National Health Committee, 2008).

## 9. Protection Measures

This section details the range of protection measures afforded to prisoners and staff – via information systems, disciplinary procedures, and complaints and inspection systems.

### 9.1 Provision of Information

#### *Law and policy framework*

The Corrections Act 2004 (s6(1)(f)) states that the provision of information about rules, obligations and entitlements is a central principle guiding the corrections system. At induction, new prisoners are to be given written information on the operation/rules of the prison and prisoner entitlements. The Prison Service Operations Manual (I.04) sets out that prisoners must be informed of their obligations, rights and privileges, and service access, in a way they can understand. Prisoners who are citizens of another country should be advised that they are afforded access to their consular representative.

With regards to transfers, prisoners must be informed of the transfer, including destination, at least a week in advance. They must also be given reasonable opportunity to inform a family member. There are exceptions to these rules on the grounds of safety, security and even 'to allow for the effective management of the national prisoner muster' (Corrections Act, s55(2)(d)). If this occurs, a prisoner must be allowed one free phone call, on arrival at the new prison, to advise family members. The reasons for transfer must be given if a prisoner requests that information, in writing within a month of transfer. Relevant policies are contained within PSOM (M.01-M.04, Movements).

#### *Issues*

Access to information has, historically, been an issue within the prisons. The Ministerial Committee of Inquiry into the Prisons System (1989:s3.5) showed that prisoners commonly complained that there was 'uncertainty and inconsistency of prison life; uncertainty as to their rights and obligations and inconsistency in the interpretation and enforcement of the rules governing them in different prisons'.

The issue of information access was improved with the introduction of information kiosks that allow prisoners to check rules themselves. Following their introduction, the Ombudsmen's Office (2005:61) stated that the system 'appears excellent'. However, more recently, concerns have been raised about information access, principally as many kiosks have been damaged or broken. Further follow-up research on access to, and timeliness of, information would be useful.

## **9.2 Registers**

### *Law and policy framework*

The Corrections Act (s37) requires that no person may be received in a prison without a valid committal order. In addition, a number of provisions in the Act and Regulations detail the reporting requirements with regard to prisoner reception, movements and the reporting of incidents.

On arrival, a prisoner may be photographed, have their measurements taken, their fingerprints taken, and undergo any prescribed procedure (excluding bodily samples) to enable their subsequent identification (Corrections Act, s41). If force is employed to gain this record, this (together with any use of weapons or restraints) must be reported (s88). If a prisoner is subsequently acquitted, all records must be destroyed.

The prison manager must keep a register of prisoners that includes details about prisoner identity, authority for their detention, date and time of their reception and, if applicable, details of the offences for which they have been committed, details of their transfers, details of remand periods and 'any other particulars the chief executive requires' (Corrections Regulations, r21(f)).

During any searches, if any unauthorised items is found, staff must report the details of the discovery to their supervisor or prison manager. If a strip search is undertaken, officers must report the details of the search (ie, the reasons and details of any unauthorised items) (s102).

If a mechanical restraint (other than the use of handcuffs/waist restraint during escorts) is used on a prisoner, this must be promptly reported to the manager. A written record must be kept, and forwarded to the chief executive. It must also be reported to a Visiting Justice or monitor (r127). Similarly, if an officer uses force or a non-lethal weapon, this must be promptly reported to the prison manager or prison employer, and a written record kept and forwarded to the chief executive (r128). All records of these incidents must include details on date, time and location of the incident, name of the prisoner, name of involved staff members, name of staff who gave approval, the circumstances of the incident, detail on the type of force/weapon/restraint used, details of the prisoner's examination by a registered health professional and outcome of the incident (r129).

With regards to medical records, prisoner medical records (including dental records) must be kept securely and are not to be treated as part of the prison records (s165).

### *Issues*

Aside from recommendations from the NZ Coroner with regards to medical records (see section 6.2), there does not appear to be publicly available documentation on recording and registers.

### **9.3 Disciplinary Procedures**

#### *Law and policy framework*

The Corrections Act and associated Regulations set out disciplinary processes, including providing for: written notice of charges; provision of relevant incident reports; provision of writing materials to prepare defence; facilitating contact with someone helping prepare the defence and contact with legal advisor; ensuring the prisoner understands and participates in the hearing; opportunity to be heard, cross-examine witnesses and evidence.

Subpart Five of the Corrections Act deals directly with offences. It highlights the range of offences 'against discipline' that includes: disobeying lawful orders from staff<sup>13</sup>; behaving in an intimidatory, abusive or offensive manner; assaulting or fighting; communicating with persons without authority; being absent from cell/work/other place without permission or reasonable excuse; having links to articles without approval; deliberately damaging or destroying prison property, or losing property due to negligence/improper conduct; obstructing officers; making false allegations knowingly; endangering the security or good order of the prison; escaping from detention; refusing to undergo prescribed identification processes; or using drugs or alcohol.

If a prisoner is charged with a disciplinary offence, they must receive written notice of the charge promptly. If a notice has not been given within seven days, prisoners can apply to the Prison Inspector to dismiss a charge. This application can also be undertaken if a hearing is not held within 14 days, or if an adjourned hearing is not heard within 21 days. For drug offences, hearing dates must accommodate a prisoner to have independent urinalysis.

Hearings must always be attended by the charged prisoner, who is entitled to be heard and to cross-examine any witness (this can be undertaken by video-link). Prisoners also have a right to gain assistance (such as a support person) for the hearing. Prisoners have the right to appeal any decisions to the Visiting Justice, and to seek further legal advice and support during any subsequent hearing.

Penalties that may be imposed include: forfeiture of privileges, forfeiture of earnings, cell confinement, and court charges. Forfeited privileges include: the opportunity to be in common areas or to make a telephone call following the evening meal; participating in a recreational activity/hobby/course/programme that is not part of the prisoner's management plan; use of electronic or multi-media equipment; use of musical instrument; purchase of any non-essential items. In the case of cell confinement, cells must be specifically designated, medical officers must be informed of cell confinement, and the manager (or representative) must pay daily visits to the confined prisoner. Further policies and procedures are contained in PSOM (MC.01-MC.04, Misconduct).

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<sup>13</sup> Under Corrections Regulations (s150(4)), a prisoner who is aggrieved by a lawful order must obey that order but may, on the first convenient occasion, make a complaint'.

## *Issues*

The Ombudsmen's Office (2005:31) noted that some prisoners complained that 'general punishment had been imposed upon their entire unit as a result of the actions of one/few fellow prisoners'. Further, this report highlighted that some prisoners were not told that they have been placed on Incident Report (and only found out that this was the case when they arrived at Parole Board). In the year to the end of June 2009, the Ombudsmen's Office received 337 complaints about prisoner discipline and misconduct. Many of the formal complaints, received by the Inspectors of Corrections in 2008/2009, also related to the timeliness of disciplinary charges. Further research in this area would be useful.

## **9.4 Complaints and Inspection Procedures**

### *Law and policy framework*

Prisoners wanting to make complaints are to be given the opportunity to obtain assistance, verify information and, if they have difficulties with verbal or written communication, assistance to prepare or present their case (Corrections Act:s154). System objectives also include: ensuring that all reasonable steps are taken to investigate complaints; ensuring that complaints are, to the extent possible, investigated in a culturally sensitive manner; disclosing identities of complainants only to the extent necessary to assist in the investigation of complaints; and monitoring and auditing of complaints to ensure effectiveness of the system. The Corrections Act (sub-part 6) and Section PC.01 of the Prison Service Operations Manual provide further information on complaints, investigations, and inspections.

### *Internal Complaints System*

The internal complaints system aims to ensure that prisoner complaints are dealt with at the lowest and most informal level (Corrections Act:s152). Investigations on complaints can be refused if the prison manager views that the complaint is frivolous or vexatious (r163).

There have been concerns about the under-utilisation and ad hoc nature of the internal complaints process (Ministry of Justice, 2007:213; Ministry of Justice, 2005). There have also been criticisms of the delays in hearing, and investigating, prisoner complaints. For instance, in 2007, the Ombudsmen's Office (Case Notes A10518) noted a prisoner complaint of assault had not been responded to with a prompt and fair investigation. There had been unreasonable delay in the authorities investigating the matter, and the investigation was deemed 'inadequate'. 'It seemed...that the inmate's complaint had simply not been taken seriously'. Previously, the Ombudsmen's Office (2005) also remarked that prisoners do not have faith in the internal complaints system. While it might have the capacity to work, prisoners do not have trust in the system. The Ombudsmen's Office anticipated that the more detailed requirements of the Corrections Regulations

would help to increase prisoner confidence in the complaints system. It is not clear whether this has been the case.

### *Prison Inspectors*

Inspectors of Corrections are independent of individual prisons, albeit staff of the Department of Corrections. A prisoner can contact an inspector at any time – prisoners have access to a free phone line, they should be given at least 24 hours notice of any Inspectorate visit, and should be available to attend interviews. Inspectors have formal access to any person and any records within the prison. They can also make any recommendations about practices and procedures, and issue any direction to staff.

Since 2005, the Department of Corrections annual report has included information on the work carried out by Inspectors of Corrections (as required by s190(1)(b) of the Corrections Act 2004). The Inspectorate's latest report detailed that during 2008/09, over 6,000 contacts by or on behalf of prisoners were made to the Inspectors. 2,799 formal complaints were subsequently received – an increase of 26 per cent on the previous year. These mainly related to prisoner property and the timeliness of disciplinary charges. Of these, just 93 (3.3%) were found to be justified complaints (justified meaning that it was seen to merit further intervention). Inspectors also undertook system reviews in particular risk areas, namely: the directed segregation system; the system for identifying and managing prisoners at risk to themselves; prison internal complaints system; and the system for managing independent sanitation and hygiene inspections (Department of Corrections, 2009c).

The Inspectors have been useful in providing a first point of 'quasi-external' contact for prisoners. They have also been helpful in highlighting the discrepancy between law/ policy and practice of staff on the unit floor. Yet, a couple of problems can also be identified (see Ombudsmen's Office, 2005):

- That they are also faced with prisoner trust issues – as they are not regarded (and are not) completely independent from the Department of Corrections;
- That they have been placed under increasing pressure of work – based on rising complaints and staffing absences – and this has impacted on their ability to undertake prompt investigations.

### *The Ombudsmen's Office*

Prisoners can also take their complaints to the Ombudsmen's Office. Ombudsmen officers will visit each prison, on a fairly regular basis, and they can be contacted via a free telephone number.

During the year to 30 June 2009, 4,687 prisoner complaints were received by the Ombudsmen (Ombudsmen's Office, 2009). This was a 56% increase on the 3,010 complaints received the previous year. These complaints principally revolved around prisoner property (907), prison transfers/movement (460),

staff conduct and attitude (370), prisoner discipline and misconduct (337), prisoner telephone calls and written communications (322), prisoner health services (266), s22<sup>14</sup> (259), prison conditions (226), personal and official visitors (174), security classifications (160) and access to information (165).

In the same year, it appears that some prisons were the source of more complaints than others: with Spring Hill (567), Rimutaka (491), Auckland (396), Christchurch (396), Hawkes Bay Regional (389), Auckland Regional Women's (254), Waikeria (348), Mt Eden (261), Auckland Central Remand (272), Tongariro/Rangipo (219), and Otago Correctional Facility (181) being the source of most complaints. Why this has occurred is unclear.

Most prisoner contacts to the Ombudsmen's Office are resolved by providing advice, explanations or information to the prisoner over the phone. In 2009, almost two thirds of the complaints made by and on behalf of prisoners were resolved through the provision of advice or explanation (Ombudsmen's Office 2009:102). The Office will not usually take up a complaint unless the prisoner has first pursued an internal remedy; around 20% of complaints in 2009 were returned to the Department for reconsideration. Following this, complaints will generally be resolved through informal intervention with the prison concerned. Around 10% of complaints in 2009 were resolved in this manner. While the Office appears to have a good informal relationship with individual prisons, it has previously been noted that formal inquiries by the Office to Department headquarters have been met with 'considerable delay' (Ombudsmen's Office, 2005:62). Whether this is still the case is unclear.

The Ombudsmen must be notified of serious incidents, such as assault allegations or deaths in custody. They monitor investigations of deaths in custody and serious incidents, and can conduct their own independent investigations if they consider this is necessary. As detailed below, the Office has also been designated as a National Preventive Mechanism for the Torture Protocol.

In recent years, the Ombudsmen have also taken a valuable role in investigating, on their own initiative, specific prison issues. These have related to the criminal justice sector (2007), prisoner transport (2007b), the detention and treatment of prisoners (2005), and a current investigation focuses on health services within the prisons. These commendable reports have been a crucial element in highlighting rights issues within penal institutions in New Zealand.

### *The Role of Other Organisations / Individuals*

Both Members of Parliament and Justices of the Peace can enter a prison, examine it and the condition / treatment of the prisoners, and then inform the manager of their observations. All observations are to be permanently recorded.

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<sup>14</sup> This relates to s22 of the NZ Bill of Rights Act that provides that persons should not be subject to arbitrary detention.

Alongside the Ombudsmen's Office, there are a range of organisations to whom prisoners can complain. These include: the Commissioner for Children, the Health and Disability Commissioners, the Privacy Commissioner and the Human Rights Commission.

In the year to 30 June 2010, the Human Rights Commission received 297 complaints and enquiries relating to prisons. The number of matters received by the Commission has risen, on an annual basis, since 2006. The majority of these approaches (around three quarters) are dealt with by the provision of information, advice or referral to an appropriate agency or process. Complaints that raised issues of discrimination, most commonly relate to: disability, 'race', and religious belief.

Corrections can also face investigation from other governmental units. For example, in 2003, the State Services Commissioner commissioned a report into the Canterbury Emergency Response Unit (Duffy, 2004). This report raised a number of concerns about Departmental investigations of inappropriate staff behaviour. Duffy found that management systems, policies and procedures were sound; the problem was how the Unit operated in practice. In response, the Department of Corrections has stated that it has improved systems of quality assurance, audit and monitoring.

### *The Optional Protocol Mechanisms*

Perhaps the most significant recent change to the inspection system has been the March 2007 ratification of the Optional Protocol to the Convention against Torture (OPCAT). This Protocol provides further international and national scrutiny over those detained, and the places they are held.

On an international level, there is a Sub-Committee (to the Committee on Torture) of ten members elected by states that are party to the Protocol. This sub-Committee will visit places of detention in each Party state and make recommendations.

However, OPCAT relies principally on the work of 'National Preventive Mechanisms' (NPMs). These are bodies that will:

- have independent and expert staff;
- be able to carry out regular visits, without warning, to all places of detention;
- have full access to registers / other documents / detainees;
- make recommendations aimed at strengthening protections or improving treatment and conditions;
- publish an annual report of their work (Owers, 2008).

The objective of these mechanisms is not to report on torture and inhuman or degrading treatment, but to prevent it.

The Ombudsmen's Office is the NPM for prisons. Their preventive monitoring will remain separate from complaints investigation work. This organisation,

together with the Children's Commissioner, has NPM status for youth justice institutions. The Human Rights Commission operates as the Central Preventive Mechanism. In their first year, the Mechanisms focused their attentions on piloting their monitoring system and programmes, and engaging in initial visits to institutions, with visits fully underway in the second year of operation. The Human Rights Commission (2009b:240) has highlighted that the NPMs have received a 'positive response and level of co-operation...from detaining authorities', highlighting their commitment 'to ensuring that New Zealand detention facilities operate to a high standard and meet human rights requirements'. In the third year of operation, the NPMs noted an increase in referrals from staff.

Initial observations from this work are:

- That some government agencies and departments have demonstrated 'a limited awareness of human rights generally' and have not yet integrated rights 'into policy and practices' (Human Rights Commission, 2009b:24). Further, that some agencies – including Corrections – should integrate human rights into staff training and day to day practices to avoid operational problems (Human Rights Commission, 2009:3.66).
- That challenging issues are apparent, such as: ensuring facilities – particularly older facilities – are fit for purpose; inconsistencies in some of policies and practices that cover use of restraints and searches; the need for adequate staffing levels, training and specialist staff; and the need for particular attention to the rights of specific groups such as children and young people, asylum seekers and disabled people (Human Rights Commission, 2009; 2010).
- The need for NPMs to be adequately funded for this extension of their duties. For example, initially no new funding was received by the Children's Commissioner to undertake their new responsibilities (Human Rights Commission, 2009:19). A better-resourced and joined-up approach – that can identify cultures of treatment / thematic issues – will allow a deeper understanding of current correctional practices (Medlicott, 2009).

Thus, there are ongoing issues about how this system can be supported and developed.

### *Prisoner Access to Redress*

The Behaviour Management Regime that operated at Auckland Prison between 1998 and 2004, was found (by the High Court, Court of Appeal and Supreme Court) to have breached prisoners' rights to be treated with humanity and respect for their inherent dignity (the *Taunoa* case). In 2004, three of the prisoners involved were awarded damages. This was met with significant political objection, and prompted the introduction of the *Prisoners'*

*and Victims' Claims Act 2005* that limits the award and payment of compensation to prisoners.

The Human Rights Commission (2009:7.3) 'considers that this response inappropriately focused on limiting prisoners' access to compensation, rather than on preventing mistreatment from occurring, and does not accord well with the State's obligations to ensure that prisoners are treated with humanity and dignity and that an effective remedy is available for violations of their rights'.

### *Arguments for an Independent Inspectorate*

The value of an independent Inspectorate continues to be raised by national and international commentators. For instance, within New Zealand, groups such as the Howard League for Penal Reform continue to advocate for an independent prison inspectorate. They argue that the current framework for addressing complaints and undertaking inspections is ad hoc, can be subject to lengthy delays, and does not produce an adequate amount of transparent reporting.

In the Australian context, Harding (2005) details that Ombudsmen, albeit useful, can be regarded with cynicism by prisoners, particularly as the Office will expect prisoners to exhaust internal complaints and grievance mechanisms first. In these circumstances, he notes, problems take a long time to rectify and can sometimes be solved after a prisoner has been released. Harding (2007) argues for an independent inspectorate that is fully autonomous, has free access to all prisons and relevant documentation, can undertake unannounced visits, has a clear philosophy of inspection standards, and that can engage in thematic reports

Anne Owers, the head of HM Inspectors of England and Wales has also detailed the importance of a fully independent, and well-funded, Inspectorate. Among other things, she argues that inspectors should (Owers, 2006, 2006b, 2008):

- Hail from a variety of backgrounds (such as from social work, probation, psychology, civil service, health care, drug treatment, as well as prisons);
- Focus on testing quality (not compliance with targets), outcome (as opposed to processes or output) and best practice (rather than minimum auditable standards). In this respect, sometimes inspectors will demand something that an overcrowded penal system cannot deliver – it is important to stress that some practices should not be the norm;
- Have complete unhindered access to institutions – and will be able to go anywhere, unescorted;

- Be able to see all documents, and speak in private to staff and prisoners;
- Ensure that at least half of inspections take place without warning;
- Undertake thematic inspections (for example, on female prisoners, young prisoners, the use of police cells, and so on);
- Not disguise the extent of the issues that contemporary correctional institutions face in providing services or resources for a growing population.

She also details the importance of undertaking confidential surveys with prisoners, to allow comparisons to be made across institutions and across time. Finally, she illustrates that (with regard to England and Wales) 92% of Inspectorate recommendations are accepted, with over two-thirds achieved following reinspection. In effect, the Prison System in that jurisdiction has engaged co-operatively with the Inspectorate.

Of course, even with the best of monitoring and inspectorate standards, prisoners rights will remain significant. It may be found that incidents are seen to 'increase' due to increased reporting and recording. Further, it might be found that violations change in their nature. For example, while monitoring has certainly led to a decrease in the number of prisoners who come forward with physical injuries, international literature details that prison officers can exert power over prisoners in other ways. A prison officer may no longer use direct force but they may write negative incident reports, to antagonise prisoners so that they 'lose' it and have to be forcibly restrained, or removed to punishment cells/segregation or even to other prisons (Crawley, 2004; McDermott and King, 2008). This is the paradox of human rights monitoring (Owers, 2008). Monitors may not see violations because they change, or are hidden – and sometimes even because prisoners do not tell them what is happening, because they feel ashamed, or they do not have an understanding that they have been violated, or they do not have faith or trust in the complaints system, or that they are resigned to their fate (Ombudsmen's Office, 2005).

## 10. Staff

### *Law and policy framework*

The Corrections Act (s11(6)) states that every prison must have sufficient staff, of each gender, to ensure that all provisions of the Act, and associated regulations, are carried out in the prison. Prison managers and officers are expected to ensure the safe custody and welfare of received prisoners (s12, s14).

According to the Regulations (r6), prison managers are responsible for the 'fair, safe, secure, orderly and humane management and care of...prisoners'. Managers must ensure that staff members are fully instructed, and performing their duties with diligence and competence; that prison staff (and prisoners) are prepared for emergency situations; that prisoners, staff and visitors are given information about their rights, duties, and responsibilities; that all those who enter the prison comply with the Corrections Act, regulations and rules; and that all records are given to entitled persons in a timely manner.

Staff members must act in accordance with the Act and Regulations (r10). They are expected to act promptly, and with initiative, in emergency situations; they must notify the prison manager of any situation that might affect the health or safety of any person in the prison; and, they must notify others if a prisoner does not appear to be in good physical or mental health, or appears to be depressed, at risk of self-harm or in need of special attention and care.

### **10.1 General Staffing Issues**

Prison officers often regard themselves as an 'unvalued, unappreciated occupational group' (Crawley and Crawley, 2008:134). Prison officers are faced with quick criticism when something goes wrong and there is little appreciation of the work challenges that they face. There is little emphasis on, or understanding of, the good practices of individual staff members, and units, within the public realm.

The Ministerial Committee of Inquiry into the Prisons System (1989:s24) noted that the 'majority of prison officers were able people who do an extremely difficult job to the best of their ability in physical conditions which would not be tolerated by most workers'. This remains the case today. For instance, at times, staff have to deal with: poor prison conditions; the realities of dealing with individuals with severe mental health problems; the pressures of dealing with those who are depressed or who self-harm or commit suicide; the ever-present danger of assault, as well as verbal or physical intimidation; the need to maintain close watch, and division, between prisoners who are conflictual, and so on (Jacobs, 2004). Further, families of staff members must also live with the stress and fears of officers.

Such staffing stresses are not assisted by the levels of staffing afforded to New Zealand institutions. In the Department of Corrections 2005/06 Annual

Report, it was highlighted that New Zealand had a higher prisoner/frontline staff ratio than Australia, Canada, England and Wales, and Scotland. During 2005/06, the ratio of prisoners to full time equivalent frontline staff in New Zealand was identified at 2.5:1. This is compared to recent rates of 1.9:1 in both Australia and Canada; 2.1:1 in England and Wales; and 1.5:1 in Scotland. While such ratios are fraught with difficulties – in that how the data is collated varies from country to country (for instance, whether it includes administrative as well as frontline staff) – the issue of staffing levels remains important. The Department of Corrections (2009c) has since indicated that local ratio levels have dropped to approximately 2.3:1. This improvement will invariably decrease pressures on staff as well as prisoners.

As the Department of Corrections (2008:23) has established, the Department operated at a level of high pressure on operations, with 'significant quality degradation and considerable negative impact on staff' during 2005/06 and 2007. During this period, there were also times when the Department operated 'at a high risk of failure, and a significant negative impact on staff'.

In this context, it is no surprise that – without the right support – staff can burn out, there can be high levels of absenteeism, and staff will leave. The top priority is, then, to recruit, train, nurture, promote, and improve prison personnel. Part of this approach is the need to build a professional culture of excellence within prison officer ranks.

In New Zealand, a number of initiatives have been undertaken to enhance the professional development of staff and to support them in gaining skills and experience. These include:

- Changes to staff selection processes, based on research into factors which predict reduced turnover and 'high performance' as a Corrections Officer.
- A new year-long induction process, during which time the new employee will receive line-management support.
- Tactical Communications training, that provides prison officers with the skills to de-escalate situations by calming angry prisoners.
- Tailored development programmes for senior staff and managers, to enable them to manage their staff more effectively.
- Annual PRIDE awards and new recognition awards to acknowledge outstanding conduct and professionalism.
- Improved, more relevant, staff training on ethics and integrity.
- Executive Scholarships, to support workers to complete advanced qualifications.
- The introduction of a major staff safety programme and Occupational Health and Safety Boards in all Correctional workplaces.

These advances should be consolidated, and care taken to ensure that the drive for efficiencies does not work against this professionalisation and safety of staff. Moreover, at a general level, fuller research on Correctional staff – including on their recruitment, training, conduct and culture – would be valuable in New Zealand.

## 10.2 Culture

Unlike the literature on police culture, the culture of prison officers has only recently been of criminological research consideration. In the UK, Crawley and Crawley (2008), and Liebling (2008) have each considered the characteristics of prison officer culture. These characteristics include:

- An expectation of solidarity between members – to be able to rely on colleagues in a ‘tight spot’; and, to sustain officers against criticism by groups who ‘do not understand’ the pressures of the job;
- Cynicism and suspicion – with regards to prisoners but also to those who are regarded as unsympathetic outsiders; only they can understand what it is like to work in prison. Cynicism is also directed to senior managers;
- Feelings of social isolation – based on the perception that those outside the prison devalue their work; feeling stigmatised by the nature of their work; inward-looking;
- Strong informal communications – rapid dissemination of information and gossip or rumour;
- Humour – using humour as a survival mechanism, a defence mechanism, morale raiser, to incorporate new arrivals, or to invoke exclusion;
- Emphasis on physical courage – having pride in being able to handle any situation; linked to machismo; prizing the ability to undertake control and restraint effectively and quickly, or to handle difficult prisoners; feelings of power within the prison setting;
- Desensitization – as staff become accustomed to drug-taking, self harm, or the routinization of conflict or violence;
- Domestic character – as officers also have to provide care and domestic duties; many officers will develop relationships with those who are held over a longer period;
- Multi-skilled – having a preparedness to work as a team; to take a problem-solving approach; and to engage in a variety of tasks on a daily basis.

Of course, occupational culture (that is, the informal rules and norms that underpin how officers relate to each other and prisoners, or how they respond to institutional changes) can vary between prisons and even within prisons. Prison managers have the capacity to set or change the cultural tone of individual institutions. Similarly, workers within particular units can sustain very different cultures from other prison areas. Discretion is operationalised in different ways across the prison estate.

It is evident that occupational culture evolves over time. In New Zealand, for instance, it is only relatively recently that women were deemed to have the appropriate skills to work as prison officers (Newbold, 2005). It is clear, too, that this culture is dependent on a whole range of factors, such as the 'type and function of the prison, the prison's history (for example the number of disturbances and the quality of industrial relations), the ratio of young to old and experienced to new staff, the nature of the regime, the ratio of staff to prisoners, the rate of staff turnover and the architecture of the prison itself' (Crawley and Crawley, 2008:141-2). In addition, it would seem that changes to organisational structures as well as the introduction of new technologies would also impact on organisational culture.

Beyond this, culture is also dictated by the values that are imposed over officer performance. For instance, as Newbold (2008:396) suggests, 'officer performance is gauged by objective administrative criteria such as numbers of escapes, assaults, disturbances, failed drug tests and suicides'. While these are undoubtedly important factors within a prison environment, they are based on the prevention of negative outcomes. Taking a human rights approach would mean reworking this criteria to include constructive outcomes that officers might engage in – such as treating individuals with dignity or fairness; the generation of positive behaviours; providing appropriate health care services; or, compliance with legal and policy frameworks. 'In practical terms, human rights must be recognized as a distinct major line of [correctional] business, in the same way that public safety/security and safe reintegration are recognized as such' (Zinger, 2006:132).

Traditionally, human rights have not been an integral part of prison officer work or thinking. In her extensive research in England and Wales, Elaine Crawley (2004) demonstrated how some officers (although not all) were resistant to the idea of prisoners' rights. She details how some officers frequently denigrated prisoners, using terms such as 'vultures', 'animals', 'scum' or 'inadequates' when talking about them. Reflecting public attitudes, some prison officers also saw that prisoners already had too many rights, and that management cared more about them than uniformed staff (this is also evidenced in McDermott and King, 2008). From their view, rights should be privileges. Of course, there were exceptions to these ideas and practices. However, in this cultural context, officers who worked to attain prisoners' rights were viewed as weak or not a 'proper officer'.

### **10.3 Employment**

The growing prison population has placed pressure on facilities, general operations as well as staff. In a 2007 Corrections briefing to the new Minister, it was highlighted that over half of all frontline prison staff have less than five years experience. In 2009, almost 60% of staff had less than five years experience (Department of Corrections, 2009c). The percentage of staff with less than two years experience had declined (29%), while the percentage of staff with between two and five years experience had increased (32%). In

reality, the numbers of new staff will place significant stress on experienced staff to mentor and oversee new staff (this is a significant issue as most of prison officer training is learnt on the job). With prisoner numbers not anticipated to fall, this concern may well intensify.

It is also apparent that recruiting staff in remote locations (such as Tongariro Prison) can be difficult. Further, the Corrections Association of New Zealand has indicated that many staff are being lured by other Corrections departments, such as in Western Australia, that offer better conditions and salaries.

Over the last five years, the Department of Corrections (2008:36) have added approximately 2,700 new staff, who now mostly work in new prison facilities or attend to community-based sentences. With regards to full-time equivalent positions in 2008/09:

- Females accounted for 40% of all Corrections staff (and 39% of all managers);
- Māori accounted for 21% of all staff (and 18% of all managers);
- Pacific people accounted for 9% of all staff (and just 3% of all managers).

## **10.4 Training**

Prison officer trainers have been working hard – between 2001-2006, over 4,000 students went on the Initial Training Course course for Corrections in New Zealand. As a side point to the New Zealand detention situation, it seems appropriate to point out that Corrections staff should also be commended for taking a much-valued training role in building rights-based approaches in other jurisdictions, such as in Vanuatu and Timor-Leste.

The Initial Training Course, at the Corrections Staff College, is a six-week residential course for new recruits. The course covers topics such as: safety standards, addiction awareness, gang management, control and restraint techniques, procedures for transferring and escorting a prisoner, relevant legislation (including Crimes of Torture Act and NZBORA), communication and conflict resolution, building professional and ethical relationships, marae protocol, the Treaty of Waitangi, cultural diversity, and the role of the Ombudsman. Recruits are also engaged in role-play situations at the Assessment Centre so that experienced staff can determine how recruits react to diverse situations. It is unclear how much time is spent on each of these elements. A significant recent initiative has been the introduction of the de-escalation training programme to established staff (as detailed in s7.5).

Issues that have been raised within international and local literature, on formal prison officer training include:

- That there is a need to ensure that there is adequate provision of trained 'specialist staff in certain areas, as well as the need to ensure

that all staff are well equipped to deal appropriately with detainees – including particular groups such as children and young people, asylum-seekers and people with physical, mental or intellectual disabilities’ (Human Rights Commission, 2009b:23).

- That staff training should continue to be strengthened across the officer’s working life course, so that staff engage with refresher courses to maintain training standards across the board (Ombudsmen’s Office, 2005).
- That human rights education should be consolidated within Corrections training, to provide a more comprehensive approach to the application of human rights principles across Correctional practice (Human Rights Commission, 2009; UN Committee Against Torture, 2009).
- That human rights education, as well as education on equality strategies, be emphasised in processes that are required for promotion at all grades (Sim, 2008).

There is no apparent research on the training experiences of prison officers in New Zealand however some studies have been conducted abroad. In academic writing about her own training as a prison officer, Arnold (2008) details the incongruities between taught courses and institutional (on the job) training. The density of initial training did not necessarily build confidence among new recruits, and Arnold (2008:409) reflects on the stress of potentially ‘making...the wrong decision in the prison and being unable to remember what they had been taught; compromising security; ‘not getting the routine right’; being too quiet, not assertive enough or ‘too nice’ to prisoners; not being able to deal effectively with confrontation or violence; being taken hostage; being ‘conditioned’ and manipulated by prisoners; being attacked or assaulted by prisoners; or discovering or seeing a prisoner who had seriously self-harmed, died, attempted or committed suicide’.

Similarly, Crawley and Crawley (2008) illustrate the mismatch between management values and the organisational realities of training and initiation. They detail that new recruits are often subject to high levels of stress and pressures to conform. Interestingly, stress is ‘generated through interactions with fellow officers and, more particularly, their managers, rather than through their interactions with prisoners’ (ibid:145).

## **10.5 Conduct**

### *Law and policy framework*

The Department of Corrections ‘Code of Conduct’ is based on three principles of conduct which all employees are expected to observe:

- Employees should fulfil their lawful obligations to Government with professionalism and integrity;

- Employees should perform their duties honestly, faithfully and efficiently, respecting the rights of the public, colleagues and offenders;
- Employees should not bring their employer into disrepute through their private activities.

In relation to the second principle, the Code of Conduct makes a number of points, including:

- You are expected to treat your colleagues, offenders and any people with whom you have official dealings with courtesy and respect. This includes respecting and being responsive to people from all cultures. You must not discriminate on the basis of the person's sex, marital status, religious or ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status, or sexual orientation.
- Role modeling: All employees play an important part in reducing re-offending. Your working relationships with other employees and with offenders must be based upon the principles of courtesy and respect for the dignity of others. You must also acknowledge that your actions, attitudes and behaviours will influence offenders and it is your job, therefore, to ensure that influence is a positive one.

Serious misconduct under the Code includes: violence or threats of violence against offenders or others in the workplace; threatening, abusive or insulting behaviour to any person in the workplace; sexual or racial harassment of Department employees, offenders or others in the workplace. These activities can receive a number of penalties including warnings and dismissal.

Corrections regulations state that every officer 'must obey without question any lawful order given by his or her senior officer; but may later raise its validity' (r13). Regulation 14 also states that 'no security officer or staff member may receive any money, gratuity, reward, gift, or benefit of any kind from or on behalf of a prisoner; neither must they enter into an agreement of benefit with a prisoner. Regulation 17 details that the prison manager, or chief executive, must be informed if it appears that there is a conflict of interest between an officer's personal or business interests and their interactions with prisoners.

### *Issues*

Over recent years, there has been a range of allegations about inappropriate conduct by prison staff. For instance, four prison officers were stood down for allegedly using prisoners to work on their private homes in 2007 (Cook, 2007). In 2008, there was a claim, at Christchurch Men's Prison, that a female staff member had been engaging in an inappropriate relationship with a prisoner, and that this matter had not been attended to by management (NZPA, 2008b). In addition, there have been cases of corrupt prison officer activity at Rimutaka Prison. The subsequent Patten Investigation (2008) found that, while there was no evidence of systemic corruption, a culture did exist at

Rimutaka that allowed some individual instances of corruption to occur (Patten, 2008). In 2009, Rimutaka prison had a female officer suspended after allegations of a prisoner liaison (Fitzsimons, 2009) and, in 2011, a senior manager pleaded guilty to drug offences, including cannabis cultivation (The Dominion Post, 2011).

The establishment of the Professional Standards Unit is a commendable step. This Unit started work in November 2007, and by 2009 had investigated 67 cases. In February 2009, The Press highlighted that a quarter of all complaints against Corrections staff, dealt with by the Professional Standards Unit, resulted in disciplinary action (Houlahan, 2009). There is some debate on whether the Unit should be fully independent of Corrections, to mirror the Independent Police Conduct Authority.

## 11. Conclusion

This review has shown that real progress has been made, since 2004, with regard to building and maintaining human rights standards in correctional institutions. In many situations, New Zealand advances beyond the UN Minimum Rules for the Treatment of Prisoners.

Recent positive steps include:

- The consolidation of human rights considerations within penal legislation, regulation and policy;
- The increase in prisoners involved in vocational/accredited industries;
- The increase in prisoners involved in literacy and educational courses;
- The expansion of drug and alcohol programmes;
- The expansion of Units and Programmes that specifically attend to the diverse needs of prisoners;
- The impending implementation of the Mothers with Babies legislation and a mental health screening tool;
- Development of culturally-relevant strategies that attend to the over-representation of groups within the prison estate;
- Further assistance for prisoners preparing for release;
- The increasing access to volunteers and cultural advisors across institutions;
- The establishment of the Professional Standards Unit;
- Developments in monitoring and inspection provisions.

All of these steps should be subject to continued review and, hopefully, consolidation. One key factor that may well downgrade many of these advances is the rising numbers of those detained. Increasing prison populations, in particular, risk undermining the gains made over the last few years. Building a rights-based culture requires, above all else, a reduction in the numbers of prisoners across institutions.

Together with the issue of prisoner growth, there remain other points of consideration. These include:

- There is a need for continued attention to ensure that basic material needs (including the right to property) of prisoners are met;

- There are concerns about excessive periods of lock-down;
- Issues concerning the scheduling of programmes require attention, as well as reflection on the expectations about what such programmes may achieve;
- A sustained approach in building provisions for ‘working for release’ is required;
- There remain concerns about educational provisions for those under 19, and educational / library provisions generally;
- Continuing ‘imagination’ is needed to strengthen links between prisoners and their families/whānau;
- Provisions with regards to community reintegration should be enhanced;
- There is a need to ensure that prison volunteers receive appropriate support and resources;
- Prisoners’ access to medical treatment (including access to dental care) requires further development;
- There is a need to establish further primary or preventive care with regards to mental health;
- Further attention and monitoring of the self-harm and unnatural deaths of prisoners, including post-release deaths, is required;
- Continuing efforts are required to ensure the well-being and safety of prisoners and staff (this might include a review of ‘double-bunking’ practices);
- New restraints and technologies should be subject to monitoring with regards to their use and effects;
- Practices with regards to information management (particularly when prisoners are transferred between units or prisons) should be strengthened;
- There is a need for close and specific monitoring of provisions for diverse groups, including children and young people, older prisoners, women, transgender prisoners, refugees and asylum seekers, prisoners with mental health problems; and, prisoners who have physical or intellectual disabilities;
- There is a need for further data on specific groups within prisons, such as older prisoners, transgender prisoners, refugees and asylum seekers, prisoners with mental health or disability issues;

- Staff-prisoner ratios require improvement;
- There is a need to build staff training in terms of enhancing skill-sets with regards to particular groups (eg working with female prisoners) and issues (such as human rights training or specific mental health training);
- Further primary research on rights standard practices within New Zealand prisons is required. This research should highlight good practice as well as areas that necessitate improvement.

However, taking a human rights approach to the issue of detention is not just about exposing particular physical conditions and practices. It is important that human rights thinking does not just become a case of ticking boxes against a checklist of targets or processes or minimum standards. Following the latter route, while useful in terms of managerialist practices, will not result in a human rights ethos or culture.

### *Rethinking Imprisonment Practices*

Beyond these concerns, building a rights-based culture also requires an examination of what prisons should be about, it requires questions about the criminal justice system as a whole (Livingstone, 2008). That is, taking a rights-based approach should also include thinking about 'overall patterns of imprisonment, their institutional context, cultural attachment to penal sensibilities and the general...consequences of imprisonment' (Piacentini, 2004:186). This may include thinking about whether certain groups of people – such as asylum seekers or those with serious mental health problems or women or others – should be imprisoned at all. Our current reliance on, and expansion of, the penal system has indicated a mentality in which 'the prison has become both the starting point *and* the finishing point for the debate around crime control' (Sim, 2008:141). In response, we need to pay much more attention to how we understand, justify and administer imprisonment and punishments generally.

Building a human rights culture also entails discussion on how human rights within prison environments are interlinked to rights within wider societies. It is evident, for instance, that many of those who are sent to prison are those who have not enjoyed secure access to human rights standards within wider communities. In addition, imprisonment aggravates this situation – as, on release, prisoners are likely to find that attaining rights (such as gaining employment, finding secure housing, and so on) becomes even more difficult. Thus, human rights standards are currently being damaged or at least endangered before, during and after imprisonment. Of course, it is not possible for prisons to be able to prevent or resolve all these violations. However, the attainment of these rights – inside and outside the prison walls – is fundamental to the rehabilitation and successful reintegration of those we choose to incarcerate, as well as to the wellbeing of families and communities.

Recent work by Professor Ian Loader (2007) has highlighted three public philosophies of contemporary penal systems:

1. **Doing Harm** – in which the purpose of the penal system is the delivery of punishment and pain. This is undertaken for vengeance, retribution and to show that certain kinds of behaviour are not tolerated. The rationale, here, is public protection and the role of the prison system is to incapacitate and exclude. Offenders are viewed as ‘dangerous others’ who have a ‘zero-sum’ relationship with victims or wider society. This philosophy can be connected to: the expansion of the prison system; the increase in prisoners; increased spending; turn-key guards.
2. **Making Good** – in which the purpose of the penal system is to repair damaged lives. This is undertaken as it is understood that prisoners derive from fractured family backgrounds, they have poor education and training skills, and they often experience mental health or substance abuse problems. Prisoners are troubled and troubling. To assist offenders to lead ‘good and useful lives’ and to protect communities from further crimes, prisons should provide educational, health and rehabilitative services. This philosophy can also be connected to the rising size and cost of the penal system as offenders can, paradoxically, be sent to prison to obtain services. It can also inflate expectations about what the system (that prioritises security and control) can accomplish; and detract from other social institutions that may be better able to provide and deliver the needed services.
3. **Doing the Necessary Minimum** – this progresses the idea that there is a need to minimise the use of prison and the harm that it does. This is undertaken as there is little hope in what the prison system can accomplish; as, prisons continually fail as social institutions. The prison system should therefore be regarded as the ultimate last resort and those within it should be treated with dignity and respect ‘in institutions whose organizational cultures and practices value and seek to protect human rights’ (ibid:9). Offenders are viewed as citizens; they are simply paying their dues to society. A secure society is best fostered and sustained by wider mechanisms of economic inclusion and social regulation. Costs of this philosophy include that: it does not accommodate well-intentioned practitioners working in the prison system to rehabilitate and assist prisoners; and it may reduce public interest in prisons.

These three philosophies are, of course, not mutually exclusive as elements of each may be combined. However, they provide a reminder of the choices we make when deciding who is sent to prison, and how penal systems may be structured and practiced. Currently, in the adult system, it seems that New Zealand is pursuing a track of ‘Doing Harm’ with an engagement of ‘Making Good’. From this author’s perspective, we should seek to ‘Do the Necessary Minimum’ with some inclusion of ‘Making Good’ (an approach more akin to New Zealand’s youth system). The reason for this is that, as the literature covered in this report makes clear, the current approach is not effective in rehabilitating offenders, deterring offenders or in creating safer communities.

Moreover, New Zealand's use of prison is costly – the 2010/11 Corrections estimated spending includes \$767.283mn on custodial services for sentenced and remand prisoners, as well as private prison contract management (The Treasury, 2010). This sum, that excludes spending on programmes, education, and the like, is significant. While the most serious offenders will continue to need to be securely detained, many offenders would be better served within community environments in which spending is directed to local social services.

These perspectives have gained traction elsewhere. For instance, the House of Commons Justice Committee (2010) has recently called for reform in the way in which imprisonment is undertaken in Britain. Among other things, the Committee concluded that:

- Prisons are economically unsustainable;
- Prisons are generally ineffective in reducing crime or reforming offenders – this is especially the case during periods of overcrowding;
- Prisons should be reserved for the most serious criminals;
- Most offenders can be managed more coherently in the community.

The Committee questioned the whole nature of punishment practices. Instead, they noted that 'if other purposes, including reform and rehabilitation and reparation to victims, were given higher priority, then we believe sentencing could make a much more significant contribution to reducing re-offending and to improving the safety of communities' (ibid:11).

With this in mind, the Committee called for the introduction of a 'justice reinvestment' model (cf Tucker and Cadora, 2003) in which government funds are directed in a more substantive way to community provisions. Arguing that prison populations could be safely cut to two-thirds of the current level, the Committee recommended that correctional savings should be redirected to probation and crime reduction programmes in the community; this will include health, education, social welfare and criminal justice initiatives for established and 'at risk' offenders. Particular focus should be given to preventative services that work with former offenders, those with drug and alcohol problems; those with mental health problems; and young people who have come into contact with criminal justice agencies. The Committee report, the result of sustained work by 14 cross-party MPs (and a whole host of practitioner and academic contributors), calls for a crucial shift in thinking about punishment practices, specifically to reduce the use of custody as a sanction.

These issues are certainly worthy of further action in a local context, so that we might begin to substantively address the questions: 'What should we expect of our prisons?' and 'What do we actually want to achieve in our responses to offenders?'. After all, a country's use and means of imprisonment is a matter of choice and, consequently, these features of New Zealand society can be changed.

## 12. Appendix One

### 12.1 Legal Framework

This section sets out some of the recent changes (2004 – 2010) that have been made to the legislative framework that guides policy and practice in prisons.

#### *The Corrections Act 2004*

The Corrections Act 2004 (and Corrections Regulations 2005) replaces the former corrections regime under the Penal Institutions Act 1954 and associated regulations, and governs the administration of prisons.

Positive features of the new legislation include:

- The explicit reference in the Act's purpose statement (s5) to compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners and the inclusion of prisoners' minimum entitlements (for example, related to communications, library services and education) 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;
- Decisions to segregate prisoners for security or protection reasons to be reviewed on a monthly, rather than three-monthly, basis;
- The inclusion of the Human Rights Commission among the list of specified statutory visitors able to 'visit a prison and have access to a prisoner(s) or staff at any time as long as the visit is consistent with the visitor's statutory duties' (ss 73, 2);
- That the Chief Executive and Prison Managers are to obtain advice from those communities that are significantly affected by Corrections policies and practices.

The Corrections Act also ended contractual arrangements that allowed for the private management of prisons. This issue has since been revisited, with legislation introduced 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 and report regularly to

the Minister of Corrections on a range of matters including staff training, prison programmes, prisoner complaints, disciplinary actions, and incidents involving violence or self-inflicted injuries.

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. Extension of the upper age limit from six to 24 months; explicit inclusion of the child's best interests as a mandatory consideration; and stipulations concerning the provision of appropriate facilities (to the extent practicable within available resources) are positive developments in terms of the rights of imprisoned mothers and their children. However, the Act is not yet in force. Commencement of the Act was deferred to ensure appropriate facilities are available.

Other recent amendments to the Corrections Act have included the *Corrections Amendment Act 2009*, which among other things, prohibits the use of 'electronic communication devices' by prisoners and provides for the detection and interception of radiocommunications; and expands search powers. In addition, the *Corrections (Use of Court Cells) Amendment Act 2009* enables court cells to be used to temporarily house prisoners during accommodation shortages.

The *Crimes of Torture Act 1989* was amended to meet the requirements of the Optional Protocol to the Convention Against Torture, ratified by New Zealand in 2007. A new Part 2 of the Act was inserted to provide for visits by the Subcommittee and for the designation of National Preventive Mechanisms and a Central National Preventive Mechanism.

#### *Bail Amendment Act 2007*

Section 8(1) of the original Bail Act 2000 provided that the court must take into account whether there is a 'risk' that the defendant may not answer to bail, interfere with witnesses or other evidence or offend while on bail. Section 8(2) listed a number of other considerations that the court may take into account such as the strength of the evidence, the likely penalty and the length of time before trial.

The Bail Amendment Act 2007 amended section 8(1) in line with *R v Hines* (CA384/02, 29 November 2002), clarifying that 'a risk' of the defendant not answering bail, interfering with witnesses or other evidence, or offending while on bail, means a 'real and significant risk'.

The Amendment Act also inserted an 'avoidance of doubt' provision at 8(3) to clarify that while it is important that court orders be obeyed, the court should not remand a defendant simply because he or she has breached a condition, unless the breach indicates that he or she now poses an unacceptable risk.

#### *Bail Amendment Act 2008*

The Bail Amendment Act 2008 reversed the 2007 amendment by once again removing 'real and significant' from the risk provision (s8(1)), thereby reverting to the previous test for determining whether a defendant should continue to be remanded in custody.

This Act also includes a sub-clause which makes it clear that bail decisions should be based solely on the determination of the risk of re-offending, interference or absconding, and not on any assistance that a defendant provides, or offers to provide, regarding any criminal investigation.

#### *Parole (Extended Supervision) Amendment Act 2004*

The Parole (Extended Supervision) Amendment Act provided for the court to order that certain sexual offenders be subject to extended supervision orders.

#### *Parole Amendment Act 2006*

The Parole Amendment Act 2006 amended the Parole Act to provide measures for the management of parole services during an epidemic.

#### *Parole Amendment Act 2007*

The Parole Amendment Act 2007 made a number of changes to the Parole Act including: providing Home Detention as a sentencing option; establishing residential restrictions that may be imposed on all offenders subject to parole or release; the monitoring of offender's compliance with release conditions; powers to issue summons for information and evidence; the implementation of confidentiality orders; and, the ability of the Commissioner of Police to make a recall application.

The Amendment Act also introduced specific standard conditions for offenders subject to a court imposed extended supervision order. Prior to this law change, these offenders were subject to the same standard release conditions as an offender released on parole.

#### *Parole (Extended Supervision Orders) Amendment Act 2009*

The Parole (Extended Supervision Orders) Amendment Act amended the Parole Act 2002 to clarify that: part-time residential restrictions can be imposed beyond the first 12 months of an extended supervision order; and the Board may impose residential restrictions on an offender subject to an extended supervision order without having to be satisfied that the offender agrees to comply with the restrictions.

#### *Sentencing Amendment Act 2006*

The Sentencing Amendment Act 2006 made amendments to the Sentencing Act to specify the priority order for the payment of reparation to multiple victims of one offender.

#### *Sentencing Amendment Act (No2) 2006*

The Sentencing Amendment Act (No 2) 2006 amended the Sentencing Act with regard to measures for the management of community sentences during an epidemic.

#### *Sentencing Amendment Act 2007*

The Sentencing Amendment Act 2007 established home detention as a sentence in its own right (rather than a way of serving a term of imprisonment). It also introduced two new community based sentences: community detention and intensive supervision. An amendment to 93(2B) excludes residential restrictions from the Special Conditions which can be imposed on prisoners serving short sentences (12 months or less).

#### *Sentencing Council Act 2007*

The Sentencing Council Act 2007 established a Sentencing Council to develop sentencing guidelines. This Council disbanded following the change of government in 2008.

#### *Sentencing (Offences Against Children) Amendment Act 2008*

The Sentencing (Offences Against Children) Amendment Act 2008 inserted a new section to the Sentencing Act to provide guidance to the court when sentencing for offending against children involving violence or neglect. The new section lists factors to be considered alongside the factors already provided for in section 9 of the Sentencing Act.

#### *Sentencing Amendment Act 2009*

The Sentencing Amendment Act 2009 established a regime for the confiscation of criminal assets through the civil courts.

#### *Sentencing (Offender Levy) Amendment Act 2009*

This Amendment provided that all offenders convicted of an offence must pay an offender levy of \$50. The amount of the levy may be changed by regulation. The levy is in addition to any other penalty that the criminal courts may impose, such as imprisonment, community service, a fine, or reparation to be paid to any victim. The courts are not to consider whether or not the levy will cause hardship, which is a consideration associated with a sentence involving reparation, or to consider the levy when taking into account the financial capacity of the offender in determining the amount of a fine.

If the court imposes on an offender a sentence of reparation or a fine, or both, the payments received from the offender will be used first to pay the reparation owed, then the offender levy and then the fine.

#### *Sentencing and Parole Reform Act 2010*

The Sentencing and Parole Reform Act 2010 establishes 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.

#### *Prisoners' and Victims' Claims Act 2005*

The Prisoners' and Victims' Claims Act 2005 deals with the awarding of compensation to prisoners for breaches of their rights under the New Zealand Bill of Rights Act 1990, the Human Rights Act 1993 and the Privacy Act 1993.

The Act restricts the awarding of compensation so that it is reserved for exceptional cases and used only if, and only to the extent that, it is necessary to provide effective redress. Restrictions on compensation include: that the plaintiff has first made reasonable use of available internal and external complaints mechanisms; and that other remedies are used if they could provide effective redress.

Section 14 of the Act lists the guiding considerations for awarding compensation, which include (among other things): whether (and how much) compensation is required to provide effective redress; any steps taken by the plaintiff to mitigate loss or damage; whether the breach of the right was deliberate or in bad faith; the plaintiff's own conduct; the consequences of the breach of the right; and the nature of the freedoms, interests or values protected by the right.

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, was extended by amendments in 2007 and 2010, so that these provisions now expire at the end of June 2012.

## **12.2 Relevant New Zealand Legal Cases**

This Section details recent legal cases (2004 – 2009), from New Zealand, that are particularly relevant to prisons. Readers should be mindful that there will be other (pre-2004) cases that are pertinent to human rights discussions. Taken together, legal cases demonstrate the tensions between prisoner/staff rights and the imperatives of institutional rights and concerns. Decisions have affirmed that:

- Detainees should be provided with the means to communicate their needs for dignified and respectful detention.
- The ‘best interests of the child’ are to be considered in decisions with regards to prisoner visits.
- Extensive solitary confinement, the removal of exercise and routine strip-searching are deemed to be consistent with ‘cruel or degrading treatment’.

### *Material Conditions*

#### **Failure To Provide Sanitary Conditions (NZ)**

***Attorney-General v Udompun*** [2005] 3 NZLR 204

The case concerned treatment of an immigration detainee while detained at a police station. The Court of Appeal upheld the finding of a breach of s 23(5) of the New Zealand Bill of Rights Act 1990 (NZBORA), which provides that people deprived of liberty are to be treated with humanity and respect for their dignity. The breach arose from failure by police to provide a change of clothing and requisite sanitary products when the respondent was detained at Auckland police station. The Court noted that it was incumbent upon police to provide some means for non-English speaking detainees to communicate any needs they may have for items that are necessary for dignified and respectful detention, such as food, medicines, or, in this case, sanitary products. In addition to failing to provide sanitary products when informed of this need, the breach was exacerbated by the failure of police to provide means to communicate this need and failure to provide a shower, change of clothes and food. The Court by a majority of 4-1 reduced the award in the High Court from \$50,000 to \$4,000.

#### **Lawfulness of Double-bunking (NZ)**

***Corrections Association of New Zealand v Chief Executive of the Department of Corrections*** (ERA, 04/08/09) AA260/09, 5275144

The Corrections Association challenged the lawfulness of the Department’s plans for increased double-bunking. The Employment Court found that the Department’s decision to proceed with double-bunking plan was not in breach of the union’s collective agreement. The Court was satisfied that the consultation requirements of the collective agreement had been met, and that

these required consultation and negotiation but did not require the union's ultimate agreement to the double-bunking proposal. This decision was later upheld by the Court of Appeal.

### *Access to Others*

#### **Right To Family Contact – Visitor Prohibition Orders (NZ)**

***Taylor v Chief Executive of the Department of Corrections*** 11/9/06, Clifford J, HC Wellington CIV-2006-485-897

The case concerned the requirements of natural justice in decisions by prison management about prison visitors. Mr Taylor's wife was issued with a Visitor Prohibition Order ('VPO') after drugs were discovered in the car in which she was travelling to visit him. He then applied for judicial review of the prison manager's decision. The judge held that the decision to issue the VPO was an administrative decision which must balance competing interests of prisoners and prison staff. The prison manager was therefore not required to afford an opportunity to present information; nor was his decision in this case predetermined, disproportionate or unreasonable.

#### **Access To Children – Requiring Best Interests Of The Child (NZ)**

***K v H*** 23/6/08, Judge Mather, FAMC Waitakere FAM-1998-090-554

This Family Court case dealt with the legal principles that apply when considering contact between children and a parent in prison. The principles are the same as those which apply to all proceedings under the Care of Children Act; the best interests of the children are the paramount and overriding consideration. The context in which any contact proposal is advanced is obviously highly relevant and care must be taken. Every case will be different. In some situations such contact can and does occur quite satisfactorily and advances the interests of the children. In other cases, for example when there is a background of serious sexual offending against a child, particular care has to be taken to ensure the children's emotional welfare is protected.

### *Health services*

#### **Refusal Of Medical Treatment – Technical Breach Does Not Automatically Invalidate Whole Process (NZ)**

***Firmin v Attorney-General*** 15/2/07, Chisholm J, HC Christchurch CIV-2007-409-1429

As the result of an application by a psychiatrist and a prison nurse the appellant underwent compulsory psychiatric assessment under the Mental Health (Compulsory Assessment and Treatment) Act 1992 immediately before he was released from prison. The prison nurse and psychiatrist who applied for assessment were not authorised to do so. The High Court held that, when considered in the overall statutory context, the breach that occurred at the

beginning of the process was a procedural breach that did not invalidate the subsequent process. Even if there had been a breach of the right to refuse medical treatment contrary to s 11 of the NZBORA, Mr Firmin was not entitled to compensation based on s 14(2) Prisoners' and Victim's Claims Act 2005.

### **Role of Staff in Administration of Medication (NZ)**

***Corrections Association of New Zealand Inc v Attorney-General*** (ERA, 31/10/06), WA150/06, WEA214/04

In 2006, the Corrections Association of New Zealand (CANZ) challenged the lawfulness and/or reasonableness of Department policies regarding corrections officers issuing over-the-counter and dose-packaged prescription medication. CANZ argued that the policy went beyond the scope of the role of Corrections officers, that they are untrained and have no protection to deliver a specialist service. The Employment Relations Authority dismissed the claim, finding that the policies were not unreasonable given that prison officers did not prescribe medication but only administered it; and the policies allowed prison officers to contact health or emergency services if any cause for concern arose.

### *Treatment*

### **Behaviour Modification/Management – Not Amount To Cruel/Degrading/Severe Treatment (NZ)**

***Taunoa v Attorney-General*** [2008] 1 NZLR 429 (SCNZ)

The Supreme Court held that the Behaviour Modification/Management Regime ('BMR') that operated at Auckland Prison violated s 23 of New Zealand Bill of Rights Act, but not s 9 (Elias CJ and Blanchard J dissenting on this point).

In 2007, the Supreme Court, by majority, declined the appeals by Mr Taunoa and others that their treatment amounted to cruel, degrading, or disproportionately severe treatment in breach of s 9 of the New Zealand Bill of Rights Act 1990. The appeal ruling did not affect the earlier decisions of the High Court and Court of Appeal that the Behaviour Management Regime, that had operated between 1998 and 2004, breached prisoners' rights to be treated with humanity and respect for their inherent dignity (affirmed by s 23(5) of the Bill of Rights Act). The Supreme Court did however, allow cross-appeals by the Attorney-General against the level of damages awarded to three of the prisoners for breach of s 23(5).

The original award of damages to the prisoners in 2004 met with significant public and political objection. This in turn prompted the enactment of the Prisoners' and Victims' Claims Act 2005, which limits the award and payment of compensation to prisoners. The Act provides that any compensation awarded to prisoners may be subject to reparation claims by any victim of their offending before being paid to the prisoner.

The treatment under BMR involved solitary confinement of inmates for 22 to 23 hours per day, removal of exercise rights, and routine strip searching.

### **No Presumption Of Name Suppression In Cases Alleging Torture (NZ)**

***Clark v Attorney-General (No 1)*** [2005] NZAR 481; (2004) 17 PRNZ 554 (CA)

The Court of Appeal dismissed an appeal against the High Court's refusal to grant name suppression in proceedings where there were allegations of torture. The Court held that there was nothing in the Convention against Torture or other international instruments to support the proposition that name suppression is necessary when there are allegations of torture.

### **Use Of Force For Taking Of Blood Sample (NZ)**

***Reekie v Attorney-General*** 22/12/08, Andrews J, HC Auckland CRI-2007-404-2652

This claim was found to be barred by the Limitation Act. The Judge noted that if it had been brought within the limitation period the claim would have failed, as the force used was 'reasonably necessary in the circumstances' in accordance with s17C of the Penal Institutions Act (cf s83 Corrections Act).

The Judge found that at the time Mr Reekie was handcuffed, he was an inmate who was giving 'active or passive resistance to a lawful order', and that the Corrections Officers had reasonable grounds for believing that the use of physical force was reasonably necessary. The databank compulsion order was a 'lawful order', and Mr Reekie's repeated statement that he would refuse to allow the sample to be taken constituted (at least) passive resistance to the order. The Judge was also satisfied that handcuffing Mr Reekie and escorting him into the interview room was 'no more physical force than is reasonably necessary in the circumstances'.

### **Exemplary Damages In Relation To Actions Of Emergency Response Unit (ERU) – Refused (NZ)**

***O'Dowd v Attorney-General*** [2006] DCR 241 (HC)

This was an unsuccessful appeal against refusal to grant exemplary damages in relation to actions by members of Emergency Response Unit (ERU). ERU removed Mr O'Dowd from his cell as part of a training exercise. He claimed the operation was designed to intimidate inmates, that ERU actions were unduly provocative, and that he suffered physical and emotional injuries. The claim for exemplary damages for assault, battery, negligence, breach of New Zealand Bill of Rights Act 1990, and breach of statutory duty were declined.

The decision involved interpretation of s17D Penal Institutions Act 1954 (cf s84 Corrections Act) which prohibits staff from deliberately acting or speaking in a manner likely to provoke an inmate. The Court held that s17D will only be engaged where a staff member deliberately chooses to act or speak in a manner likely to provoke an inmate. It is not necessary for the actions or words to be deliberately provocative so long as the manner in which they are spoken is deliberate and likely to provoke – whether or not a prisoner is likely

to be provoked must be assessed objectively. A breach of s17D does not give rise to a private law cause of action; and even if a private law cause of action was available, in this case the very high threshold for exemplary damages was not surmounted.

### **Cell Confinement As Factor In Bail (NZ)**

***R v Kahui*** 2/10/07, Heath J, HC Auckland CRI-2007-092-14990

In considering whether there is just cause for continued detention, s 8(1)(a) Bail Amendment Act 2007 requires the Court to take into account 'whether there is a real and significant risk' of flight, interference with witnesses or evidence and re-offending, as well as s 8(1)(b) considerations of 'any matter that would make it unjust to detain the defendant'.

In this case, although previous breaches of bail conditions established a 'real and significant risk of re-offending', the nature of Mr Kahui's detention – which entailed cell confinement for 23 hours per day for his own protection – was a countervailing factor which made continued detention unjust.

### *Disciplinary Procedures*

### **Legal Representation – Distinction Between Prison Discipline Regime And CJS (NZ)**

***Taylor v Visiting Justice at Arohata Prison*** 24/7/07, Wild J, HC Wellington CIV-2007-485-613:

This is one of several recent cases – following *Drew v Attorney-General* [2002] 1 NZLR 58 – dealing with the distinction between the prison discipline regime and criminal justice system, and the (lesser) requirements of legal representation that attach to the prison discipline context. The relevant statutory provisions are ss 128 and 133-140 Corrections Act 2004 and Schedule 7 to the Corrections Regulations 2005.

### **Legal Representation (NZ)**

***Thompson v Attorney-General*** 1/11/07, John Hansen J, HC Christchurch CIV-2007-409-2364; CIV-2007-409-2245

This case concerned the assault of a prisoner by two others, Thompson and Pryce. Following the incident, the Visiting Justice sentenced the men to 15 days' cell confinement and 90 days' loss of privileges, the maximum penalty available under the Corrections Act. Thompson and Pryce sought judicial review of this decision on the grounds of lack of legal representation, evidential issues, and unreasonableness. They were unsuccessful. It was deemed the the Visiting Justice hearing did not require legal representation, that the decision was reached following eyewitness accounts by prison officers and photographic evidence of the assaulted prisoner's injuries. In the circumstances, the Visiting Justice faced a clear-cut credibility issue and was entitled to favour officer evidence.

**Correct Remedy For Breach Of Natural Justice Is Judicial Review (NZ)**  
***McKean v Attorney-General* [2007] 3 NZLR 819 (HC)**

In this case the Judge found that the Visiting Justice's decision not to allow legal representation had been made unfairly, in breach of the principles of natural justice. However Mr McKean was not entitled to compensation, as judicial review was adequate redress for the error of the Visiting Justice.

This is one of several cases dealing with judicial review of disciplinary decisions by Visiting Justices. These affirm that judicial review, rather than compensation, is the appropriate remedy for a breach of natural justice. This decision referred to dicta in previous cases – including *Brown v Attorney-General* [2005] 2 NZLR 405 and *Attorney-General v Udompun* [2005] 3 NZLR 204 – that compensation is not necessary if there is already an effective remedy (ie, judicial review) for breaches of the NZBORA.

**Legal Representation – Judicial Review/ BORA Compensation (NZ)**  
***Botting v Attorney-General* 16/12/05, Chisholm J, HC Christchurch CIV-2005-409-1570**

This case concerned a prisoner who had been declined legal representation in relation to a disciplinary charge of cannabis use following a urine test. He claimed that this breached natural justice, and he sought compensation for loss suffered as a result (namely, increase in 'Identified Drug User' status and ejection from a programme).

The Judge found that issues concerning the drug test's validity emerged during the hearing with which Mr Botting struggled to cope; thus he was prejudiced in his defence by lack of legal representation, constituting a breach of natural justice. The Visiting Justice's decision was set aside for lack of evidence. However, citing dicta in *Attorney-General v Udompun* [2005] the Judge held that compensation was not justified.

**Judicial Review – Procedural Fairness (NZ)**  
***Percival v Attorney-General* [2006] NZAR 215 (HC)**

This case involved claims by five prisoners in relation to charges of tampering with urine samples. Four of the prisoners argued that the Visiting Justice's decision breached natural justice, as they were denied legal representation and the opportunity to cross-examine witnesses on the scientific evidence.

The Judge found that natural justice had been breached. While declining to award compensation, the Judge noted that the right breached is important and should not be trivialised. Three of the prisoners were entitled to a declaration that the disciplinary decision was invalid.

### **Distinction Between Prison Discipline Regime And Criminal Justice System (NZ)**

***Jackson v Attorney-General*** [2006] 2 NZLR 534; (2005) 22 CRNZ 317 (HC)

This case concerned a disciplinary charge of cannabis possession, where the prisoner argued that he was unaware of its presence in his cell. Mr Jackson applied for judicial review, the issue being whether the offence required proof of mens rea (intention / knowledge).

The Court held that in this context, a number of factors displace ordinary requirement for proof of mens rea. The law provides a regime of discipline separate from the criminal justice system; it is important to control access to drugs in prison; and, under regulations, inmates accept full responsibility for property. However, the offence should be categorised as strict liability because prisoners should not be exposed to significant consequences if they are able to show an absence of fault. In this case, Mr Jackson's application was denied, as he did not establish on the balance of probabilities that he took all reasonable steps to ensure cannabis did not come into his cell.

### **Natural Justice Concerns Arise At Point When Disciplinary Charge Is Determined (At Hearing Before Visiting Justice) (NZ)**

***Department of Corrections v Taylor*** [2009] NZCA 129, CA318/08

A disciplinary charge against Mr Taylor was brought before a hearing adjudicator, who decided to refer the case to a Visiting Justice under s134 Corrections Act. Mr Taylor brought judicial review proceedings alleging breach of natural justice by the hearing adjudicator in deciding to refer case to a Visiting Justice.

The Court of Appeal held that it was not necessary for the adjudicator to hold a hearing before referring a case to Visiting Justice. A hearing at that stage is not a requirement in terms of principles of natural justice or of the NZBORA; the point of concern in terms of natural justice arose at the time that the charge was determined rather than at preliminary stages of process, and no additional requirement should be read into a statutory scheme to protect prisoners' rights.

### **Natural Justice Requirements In Context Of Administrative Decision To Issue Visitor Prohibition Order (NZ)**

***Taylor v Chief Executive of the Department of Corrections*** 11/9/06, Clifford J, HC Wellington CIV-2006-485-897

See above.

## *Complaint and Inspection Procedures*

### **Compensation Following Assault (NZ)**

***Edgecombe v Attorney-General*** [2005] DCR 780 (DC)

In this case concerning a claim for compensation by a prisoner who had been assaulted by a prison officer, it was held that assault was a breach of the right of a person deprived of liberty to be treated with humanity and respect. However, compensation was not the only redress available. Had Mr Edgecombe cooperated with police, the officer concerned would have been prosecuted and required to pay reparation.

### **Grounds For Judicial Review (NZ)**

***Greer v Prison Manager at Rimutaka Prison*** 18/12/08, Ronald Young J, HC Wellington CIV-2008-485-1603

Mr Greer complained of unfair treatment toward him by specific Department of Corrections staff – including in relation to transfer of legal documents and refusing requests to access computers and internet – and sought judicial review of their conduct. The Judge held however, that these were essentially complaints that the Department staff were not acting as Mr Greer wished; while perhaps frustrating, the staff members actions warranted no judicial review. It was not appropriate that courts be involved in dealing with management-level disputes.

### **Alleged Failure To Provide Education; Protection Of Complainants In Respect Of Torture/III-Treatment (NZ)**

***Clark v Governor-General***, 27 May 2005, Gendall J, High Court – Wellington, CIV-2004-485-1902, Unreported

Mr Clark complained that he had been assaulted by prison officers while in prison, and brought proceedings against the state. Part of his claim was that the state had breached its obligations by failing to provide education, review, investigation and protection of complainants in respect of torture and ill treatment. The Attorney General sought the striking out of this claim.

At issue was whether those obligations, which stem from Articles 10-13 of the Convention Against Torture and Articles 2(3) and 7 of the International Covenant on Civil and Political Rights (ICCPR), have been incorporated obligations into domestic law. If they are arguably incorporated, the question was whether New Zealand has already met those obligations.

Justice Gendall held that it can be argued that NZBORA and the Crimes of Torture Act 1989 incorporate wider rights under Convention Against Torture and ICCPR ensuring primary rights against torture and ill-treatment are upheld. Out of the four claimed obligations, the duty to put in place a system to properly investigate claims of torture and ill-treatment is arguably a sufficiently justiciable matter to found claim in domestic law. Similarly the duty

to protect complainants who allege torture or ill-treatment is arguably a sufficiently justiciable matter.

However, given that New Zealand has various mechanisms available to prisoners to pursue complaints – including the Police, Prison Inspectorate and Ombudsmen – Mr Clark would have great difficulty in arguing that the New Zealand Government has breached these obligations. The other two alleged duties – the duty to provide education and review – are administrative or political in nature and not sufficiently justiciable.

The application for striking out the claim was granted.

**No Presumption Of Name Suppression In Bill of Rights Cases (NZ)**  
***Clark v Attorney-General*** (2004) 17 PRNZ 161 (HC)

Mr Clark unsuccessfully sought name suppression in relation to his claims against the state under the Bill of Rights Act. Mr Clark submitted that if his name was published there was risk of undue attention being focused on his past history rather than on the issues.

It was held that the general principle is that justice is to be administered openly and publicly; any departure from that principle must depend upon demands of justice; and international instruments and NZBORA did not render this approach inappropriate. The Court found no evidence that Mr Clark's specific consequences are such that publication of his name would have specific adverse consequences for him, and his application for name suppression was denied.

### **12.3 Relevant International Cases**

This Section details legal cases (2004 – 2009), appertaining to prisons and rights, from international courts. It is shown that a number of recent international court decisions have affirmed:

- The requirement that conditions and treatment must be appropriate to a prisoner's state of health – and that inadequate treatment may constitute inhuman or degrading treatment.
- The right to family contact should not be interfered with through onerous visiting conditions.
- The right to privacy of medical correspondence.
- The requirement that any suicide in custody must be independently investigated.
- Restrictions on the state's ability to limit prisoners' voting rights.

#### *Material Conditions*

##### **Conditions Of Detention Not Appropriate To Health (Italy)**

**Scoppola v Italy** [2008] ECHR 50550/06 (10 June 2008)

The European Court of Human Rights held that there had been a violation of art 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights because the applicant's conditions of detention were not appropriate to his state of health.

In the Court's view, in circumstances such as these, the State should have either transferred the applicant to a better-equipped prison in order to avoid any risk of inhuman treatment or deferred execution of a sentence that had become tantamount to treatment contrary to art 3 of the Convention.

#### *Access to Others*

##### **Right To Family Contact (Spain)**

**Tornel v Spain**, UN Doc CCPR/C/95/D/1473/2006 (24 April 2009)

The UN Human Rights Committee held that the rights of a prisoner's relatives to protection from arbitrary interference with their family life, protected under art 17 of the International Covenant on Civil and Political Rights, will be infringed if prison authorities adopt a 'passive attitude' to keeping them informed of significant changes in the prisoner's health.

### **Refusal To Attend A Funeral Can Be A Violation Of A Prisoner's Rights (Poland)**

***Czarnowski v Poland*** [2009] ECHR 28586/035 (20 January 2009)

The Applicant, Mr Edward Czarnowski, lodged an application with the European Court of Human Rights against Poland for breach of art 8 of the European Convention on Human Rights. Art 8 provides:

'Everyone has the right to respect for his private and family life...There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

### **Onerous Visitation Restrictions A Violation Of Prisoners' Rights (Poland)**

***Ferla v Poland*** [2008] ECHR 55470/00 (20 May 2008)

The European Court of Human Rights held that a Polish prisoner's right to respect for his family life was violated by onerous visitation restrictions, which substantially prevented him from seeing his wife and son. The applicant was awaiting a final determination on a serious assault charge. Although his wife had previously made a statement to police about the alleged crime, the risk of prejudicing her willingness to testify at trial was considered insufficient reason for interfering with the right to family life.

### **Right To Vote (Australia)**

***Roach v AEC and Commonwealth of Australia*** [2007] HCA 43 (30 August 2007)

This restricted the state's ability to limit prisoners' right to vote. It notes that prisoners with a sentence over three years may still have voting rights curtailed, but significantly rolls back the power of the state to disenfranchise prisoners in other respects.

### **Monitoring / Confidentiality Of Prisoner Correspondence (UK)**

***Szuluk v United Kingdom*** [2009] ECHR 36936/05 (2 June 2009)

The European Court of Human Rights held that it is a disproportionate interference with an individual's right to privacy to monitor their confidential medical correspondence with their specialist. The prison governor had directed that the applicant's correspondence with his specialist be opened and inspected by the prison medical officer to ensure that there were no illicit enclosures. The applicant had sought to correspond confidentially with his specialist to ensure that he was receiving appropriate care and supervision with respect to his potentially life-threatening condition. The applicant, who had lost before the UK Court of Appeal, successfully argued that, by analogy with legal correspondence, the risk of his abusing the confidentiality of his correspondence for illicit purposes was outweighed by the likelihood that

inspecting his correspondence would inhibit what he conveyed to the specialist, thereby harming the quality of advice that he received.

### *Health services*

#### **Right To Privacy In Medical Correspondence (UK)**

***Szuluk v United Kingdom*** [2009] ECHR 36936/05 (2 June 2009)

See above.

#### **Rights Will Be Said To Be Violated When Conditions Of Detention Are Not Tailored To A Prisoner's Health (Italy)**

***Scoppola v Italy*** [2008] ECHR 50550/06 (10 June 2008)

See above.

#### **Suicide Of A Prisoner Can Be Blamed On Authorities' Failure To Provide Medical Care (France)**

***Renolde v France*** [2008] ECHR 5608/05 (16 October 2008)

On 16 October 2008, the European Court of Human Rights held that the suicide of a prisoner suffering from mental illness in France was attributable to the authorities' failure to provide adequate medical care. This failure was a breach of the deceased's right to life and right to be free from inhuman or degrading treatment.

The House of Lords has recently unanimously held that the right to life established by art 2 of the European Convention on Human Rights requires the state to carry out an independent investigation whenever a person is left incapacitated by a suicide attempt in custody.

#### **Prisoners Should Have Rights To Artificial Insemination Procedures (UK)**

***Dickson v United Kingdom*** [2007] ECHR 44362/04 (Grand Chamber, 4 December 2007)

This case concerns prisoners' access to artificial insemination facilities. The applicants complained that the refusal by the Secretary of State to allow the first applicant access to artificial insemination facilities while in prison constituted a breach of the applicants' rights under art 8 (right to private and family life) and art 12 (right to marry and found a family) of the European Convention on Human Rights.

The Grand Chamber of the European Court of Human Rights held (by a 12:5 majority) that there had been a violation of art 8, but that it was not necessary to examine the complaint under art 12.

## *Treatment*

### **Example Of Degrading Treatment (Poland)**

***Wiktorko v Poland*** [2009] ECHR 14612/02 (31 March 2009)

The European Court of Human Rights held that the treatment of a Polish national while detained at a government-run 'sobering-up centre', constituted degrading treatment in violation of the substantive protection of art 3 of the European Convention on Human Rights. The applicant in this case was forcibly undressed by two male employees and was immobilised by restraining belts for a period of ten hours. Further, the Court held that subsequent investigations and proceedings carried out by Polish authorities were inadequate, in violation of the procedural limb of art 3 of the Convention.

### **Obligation Of Government To Conduct Investigation (UK)**

***AM & Ors, R (on the application of) v Secretary of State for the Home Department & Ors*** [2009] EWCA Civ 219 (17 March 2009)

The UK Court of Appeal affirmed that the government has an obligation to conduct an independent investigation where there is credible evidence of a potential breach of arts 2 (right to life) and 3 (prohibition against ill-treatment) of the European Convention on Human Rights.

### **Treatment Of Aboriginal Man A Violation Of Detention Rights (Australia)**

***Brough v Australia*** (UN Human Rights Committee, Communication No 1184/2003)

In March 2006, the UN Human Rights Committee published a landmark finding concerning alleged breaches of articles 2(3) (right to an effective remedy), 7 (right to freedom from cruel, inhuman or degrading treatment or punishment), 10 (rights of persons deprived of their liberty) and 24 (right to adequate protection for children) of the International Covenant on Civil and Political Rights (ICCPR) in a New South Wales prison. The case involved a 17 year old Aboriginal youth, who suffered from a mild intellectual disability. Corey Brough was placed in a solitary confinement cell for 72 hours, where the artificial lights were on all the time and where he was stripped to his underwear and his blanket was taken away from him. The Court noted "his status as a juvenile person in a particularly vulnerable position because of his disability and his status as an Aboriginal" and found that this treatment violated the provisions of the ICCPR relating to humane treatment, separation of juveniles and adults, and article 24(1) which requires that children be protected by society and the State without discrimination.

### **Handcuffing (England And Wales)**

***Faizovas, R (on the application of) v Secretary of State for Justice*** [2009] EWCA Civ 373 (13 May 2009)

This case sets out a requirement for prisons to undertake detailed risk assessments if they deem it necessary for handcuffs to be used on a prisoner during hospital visits. The England and Wales Court of Appeal found that the

risk assessments carried out in this case demonstrated that the prisoner posed a realistic risk of absconding. In light of this security risk, the use of handcuffs did not constitute degrading treatment. Nonetheless, the prison was instructed to revise its policy on handcuffing, which was deemed to fall short of current human rights standards.

**Restraint And Seclusion Of Schizophrenic A Breach Of Rights (Ukraine)**  
***Kucheruk v Ukraine*** [2007] ECHR 2570/04 (6 September 2007)

In this case, the applicant, a man with chronic schizophrenia, was subjected to the practices of restraint and seclusion while detained. The applicant successfully complained to the European Court of Human Rights of violations of art 3 (prohibition on cruel, inhuman or degrading treatment or punishment) and art 5 (right to liberty and security of person and freedom from arbitrary detention) of the European Convention on Human Rights in relation to his detention, seclusion, restraint, and the investigation by the authorities of his subsequent complaints.

**Lawfulness Of Strip Searches (France)**  
***Frerot v France*** [2007] ECHR 70204/01 (12 June 2007)

The European Court of Human Rights held that frequent, unwarranted strip searches conducted on the applicant violated the prohibition on degrading treatment in art 3 of the European Convention on Human Rights ('ECHR'). Further, certain restrictions placed on the applicant's correspondence violated the right to privacy protected by art 8 of the ECHR.

*General Protection Measures*

**Need For Review Of Detention (UK)**  
***Secretary of State for Justice v James*** [2009] UKHL 22 (6 May 2009)

The House of Lords confirmed that a breach of arts 5(1)(a) and 5(4) of the European Convention on Human Rights may occur in circumstances where a prisoner is detained for longer than is necessary for public protection or for a lengthy period without a meaningful review of the risk they pose to the public.

However, the House of Lords held that a violation is only likely to arise if: the review system breaks down entirely, such that meaningful review of a prisoner's case is rendered impossible; or a prisoner is detained for 'a period of years' without an effective review of their case.

**Justice Secretary's Ability To Make Parole Decisions Not A Breach Of Rights (UK)**  
***Black v Secretary of State for Justice*** [2009] UKHL 1 (21 January 2009)

The House of Lords held that the Justice Secretary's power to determine whether certain long-term prisoners should be released on parole does not constitute a breach of art 5 of the European Convention on Human Rights, which requires the lawfulness of detention to be determined by a court.

**Mandatory Life Imprisonment Without Parole Not A Breach Of Rights (UK)**

***Wellington R, (On the Application of) v Secretary of State for the Home Department*** [2008] UKHL 72 (10 December 2008)

The House of Lords held that a mandatory sentence of life imprisonment without parole does not necessarily constitute inhuman or degrading treatment or punishment under art 3 of the European Convention on Human Rights.

**Right To Life Requires State Investigation Into Suicide Attempt While In Custody (UK)**

***R (on the application of JL) v Secretary of State for Justice*** [2008] UKHL 68 (26 November 2008)

The House of Lords unanimously held that the right to life established by art 2 of the European Convention on Human Rights requires the state to carry out an independent investigation whenever a person is left incapacitated by a suicide attempt in custody.

**Details Of A State's Obligation To Investigate A Suicide Enumerated (UK)**

***JL, R v Secretary of State for the Home Department*** [2007] EWCA Civ 767 (24 July 2007)

This case concerned the investigative duties imposed upon authorities by art 2 of the European Convention on Human Rights (the right to life) following the injury or death of an individual while in custody. In particular, the case turned on whether an obligation to carry out an 'enhanced investigation' was subject to a threshold test of 'arguability'. The content of an enhanced investigation has certain features: (i) the State itself must commence the investigation; (ii) the investigation or inquiry must be open to public scrutiny; (iii) the investigator must be independent of those persons involved; and (iv) the family must have proper opportunity to participate (*R (on the application of Amin) v Secretary of State for the Home Department* [2003] UKHL 51). In the present case, although a primary investigation had taken place, it was argued that this was insufficient to meet the requirements of art 2, namely to conduct an enhanced investigation.

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