



## Submission of the Chief Ombudsman of New Zealand

For the Universal Periodic Review  
32<sup>nd</sup> Session

### Executive Summary

1. I make this submission in addition to my support of the joint submission of the New Zealand National Preventive Mechanisms.
2. I encourage the following recommendations to be made:
  - a. The Department of Corrections' consideration of privacy arrangements in ARU cells is progressed as a matter of priority.
  - b. Clause 15 be removed from the Corrections Amendment Bill.
  - c. Minimum cell size requirements, consistent with international standards, be adopted.

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### Introduction

3. Under the Optional Protocol to the Convention Against Torture (OPCAT), the Ombudsmen are designated as a National Preventive Mechanism (NPM) responsible for monitoring and inspecting the treatment of detainees in:
  - 18 prisons;
  - 80 health and disability places of detention;
  - Three immigration detention facilities;
  - Four child care and protection residences;
  - Five youth justice residences;
  - Last month the Ombudsman was also designated to monitor the treatment of persons detained in privately run aged care facilities and Court cells. We are currently scoping our role and inspections have not yet started.
4. This submission relates to key recurring observations that my inspectors have made in the course of inspecting prisons. Although I make some recommendations, the key

purpose of this submission is to provide additional context to the comments outlined in the joint NPM submission.

## Violence in prisons

5. There has been an increasing trend in the incidence of serious violence perpetrated by prisoners against both staff and other prisoners, which included the murder of a prisoner in March 2015.
6. During inspections, Prison Directors have reported their concerns about high levels of violence. There has been a perception amongst staff and prisoners that levels of violence have increased, which some staff attribute to prisoner use of new psychoactive substances and the prevalence of gangs within prisons.
7. At each prison inspection, my inspectors conduct a confidential prisoner questionnaire. Responses to this questionnaire continue to suggest that a significant number of prisoners do not report assaults due to fear of reprisal.<sup>1</sup>
8. I have recommended previously that Prison Directors establish the circumstances and locations where prisoners feel unsafe, and take steps to address these findings in a forum that includes prisoner representation. I understand that the Department of Corrections has commenced this action in some prisons. However, the issue presents across many prisons, and I consider that the effects of an increasing prison population is likely to exacerbate violence and safety concerns.

## Remand prisoners

9. Inspectors have found that remand prisoners are often detained in unsuitable conditions, particularly at Manawatu Prison, Invercargill Prison and Christchurch Men's Prison.<sup>2</sup> The majority of remand cells at these three prisons are double-bunked. Inspectors observed run-down accommodation and a lack of staff supervision, particularly at Invercargill Prison, a culture of intimidation amongst prisoners, especially in the exercise yards. Remand prisoners had limited access to internal recreation space and purposeful activity. Prisoners had the option of being either locked in their cell or in the exercise yard (a basic yard to cell regime). These conditions resulted in a significant number of remand prisoners spending extended periods locked in their cells, not involved in purposeful activities. Remand prisoners at these sites were denied access to dining facilities and were required to eat their meals in their cell, immediately adjacent to uncovered toilets.
10. In 2013, the United Nations Subcommittee for the Prevention of Torture visited several New Zealand prisons and stated that limited time out of cell and the limited range and provision of constructive activities were issues for remand prisoners that should be addressed.

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<sup>1</sup> <http://www.ombudsman.parliament.nz/resources-and-publications/opcat-reports>

<sup>2</sup> Available on the Ombudsmen website, see above, n 1.

11. The lack of purposeful activity for remand prisoners and basic unlock regime is still an ongoing issue, further exacerbated by the substantial increase in the remand population since 2013.

## Privacy

12. All cells in prison At Risk Units (ARUs), including the unscreened toilet, are subject to CCTV coverage, which is monitored in the staff base and the master control room. Any person who enters the staff base can view the camera footage. This presents a significant privacy issue.
13. The Department of Corrections' policy is for toilets in ARU cells to be unscreened. The Corrections Regulations require that cells for prisoners at risk of self-harm must have '*no privacy screening or other barrier that prevents a full view of the cell from the door window.*'<sup>3</sup> Prison staff and others are therefore able to observe either directly or via camera footage, prisoners undertaking their ablutions or in various stages of undress.
14. I consider that this arrangement undermines prisoners' rights to human dignity and privacy. I have for some time expressed my concern about this to the Department of Corrections, which has this matter under consideration. I urge the Council to recommend that this is addressed as a matter of priority.

## Use of Police cells

15. My inspectors continue to observe prisoners being detained for unacceptable periods of time in police cells and remand centres attached to Police stations. Police cells are not designed for, or suited to, the detention of individuals for periods longer than a matter of days. My inspectors have observed that in such situations, prisoners frequently fail to receive their minimum entitlements under section 69(1) of the Corrections Act. Prisoners housed in these facilities do not easily access shower facilities, rehabilitation programmes, visits, time out of cell, and fresh air.
16. These minimum entitlements (such as exercise, purposeful activities, and visits) may only lawfully be denied in certain circumstances, which I do not consider to exist if the use of a Police cell is due only to accommodation pressures. I have reported on this to the Department of Corrections.
17. Proposed legislative amendments to the Corrections Act<sup>4</sup> seek to facilitate the extended use of Police cells for prisoners, by allowing the denial of minimum entitlements where not practicable to provide them. This undermines the purpose of a 'minimum' entitlement, and favours convenience above respect for prisoners' human rights. In circumstances where a prisoner is to be housed in a facility not suitable for that purpose, their minimum entitlements are of greater, not lesser, importance.

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<sup>3</sup> Schedule 2, Part C.

<sup>4</sup> [Corrections Amendment Bill](#) 35-1, Clause 15.

18. I encourage the Council to recommend that these proposed changes be removed from the Corrections Amendment Bill.

## Cell sharing

19. My inspection reports have observed that some double-bunked cells do not meet international standards for single occupancy, let alone double occupancy, and that Shared Accommodation Cell Risk Assessment (SACRA)<sup>5</sup> assessments are not always completed according to policy. These assessments are intended to determine whether individuals are suited to share a cell.
20. Existing accommodation in some facilities, unsuitable for even one prisoner, are now expected to be double-bunked.<sup>6</sup> This is enabled by the fact that there are no minimum standards in New Zealand for cell size, and no specific requirements for double-occupancy cells. This is despite Rule 13 of the UN Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), which requires due regard to the conditions of sleeping accommodation, and in particular 'minimum' floor space. Currently, the only 'protection' that prisoners have is a preference in the Corrections Regulations that they be accommodated, where practicable, in individual cells.
21. The abovementioned amendments to the Corrections Act and the Corrections Regulations will remove even this minimal protection. There will no longer be a preference for single-occupancy cells, rather '*a prisoner may be accommodated in a shared cell unless the prison manager is satisfied that the prisoner is unsuited for the shared cell accommodation.*' This is contrary to Rule 12 of the Nelson Mandela Rules, which applies a preference for single-occupancy cells.
22. These amendments are motivated in part by the increasing prison population, at a time where there is limited known detail on whether and how steps will be taken to address that issue itself.
23. In my submission on the Corrections Amendment Bill, I have expressed concern about the continued use of cell sharing in prisons, and have recommended that the preference for single-cell accommodation is retained.
24. At a minimum, I urge the Council to recommend that New Zealand adopt minimum cell size requirements, consistent with international standards.

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<sup>5</sup> [http://www.corrections.govt.nz/resources/policy\\_and\\_legislation/Prison-Operations-Manual/Induction/1-8.html](http://www.corrections.govt.nz/resources/policy_and_legislation/Prison-Operations-Manual/Induction/1-8.html)

<sup>6</sup> [http://www.ombudsman.parliament.nz/system/paperclip/document\\_files/document\\_files/2706/original/arohata\\_upper\\_prison\\_inspection\\_report.pdf?1522807575](http://www.ombudsman.parliament.nz/system/paperclip/document_files/document_files/2706/original/arohata_upper_prison_inspection_report.pdf?1522807575)