



Monitoring Places of Detention

A large, stylized white tree graphic on the left side of the page, with a thick trunk and several branches extending upwards and outwards.

Annual report of activities under the
Optional Protocol to the Convention Against Torture
(OPCAT)

1 July 2008 to 30 June 2009



Office of the  Ombudsmen
Te Tari -o- Ngā Kaitiaki Mana Tangata

Tāmaki Makaurau – Auckland

Level 4 Tower Centre, 45 Queen Street
PO Box 6751, Wellesley Street
Tāmaki Makaurau Auckland 1141
Waea Telephone 09 309 0874
Waea Whakāhua Fax 09 377 3593

Te Whanganui ā Tara – Wellington

Level 1 Vector Building, 44-52 The Terrace
PO Box 12411, Thorndon
Te Whanganui ā Tara Wellington 6144
Waea Telephone 04 473 9981
Waea Whakāhua Fax 04 471 6759

Otautahi – Christchurch

Level 3 Guardian Building, 79-83 Hereford Street
PO Box 1578, Otautahi Christchurch 8140
Waea Telephone 03 379 2015
Waea Whakāhua Fax 03 353 0959

Human Rights Commission InfoLine

0800 496 877 (toll free)
Fax 09 377 3593 (Attn: InfoLine)
Email infoline@hrc.co.nz
TTY (teletypewriter) 0800 150 111
Language Line and NZ Sign Language interpreter available.
<http://www.hrc.co.nz>

ISSN: 1179-531X (print)

ISSN: 1179-5328 (online)

Published December 2009
Aotearoa New Zealand

Contents

FOREWORD	2
INTRODUCTION	4
HUMAN RIGHTS COMMISSION	6
INDEPENDENT POLICE CONDUCT AUTHORITY	7
OMBUDSMEN	11
CHILDREN'S COMMISSIONER	16
INSPECTOR OF SERVICE PENAL ESTABLISHMENTS	19
SUMMARY OF EMERGING ISSUES	20
APPENDICES	25
Appendix 1: OPCAT background	25
Appendix 2: Human rights standards	28
Appendix 3: Monitoring standards framework	29
Appendix 4: Optional Protocol to the Convention Against Torture	35
Appendix 5: Part 2, Crimes of Torture Act 1989	43

Foreword

In its second year of operation, the preventive monitoring system established under the Optional Protocol to the Convention against Torture (OPCAT) has already had positive impacts. The value of independent, human rights based monitoring has been demonstrated, as the monitoring organisations have been able to bring areas requiring improvement to authorities' attention. This includes highlighting problems that may have worsened had they continued to go undetected.

Issues raised in this report

Because of the broader scope of OPCAT preventive visits, the monitoring bodies (known as National Preventive Mechanisms or NPMs) have identified and been able to address issues that may not have come to light, if not for OPCAT monitoring. An example is the situation encountered by the Ombudsmen, involving gaps in information and oversight of "hybrid orders". The Ombudsmen's intervention enabled this gap to be remedied and further instances of unlawful detention to be prevented.

Other issues that have arisen in the course of OPCAT activities have included:

- lack of valid documentation for detention
- use of isolation and restraint for extended periods
- lack of access to mental health services
- gaps in policies and procedures
- lack of adherence in practice to established policies and procedures.

Issues raised in the previous annual report have also continued to be a focus of OPCAT activities, including:

- the rights and needs of particular groups – including children and young people, asylum seekers, Māori and people with mental health issues
- staffing levels and training
- conditions of detention and standard of facilities.

Resourcing for NPMs also remains an issue, given their size, the nature of their roles and the scope of places to be visited. A positive development this year has been the provision of additional government funding to the Independent Police Conduct Authority, which has enabled the Authority.

While all NPMs have now established visiting programmes, the level of coverage and frequency of visits they are able to conduct is limited. For example, facilities the Ombudsmen and Independent Police Conduct Authority are required to visit number in the hundreds. On current resource levels, some sites may not receive an OPCAT visit for many years. NPMs will require further resources if all facilities are to be regularly visited as envisioned by OPCAT.

The high level of cooperation from detaining agencies has continued this year, and relationships with agencies and institutions have been further developed. An evident increase in familiarity with OPCAT monitoring and human rights issues has been welcomed. However, the need for greater awareness and understanding of human rights remains an issue.

As the Central NPM and as part of the development of a second national action plan for human rights, the Human Rights Commission will identify and prioritise the most pressing of the long-standing issues requiring action. The Commission will work with other NPMs to do this in the next year.

The issues raised in this report have particular significance in light of New Zealand's high detention rate. The past year has seen another rise in prisoner numbers and continuing pressure on facilities. Of particular concern is the need for greater availability of mental health services for prisoners.

While the agencies and institutions themselves have little control over the numbers of detainees, they must ensure that responses to capacity issues are conducive to respect for human rights and dignity, and that risks associated with overcrowding are carefully managed.



Rosslyn Noonan
Chief Commissioner
Te Amokapua

Introduction

This collated annual report brings together the reports of the five designated OPCAT organisations: the Human Rights Commission, Independent Police Conduct Authority, Ombudsmen, Children’s Commissioner, and Inspector of Service Penal Establishments. This is the second such report and covers the period from 1 July 2008 to 30 June 2009. It provides a summary of activities undertaken during the 2008-09 year, as well as observations and key issues that have emerged.

OPCAT

The OPCAT system, which involves monitoring places of detention by independent bodies, aims to help States meet their obligations to prevent torture and ill treatment of people who are deprived of their liberty.

New Zealand became a party to OPCAT in March 2007, following the enactment of amendments to the [Crimes of Torture Act 1989](#) to provide for visits by the international and domestic monitoring bodies.

The designated National Preventive Mechanisms are:

- the [Office of the Ombudsmen](#) – in relation to prisons, immigration detention facilities, health and disability places of detention, and Child, Youth and Family residences
- the [Independent Police Conduct Authority](#) – in relation to people held in police cells and otherwise in the custody of the police
- the [Office of the Children’s Commissioner](#) – in relation to children and young persons in Child, Youth and Family residences

- the Inspector of Service Penal Establishments of the Office of the Judge Advocate General – in relation to Defence Force Service Custody and Service Corrective Establishments
- the [Human Rights Commission](#) has a coordination role as the designated Central NPM.

The NPMs are empowered under OPCAT to regularly visit places of detention, and make recommendations aimed at strengthening protections, improving treatment and conditions, and preventing torture or ill treatment. The Central NPM’s role includes coordination and liaison with NPMs, addressing systemic issues, and liaising with the international Subcommittee on the Prevention of Torture.

The international OPCAT monitoring body, the [UN Subcommittee for the Prevention of Torture](#), will periodically visit each State party to inspect places of detention and make recommendations to the State.

International accountability

New Zealand ratified the UN Convention Against Torture in 1989 and reports on implementation of the Convention to the responsible UN Committee every four years. Since 2008, every member of the United Nations has also had to take part in a comprehensive review of its human rights performance. The review, known as the Universal Periodic Review, covers all the rights – civil, political, economic, social and cultural – set out in the Universal Declaration of Human Rights.

During the year there was considerable international focus on New Zealand's human rights performance and compliance with the UN Convention Against Torture in particular. As well as undergoing its first Universal Periodic Review this year, the New Zealand Government also appeared before the UN Committee Against Torture to present its periodic report¹. In both forums, New Zealand's ratification of OPCAT and establishment of the OPCAT monitoring

system were noted positively. A range of challenging issues were highlighted, including: high imprisonment rates and over-representation of Māori in prison; detention of asylum seekers; youth justice issues; investigation and prosecution of complaints; detention conditions; the use of tasers; training; and data collection.

A number of the issues raised had been flagged in the early stages of OPCAT monitoring and continue to be a focus of OPCAT activities.

The OPCAT is designed to complement both periodic reporting to international human rights bodies and national complaints and accountability processes, by providing continuous monitoring "on the ground". Through a preventive approach and process of constructive dialogue with detaining authorities, the OPCAT objective is continual improvement and strengthening of human rights protections.

¹ Further information and links to these reports can be found on the Human Rights Commission website, at: <http://www.hrc.co.nz/home/hrc/internationalhumanrights/internationalhumanrights.php>

Human Rights Commission

The Human Rights Commission has been designated as the Central National Preventive Mechanism, which entails coordination and liaison with NPMs, identifying systemic issues, and liaising with the UN Subcommittee.

The Commission is an Independent Crown Entity with a wide range of functions under the [Human Rights Act 1993](#). One of the Commission's primary functions is to advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand society.

The Commission's functions may be undertaken through a range of activities, including advocacy, coordination of human rights programmes and activities, carrying out inquiries, making public statements, and reporting to the Prime Minister on any matter affecting human rights. This includes the desirability of legislative, administrative or other action to better protect human rights. The Commission also administers a disputes resolution process for complaints about unlawful discrimination.

Commissioners are appointed by the Governor General, on the advice of the Minister of Justice, for a term of up to five years.

SUMMARY OF ACTIVITIES

In its role as the Central NPM, the Commission continued to liaise with NPMs, and held two round table meetings of the OPCAT organisations. A round table meeting between the NPMs and members of civil society was well attended by representatives from a range of organisations with an interest in the rights of people in detention. The meeting was useful both in terms of raising awareness of OPCAT and identifying and discussing issues of concern to NGOs, which continued to inform OPCAT work.

Research has been commissioned to update previous baseline research on prisons and youth justice residences. The updated research will contribute to OPCAT monitoring activities and the development of a second national Action Plan for Human Rights.

Visits are underway by all NPMs, who have reported a number of positive outcomes as the result of preventive monitoring. Issues identified through visits and wider monitoring are discussed in later sections of this report.

Internationally, there are relatively few NPM systems in operation and there is interest in the New Zealand "multiple mechanism" approach. The Commission was invited to share information on its role and experiences, at a regional workshop focussed on ratification of OPCAT in the Philippines, and in discussions amongst national human rights institutions on OPCAT implementation, which was organised by the Office of the High Commissioner for Human Rights.

The Commission submitted the first OPCAT annual report to the UN Subcommittee. The Chief Commissioner also met with the Subcommittee Secretariat to discuss New Zealand's OPCAT implementation and ongoing liaison with the Subcommittee.

Independent Police Conduct Authority

The Independent Police Conduct Authority (IPCA) is the designated NPM in relation to people held in police cells and otherwise in the custody of the police.

The IPCA is an Independent Crown Entity, which exists to ensure and maintain public confidence in the New Zealand Police. The IPCA does this by considering and, if it deems it necessary, investigating public complaints against police of alleged misconduct or neglect of duty and assessing police compliance with relevant policies, procedures and practices in these instances.

The IPCA also receives from the Commissioner of Police notification of all incidents involving police where death or serious bodily harm has occurred.

The IPCA may undertake an investigation of its own motion, where it is satisfied there are reasonable grounds in the public interest, any incident involving death or serious bodily harm.

The IPCA evolved from the Police Complaints Authority, which was established in 1988. The Independent Police Conduct Authority Act 2007 marked a major shift in the direction of the Authority. This started with its name change and the change in the body of the Authority from an individual to a Board of up to five members, comprising both legal experts and lay people².

Justice Lowell Goddard is Chairperson of the Independent Police Conduct Authority and was appointed as the Police Complaints Authority in February 2007.

CONTEXT

There are more than 400 police stations in New Zealand. Within these sites there are 525 overnight cells and 38 holding cells. There are 474 cells in New Zealand Police stations that are open 24 hours a day.

Police in several locations have a daily responsibility for the safe custody of prisoners on remand who can not otherwise be accommodated in appropriate Department of Corrections facilities. The remand period between court appearances may extend to 10 days, which presents a particular challenge for police, since police detention facilities are not designed for lengthy periods in custody.

Police also have a responsibility for the management of some prisoners detained in court cells, i.e. those who are appearing following arrest or who are not in the legal custody of the Department of Corrections.

Cell blocks are concentrated in the larger metropolitan centres. The IPCA has prioritised the identification of which of these might be “hot spots” to be targeted for OPCAT visits. Clearly, cells in remote areas will be equally important, where surveillance and supervision are not as well resourced by police.

² Independent Police Conduct Authority Statement of Intent 2009-2012.

Detention by police is much wider than the use of police cells. The Authority also considers the detention process from the moment an individual's liberty is deprived, e.g. in a home or on the side of the road; transported to a police station in a police vehicle; during the charge process; and through to placement in a cell. The Authority will ensure that all aspects of police detention are inspected and considered under the Act and Protocol.

The Authority intends working closely with police on the design and construction of new or refurbished detention facilities, including vehicles.

APPROACH

The New Zealand Government is committed to ensuring that the IPCA is appropriately resourced to increase and develop its capability to independently carry out investigations into police conduct, policies and procedures. This commitment from government is significant in the context of the adequate resourcing of the requirement to report under the OPCAT.

Visits to 25 police sites, each with several individual cells, during 2007 to 2008 provided the Authority with a greater understanding of the environment and operational protocols affecting police custody areas. In 2008 to 2009 the Authority used that knowledge and experience to finalise comprehensive monitoring standards, based on international best practice, and introduced templates for conducting inspections and preparing inspection reports.

An increase in the resources available to the Authority to conduct investigations presented an opportunity during the current year to move from looking at existing custodial conditions to an approach by which investigators carry out formal inspections and prepare official inspection reports with recommendations and timelines for implementation and future review.

This change in approach is beginning to produce benefits. For example, investigators have a higher profile in police districts and in custody areas, in particular, which in turn creates opportunities to raise the awareness of the requirements and purpose of the OPCAT. This is especially so among front-line police staff. The Authority notes a detectable change in attitude by some front-line police, where the human rights of people deprived of their liberty is concerned.

A significant factor contributing to these and other changes is the continued personal involvement of the Chair and members of the Authority, wherever possible, during inspections.

Further evidence of change since the introduction of the OPCAT is apparent at middle and senior levels within police. The Authority has begun to respond to requests from police managers for more information about the OPCAT; the monitoring standards, which are applied during inspections; and ways in which police might themselves be more proactive in meeting the Authority's expectations, through such things as better data, improving conditions and staff training.

Factors considered before and during a cell visit include the nature and size of the police station and cell block; the number and category of people held there, e.g. overnight arrests, remand prisoners, juveniles, those with mental and/or physical disabilities; and information already known about the police cells, which may include a history of complaints and known problems.

This year the Authority advised police that the programme of visits to a particular cell block may include a mix of announced and unannounced visits, with the intention of following up on issues and recommendations raised during an earlier visit. The scope for unannounced visits during 2009-10 is expected to increase as the number of inaugural site visits increases.

Because of the wide scope of measures which can potentially be applied during each visit, the Authority sets specific objectives beforehand. This year the focus has been primarily on cell conditions; hygiene; medical aid including issues of disability; treatment of detainees; staff awareness of the OPCAT; and the proper application of police custodial policies and practice.

SUMMARY OF ACTIVITIES

The IPCA visited 37 police sites equipped with detention facilities throughout New Zealand for the year ended 30 June 2009. The target for the year was 30 police sites.

Budget approvals and recruitment of additional staff for new investigator positions contributed to the target being exceeded this year. The Authority is confident that a target of 30 inspections of police sites will be achieved by 30 June 2010³.

Response from police to the requirements of the OPCAT and the Authority's role and requirements in that regard has been positive. The Authority's overall approach is less about "finger pointing" and laying blame and more about working with the Commissioner of Police and their staff to identify where changes in police cell conditions and the management of detainees are needed.

Data from all complaints received by the Authority from people in police custody that might be categorised as incidents of torture or cruel, inhuman or degrading treatment or punishment will be collected and analysed.

A separate domain is being established within the Authority's database, which acts as an information forum in which cell visit inspection reports are stored. This is a valuable source of historical information for the Authority in planning visits; a means of tracking recommendations for improvement and monitoring the timeliness and quality of remedial action by police; a device for trend analysis and identifying the emergence by location of hot spots of police conduct and behaviour which could be categorised as torture, or cruel, inhuman or degrading treatment; and as a tool for informing the Authority's annual report.

The Authority continues to work with the Human Rights Commission, as the Central NPM, and with other NPMs whose OPCAT responsibilities overlap with the Authority. Examples may include the Children's Commissioner in cases where young people are detained, and the Office of Ombudsmen in relation to the accommodation of remand prisoners in police cells on behalf of the Department of Corrections, and in court cells.

³ Statement of Intent 2009-2012, page 22.

GOING FORWARD

The IPCA intends inspecting 30 police detention facilities before 30 June 2010⁴. A report to 30 June 2010 will be prepared on its observations, conclusions and recommendations with regard to detention facilities. This will be submitted to the Minister of Justice, to the New Zealand Parliament and to the public.

Bearing in mind the large number of police sites and cell blocks still to be visited, the focus of each visit in the coming year is likely to continue to be on the physical environment, health and safety, and police policies, practices and procedures. Visits will be informed by those completed in the years to 30 June 2008 and 2009, and from further analysis of complaints received from people detained in police cells or other detention facilities.

As resources become available in future, the Authority may, if considered appropriate and necessary in the New Zealand context, be in a position to introduce into the inspection process independent expertise in areas such as engineering, medical assistance, legal issues and education, in accordance with international guidelines.

Over the coming year, the Authority will provide a high visibility to observing detention conditions; further refine the assessment criteria and standards already prepared for observing detention conditions; take appropriate and swift action to report upon and commence activities for addressing any serious abuses of detained persons; and continue to work closely with the Human Rights Commission, as the Central NPM, to ensure New Zealand's responsibilities under the OPCAT are met.

⁴ Statement of Intent 2009-2012, page 22.

Ombudsmen

The Ombudsmen have been designated as the NPM for prisons, immigration detention facilities, health and disability places of detention, and child and youth residences.

The Ombudsmen are independent Officers of Parliament, with wide statutory powers to investigate complaints against central and local government agencies. The functions and powers of the Ombudsmen are set out in several pieces of legislation, including the [Ombudsmen Act 1975](#).

The Ombudsmen's role includes providing an external and independent review process for individual prison inmates grievances, as well as the ability to conduct investigations on their own motion⁵.

Ombudsmen, as Officers of Parliament, are responsible to Parliament but are independent of the government of the day. Ombudsmen are appointed by the Governor-General on the recommendation of the House of Representatives.

The Ombudsmen have dealt with a number of significant issues this year relating to the humane treatment of people in detention, under their monitoring and inspection role. Many of these issues may not have surfaced if they did not have this role.

CONTEXT

The Ombudsmen have appointed a Chief Inspector to assist them in their role to visit and inspect the facilities falling within the scope of their Crimes of Torture Act 1996 designation.

To date, the Ombudsmen have identified people detained against their will (or without their informed consent) under the following legislation:

- Mental Health (Compulsory Assessment and Treatment) Act 1992
- The Intellectual (Compulsory Care and Rehabilitation) Act 2003
- The Criminal Procedure (Mentally Impaired Persons) Act 2003
- Protection of Personal and Property Rights Act 1988.

Other legislation detaining people against their will relevant to the Ombudsmen's designation includes:

- The Alcoholism and Drug Addiction Act 1985
- Corrections Act 2004
- Criminal Justice Act 1985
- Extradition Act 1999
- Summary Proceedings Act 1957
- Terrorism Suppression Act 2002
- Immigration Act 1987.

⁵Section 13(3) of the Ombudsmen Act, enables the Ombudsmen to instigate "own-motion" investigations in the absence of a complaint being made. Recent own motion investigations include investigations into: the Department of Corrections in relation to the detention and treatment of prisoners (2005); prisoner transport (2007); and the Criminal Justice Sector (2007).

SUMMARY OF ACTIVITIES

A significant number of scoping visits have been completed, as have a number of focused visits. Focused visits are inspection-type visits that can vary from a full inspection of a particular unit within a facility to a shorter visit that focuses on specific areas. These areas may or may not have been identified as of potential concern by the Chief Inspector on behalf of the Ombudsmen.

The Chief Inspector and the Chief Ombudsman have had several meetings with various civil society groups, the Department of Corrections and some District Inspectors of Mental Health. These meetings have proven to be a valuable source of information about the facilities over which the Ombudsmen have jurisdiction, as well as providing an opportunity to explain the Ombudsmen's role under the Crimes of Torture Act and clarify any issues or concerns.

As at 30 June 2009, 89 scoping visits to the following facilities have been completed:

Immigration: 2
 Mental Health sites: 74
 Care & Protection residences: 1
 Prisons: 11
 Court cells: 1

Eighteen focused visits have been completed for the following facilities:

Mental Health Units: 15
 Prisons: 2
 Immigration: 1

However, it is estimated that in excess of 120 facilities will need to be visited to fulfil the delegation to monitor and inspect prisons, immigration, health and disability places of detention, child care and protection residences and youth justice residences.

Because of the significant amount of work the OPCAT responsibility will require, the Ombudsmen intend to increase the number of inspectors during the next financial year, subject to resourcing being made available.

ISSUES

There are a number of significant areas of concern that have been identified during both the scoping visits and the focused visits.

Potential cruel and inhuman treatment (mental health)

The Chief Inspector encountered two cases that caused much concern. One involved a mental health patient who had been in virtually constant restraint and seclusion for nearly six years to prevent the patient from assaulting other patients and staff. Another example was a young mentally disabled patient, held pursuant to the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, who had been kept in seclusion for a lengthy period.

In both instances the Chief Ombudsman wrote to the respective Chief Executives of the District Health Boards concerned. As a result, one patient has been moved to a more suitable facility and the other now has a management plan to facilitate a move into a suitable community-based facility.

The Chief Inspector has advised:

- There are not enough forensic beds to cater for the “ballooning” number of offenders with mental health problems.
- Some offender/patients returned to prison were transferred to District Health Board jurisdiction without notice to the hospital by the Department of Corrections and while the offender was still undergoing treatment by the forensic team. This potentially compromised the patient’s on going treatment.
- Some patients are being held in secure care longer than necessary because of a shortage of suitable community-based accommodation.

Various mental health personnel spoken to by the Chief Inspector have confirmed these concerns.

Invalid legal paperwork (mental health)

The Chief Inspector discovered patients being held in mental health facilities, and whose treatment included the use of seclusion and restraint, where there was no valid documentation authorising their detention.

Authorisation includes:

- court orders
- Power-of-attorney documents
- Protection of Personal and Property Rights Act documentation
- signed patient consent forms.

In one instance a patient had been treated for some years without any apparent consent of any kind. Once these issues were drawn to the attention of the respective managers and District Health Board Chief Executives, the necessary paperwork was obtained and the treatment validated.

The issue of what constitutes “informed consent” has also been identified by the Ombudsmen as an area of concern, especially in the case of elderly persons. An elderly person may well have been mentally capable of giving informed consent when first admitted to a hospital. However, a question arises as to whether (and if so when) that informed consent ceases to be informed with the onset of dementia, Alzheimer’s or other debilitating illness. The Chief Ombudsman has asked the Chief Inspector to explore this issue further with relevant agencies.

Unlawful detention (prisons) – hybrid orders

There was one instance of unlawful imprisonment uncovered on inspection by the Chief Inspector, following a complaint to the Ombudsmen from a prisoner’s mother.

The situation revolved around those offenders who are considered fit to plead and fit to stand trial and be convicted, but are not considered fit by the court to serve any term of imprisonment in a prison. These people become subject to an order made under the Criminal Procedure (Criminal Impaired Persons) Act 2003, which requires they be detained in a hospital. These orders are sometimes known as hybrid orders.

The offender was brought before the Parole Board (several months after his eligibility for parole) and was released back into the care of the hospital. The Parole Board imposed release conditions, including the possibility of recall to prison. When the offender subsequently (and supposedly) breached his parole conditions while still an in-patient, he was recalled to prison for a month. When it was established that, pursuant to the provisions of the Parole Act 2002, he should not have been recalled to prison – as the release conditions did not commence until he was released from hospital – he was returned to the mental health facility. The month spent in prison was then clearly unlawful detention.

As a result of further enquiries, the Ombudsmen understand there were over 20 such offenders in the New Zealand prison system. At least one other offender had been denied their lawful appearance before the NZ Parole Board “as soon as practicable after the expiration of the non-parole period of their sentences”. This appeared to be due to little information being collectively available to the Department of Corrections, Ministry of Justice, Courts, the NZ Parole Board and Mental Health Services, as to who these offenders were, what their legal entitlements were in regards to parole eligibility, where they were located, or whose responsibility they were.

As a result of the Ombudsmen’s enquiries under the Crimes of Torture Act, this situation has now largely been resolved. However, the Ombudsmen will continue to incorporate such enquiries as part of their monitoring role.

Non-smoking policies (mental health sites)

Various District Health Boards have introduced, or are in the process of introducing, no-smoking policies at campuses across the country. This is having an impact on patients who smoke. As an NPM, the Ombudsmen have no set view on this issue and note that it may be tested through the courts. The Ombudsmen may consider investigating specific complaints about such a policy where warranted under the Ombudsmen Act.

Prisons – fans in prisoner cells

In 2007, the Department of Corrections assured the Ombudsmen:

“that where temperatures exceed policy guidelines and there is no other option for temperature control and/or ventilation in that cell, Prison Services will provide prisoners with individual fans, subject to safety and security considerations and availability of electrical facilities.”

The Ombudsmen understand this was never implemented, as individual prisons were not notified of that instruction. Since then, Prison Services has removed the ability for prisoners to purchase their own fans with their own funds. There are prisoners who are without family and friends to provide funds for the purchase of an individual fan. Taking into account all circumstances of a prisoner’s detention (including the increase of “lock-down” time, and doubling up of prisoners in cells designed for one prisoner), the Ombudsmen are concerned that excessive

temperatures could amount to cruel or inhuman treatment under the Crimes of Torture Act. They will continue to monitor this issue. The Chief Inspector raised this issue at a recent meeting with Assistant Regional Managers of the Department of Corrections and was assured that the ability for prisoners to purchase their own fans had been reinstated, and prisoners without sufficient funds would have fans provided to them.

On-site reaction from staff and local hospital and prison management

The Ombudsmen are pleased to report that the Chief Inspector has generally received co-operation from staff and management at the various sites visited. Feedback has indicated that the visits are seen as worthwhile. The Chief Inspector has been able to allay misgivings or concerns about what the OPCAT visits are about and provide practical assistance in addressing issues relating to the humane treatment of those in detention.

Children's Commissioner

The Children's Commissioner is responsible for monitoring children and young persons in residences established under section 364 of the Children, Young Persons and their Families Act 1989 (CYPFA).

The Children's Commissioner is an Independent Crown Entity, carrying out its responsibilities and functions through the Office of the Children's Commissioner (the Office), operating under the Children's Commissioner Act 2003.

The Children's Commissioner has a range of statutory powers to promote the rights, health, welfare, and well-being of children and young

people from 0 to 18 years of age.

These functions are undertaken through advocacy, public awareness, consultation, research, investigations and monitoring. The Commissioner's role includes specific functions in respect of monitoring activities completed under the Children, Young Persons and Their Families Act. The Commissioner also undertakes systemic advocacy functions and investigates particular issues with potential to threaten the health, safety, or well-being of children and young people.

The Children's Commissioner is appointed by the Governor-General.

The Children's Commissioner is jointly responsible, with the Ombudsmen, for monitoring children and young people in residences established under section 364 of the CYPFA. The Office carries out residence visits and refers reports and findings to the Chief Ombudsman for input, including recommendations they wish to make.

The Children's Commissioner's role as a NPM has some overlap with his statutory responsibility to monitor the policies and practices of Child, Youth and Family generally.

CONTEXT

Child, Youth and Family has established eight residences under section 364 of the CYPFA – three youth justice residences, four care and protection residences (which includes a specialist unit for young people who have a severe conduct disorder) and a specialist unit for young people who have displayed sexually inappropriate behaviour.

Within Child, Youth and Family residences, processes are in place to ensure children and young people are not exposed to torture, brutality or inhuman treatment. Most of these are prescribed by the Children, Young Persons and Their Families (Residential Care) Regulations 1996 (the Regulations). Child, Youth and Family audits its own compliance against these Regulations.

APPROACH

Before an NPM visit, the Office checks:

- Child, Youth and Family's residential audit of compliance with the Regulations
- quarterly grievance panel reports
- documentation around the application of the Regulations as defined in the Standard Operating Procedures.

In the course of residence visits, the Office looks at:

- Treatment: identifying any incidents of torture, brutality or inhuman treatment, or the use of isolation and/or force and restraint.
- Protection measures: provision of information such as complaint, inspection, and disciplinary procedures and how such incidents are recorded.
- Material conditions: accommodation, lighting and ventilation, personal hygiene, sanitary facilities, clothing and bedding, and food.
- Activities and access to others: contact with family and the outside world, outdoor exercise, education, leisure activities, and religion.
- Health services: access to medical care.
- Staff: conduct and training.

SUMMARY OF ACTIVITIES

This year, the Office has met with senior Child, Youth and Family officials responsible for residential care, keeping them informed of OPCAT processes and standards and the procedure for preventive monitoring.

During the 2008-09 financial year, the Office employed a specialist contractor to undertake inspections. Two Child, Youth and Family facilities were visited – Whakatakopakai, a care and protection residence, in July 2008, and Korowai Manaaki, a youth justice residence, in November 2008. A comprehensive report on each residence was completed.

During the visits there were discussions with children and young people, staff, management and the grievance panel. Each visit took three days and required extensive verification of the processes in place to ensure children and young people are not exposed to torture, brutality or inhuman treatment.

ISSUES

Both residences visited showed substantial compliance with measures to ensure children and young people are not exposed to torture, brutality or inhuman treatment. Nevertheless, the Office identified the following areas for improvement.

A number of key Standard Operating Procedures are not available, including those related to secure care, powers of punishment and discipline, searches, and rights of children and young people. The Office has asked to be kept up to date on progress in developing the outstanding Standard Operating Procedures.

The Regulations require that all behaviour intervention models have sign-off from the Chief Executive of the Ministry of Social Development. The Office has asked for information on how behaviour management plans are developed and agreed by the Chief Executive.

The Office is concerned about the criteria and processes for defining and responding to critical incidents to and from national office. The Office has asked that Child, Youth and Family consider the processes for categorising incidents and for providing feedback to residences on incidents brought to their attention.

The Office is also concerned that issues raised in annual audit reports are not always attended to in a timely manner. Child, Youth and Family has been asked to review how concerns brought to its notice during the audit cycle are addressed and monitored.

Feedback to Child, Youth and Family

Child, Youth and Family management have been helpful in facilitating access to the residential facilities, staff, residents and to written documentation.

Where NPM visits have identified an issue specific to a residence, these have been raised in a written draft report with the management team of that residence. Child, Youth and Family national office staff have also taken the opportunity to discuss the report with the Office before the report was considered final.

A letter summarising the issues found during the NPM visits this year has been provided to Child, Youth and Family.

GOING FORWARD

From 2009-10, an advisor from the Office will undertake all NPM visits and complete reports. Four visits are planned for 2009-10, although further unannounced visits may be undertaken, should any issues of concern arise.

In June 2009, Child, Youth and Family introduced a blueprint for how it will run residential services in the future, entitled Towards Outcome Focused Residential Services. This outlines a culture shift that moves away from a residential care model, with a focus on containment, and towards a therapeutic treatment model of service delivery. This will include a review of all the Standard Operating Procedures. The new model will be phased in from July 2009 and will be fully implemented by March 2010. The Office will monitor the effects of these changes for children and young people, as part of its 2009-10 NPM visits.

The Office has asked Child, Youth and Family to consider including information on the Crimes of Torture Act, NPM responsibilities and OPCAT in the new induction training package being developed for residential staff. The Office is happy to provide that information and training.

Inspector of Service Penal Establishments

The Inspector of Service Penal Establishments (ISPE) is the NPM responsible for monitoring New Zealand Defence Force detention facilities.

The appointment of the ISPE is tied to the appointment of the Registrar of the Court Martial of New Zealand, an official appointed independently by the Chief Judge of that jurisdiction by the provisions of the Court Martial Act 2007 (ss79 (1) and 80).

CONTEXT

The Services Corrective Establishment (SCE) is located in Burnham Military Camp, south of Christchurch. In addition, there are a limited number of holding cells in each of the more significant New Zealand Defence Force (NZDF) base or camp facilities that are used to confine members of the armed forces for a few days at a time.

There are no detention facilities off-shore currently available to the NZDF on NZ Navy ships or for the forces on operational deployments.

APPROACH

The ISPE has no staff, but has the capacity to second additional personnel if required to assist meeting OPCAT objectives. The inspector's role is to ensure that all members of the armed forces deprived of their liberty are treated with humanity and respect and not subjected to torture or to cruel, inhuman or degrading treatment or punishment.

The ISPE visits the SCE unannounced and meets with the Chief Warden. The ISPE reviews documentation, inspects the facilities and interviews each detainee individually and in private. Feedback is provided at the conclusion of the inspection to the Commandant of SCE and to the Chief Warden. There has been no significant concern identified. If there was, ISPE would report directly to the Chief of Defence Force.

SUMMARY OF ACTIVITIES

While up to eight inspections are authorised per year, two inspections of SCE have been completed in 2008-09. The cells at 2 Land Force Group in Linton Military Camp, Naval Base Devonport and Burnham Camp have also been inspected.

ISSUES

The ISPE has continued to receive cooperation at all levels of the NZDF and has been impressed with endeavours to comply with the obligations to OPCAT.

SCE is a fairly modern facility, with a professional staff of non-commissioned officers drawn from all three armed services. The Inspector's two visits to SCE and interviews with detainees this year have raised no concerns. The ISPE has been satisfied with the treatment and conditions of detention and the measures in place to prevent torture and ill treatment.

The standard of detention accommodation in the naval base is of some concern. This will be monitored over the next 12 months to ensure upgrades are initiated.

GOING FORWARD

ISPE intends to carry out up to eight inspections of SCE in the 2009-10 year. Further visits to camp and base holding cells will also be arranged.

Summary of emerging issues

POSITIVE OUTCOMES

Building on the scoping and preparatory work undertaken in the initial year of OPCAT operation, NPMs this year have continued to implement their OPCAT monitoring programmes and report a number of positive outcomes. In particular, because of the broader scope of OPCAT preventive visits, NPMs have identified and been able to address issues that may not otherwise have come to light. An example is the situation encountered by the Ombudsmen, involving gaps in information and oversight of hybrid orders. The Ombudsmen's intervention enabled those gaps to be remedied and further instances of unlawful detention to be prevented.

There is also continued cooperation from detaining agencies and some evidence of growing awareness and appreciation of human rights, OPCAT and the monitoring role of NPMs amongst staff and management.

ISSUES RAISED IN PREVIOUS OPCAT ANNUAL REPORT

The 2007-08 OPCAT annual report was the first report on OPCAT implementation in New Zealand. At that point, OPCAT activities had largely focussed on planning and preparation. The report outlined monitoring processes and standards that were being developed, and flagged some emerging issues.

A number of the administrative issues raised in the first annual report have been addressed. These include some suggested amendments to the NPM designations. The designations of the Ombudsmen and Children's Commissioner were amended to clarify that their role covered care and protection residences as well as youth justice residences. The two NPMs continue to share the designation in this area. The wording of the designation relating to Defence Force facilities was also amended to better reflect and clarify that the role is carried out specifically by the ISPE.

Resourcing, another issue raised in the first annual report, remains an issue for some NPMs. A positive development this year has been the provision of additional government funding to the IPCA, which has enabled them to recruit staff and commence its monitoring programme. Resourcing is an ongoing issue, however, given the size of the NPMs, the nature of their roles and the scope of places to be visited.

OPCAT is premised on the notion that all places of detention are visited regularly, and with sufficient frequency, in order to effectively prevent ill treatment. NPMs are limited by the resources available in the level of coverage and frequency of visits they are able to undertake. In the case of the Ombudsmen and IPCA, the facilities to be visited number in the hundreds. On current resource levels, some sites may not receive an OPCAT visit for many years. Further resources will be required to enable NPMs to continue to expand and develop their monitoring programmes, if all facilities are to be visited with the full degree of regularity envisioned by OPCAT.

A number of the challenging issues raised in the first annual report continue to be a focus of OPCAT activities, and were also highlighted by the UN Committee Against Torture during its examination of New Zealand in May 2009. These issues include:

- the rights and needs of particular groups, including children and young people, asylum seekers, Māori and people with mental health issues
- staffing levels and training
- conditions of detention and standard of facilities.

ISSUES

Awareness and cooperation

It is pleasing to note that cooperation from detaining authorities and other organisations has continued this year, and positive relationships with agencies and institutions continue to be developed.

While the response from institutions has, on the whole, been positive, it must be emphasised that the ability of NPMs to speak privately and unhindered with people who are detained (and with staff), is a fundamental requirement of the OPCAT process. Both the OPCAT (articles 20-21) and the Crimes of Torture Act (sections 29-30) require NPMs to be provided with unrestricted access to detainees, and prohibit any form of reprisal or disadvantage as a result of speaking to NPMs. The ability to conduct unannounced inspections will be utilised where it is suspected that attempts have been made to prevent detainees from speaking openly with NPMs.

Awareness and understanding of human rights is an issue across the board and requires considerable further focus.

The types of extreme abuse that would fall within the category of torture are generally well recognised and understood. Perhaps less understood is the fact that torture and cruel, inhuman or degrading treatment can take a variety of different forms. This includes, in some circumstances, inadequate detention conditions or the improper use of force, restraint, or isolation. In addition, alongside the absolute prohibition against torture and ill treatment is a positive requirement that people in detention are treated with “humanity and respect for the inherent dignity of the person”⁶. This may require taking into account factors such as a person’s age, sex, gender identity, health or disability to ensure conditions and treatment are appropriate.

Some NPM observations indicate that, while staff may have a good knowledge of the legislation or internal policies governing their institution, in the absence of an integrated human rights approach or training, they may not always have a consciousness of the human rights implications of their actions and decisions. Opportunities for NPM input and involvement in training initiatives are therefore welcome.

⁶ Article 10, International Covenant on Civil and Political Rights; and section 23(5) New Zealand Bill of Rights Act 1990.

Some definitions:

Torture is the intentional infliction of severe pain or suffering (either physical or mental), done for a purpose such as to obtain information or as punishment. The conduct must be of a sufficiently high level of severity, generally reserved for “the most extreme conduct”.

Cruel, inhuman or degrading treatment or punishment are acts that inflict mental or physical suffering, anguish, humiliation or fear, but which fall short of torture. Intention or purpose are not essential, although a minimum level of severity must be met. This takes into account the circumstances of the particular case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age, religion and state of health of the individual concerned.

All persons deprived of their liberty must be treated with **humanity and with respect for the inherent dignity** of the human person. This positive obligation complements the prohibition against torture or ill treatment. Failure to meet the

basic requirements of detention may constitute torture, or cruel, inhuman or degrading treatment in certain circumstances, particularly if over a prolonged period or where the combination of a number of failures has a cumulative effect.

Examples of situations that have been found by international human rights bodies to violate human rights standards include:

- assaults
- overcrowded conditions
- lack of natural light and ventilation
- inadequate or inappropriate food
- unhygienic conditions
- inadequate medical services (including psychiatric treatment)
- conditions that are inappropriate to a person’s state of health or disability
- inadequate provision for family contact
- lack of recreation or educational facilities.

FACILITIES

NPMs have continued to give particular attention to the physical conditions in which people are detained.

Human rights standards stress that accommodation must be safe, healthy and humane. Decent living conditions are essential for the preservation of human dignity in places of detention, as well as for detainees’ physical

and mental health. International and domestic minimum standards require adequate space, heating, natural and artificial light, fresh air and ventilation, sanitary facilities, and proper standards of maintenance and cleanliness. These standards must also be satisfied when new facilities are being planned and designed, and when considering ways of coping with capacity issues.

Lack of appropriate facilities may contribute to a number of other human rights issues, such as mixing of remand and sentenced prisoners, age mixing, and increased lock-down periods. Access to employment, education, health services, treatment programmes, recreation and visitors may all be affected by capacity, resource and staffing pressures.

These issues have particular significance in light of the continued increase in the numbers of people detained, pressures on facilities and

services, and the heightened risks associated with overcrowding. Detaining agencies must ensure that responses to capacity issues are conducive to respect for human rights and dignity, and that risks associated with overcrowding are carefully managed. However, the agencies and institutions themselves have little control of the numbers of detainees they are presented with. Attention also has to be given to the way detention is used in New Zealand and ways of reducing the imprisonment rate considered.

The UN Committee Against Torture expressed concerns about prison conditions, particularly in light of forecasted ongoing growth in prisoner numbers. This was one of four issues the Committee requested the New Zealand Government report back on within one year:

Conditions of detention

9. The Committee notes with concern the insufficient number of prison facilities in light of the forecasted growth in prisoners numbers which may lead to inter-prisoners' violence.

The Committee is also concerned at the inadequate provision of mental health care and legal services to mentally ill inmates in prisons. The Committee is concerned at the use by prison authorities of instruments of physical restraint that may cause unnecessary pain and humiliation. (arts. 11 and 16)

In order to improve the arrangements for the custody of persons deprived of their liberty, the State party 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), and in the case of children in conflict with the law ensure that detention is only used as a measure of last resort. It should also provide adequate mental health care and legal services for all persons deprived of their liberty, particularly to inmates suffering from mental illnesses. The State party should keep under constant review the use of instruments of restraint that may cause unnecessary pain and humiliation, and ensure that they are used only when necessary, and that their use is appropriately recorded.

POLICY AND PROCEDURES

New Zealand law and policy is generally well developed and human-rights compliant. However, OPCAT activities have highlighted some gaps in policy or procedure. Opportunities for OPCAT monitoring organisations to have input into the development of policies can assist in early identification of human rights issues or gaps and are therefore welcome.

Instances of a lack of adherence in practice to policies and procedures highlights the importance of regular monitoring and training. As noted above, NPMs have welcomed opportunities for input and involvement in training activities.

The importance of data collection and monitoring have also been highlighted through OPCAT monitoring.

IMPLEMENTATION OF RECOMMENDATIONS

Institutions and government agencies have been generally receptive to OPCAT recommendations. In a number of cases they have moved promptly to address identified issues. It is hoped this cooperation will continue between the monitoring mechanisms and authorities, as envisioned by OPCAT.

A number of the issues encountered by NPMs relate to long-standing issues raised in the past through various reports, inquiries and recommendations. Addressing some of these complex and resource-dependent issues may be particularly challenging in the current economic climate. However, commitment to OPCAT compliance, along with the OPCAT approach of constructive dialogue, should provide an opportunity for a concerted focus on action.

APPENDIX 1: OPCAT background

INTRODUCTION TO OPCAT

The [Optional Protocol to the Convention against Torture](#) (OPCAT)¹ is an international human rights treaty that New Zealand signed up to in 2007. It is designed to assist States to meet their obligations to prevent torture and ill treatment in places where people are deprived of their liberty. Unlike other human rights treaty processes that deal with violations of rights after the fact, the OPCAT is primarily concerned with preventing violations. It is based on the premise, supported by practical experience, that regular visits to places of detention are an effective means of preventing ill treatment and improving conditions of detention. This preventive approach aims to ensure that sufficient safeguards against ill treatment are in place and that any problems or risks are identified and addressed.

OPCAT establishes a dual system of preventive monitoring, undertaken by international and national monitoring bodies. The international body, the [UN Subcommittee for the Prevention of Torture](#), will periodically visit each State party to inspect places of detention and make recommendations to the State. At the national level, independent monitoring bodies called National Preventive Mechanisms (NPMs) are empowered under OPCAT to regularly visit places of detention, and make recommendations aimed at strengthening protections, improving treatment and conditions, and preventing torture or ill treatment.

“Whether or not ill treatment occurs in practice, there is always a need for States to be vigilant in order to prevent ill treatment. The scope of preventive work is large, encompassing any form of abuse of people deprived of their liberty which, if unchecked, could grow into torture or other cruel, inhuman or degrading treatment or punishment. Preventive visiting looks at legal and system features and current practice, including conditions, in order to identify where the gaps in protection exist and which safeguards require strengthening.”²

IMPLEMENTATION IN NEW ZEALAND

New Zealand ratified OPCAT in March 2007, following the enactment of amendments to the [Crimes of Torture Act 1989](#)³, to provide for visits by the Subcommittee and the establishment of NPMs.

New Zealand’s designated NPMs are:

- the [Office of the Ombudsmen](#) – in relation to prisons, immigration detention facilities, health and disability places of detention, and Child, Youth and Family residences
- the [Independent Police Conduct Authority](#) – in relation to people held in police cells and otherwise in the custody of the police
- the [Office of the Children’s Commissioner](#) – in relation to children and young persons in Child, Youth and Family residences

¹ The full text of the OPCAT is set out in Appendix 4.

² Subcommittee on Prevention of Torture, First Annual Report of the Subcommittee on Prevention of Torture, CAT/C/40/2, (May 2008), para 12.

³ A copy of the relevant part of the Act is included as Appendix 5.

- the Inspector of Service Penal Establishments of the Office of the Judge Advocate General – in relation to Defence Force Service Custody and Service Corrective Establishments
- the [Human Rights Commission](#) has a coordination role as the designated Central NPM.

“The very fact that national or international experts have the power to inspect every place of detention at any time without prior announcement, have access to prison registers and other documents, [and] are entitled to speak with every detainee in private ... has a strong deterrent effect. At the same time, such visits create the opportunity for independent experts to examine, at first hand, the treatment of prisoners and detainees and the general conditions of detention ... Many problems stem from inadequate systems which can easily be improved through regular monitoring. By carrying out regular visits to places of detention, the visiting experts usually establish a constructive dialogue with the authorities concerned in order to help them resolve problems observed.”⁴

FUNCTIONS AND POWERS OF NATIONAL PREVENTIVE MECHANISMS

By ratifying OPCAT, States agree to designate one or more (NPM) for the prevention of torture (Article 17) and to ensure that these mechanisms are independent, have the necessary capability and expertise, and are adequately resourced to fulfil their function (article 18).

The minimum powers NPMs must have are set out in article 19. These include the power to regularly examine the treatment of people in detention; to make recommendations to relevant authorities; and submit proposals or observations regarding existing or proposed legislation.

NPMs are entitled to access all relevant information on the treatment of detainees and the conditions of detention; to access all places of detention and conduct private interviews with people who are detained or who may have relevant information. The NPMs have the right to choose the places they want to visit and the persons they want to interview (article 20). NPMs must also be able to have contact with the international Subcommittee and publish annual reports (article 20, 23).

The State authorities are obliged, under article 22, to examine the recommendations made by the NPM and discuss their implementation.

The amended [Crimes of Torture Act](#) enables the Minister of Justice to designate one or more NPM as well as a Central National Preventive Mechanism and sets out the functions and powers of these bodies. Under section 27 of the Act, the functions of an NPM include examining the conditions of detention and treatment of detainees, and making recommendations to improve conditions and treatment and prevent torture or other forms of ill treatment. Sections 28-30 set out the powers of NPMs, ensuring they have all powers of access required under OPCAT.

⁴ UN Special Rapporteur on Torture, Report of the Special Rapporteur on torture to the 61st session of the UN General Assembly, A/61/259 (14 August, 2006), para 72.

CENTRAL NATIONAL PREVENTIVE MECHANISM

OPCAT envisions a system of regular visits to all places of detention.⁵ The designation of a central mechanism aims to ensure there is coordination and consistency among multiple NPMs so they operate as a cohesive system. Central coordination can also help to ensure any gaps in coverage are identified and that the monitoring system operates effectively across all places of detention.

The functions of the Central National Preventive Mechanism (CNPM) are set out in section 32 of the Crimes of Torture Act, and are to coordinate the activities of the NPMs and maintain effective liaison with the UN Subcommittee on Prevention of Torture. In carrying out these functions, the CNPM is to:

- consult and liaise with NPMs
- review their reports and advise of any systemic issues
- coordinate the submission of reports to the Subcommittee
- in consultation with NPMs, make recommendations on any matters concerning the prevention of torture and ill treatment in places of detention.

MONITORING PROCESSES

While the OPCAT sets out the requirements, functions and powers of NPMs, it does not prescribe in detail how preventive monitoring is to be carried out. New Zealand's OPCAT organisations have developed procedures applicable to each detention context.

The general approach to preventive visits, based on international guidelines, involves:

- Preparatory work, including information collection and identifying specific objectives, before a visit takes place.
- The visit itself, during which the NPM visitors speak with management and staff, inspect the institution's facilities and documentation, and speak with people who are detained.
- Upon completion of the visit, discussions with the relevant staff, summarising the NPM's findings and providing an opportunity for an initial response.
- A report to the relevant authorities of the NPM's findings and recommendations, which forms the basis of ongoing dialogue to address identified issues.

NPMs' assessment of the conditions and treatment of detention facilities takes account of international human rights standards,⁶ and involves looking at:⁷

- Treatment: any allegations of torture or ill-treatment; the use of isolation, force and restraint.
- Protection measures: registers, provision of information, complaint and inspection procedures, disciplinary procedures.
- Material conditions: accommodation, lighting and ventilation, personal hygiene, sanitary facilities, clothing and bedding, food.
- Activities and access to others: contact with family and the outside world, outdoor exercise, education, leisure activities, religion.
- Health services: access to medical care.
- Staff: conduct and training.

⁵ OPCAT, article 1

⁶ A list of key human rights instruments is set out in Appendix 2.

⁷ A copy of the monitoring standards framework is included as Appendix 3.

APPENDIX 2: Human rights standards

The development of the standards for NPM monitoring have been formulated with reference to the international human rights framework. This includes the binding human rights treaties that New Zealand has signed up to, as well as other international instruments (such as declarations, principles, guidelines, standard rules and recommendations) that provide guidance for States to comply with binding instruments.

Binding international instruments include:

[Convention against Torture and other forms of cruel, inhuman or degrading Treatment or Punishment \(CAT\)](#)

[Optional Protocol to the Convention against Torture \(OPCAT\)](#)

[International Covenant on Civil and Political Rights \(ICCPR\)](#)

[Convention on the Rights of the Child \(CRC\)](#)

[Convention on the Elimination of All Forms of Discrimination against Women \(CEDAW\)](#)

[International Convention on the Elimination of All Forms of Racial Discrimination \(CERD\)](#)

[Convention on the Rights of Persons with Disabilities \(CRPD\)](#)

Other relevant international instruments include:

[Standard Minimum Rules for the Treatment of Prisoners \(SMR\)](#)

[Basic Principles for the Treatment of Prisoners \(BPTP\)](#)

[Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment \(BPP\)](#)

[United Nations Rules for the Protection of Juveniles Deprived of their Liberty \(RPJDL\)](#)

[United Nations Standard Minimum Rules for the Administration of Juvenile Justice \("The Beijing Rules"\)](#)

[Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment \(PME\)](#)

[Code of Conduct for Law Enforcement Officials \(CCLEO\)](#)

[Basic Principles on the Use of Force and Firearms by Law Enforcement Officials \(BPUF\)](#)

[Principles for the protection of persons with mental illness and the improvement of mental health care \(PMI\)](#)

[Minimum Interrogation Standards developed by the Advisory Council of Jurists to the Asia Pacific Forum of National Human Rights Institutions⁸ \(MIS\)](#)

[European Committee for the Prevention of Torture, The CPT Standards: 'Substantive' sections of the CPT's General Reports \(CPT\)](#)

[United Nations Human Rights Committee General Comments on the implementation of the ICCPR: \[General Comment 20 \\(GC20\\)\]\(#\) and \[General Comment 21 \\(GC21\\)\]\(#\)](#)

⁸ The Advisory Council of Jurists (ACJ) is a body of eminent jurists that advises the Asia Pacific Forum of National Human Rights Institutions (APF) on the interpretation and application of international human rights law.

APPENDIX 3: Monitoring standards framework

Although the detailed standards and measures used by National Preventive Mechanisms are tailored to suit each type of detention facility, the following is the basic framework applied. These issues and standards have been drawn from international human rights standards and monitoring guidelines.

Issues	Standards	Relevant international references ⁹
Treatment		
Torture and ill-treatment	<p>No one is subjected to torture or ill treatment</p> <p>Any allegations of torture or ill treatment are promptly and thoroughly investigated and addressed through appropriate channels</p>	<p>ICCPR 7 CAT 1, 2, 16 CRC 37 CPRD 15</p> <p>BPP 6 SMR 31 CCLEO 5</p>
Use of force or restraint	<p>Force is only used legitimately – only ever as a last resort and to the minimum extent possible – in strict accordance with the principles of necessity and proportionality and within prescribed procedures</p> <p>Any use of force is documented, reported and reviewed</p> <p>Immediate access to medical examination and treatment is provided whenever force is used</p> <p>Instruments of restraint are only used legitimately, for no longer than strictly necessary, and never as a punishment</p>	<p>Force: SMR 54 BPUF 9, 15,16 CCLEO 3</p> <p>Restraint: SMR 33-34 RPJDL 64</p>
Solitary confinement	<p>Use of conditions amounting to solitary confinement is limited and of short duration, and is accompanied by safeguards including access to medical examination and monitoring, review and appeal</p> <p>Access to basic necessities, including food, light and exercise should never be denied</p>	<p>BPTP 7 GC20 6 SMR 32</p>

⁹ See Appendix 2 for full titles of the international human rights instruments; numbers refer to the relevant article, paragraph or rule.

Issues	Standards	Relevant international references ⁹
Protection Measures		
Information	People in detention are effectively informed of their rights and obligations and about the operation of the place of detention	BPP 13 SMR 35
	Persons under arrest are informed of the reasons for their arrest and any charges, and of their rights Questioning is conducted in accordance with Minimum Interrogation Standards	BPP 10, 13 MIS
Disciplinary procedures	Disciplinary procedures are set out in clear rules, and these are effectively conveyed to detainees and staff Rules and sanctions are lawful, reasonable, and proportionate, and are fairly and consistently applied The rules of natural justice are applied, including that people in detention have a right to be heard before a competent authority, to prepare a defence and have a right to appeal	BPP 30 SMR 27-32
Complaint and inspection procedures	People in detention have access to effective internal and external complaint mechanisms – they are able to make a complaint if and when they want to, without fear of adverse consequences Complaints are dealt with in a fair, timely and effective manner Inspection mechanisms are able to visit regularly, and people in detention are able to communicate freely and confidentially with inspection bodies	BPP 29 SMR 55 BPP 33 SMR 35-36

Issues	Standards	Relevant international references ⁹
Protection Measures		
Categories of people in detention	<p>For their protection, and in recognition of the special needs of different categories of detainees, people in detention are separated according to gender, age, and judicial/legal status:</p> <p>Young people are detained separately from adults</p> <p>Accused persons are detained separately from convicted persons</p> <p>Men and women are detained separately</p> <p>Attention is given to the specific needs of particular groups – such as children and young people, women, older people, disabled people, foreign nationals, minority groups and other vulnerable groups – to ensure their safety, equality of access to all facilities and services and that conditions and treatment are appropriate to their needs</p>	<p>ICCPR 10(2) GC21 9 GC20 13</p> <p>SMR 8, 85 RPJDL 29 BPP 8</p>
Registers	An official record is maintained of detainees' identity, legal reason for detention, time of arrest, time of arrival and departure, physical state on arrival/ departure, and any incidents	<p>BPP 12 SMR 7 GC20 11</p>

Issues	Standards	Relevant international references ⁹
Material Conditions		
Accommodation	<p>People in detention are accommodated in a safe, clean and decent environment that is suitable for the purpose and for their individual needs</p> <p>Living conditions – space, lighting, ventilation, heating, hygiene, clothing and bedding, food, drink and exercise – are sufficient to adequately provide for the health, dignity, privacy and other needs of people in detention</p>	SMR 9-14 (Accommodation), 26
Personal hygiene, sanitary facilities	<p>Hygiene and sanitary facilities and procedures are adequate to ensure the health, dignity and privacy of people in detention, and facilities are clean and well maintained</p> <p>People in detention always have ready access to toilets and clean water, regular access to bathing and shower facilities and necessary toiletry items</p> <p>People in detention are encouraged, enabled and expected to maintain good personal hygiene, and keep themselves, their cells/accommodation and clothing clean</p>	SMR 12-14, 15-16 (personal hygiene), 17-19 (clothing and bedding)
Food	<p>People in detention are provided sufficient and adequate quantity, quality and variety of food and drink necessary for a healthy diet, and to meet their individual needs</p> <p>Food is prepared and served in accordance with hygiene standards and in a manner and environment that respects the dignity of the person</p>	SMR 20, 26 JPJDL 67

Issues	Standards	Relevant international references ⁹
Activities and access to others		
Administration of time; availability of activities (work, education, religion, leisure)	<p>At least one hour of exercise in fresh air each day is available to all people in detention</p> <p>For their physical and mental well-being, and to assist in their personal development and reintegration into society, people in detention should spend time outside their cells, engaged in purposeful activities – including meaningful, remunerated employment; education; recreational and cultural activities</p> <p>Working conditions and health and safety requirements are observed</p> <p>People in detention are able to exercise their right to freedom of religion and belief, to observe and practice their religion if they choose to, and have access to a representative of their religion</p>	<p>SMR 21, 65-66 RPJDL 47, 32 BPTP 8 SMR 71-76 RPJDL 43-46 SMR 77-78 BPTP 6 RPJDL 38-42 BPP 28 SMR 21, 40, 78 RPJDL 32, 47 ICCPR 27 SMR 41-42 BPTP 3 RPJDL 48</p>
Access to others	<p>Contact with the outside world and, in particular, maintenance of relationships with family are facilitated through correspondence and visits</p> <p>Any conditions, limitations or supervision of visits or outside contact are necessary, reasonable, and proportionate</p> <p>All people in detention are able to be visited by and have confidential communication with legal advisers</p> <p>Foreign nationals have access to their diplomatic/ consular representative or other representative organisation</p> <hr/> <p>Persons under arrest are able to notify a third party, have access to a lawyer, the right to a medical examination, and are brought before a court as soon as possible</p>	<p>ICCPR 23 BPP 15, 19 SMR 37, 92 RPJDL 59</p> <hr/> <p>ICCPR 9, 14</p>

Issues	Standards	Relevant international references ⁹
Health Services		
Health Services	<p>Health services – including: medical, psychiatric, dental, pre/post-natal care – are provided on an equitable basis to all people in detention, to an equivalent standard as that available in the community, and in conditions that ensure decency, privacy and dignity</p> <p>All people who are detained have access to medical examination on admission</p>	<p>SMR 22-26, 82-83 BPTP 9 BPP 24-26 CCLEO 6</p>
Staff		
Staff	<p>Staff ensure that all people in detention are treated with respect for their dignity and humanity</p> <p>All staff have the skills, attributes, professional training and support necessary for their role, and to ensure a safe and secure environment where human rights are respected</p>	<p>SMR 46-54 RPJDL 81-87 GC20 10</p>

APPENDIX 4: Optional Protocol to the Convention Against Torture

Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199.

Entered into force on 22 June 2006

PREAMBLE

The States Parties to the present Protocol,

Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights,

Convinced that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment,

Recalling that articles 2 and 16 of the Convention oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,

Recognizing that States have the primary responsibility for implementing those articles, that strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common responsibility shared by all and that international implementing bodies complement and strengthen national measures,

Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures,

Recalling also that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the adoption of an optional protocol to the Convention, intended to establish a preventive system of regular visits to places of detention,

Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention, Have agreed as follows:

PART I

General principles

Article 1

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Article 2

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.

2. The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.

3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.

4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

Article 3

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

Article 4

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.

2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

PART II

Subcommittee on Prevention

Article 5

1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.

2. The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.

3. In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.

4. In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.

5. No two members of the Subcommittee on Prevention may be nationals of the same State.

6. The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee on Prevention efficiently.

Article 6

1. Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.

2.

(a) The nominees shall have the nationality of a State Party to the present Protocol;

(b) At least one of the two candidates shall have the nationality of the nominating State Party;

(c) No more than two nationals of a State Party shall be nominated;

(d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.

3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties that have nominated them.

Article 7

1. The members of the Subcommittee on Prevention shall be elected in the following manner:

(a) Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol;

(b) The initial election shall be held no later than six months after the entry into force of the present Protocol;

(c) The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot;

(d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

2. If during the election process two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee on Prevention. Where nationals have received the same number of votes, the following procedure applies:

(a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention;

(b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member;

(c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

Article 8

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party that nominated the member

shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 9

The members of the Subcommittee on Prevention shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half the members elected at the first election shall expire at the end of two years; immediately after the first election the names of those members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1 (d).

Article 10

1. The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.

2. The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, inter alia, that:

(a) Half the members plus one shall constitute a quorum;

(b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;

(c) The Subcommittee on Prevention shall meet in camera.

3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall meet at such times as shall be provided by its rules of procedure. The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

PART III

Mandate of the Subcommittee on Prevention

Article 11

1. The Subcommittee on Prevention shall:

(a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(b) In regard to the national preventive mechanisms:

(i) Advise and assist States Parties, when necessary, in their establishment;

(ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;

(iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

(c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

Article 12

In order to enable the Subcommittee on Prevention to comply with its mandate as laid down in article 11, the States Parties undertake:

(a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention as defined in article 4 of the present Protocol;

(b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;

(d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

Article 13

1. The Subcommittee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties in order to fulfil its mandate as established in article 11.

2. After consultations, the Subcommittee on Prevention shall notify the States Parties of its programme in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted.

3. The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.

4. If the Subcommittee on Prevention considers it appropriate, it may propose a short follow-up visit after a regular visit.

Article 14

1. In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it:

(a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Subject to paragraph 2 below, unrestricted access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information;

(e) The liberty to choose the places it wants to visit and the persons it wants to interview.

2. Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

Article 15

No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

Article 16

1. The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.

2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State

Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.

3. The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.

4. If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention.

PART IV

National preventive mechanisms

Article 17

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

Article 18

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.

2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.

3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.

4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

Article 19

The national preventive mechanisms shall be granted at a minimum the power:

(a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;

(b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

(c) To submit proposals and observations concerning existing or draft legislation.

Article 20

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

(a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;

(e) The liberty to choose the places they want to visit and the persons they want to interview;

(f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

Article 21

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

Article 22

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

Article 23

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

PART V

Declaration

Article 24

1. Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol.

2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

PART VI

Financial provisions

Article 25

1. The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.
2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.

Article 26

1. A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programmes of the national preventive mechanisms.
2. The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

PART VII

Final provisions

Article 27

1. The present Protocol is open for signature by any State that has signed the Convention.
2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 28

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the present Protocol shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

Article 29

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 30

No reservations shall be made to the present Protocol.

Article 31

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

Article 32

The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, nor the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 33

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided or may decide to take with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter already under consideration by the Subcommittee on Prevention prior to the date on which the denunciation becomes effective.

3. Following the date on which the denunciation of the State Party becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

Article 34

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment that they have accepted.

Article 35

Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Members of the Subcommittee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

Article 36

When visiting a State Party, the members of the Subcommittee on Prevention shall, without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

- (a) Respect the laws and regulations of the visited State;
- (b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 37

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

APPENDIX 5: Part 2, Crimes of Torture Act 1989

Crimes of Torture Act 1989

PART 2

PREVENTION OF CRIMES OF TORTURE

Preliminary provisions

15 Purpose of this Part

The purpose of this Part is to enable New Zealand to meet its international obligations under the Optional Protocol.

16 Interpretation

In this Part, unless the context otherwise requires,—

Central National Preventive Mechanism means any person, body, or agency for the time being designated under section 31 as the Central National Preventive Mechanism

deprived of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order or agreement of any judicial, administrative, or other authority

detainee means a person in a place of detention who is deprived of his or her liberty

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

National Preventive Mechanism means 1 or more of the following that may, for the time being, be designated under section 26 as a National Preventive Mechanism

- (a) an Ombudsman holding office under the [Ombudsmen Act 1975](#);
- (b) the Independent Police Conduct Authority;
- (c) the Children's Commissioner;
- (d) visiting officers appointed in accordance with relevant Defence Force Orders issued pursuant to sections 175 and 206 of the [Armed Forces Discipline Act 1971](#);

(e) any other person, body or agency that is designated a National Preventive Mechanism

Optional Protocol means the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations on 18 December 2002, a copy of the English text of which is set out in Schedule 2

place of detention means any place in New Zealand where persons are or may be deprived of liberty, including, for example, detention or custody in —

- (a) a prison;
- (b) a police cell;
- (c) a court cell;
- (d) a hospital;
- (e) a secure facility as defined in section 9(2) of the [Intellectual Disability \(Compulsory Care and Rehabilitation\) Act 2003](#);
- (f) a residence established under section 364 of the [Children, Young Persons, and Their Families Act 1989](#);
- (g) premises approved under the [Immigration Act 1987](#);
- (h) a service penal establishment as defined in section 2 of the [Armed Forces Discipline Act 1971](#)

Subcommittee means the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture, established in accordance with Part II of the Optional Protocol.

Section 16 **National Preventive Mechanism** paragraph (b): amended, on 29 November 2007, by section 26 of the Independent Police Conduct Authority Amendment Act 2007 (2007 No 38).

Visits by Subcommittee

17 Purpose of sections 18 to 20

The purpose of sections 18 to 20 is to enable the Subcommittee to fulfil its mandate set out in Article 11 of the Optional Protocol.

18 Subcommittee's access to information

Every person must permit the Subcommittee to have unrestricted access to the following information in relation to places of detention in New Zealand:

- (a) the number of places of detention:
- (b) the location of places of detention:
- (c) the number of detainees:
- (d) the treatment of detainees:
- (e) the conditions of detention applying to detainees.

19 Subcommittee's access to places of detention and persons detained

Every person must permit the Subcommittee to have unrestricted access to —

- (a) any place of detention in New Zealand and to every part of that place:
- (b) any person in a place of detention.

20 Subcommittee may conduct interviews

(1) Every person must permit the Subcommittee to interview, without witnesses, either personally or through an interpreter, —

- (a) any person in a place of detention:
- (b) any other person who the Subcommittee believes may be able to provide relevant information.

(2) No person or agency who has provided information in good faith to the Subcommittee may, in respect of the provision of that information, be subject to any —

- (a) criminal liability:
- (b) civil liability:

(c) disciplinary process:

(d) change in detention conditions:

(e) other disadvantage or prejudice of any kind.

(3) Subsection (2) applies regardless of whether the information provided to the Subcommittee was true.

(4) If requested by the Subcommittee, the person in charge of a place of detention must provide a safe and secure environment for the Subcommittee to conduct an interview with any detainee who is considered likely to behave in a manner that is —

- (a) offensive, threatening, abusive, or intimidating to any person; or
- (b) threatening or disruptive to the security and order of the place of detention.

21 Experts may accompany Subcommittee

If the Subcommittee requires it, 1 or more experts selected in accordance with paragraph 3 of Article 13 of the Optional Protocol may accompany the Subcommittee on any visit to a place of detention.

22 Objection to visit by Subcommittee

(1) The Minister may, by notice in writing to the Subcommittee, object to the Subcommittee having access to any place of detention for a temporary period if the Minister believes—

- (a) there is an urgent and compelling reason on 1 of the following grounds:
 - (i) national defence; or
 - (ii) public safety; or
 - (iii) natural disaster; or
 - (iv) serious disorder in the place of detention; and

(b) that ground temporarily prevents access to the place of detention.

(2) On receiving a notice under subsection (1), the Subcommittee must delay its visit to the place of detention to a later date.

23 Appointment of New Zealand officials

The Minister may appoint 1 or more persons to accompany or assist the Subcommittee during visits to places of detention in New Zealand.

24 Identification certificates

The Minister may issue a certificate identifying—

- (a) any member of the Subcommittee;
- (b) any expert accompanying the Subcommittee;
- (c) other persons appointed under section 23 to accompany or assist the Subcommittee during visits to places of detention in New Zealand.

25 Ministerial directions

(1) The Minister may, by notice in writing, issue directions to any person in charge of a place of detention for the purpose of facilitating any visit to a place of detention in New Zealand by the Subcommittee.

(2) A person in charge of a place of detention must comply with any directions given by the Minister under this section.

National Preventive Mechanisms

26 Designation of National Preventive Mechanisms

(1) In accordance with Article 17 of the Optional Protocol, the Minister must, not later than 1 year after the Optional Protocol is ratified by New Zealand, designate by notice in the Gazette the number of National Preventive Mechanisms the Minister considers necessary.

(2) In designating a National Preventive Mechanism the Minister must have regard to the matters set out in Article 18 of the Optional Protocol.

(3) A National Preventive Mechanism may be designated—

- (a) in respect of such places of detention as may be specified in the notice; and
- (b) on any terms and conditions specified in the notice.

(4) After designating 1 or more National Preventive Mechanisms under subsection (1), the Minister may, at any time, by notice in the Gazette —

(a) revoke the designation of a National Preventive Mechanism:

(b) designate 1 or more other National Preventive Mechanisms:

(c) vary the designation of a National Preventive Mechanism to include or exclude such other places of detention as may be specified in the notice:

(d) vary or revoke the terms or conditions to which the designation of a National Preventive Mechanism is subject, or revoke those terms and conditions and impose new terms and conditions.

27 Functions of National Preventive Mechanism

A National Preventive Mechanism has the following functions under this Act in respect of the places of detention for which it is designated:

(a) to examine, at regular intervals and at any other times the National Preventive Mechanism may decide,—

- (i) the conditions of detention applying to detainees; and
- (ii) the treatment of detainees:

(b) to make any recommendations it considers appropriate to the person in charge of a place of detention—

(i) for improving the conditions of detention applying to detainees:

(ii) for improving the treatment of detainees:

(iii) for preventing torture and other cruel, inhuman or degrading treatment or punishment in places of detention:

(c) to prepare at least 1 written report each year on the exercise of its functions under the Act during the year to which the report relates and provide that report to —

- (i) the House of Representatives, if the National Preventive Mechanism is an Officer of Parliament; or
- (ii) the Minister, if the National Preventive Mechanism is not an Officer of Parliament:

(d) to provide a copy of each report referred to in paragraph (c) to the Central National Preventive Mechanism (if designated).

28 National Preventive Mechanism's access to information

For the purposes of this Act, every person must permit a National Preventive Mechanism to have unrestricted access to the following information:

- (a) the number of detainees in the places of detention for which it is designated:
- (b) the treatment of detainees in those places of detention:
- (c) the conditions of detention applying to detainees in those places of detention.

29 National Preventive Mechanism's access to places of detention and persons detained

For the purposes of this Act, every person must permit a National Preventive Mechanism to have unrestricted access to —

- (a) any place of detention for which it is designated, and to every part of that place:
- (b) any person in a place of detention for which it is designated.

30 National Preventive Mechanism may conduct interviews

(1) For the purposes of this Act, every person must permit a National Preventive Mechanism to interview, without witnesses, either personally or through an interpreter, —

- (a) any person in a place of detention for which it is designated:
- (b) any other person who the National Preventive Mechanism believes may be able to provide relevant information.

(2) No person or agency who has provided information in good faith to a National Preventive Mechanism may, in respect of the provision of that information, be subject to any —

- (a) criminal liability:
- (b) civil liability:
- (c) disciplinary process:
- (d) change in detention conditions:
- (e) other disadvantage or prejudice of any kind.

(3) Subsection (2) applies regardless of whether the information provided to the National Preventive Mechanism was true.

(4) If requested by the National Preventive Mechanism, the person in charge of a place of detention must provide a safe and secure environment for the National Preventive Mechanism to conduct an interview with any detainee who is considered likely to behave in a manner that is —

- (a) offensive, threatening, abusive, or intimidating to any person; or
- (b) threatening or disruptive to the security and order of the place of detention.

Central National Preventive Mechanism

31 Designation of Central National Preventive Mechanism

The Minister may, at any time, by notice in the Gazette, designate a Central National Preventive Mechanism.

32 Functions of Central National Preventive Mechanism

(1) The functions of the Central National Preventive Mechanism, in relation to this Act, are to —

- (a) coordinate the activities of the National Preventive Mechanisms; and
- (b) maintain effective liaison with the Subcommittee.

(2) In carrying out its functions, the Central National Preventive Mechanism is to —

- (a) consult and liaise with the National Preventive Mechanisms:
- (b) review the reports prepared by the National Preventive Mechanisms under section 27(c) and advise the National Preventive Mechanisms of any systemic issues arising from those reports:
- (c) coordinate the submission of the reports prepared by the National Preventive Mechanisms under section 27(c) to the Subcommittee:
- (d) make, in consultation with all relevant National Preventive Mechanisms, any recommendations to the Government that it considers appropriate on any matter relating to the prevention of torture and other cruel, inhuman or degrading treatment or punishment in places of detention in New Zealand.

Miscellaneous provisions

33 Confidentiality of information

- (1) Every person must keep confidential any information that is given to him or her in the exercise of that person's functions or duties under this Act.
- (2) Despite anything in subsection (1), such information may be disclosed for the purpose of —
 - (a) enabling New Zealand to fulfil its obligations under the Optional Protocol:
 - (b) giving effect to this Act.
- (3) Nothing in this Act prevents a National Preventive Mechanism or the Central National Preventive Mechanism from making public statements in relation to any matter contained in a report presented to the House of Representatives under section 27(c)(i) or section 36(1) that the National Preventive Mechanism or the Central National Preventive Mechanism considers is in the public interest.
- (4) No information disclosed under subsection (2) or public statement made under subsection (3) may include information about an identifiable individual without that individual's consent.

34 Powers of National Preventive Mechanism

Where a National Preventive Mechanism has powers in relation to the exercise of any functions under any other Act, the National Preventive Mechanism has, in relation to the exercise of its functions under this Part, the same powers.

35 Protections, privileges, and immunities

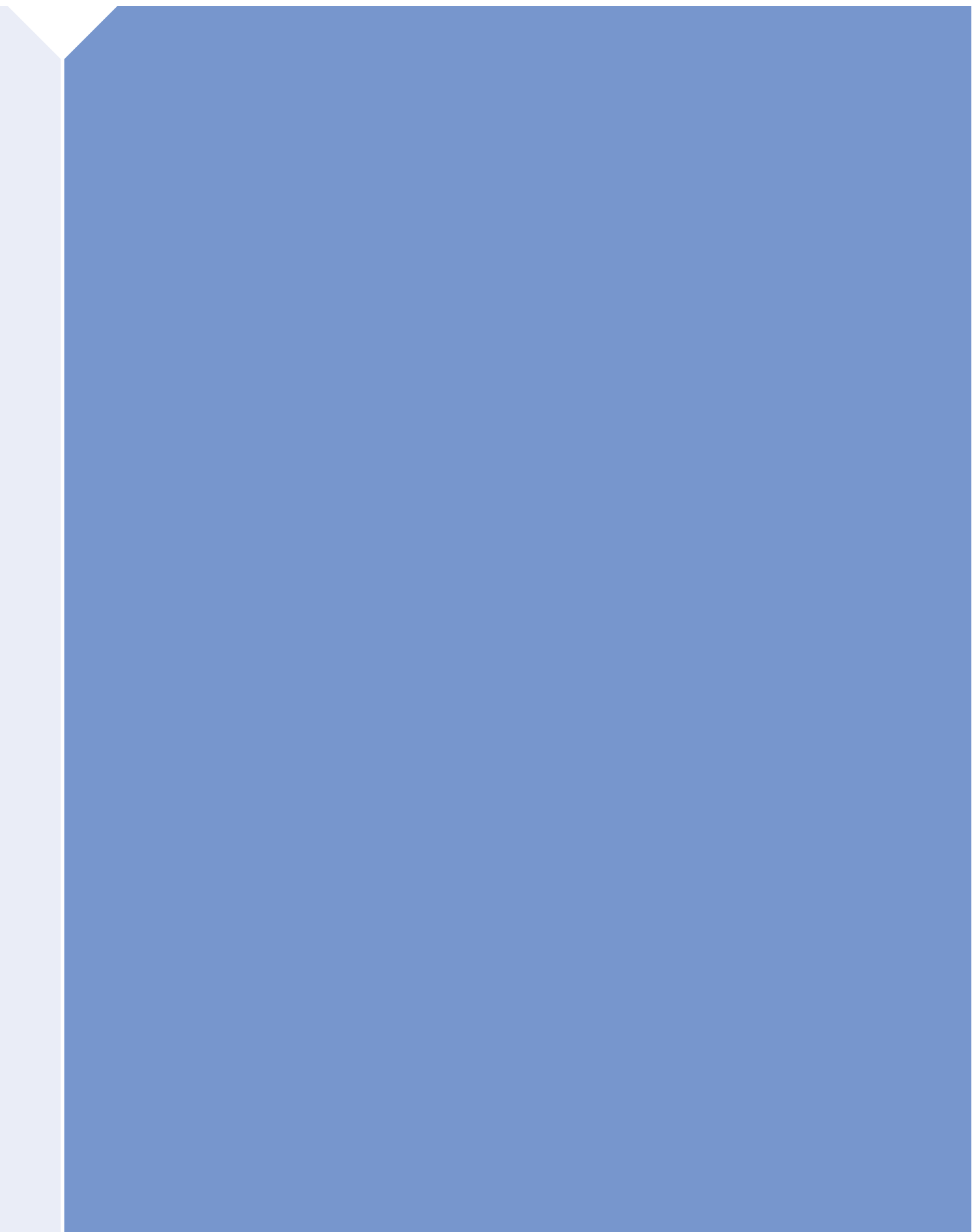
Where a National Preventive Mechanism has protections, privileges, and immunities in relation to the exercise of any powers and functions under any other Act, the National Preventive Mechanism has, in relation to the exercise of its functions under this Part, the same protections, privileges, and immunities.

36 Publication of National Preventive Mechanism report

- (1) As soon as practicable after receiving a report under section 27(c)(ii) the Minister must present a copy of that report to the House of Representatives.
- (2) As soon as practicable after a report of a National Preventive Mechanism has been presented to the House of Representatives under subsection (1) or section 27(c)(i), the National Preventive Mechanism must —
 - (a) publicly notify where copies of the report may be inspected and purchased; and
 - (b) make copies of the report available to the public at the place set out in the public notification, on request, for inspection free of charge and for purchase at a reasonable cost.

37 This Part not limited by other Acts

Where an agency or person (including a National Preventive Mechanism) has investigative functions under any other Act not amended by Part 2 of the [Crimes of Torture Amendment Act 2006](#), that other Act does not limit the operation of this Part.





Human Rights
Commission
Te Kāhui Tika Tangata