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**He tūhuratanga nā Te Kaitiaki Mana Tangata
ki te Ara Poutama Aotearoa**

**Investigation into
Ara Poutama Aotearoa | Department of Corrections**

Pipiri | June 2023

Peter Boshier

**Tari o te Kaitiaki Mana Tangata
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Foreword

The catalyst for this investigation was the high profile 2020/2021 riots at Waikeria Prison in Waikato that made headlines around the world.

Protesting prisoners lit fires that swept through the Waikeria High Security Complex, known as the “Top Jail” causing extensive damage.

The unrest lasted for six days until the remaining prisoners surrendered. The sheer scale of the destruction shocked the country. The incident prompted a national debate about prison conditions, violence inside prison walls and gang influence.

I regularly examine prisons and other places of detention across New Zealand under the Crimes of Torture Act 1989. In this part of my role as Chief Ombudsman, I am responsible for examining the treatment of detainees and the condition of their facilities and making recommendations for improvement.

This role arises from New Zealand ratifying the Optional Protocol Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in 2007. This international treaty committed our country to ensuring we have protections for people in situations where they are deprived of their liberty and potentially vulnerable to ill treatment or harm.

Just a year before the riots, I had issued a report which examined the conditions at Waikeria, so too had the Chief Inspector of Ara Poutama Aotearoa | Department of Corrections under her remit.

In my report I found the high security complex and the low security complex inside the prison were not fit for purpose. This was compounded by a lack of natural light, poor ventilation and small cells. Most prisoners in the high security complex were double-bunked in cells originally designed for one, and the living conditions were poor.

Prisoners were being forced to eat meals in cells where there were uncovered toilets; they were not being given access to regular health checks; there were no standard meal times and some prisoners were not being given privacy in toilet and shower areas.

The Department accepted my findings and my recommendations for change. Yet the riots occurred.

A number of investigations were announced in the aftermath of the riots including mine.

In this investigation, I decided to focus on the deeper challenges faced by the corrections system. I needed to know why many things weren't improving. I was becoming increasingly concerned about the number of recommendations made following inspections of prisons across New Zealand that needed to be made again in subsequent inspections several years on.

What wasn't resonating? As with Waikeria, even though the Department had accepted most of the recommendations made by my Office and other oversight entities, they did not appear to have been addressed in a way that resulted in enduring, or at least timely, improvements for those in prison. Change (when it has occurred) seems to me to be too slow, and the fair treatment and rights of people in New Zealand have been the collateral.

In my previous career as a lawyer and Principal Family Court Judge, I have witnessed first-hand society's treatment of people who end up in prison for their crimes, and their victims, and I know how cycles of offending and victimisation recur when people are not treated with dignity and respect.

Prison is about the loss of liberty; that is the punishment. I think most New Zealanders understand that beyond that, it is important to safeguard the rights of people in prison to be treated fairly and humanely. In addition, the conditions under which prisoners are kept must reflect the commitment we have as a country to improving human rights conditions for all our people not least because, with very few exceptions, these people will be re-joining our families, workplaces and communities at the end of their sentences.

Prisoners must be helped to reintegrate into society as seamlessly as possible. The Department has a responsibility to assist those in its care, so when they walk out of the prison gates, they are ready and able to re-join society and make valuable contributions. I believe this can only happen if prisoners are able to re-emerge with a sense of self-respect and dignity.

After taking a very close look at what is happening across our corrections system, I have made a number of far-reaching recommendations including that consideration be given to the establishment of an independent governance and oversight body for the Department.

But here I want to focus on what lies at the very heart of this report.

The Department has legal obligations to treat prisoners fairly, safely and humanely. However, I have found that the Department is giving these obligations insufficient emphasis. This means that prisoner rights are at a greater risk of being ignored even when oversight agencies repeatedly raise concerns about them.

The Waikeria Prison riots brought these inadequacies into sharp focus. Providing conditions where prisoners are treated humanely and making sure their dignity is upheld should be core principles within the corrections system, but within the Department, these principles are not given enough weight. This has to be addressed — the Department must be given the tools to facilitate a renewed approach to prisoner rights in order to effect long-lasting and effective change.

Foreword

To that end, I am recommending that the Department reviews the Corrections Act 2004 and the Corrections Regulations 2005 to make sure Te Tiriti o Waitangi, the New Zealand Bill of Rights Act and relevant international human rights obligations such as the Mandela Rules, are given greater emphasis. I have also recommended that the Department reviews existing decision-making processes to ensure that these rights are properly incorporated.

This is needed to make sure the fair, safe, and humane treatment of prisoners and the conditions in which they are held are at that the centre of all of the Department's operational decision-making.

The Department now has a real chance to break the cycle of acknowledging repeated recommendations for change but coming up short on sustained and meaningful improvements.

Upholding human dignity behind bars is not impossible. Organisational and legislative changes that give greater emphasis to the fair, safe, and humane treatment of those detained in prison will help create a legal and moral foundation that shapes how our country's prison system should run from the top to the bottom.

Peter Boshier

Chief Ombudsman

June 2023

Acknowledgements

First, I acknowledge the people in prison, their families and whānau, whose interests sit at the heart of this investigation.

I would like to thank Ara Poutama Aotearoa | Department of Corrections — in particular staff from the Monitoring Agency Relationships team — for the assistance and cooperation provided throughout this investigation. I am particularly grateful to the Department's staff (past and present including previous Chief Executives) who spoke frankly during interviews as well as those who assisted my investigators during site visits. The information provided was invaluable for my investigation.

I am also immensely thankful to my panel of experts for their insights and advice:

- Tā Kim Workman
- Dr Paul Wood
- Deborah Te Kawa
- Tom Gott.

I extend my thanks to members of Pūhara Mana Tangata whose advice has guided my consideration of the issues identified in my report.

My thanks also to other individuals and organisations who contributed to this investigation:

- the other oversight entities including the Te Kāhui Tika Tangata | Human Rights Commission; Health and Disability Commissioner | Te Toihau Hauora, Hauātanga; and Te Tari Tirohia | Office of the Inspectorate;
- public sector organisations, including Te Kawa Mataaho | Public Service Commission, Manatū Hauora | Ministry of Health, Te Whatu Ora | Health New Zealand and Te Tāhū o te Ture | The Ministry of Justice;
- organisations that represent the staff of the Department, specifically the Corrections Association of New Zealand, Tōpūtanga Tapuhi Kaitiaki o Aotearoa | New Zealand Nurses Organisation, and Te Pūkenga Here Tikanga Mahi | Public Service Association.

I would like to acknowledge the contribution of, and the work undertaken by, advocates and penal reformers such as Amnesty International, JustSpeak, People Against Prison Aotearoa, and the New Zealand Howard League. I also acknowledge the efforts of Ināia Tonu Nei and by Te Uepū Hāpai i Te Ora | Safe and Effective Justice Advisory Group to transform the criminal justice system, and the work of Te Rōpu Wāhine Māori Toko i te Ora | Māori Women's Welfare League to support the rehabilitation of those who are imprisoned as well as the victims of crime.

Finally, to those who shared their experience of imprisonment, thank you for entrusting me with your journey through the corrections system.

A note about terminology

I acknowledge the importance of language and the terminology for this investigation, particularly for the people in prison.

The legislation relevant to my investigation uses the term 'prisoner' to refer to any person who is being held in the legal custody (under the Corrections Act 2004) of the Chief Executive.

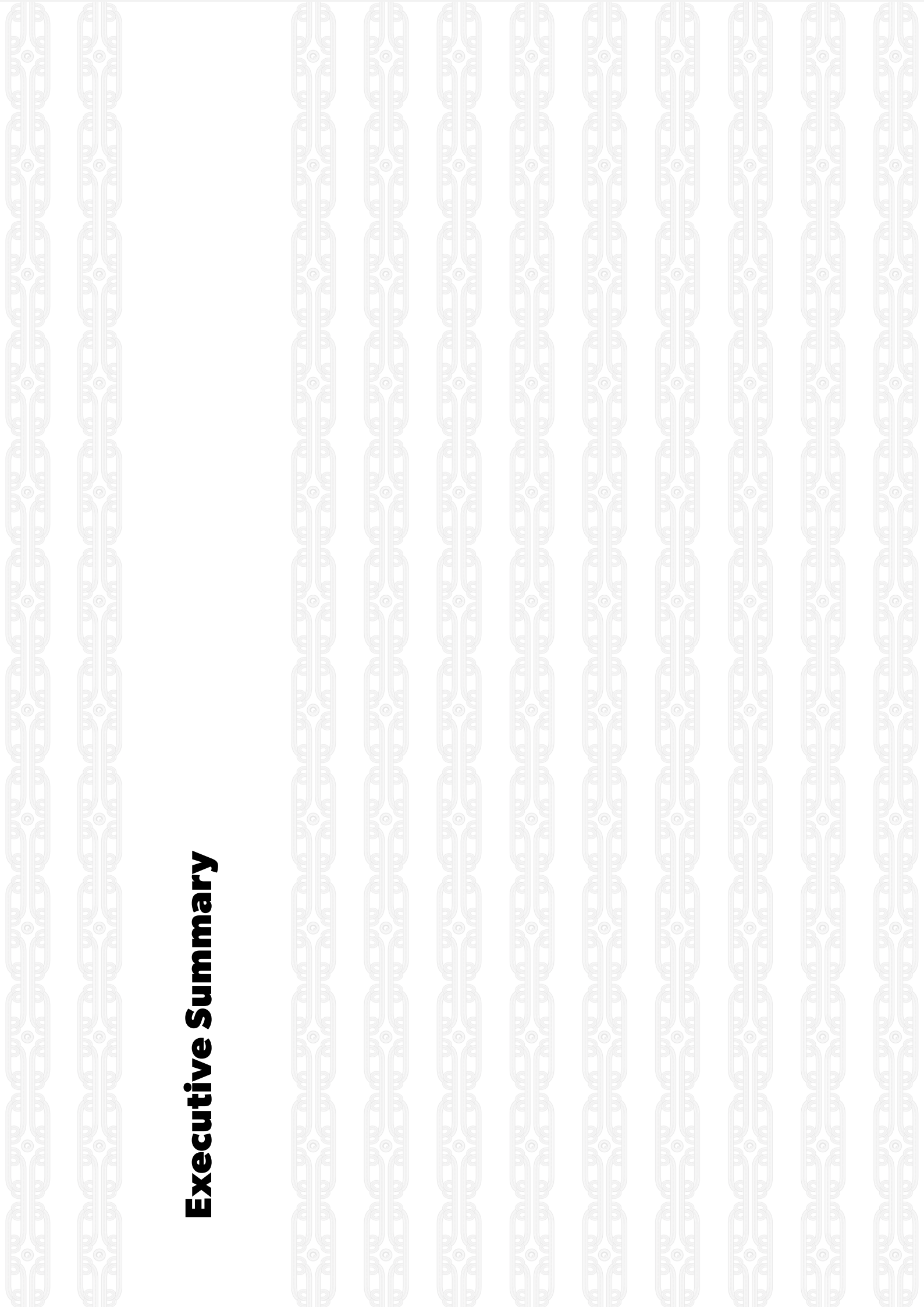
Throughout my investigation, I have observed different terms used by Ara Poutama Aotearoa | Department of Corrections (the Department) to refer to prisoners.

I have chosen to refer to the people who are in prison as either 'prisoners' or those 'in the care of the Department', depending on the context in which the reference is made. This largely reflects the approach I have observed being taken by the Department.

Prisons in New Zealand are categorised as either men's prisons or women's prisons. It is important to acknowledge that the people in the care of the Department include transgender people and likely those who identify with other gender identities.

A glossary of the terms used in this report can be found at [Appendix 1](#).

Executive Summary



Executive Summary

1. One of my roles as Chief Ombudsman | Kaitiaki Mana Tangata, is to examine the general conditions and treatment of people detained in prisons in New Zealand. That monitoring occurs primarily through prison inspections, which I conduct as a designated National Preventive Mechanism (NPM) under the Crimes of Torture Act 1989.¹ I am also authorised by the Ombudsmen Act 1975 to investigate individual complaints against Ara Poutama Aotearoa | Department of Corrections (the Department), and to undertake self-initiated investigations such as this one. I also monitor deaths and serious incidents that occur in prisons.

Why I investigated

2. Over recent years, I have become increasingly concerned about the number of recommendations made following a prison inspection that need to be made again in subsequent inspections several years on. Even though the Department has accepted most of the recommendations made by oversight entities,² the issues raised did not appear to have been addressed in a way that resulted in enduring, or at least timely, improvements for those in prison. Change (when it has occurred) has, in my view, been too slow, and the fair treatment and rights of people in New Zealand have been the collateral.
3. Ombudsmen before me reported similar experiences. I am also aware of the issues raised by other oversight entities and through court proceedings, relating to the fair, safe, and humane treatment of those in prison.
4. Imprisonment is about the loss of liberty.³ The New Zealand Bill of Rights Act 1990 (NZBORA) requires that even with the deprivation of liberty, all other rights — including the right to be treated with humanity and respect for the inherent dignity of a person⁴ — should be protected, subject only to the necessary limitations that may be justifiable in a particular circumstance.⁵ The corrections system

1 The Crimes of Torture Act 1989 gives effect to the [Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment](#) 2375 UNTS 237 (opened for signature 4 February 2003, entered into force 22 June 2006), which New Zealand ratified in 2007. Inspection reports setting out my findings and, where I consider it necessary, recommendations for improvement, are published online. See the Office of the Ombudsman webpage [Resources and publications](#).

2 See paragraph 28.

3 Including the loss of freedom of movement and association. See the New Zealand Bill of Rights Act 1990, ss 17 and 18; see also [Universal Declaration of Human Rights](#) (UNDHR) GA Res 217A (1948), arts 3, 13 and 20; and [International Covenant on Civil and Political Rights](#) (ICCPR) 999 UNTS 171 (opened for signature 16 December 1966, entered into force 23 March 1976), arts 9(1), 12 and 22.

4 New Zealand Bill of Rights Act 1990, s 23(5).

5 New Zealand Bill of Rights Act 1990, s 5.

should also reflect the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules).⁶ People detained in prison must be treated fairly, safely and humanely as a **matter of law**.⁷

5. In late 2020, I watched with deep concern the events unfolding at Waikeria Prison, which eventually led to the destruction of the prison's High Security Complex (HSC). Earlier that year, the Department's Chief Inspector had published a report noting that Waikeria Prison *'face[d] challenging conditions due to the continued use of facilities more than 100 years old'*.⁸ Similarly my own inspection of that prison had found, among other matters, the HSC was not fit for purpose and I recommended changes that had also been accepted by the Department.⁹
6. Following the events at Waikeria, there were, understandably, calls for an independent inquiry.¹⁰
7. It was against this background that I decided to commence a self-initiated investigation into the Department.¹¹ I sought to understand whether there are systemic issues that are affecting the ability of the Department to effectively respond to the concerns and findings, and to implement the recommendations of oversight entities (including those from my Office and the Inspectorate) which the Department had purportedly accepted.¹²

How I investigated

8. My investigation has involved speaking with and gathering information from a wide range of people — those with lived experience, those representing Māori organisations, third parties working to support people in prison and their whānau and those with an interest in prison reform, current and previous employees of the Department (including previous senior leaders), unions representing the interests of staff, and other oversight entities. My investigators also visited seven prisons and the Department's National Learning Centre in Upper Hutt.

6 Corrections Act 2004, s 5(1)(b).

7 Corrections Act 2004, s 5(1)(a).

8 See [Appendix 2](#), report 1 at 3.

9 See [Appendix 2](#), report 2.

10 Paul Hunt, Chief Human Rights Commissioner ['Human Rights Commission calls for inquiry into Waikeria protest'](#) (press release, 4 January 2021).

11 Under s 13(1) of the Ombudsmen Act 1975, an Ombudsman may *'investigate any decision or recommendation made, or any act done or omitted ... relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by any public service agencies or organisations...'*

12 In the first instance I considered the Department's response to a number of specific reports, which are set out in [Appendix 2](#), see reports 2–31.

9. I also drew on the expertise of a small panel of people with significant professional and personal experience relevant to my investigation.

What I found

10. Prisons are difficult environments for those who are detained in them and for those who work in them, as well as the wider community who visit them.
11. The Department clearly has a complex job balancing its obligations, including maintaining the confidence of its Minister and the public, its health and safety obligations to both staff and those in prison, and the rights and needs of the people in its care.
12. Independent oversight of prisons plays a critical role in ensuring both public safety and the maintenance of a fair and just society. It is designed to provide confidence in the corrections system. Where oversight entities identify issues and make recommendations for change, the Department should act to address these.
13. The Department has accepted most of the recommendations made by oversight entities. However, the issues raised did not appear to have been addressed by the Department in a way that resulted in enduring, or at least timely, improvements for those in prison.
14. In New Zealand, it is expected that the Department will give prominence to prisoner rights and welfare in all its actions and decisions. However, a common theme in my findings is that the legal rights and interests of prisoners have been too easily and unreasonably overlooked. While I acknowledge its obligations to its staff and the wider public, the Department has not sufficiently had the fair, safe, and humane treatment of prisoners at the centre of its decision making. This appears to me a core reason why change has not occurred in response to oversight entity reports.
15. My investigation found the Department did not consider the findings and recommendations of oversight entities as opportunities to improve the overall performance of the prison network. This was evident in the deficiencies I identified in the Department's approach to managing oversight entities' reports and recommendations.
 - The Department's leadership and various governance groups lacked visibility, and a collective view and understanding of the specific issues raised by oversight entities, or of root causes and systemic issues.
 - The Department lacked clear lines of accountability and responsibility for addressing the findings of oversight entities, and for monitoring progress in implementing remedial actions.

...I think part of the problem is that the staff and everyone ... forgets that the prisoner is actually the most important piece of the puzzle.

Senior staff member

- The Department’s internal systems and processes were not consistently followed, and, where improvements were proposed, they were not fully implemented and properly resourced on an ongoing basis.
16. I have also identified systemic issues which, in my view, contributed to the Department’s inability to consistently and effectively address the concerns of oversight entities, and which have inhibited the Department from making significant and sustained improvements for those in prison.
 17. The Department appears to me to adopt an unduly narrow approach to its legal obligations and to the purpose of the corrections system, which does not give sufficient emphasis to NZBORA, Te Tiriti o Waitangi | Treaty of Waitangi,¹³ or international obligations. It is not apparent that the Department has exercised good regulatory stewardship to ensure the legislation it administers is fit for purpose.
 18. My investigation found that, despite well-intentioned efforts, senior leaders have been unable to establish a clear, cohesive vision and purpose for the organisation that demonstrates a deep understanding of Te Tiriti o Waitangi | Treaty of Waitangi, system stewardship and human rights. This has contributed to confusion, especially for prison staff, about the Department’s priorities and what is expected of them. This is compounded by a discernible pattern of division evident at all levels within the organisation, but mostly between frontline prison staff and the National Office.
 19. On the basis of the information and the evidence I have considered, in my view, senior leadership has omitted to take a whole-of-organisation approach to address the complex issues it is tasked to manage. Most notably, despite having many strategies, plans and initiatives, the Department has omitted to develop and execute a long-term capability strategy that would ensure it had developed the Māori Crown relations maturity and cultural capabilities required to implement important organisational strategies such as Hōkai Rangī¹⁴ and Wāhine — E Rere Ana Ki te Pae Hou¹⁵. The lack of effective long-term capability planning has, in my view, contributed to the current staffing crisis the Department is experiencing, and an omission to create an adequate pipeline of skilled and experienced custodial and health staff with the knowledge and skills required to put the fair, safe, and humane treatment of the people in prison at the centre of their decision making.

...The weight of ... narky little reviews and endless recommendations meant that ... they tended to become a thing of dread and a burden.

Former senior leader

We can't just keep slapping Māori names on organisations or strategies and think that that's enough. ... Systemic change is going to be deliberate sharing of power. It's not going to be redesigning a Corrections facility so it looks like a stingray. It's not going to [come from] chucking some more kupu Māori up on the walls.

Third party

13 I acknowledge there are two texts with different meanings.

14 Ara Poutama Aotearoa | Department of Corrections [Hōkai Rangī 2019–2024](#).

15 Ara Poutama Aotearoa | Department of Corrections [Wāhine — E rere ana ki te pae hou | Women rising above a new horizon: Women’s Strategy 2021-2025](#).

20. In response to a history of sentinel events and negative public scrutiny, the Department's organisational culture seems to me to be excessively risk averse and reactive. Extrinsic factors, such as the highly political nature of the criminal justice system, appear to have had a bearing on the decision making of senior leaders and, in this regard, poses a significant challenge for those leading the Department. Despite good intentions, the Department's organisational culture appears to have hampered the ability of senior leaders to drive and embed lasting change — particularly as its focus frequently shifts in the face of multiple crises.
21. After considering all the evidence, I consider the senior leadership of the Department is overly optimistic about the organisation's performance. This has a direct impact on the ability of the Department to undertake a true exposition of the issues that need addressing. While I accept it can be confronting for individual senior leaders, as steward of the corrections system, the Department's leadership needs to guard against any tendency to 'explain away' issues identified by oversight entities and third parties. It must be able to identify for itself, and to those who hold it accountable, what its deficiencies are, in order to improve at a deeper systemic level.
22. My findings are most concerning when considering the disproportionate burden imprisonment places on Māori, and the increasingly complex needs of those in the care of the Department.

The Department has ... over the last 20 years ... become more and more risk averse. They don't want to take any risks because they get pummelled in the media, they get pummelled by Parliament. Everyone has a crack at them. It's like shooting fish in a barrel.

Senior staff member

My opinion

23. The Department has legal obligations to treat prisoners in a humane manner. Further, as a steward of the corrections system, it has to engage with, and respond to, issues being raised by oversight entities, and ensure that the Crown's Te Tiriti o Waitangi | Treaty of Waitangi obligations are met.
24. I commenced this investigation to understand why it appeared the Department had been unable to effectively address many concerns raised by oversight entities, and to achieve significant and sustained improvement for those in its care. In my investigation, I identified clear deficiencies in the Department's approach to managing the reports and recommendations of oversight entities. In my view, this is due to the Department's omission, over time, to focus its decision-making efforts relating to the operations of prisons on the fair, safe, and humane treatment of those within it. This is evidenced in the Department's narrow approach to the interpretation, application, and maintenance of its legislation; its lack of transparency and tendency to explain away the concerns and recommendations of oversight bodies; its inability to create and embed a clear organisational

purpose; its risk-averse and reactive organisational culture; and a failure to take a whole-of-organisation approach to managing complex issues, such as addressing its capability requirements.

25. Through my investigation, I have identified various barriers that inhibit the Department from effectively addressing the issues highlighted by oversight entities. In my view, even though these barriers were within the Department's control and remit, senior leadership has not taken adequate steps to address them. Accordingly, it is my final opinion that this omission, and consequently the failure to effectively address the concerns raised by oversight entities, was unreasonable.

Recommendations

26. I recommend that:
- i. the Department reviews the Corrections Act 2004, and the Corrections Regulations 2005, and advises the Minister on amendments that are necessary to ensure that:¹⁶
 - a. Te Tiriti o Waitangi | Treaty of Waitangi, the NZBORA, and relevant international human rights obligations, such as the Mandela Rules, are given greater emphasis in the purpose, principles, and detailed provisions of the Corrections Act; and
 - b. decision making related to the operations of prisons gives greater emphasis to the fair, safe, and humane treatment of those detained in prison;
 - ii. the Department reviews its governance arrangements, and that this review includes:
 - a. establishing clear lines of senior leadership accountability for ensuring the fair, safe, and humane treatment of those in prison; and
 - b. consideration of the membership of governance groups, as well as the appointment of independent Chairs;
 - iii. the Department takes steps to address the other systemic issues that I have identified in this report. In undertaking these steps, the Department should ensure that:
 - a. in all decision making about the people detained in prison, sufficient emphasis is given to Te Tiriti o Waitangi | Treaty of Waitangi, the NZBORA, and relevant international human rights obligations, such as the Mandela Rules. To achieve this, the Department should:

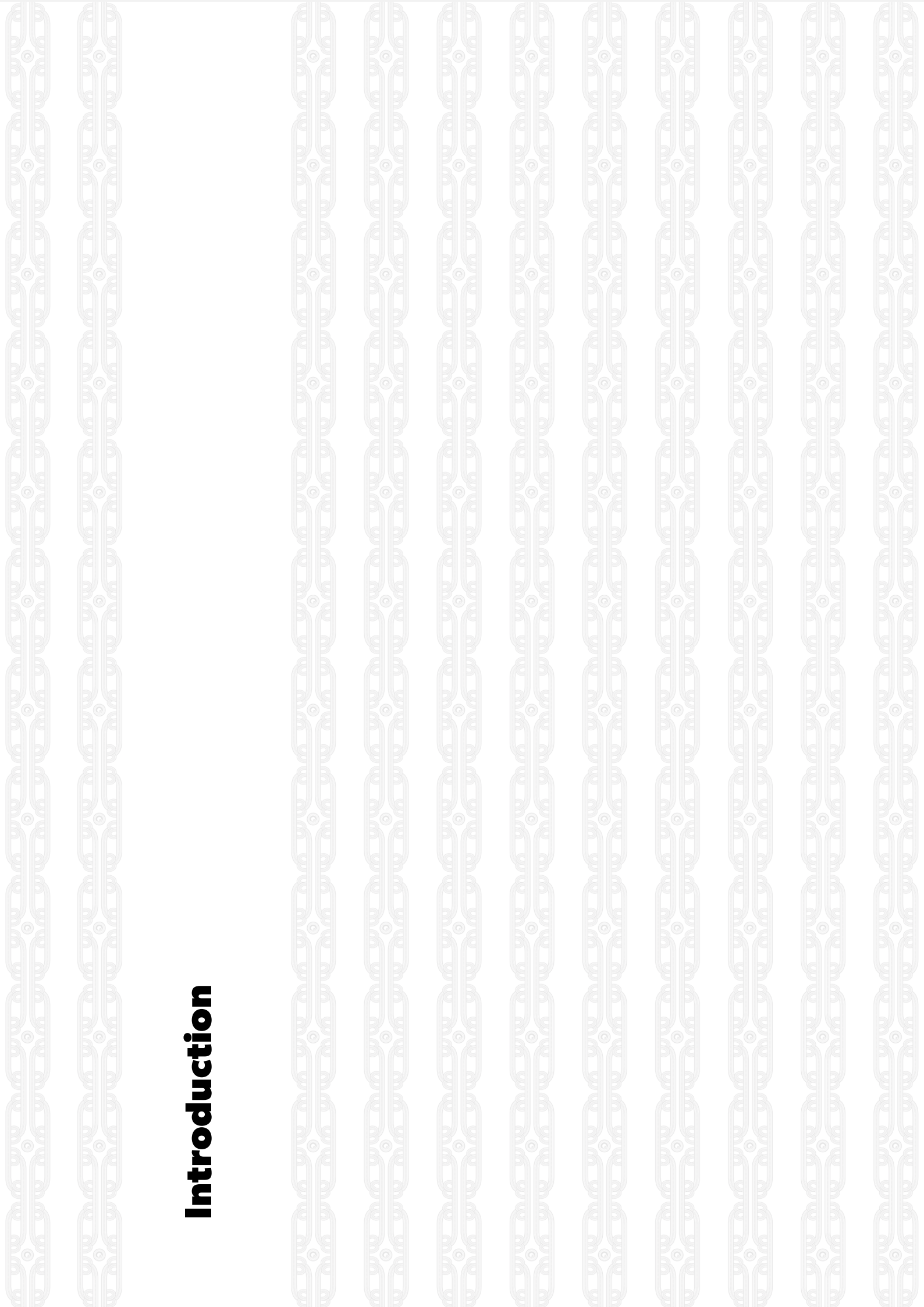
16 Section 22(3)(e) of the Ombudsman Act 1975 provides for an Ombudsman to recommend that 'any law on which the decision, recommendation, act, omission was based should be reconsidered'.

- i. communicate and embed a clear organisational purpose for the prison system that enables the fair, safe, and humane treatment of those within it;
 - ii. review its operational staff manual(s) and support systems to ensure core processes and advice reflect Te Tiriti o Waitangi | Treaty of Waitangi and human rights obligations;
 - iii. ensure, through its recruitment and training, departmental staff are adequately skilled at undertaking Te Tiriti o Waitangi | Treaty of Waitangi and rights-based analysis; and
 - iv. enable and resource its policy function to have a more direct role in responding to the reports of oversight entities in order to proactively advise on the need for legislative reform, where appropriate, to achieve the changes sought by oversight entities;
- b. there is a strategic whole-of-organisational response to addressing the complex organisational culture and capability issues I have identified. The response should incorporate comprehensive and long-term culture change and workforce capability strategies. As part of these strategies, the Department should focus on:
- i. the progressive professionalisation of the custodial workforce;
 - ii. working with Te Whatu Ora | Health New Zealand to take a whole-of-system approach to the recruitment and retention of health staff;
 - iii. embedding strong Māori Crown relations organisational capability¹⁷ and cultural capability across the entirety of its workforce; and
 - iv. creating an open and honest organisational culture that has the maturity to identify, report, and address deficiencies and root causes;
- c. oversight entities' findings and recommendations are consistently considered as opportunities to improve the overall performance of the prison network. This should include ensuring that:

17 Māori–Crown relations capability is the framework developed by Te Arawhiti | Office for Māori–Crown Relations; see [Māori Crown relations capability framework for the public service — organisational capability component](#). It is presented as a maturity model to guide agency leaders and to assist them develop their organisational capability. Understanding Māori–Crown relations is one of six competencies articulated by the framework.

- i. the various systems for managing oversight reports are consistently followed, and any process improvements are properly implemented and fully resourced;
 - ii. the leadership and governance groups have a collective view and understanding of the specific concerns of oversight entities, as well as root causes and systemic issues; and
 - iii. on a six-monthly basis, the Department publicly reports on the progress it has made in addressing the findings and recommendations of oversight entities;
- iv. the Department identifies and documents how it intends to measure, and report on, the effectiveness of the steps it has taken in response to my investigation; and
- v. Te Kawa Mataaho | Public Service Commission liaises with the Department and then provides advice to the Minister of Corrections on options for longer-term mechanisms for independent governance oversight and assurance over the operation and management of the Department (such as a Ministerial Advisory Board).

Introduction



Introduction

27. Independent oversight of the corrections system, and in particular prisons, is critical to public safety and the maintenance of a fair and just society. Prisons, by their very nature, operate largely out of public sight. Research shows that people deprived of their liberty are especially vulnerable to abuses of power because of the imbalance between them and the staff they depend on.¹⁸
28. In New Zealand, the oversight of prisons and the treatment of those within them are the responsibility of a number of different entities. As well as the Ombudsman, these entities include Te Kāhui Tika Tangata | Human Rights Commission (HRC) and Te Toihau Hauora, Hauātanga | Health and Disability Commissioner (HDC), as well as the Department's own Te Tari Tirohia | Office of the Inspectorate (the Inspectorate). Across these entities, there is a combination of proactive and reactive prison oversight.
29. Through our collective activities, including the making of recommendations for change, oversight entities safeguard the rights of people in prisons, as well as promoting accountability and transparency of the Department. Oversight entities are uniquely positioned, because they have the ability to examine the day to day operations of prisons and the experiences of those within. It is important that their concerns and recommendations for improvement are effectively responded to and addressed by the Department. This in turn ensures that the purpose of the corrections system — namely, to improve public safety and contribute to the maintenance of a just society¹⁹ — is met.

Why this investigation

30. Following the events at Waikeria Prison in 2020, and the call for an independent inquiry, I started this investigation because I was concerned that significant improvements to the welfare and rehabilitation of the people in prison were not evident. I wanted to identify whether there are any systemic issues that may be affecting the Department's ability to achieve the significant and sustained change that I and other oversight entities have been calling for.

18 United Nations Office of the High Commissioner for Human Rights, Asia Pacific Forum and the Association for the Prevention of Torture [Preventing Torture: An Operational Guide for National Human Rights Institutions](#) (May 2010) at 12–13; Tracey McIntosh and Kim Workman 'Māori and Prison' in Antje Deckert and Rick Sarre (eds) *The Palgrave handbook of Australian and New Zealand criminology, Crime and Justice* (Palgrave MacMillan, 2017) at 725; and Juan Tauri 'A Critical Appraisal of Responses to Māori Offending' (2012) *International Indigenous Policy Journal* 3(4): 4.

19 Corrections Act 2004, s5(1).

Repeated concerns over years

31. Successive Ombudsmen have consistently raised concerns about the treatment of those in prison.²⁰ For instance, following revelations about the ill-treatment of prisoners at the end of 2004,²¹ former Ombudsmen John Belgrave and Mel Smith commenced a self-initiated investigation into the Department.²² This found (among other matters) that:
- there was an unreasonably long time between the provision of dinner and breakfast;
 - there was a lack of meaningful activities available to all prisoners, particularly remand prisoners; and
 - in terms of health care, there were issues with consistency and continuity, delays with referrals, a lack of 24-hour nursing staff on site, and inadequate dental care available to those in prison.
32. Similar issues have been repeatedly raised by Ombudsmen in their reports on prison visits undertaken as part of their National Preventive Mechanism (NPM) functions.²³ They were also highlighted in inspections undertaken by the Department's own oversight body, the Inspectorate. Collectively, these reports often refer to consistent issues across three broad themes, all of which are critical to a prison system that is fair, safe, and humane:²⁴
- treatment and conditions of prisoners;
 - provision of constructive activities; and
 - performance monitoring and review measures.
33. In terms of the treatment and conditions of prisoners, repeated issues have included the time prisoners have out of their cells (also known as 'unlock' hours), the timing of their meals and medication

20 Apart from correspondence with the Department (and its predecessors) about the merits or otherwise of individual complaints from prisoners and their whānau, Ombudsmen have also regularly reported on issues in the prisons in their Annual Reports and Case Notes. See the Office of the Ombudsman webpage [Resources and publications](#).

21 Such as the Behavioural Management Regime at Auckland Prison and the Canterbury Emergency Response Unit. For details about the Behavioural Management Regime, see *Taunoa v Attorney General* (2004) 7 HRNZ 379; *Attorney General v Taunoa* [2006] 2 NZLR 457; and *Taunoa v Attorney General* [2007] NZSC 70, [2008] 1 NZLR 429. For details about the Canterbury Emergency Response Unit, see Paul Swain '[Swain welcomes inquiry report](#)' (press release, 17 December 2004).

22 See [Appendix 2](#), report 32.

23 Under the Crimes of Torture Act 1989 (which gives effect to the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)) NPMs are tasked with examining the treatment of detainees and their conditions, and making any recommendations for improvement. Since 2007, the Ombudsmen have been specifically designated as an NPM for the purposes of prisons, as distinct from other places of detention. The HRC is designated as the central NPM, responsible for (among other matters) coordinating and reporting on the activities of the NPMs. It can also make any recommendations for the prevention of torture and other cruel, inhuman, or degrading treatment or punishment in places of detention.

24 See [Appendix 2](#), reports 2–31.

rounds, and CCTV monitoring of prisoners when using toilets and showers. The concerns raised also covered the provision of minimum entitlements, such as one hour of physical exercise in open air; clean bedding; and contact with family, whānau, and visitors. Access to adequate and timely health and dental care also featured as an issue repeatedly across prison sites, as did the omission to undertake an annual assessment of prisoners to properly understand and accommodate their health and disability needs. There were also a number of issues raised about the different needs of those in women's prisons.

34. As for the provision of constructive activities, a recurring issue involved prisoners being able to access education, employment, rehabilitation, and reintegration programmes. This was a particular concern for prisoners on remand, in voluntary segregation, and/or in high-security units.
35. Finally, repeated concerns have been raised about the performance monitoring and review measures in place to ensure good practice and sound decision making. This was especially critical in terms of decisions about the segregation of prisoners (including a lack of proper documentation and review), the use of force and control, and restraint practices. Another repeated issue related to prisoners' access to an adequate general complaints process, including a separate one to raise confidential health-related matters.
36. Most of the recommendations made about these issues were accepted by the Department. Looking across the sample of the Ombudsmen's reports spanning the period 2010 to 2021,²⁵ 86 percent of recommendations were either accepted or partially accepted by the Department — over 17 percent of which were recommendations that had been made previously to the same prison. Recommendations that were accepted but not achieved related to a range of matters including facility maintenance, record keeping and efforts to engage with mana whenua. In total, about 14 percent of recommendations were rejected by the Department. These related to a range of matters, including:²⁶
 - normalising meal times;
 - improving privacy screening in double-occupancy cells;
 - removing CCTV monitoring in toilet and shower areas;
 - undertaking an annual health-needs assessment for each prisoner; and
 - creating a separate process for health complaints.

25 This sample of reports relates only to the ones that were referenced in my letter notifying the Chief Executive of my investigation (reports 2, and 8–31 in [Appendix 2](#)).

26 I appreciate that the Department's position on some of these issues has evolved over time. See comments under the heading '[Steps taken by the Department to address common themes](#)' at page 70 of my report.

Efforts of oversight entities

37. In reaching the decision to investigate, I was also mindful of the efforts of other oversight entities, notably the HRC and the HDC. They, along with the Inspectorate, have reported on issues relating to the fair, safe, and humane treatment of those in prison.
38. I note for example, the findings in three reports commissioned by the HRC.²⁷ The first of those, published in 2017,²⁸ made 10 specific practice change recommendations to the Department. In the follow-up report of December 2020,²⁹ progress was noted, but the report concluded that the key issues in seclusion and restraint practices, as highlighted in the 2017 report, remained a repeated concern.³⁰
39. I was also conscious of the Chief Human Rights Commissioner's public statement in January 2021:³¹

We know the human rights standards, we know the failings, there is no shortage of reports and recommendations, including some from Corrections itself, yet progress is glacial. I sense no urgency.

40. Despite the repeated findings and suggestions for change, progress at individual prison sites and across the entirety of the prison network appears to have been very slow. For instance, in her follow-up inspection report of 2019 into Manawatu Prison, the Department's Chief Inspector noted:³²

I am disappointed to note, however, that more than two years after the initial inspection, progress on the refurbishment of B Block and the installation of an audio visual suite have been slow, due in part to competing priorities and fiscal pressures on the Department. The lack of progress in improving access to health services for prisoners was also disappointing, as was the time taken to establish and operationalise a Site Emergency Response Team.

41. I saw a similar pattern in a number of my follow-up OPCAT visits to prisons. I refer, for example, to the visits to Christchurch Men's Prison and Whanganui Prison in 2020.³³ While I identified a number of improvements (including the reduction of double bunking

27 The HRC separately produces Annual Reports on Aotearoa New Zealand's activities under OPCAT. See [Monitoring Places of Detention: Monitoring the Optional Protocol to the Convention Against Torture](#).

28 See [Appendix 2](#), report 33.

29 See [Appendix 2](#), report 34.

30 During the course of this investigation, the HRC published a further report in November 2021 (see [Appendix 2](#), report 35) which focused on practices in women's prisons. This report noted areas where progress had been made by the Department, but it repeated recommendations from both the 2017 and 2020 reports.

31 Above [n 10](#).

32 See [Appendix 2](#), report 8 at 4.

33 See [Appendix 2](#), reports 12 and 25.

in Whanganui Prison and the improved interactions between prisoners and staff at Christchurch Men’s Prison), I was disappointed to discover that a number of recommendations, previously accepted by the Department, had been either not achieved or only partially achieved.³⁴

42. In particular, my visit to Christchurch Men’s Prison in 2020 found that of the 44 recommendations the Department had accepted in 2017, 9 had been achieved,³⁵ 9 had been partially achieved and 22 had not been achieved.³⁶
43. Similarly, my 2020 visit to Whanganui Prison found that the Department had fully achieved 14 out of the 31 recommendations it had previously accepted (either in full or partially),³⁷ 8 accepted recommendations had been partially achieved, and 9 had not been achieved at all.³⁸
44. Looking across a number of reports, I was concerned that the findings and recommendations of oversight entities did not appear to have been effectively addressed by the Department in a way that resulted in enduring, or at least timely, improvements for those in prison across the full range of concerns raised.
45. My concerns in this regard were ultimately borne out by an Assurance Review that the Inspectorate undertook after I commenced my investigation.³⁹ This involved an initial assessment of closed findings and recommendations, which showed limited evidence for decisions to close. Inspectors then sought more information, undertaking desk-based research, speaking to Regional Inspectors and contacting prison sites. For health-related matters, further information was provided by the Manager Health Quality and Practice. Significantly, the Inspectorate could provide assurance for only 13 percent (69 of 518) of the findings and recommendations

34 ‘Partially achieved’ is used to denote circumstances where some but not all elements of an earlier recommendation appear to have implemented or realised.

35 The Department had also achieved one recommendation that it had previously rejected, which related to a survey of prisoners.

36 The recommendations accepted but not achieved related to a broad range of issues, including the physical environment, privacy and confidentiality, health services, prisoner safety, meal times, provision of information, conditions for prisoners on remand, and engagement with local iwi to better support the needs of Māori prisoners.

37 The Department had also achieved one recommendation that it had previously rejected, which related to health care for older and disabled prisoners.

38 The recommendations accepted but not achieved included the standardisation of meal times, unlock hours, privacy of prisoners in the At Risk Units, provision of information to prisoners, the inappropriate use of dry rooms when there was no capacity in the At Risk Units, provision of cultural support, and ventilation issues.

39 Janis Adair, Chief Inspector *Memorandum: Office of the Inspectorate Assurance Review — Office of the Ombudsman Self Initiated Review* Office of the Inspectorate (2 November 2021).

arising from a sample of oversight entity reports that the Department had deemed as 'closed' or 'addressed'.⁴⁰ Further, the Inspectorate observed:⁴¹

Appendix F shows that the top five themes (in terms of overall total, not % assured) are:

- *access to health services, with 80 findings and recommendations (21% assured)*
- *case management and access to programmes, with 77 findings and recommendations (10% assured)*
- *segregation, and Intervention and Support Units, with 47 findings and recommendations (9% assured)*
- *kiosks, communication and visits, with 36 findings and recommendations (11% assured)*
- *meals, with 31 findings and recommendations (16% assured).*

Together, the top five themes account for more than half of all findings and recommendations (271 or 52%). My team provides assurance for 38 findings and recommendations in these themes (14%).

Closed findings and recommendations for which my team could not provide assurance span 12 prisons and seven themes (86%).

The contents of Appendix F, referred to by the Inspectorate, are reproduced in [Figure 1](#) below.

40 I understand that this Assurance Review was based on the 'closed' findings and recommendations contained in reports 2–31, referred to in [Appendix 2](#).

41 Above n 39 at 2.

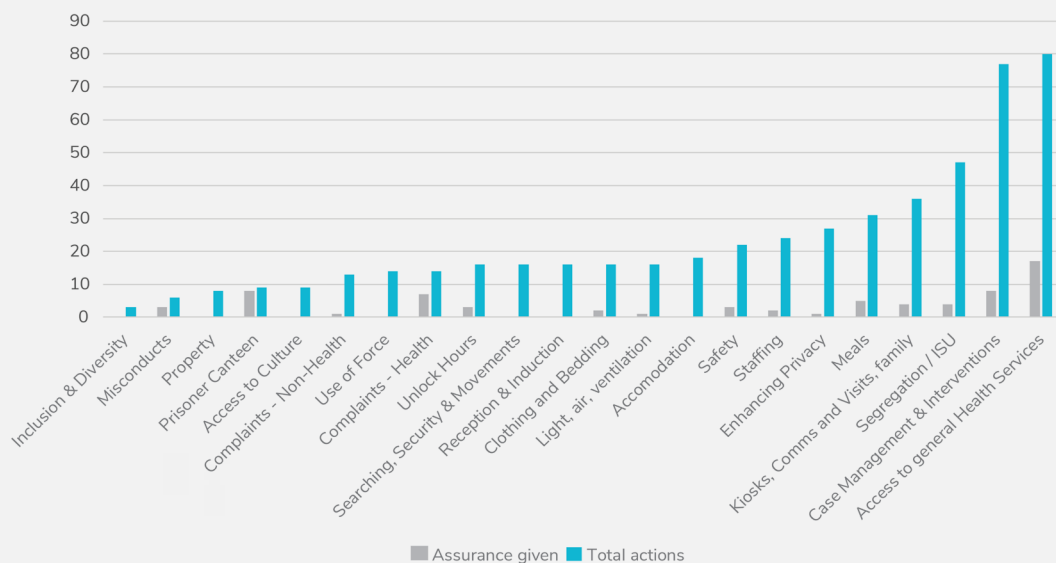


Figure 1: Themes, total number of findings and recommendations assured by the Chief Inspector⁴²

46. That a number of oversight entity recommendations appear not to have been acted on, and that the same issues have been raised across multiple prisons and repeated over time, signals to me that there may be systemic barriers within the Department to implementing significant and sustained change.

What and how I investigated

47. In May 2021, I wrote to the Chief Executive advising that I was commencing a self-initiated investigation that would consider:⁴³
- the acts and/or omissions of the Department in responding to the concerns raised, and suggestions made, for improvement by oversight entities;
 - the steps taken by the Department; and
 - whether there are any systemic issues that may be affecting the ability of the Department to achieve significant and sustained change.

42 Above n 39 at 47.

43 Following this, I publicly announced this investigation on 18 May 2021 and released the [Investigation Terms of Reference: Ara Poutama Aotearoa — Department of Corrections — actions and/or omissions to make sustained and significant improvement to prisoner welfare and rehabilitation](#).

48. I advised that, in the context of stewardship obligations and those provided for by Te Tiriti o Waitangi | Treaty of Waitangi, my investigation would include looking at the actions the Department had taken to effectively address the three broad themes identified above:⁴⁴
- the treatment and conditions of persons detained in corrections facilities — such as the physical environment, as well as the way the Department protects the mana of those in its care and its staff members;
 - the provision of constructive activities for those in the Department’s care — such as education, employment, rehabilitation, and reintegration programmes; and
 - the performance monitoring and review measures in place to ensure good practice and sound decision making — such as complaints management, oversight of segregation orders, use-of-force reviews, and other operational or incident reviews.
49. I explained that in the first instance, I would consider the Department’s response to a number of specific reports,⁴⁵ as well as similar reports on these issues from other oversight entities.
50. I also advised that the areas of focus may be adjusted or refined as more information became available over time.

Phased approach

51. My investigation was conducted in two phases. The first phase was an initial inquiry, in which I sought to gain a clear understanding of the operating environment of the Department and how the concerns and recommendations made by oversight entities had been considered. I also sought to form insights into any barriers to achieving sustained change.
52. This phase involved interviews with members of the Department’s senior leadership, as well as other members of staff in prison management roles. My investigators also interviewed a number of prison reform advocates, unions representing staff, and several former departmental staff — a number of whom had held senior leadership roles, including previous Chief Executives.

44 See comments relating to the three broad themes under the heading ‘Repeated concerns over years’ on page 18 of my report.

45 See Appendix 2, reports 2–31.

53. Recognising that the Department is part of the wider justice sector and system, I interviewed the Chair of the Justice Sector Leadership Board (the JSLB),⁴⁶ as the justice sector governance mechanism contributing to system-wide performance.⁴⁷
54. I also made a number of requests for information, with a focus on structure, decision making, and accountability. More general research and data gathering was conducted to obtain a more detailed picture of the Department, and of the people in its care and custody.
55. The information and evidence gathered in the first phase provided me with an overview of the Department's strategic context and operating environment, and informed the areas of focus in the next phase.
56. In late 2021, I wrote to the Chief Executive advising that the next phase of my investigation would focus on:
- the steps taken by the Department to address concerns and suggestions for improvement by oversight entities — including the current and historical processes for considering and responding to the concerns of and suggestions from oversight entities, and how issues (arising from and relating to reports by oversight entities) that have required a broader system response are, and have been, advanced by the Department; and
 - the transformative efforts of the Department that may address concerns and suggestions for improvement by oversight entities — specifically, any challenges the Department has faced in implementing strategies and initiatives such as Making Shifts Work, Hōkai Rangī, and both the 2017 and 2021 women's strategies titled E Rere Ana Ki te Pae Hou.⁴⁸
57. The second phase of the investigation involved a further set of interviews with:
- a wide range of current and former custodial and health staff based across a number of prisons;
 - current staff based in the Department's Regional Offices;
 - current and former staff based in the Department's National Office, who were involved in significant initiatives and projects;
 - senior officials in the justice and health sectors; and

46 Established in 2011, the members of the JSLB are the Secretary for Justice (Chair), the Solicitor-General, the Commissioner of Police, the Chief Executive of the Department of Corrections, the Director of the Serious Fraud Office, and the Chief Executive of Oranga Tamariki.

47 As described by the JSLB in the [Justice Sector Briefing for Incoming Ministers](#) (November 2020).

48 Further detail about these initiatives and strategies is set out below under the heading '[Strategies and plans](#)' at page 42 of my report.

Introduction

- staff from the offices of other oversight entities such as the HRC and the HDC, as well as the Inspectorate.
58. My investigation also involved holding interviews with, and gathering information from, people with lived experience of the custodial system; prison reformists; advocates; and a range of other stakeholder groups, including representatives of Māori organisations.
59. A series of requests were made to the Department for documentation, including:
- past and present processes for considering and responding to oversight body recommendations;
 - reports and information about organisational reviews;
 - the implementation of specific projects, initiatives and strategies;
 - reports and briefings to the Minister of Corrections, including those related to Cabinet papers;
 - data and information related to the Department's staff engagement surveys;
 - data and reports from prisoner health surveys; and
 - workforce data, including material related to staff training.
60. Staff from my investigation team visited seven prisons, as well as the Department's National Learning Centre and Tactical Facility,⁴⁹ and spoke to a range of staff at those sites.
61. Requests for information were also made to Te Tai Ōhanga | The Treasury, Te Kawa Mataaho | Public Services Commission, and Te Tāhū o te Ture | Ministry of Justice. In addition, information was also received from the organisations representing staff, current employees and a range of third parties. I also reviewed publicly available information and considered relevant international conventions, legislation, and case law.
62. For this investigation, I also engaged a group of people with expertise and experience in public management, systems thinking, imprisonment, and the criminal justice system.⁵⁰
63. I invited the Department, and relevant third parties, to comment on my provisional opinion and proposed recommendations. I have considered all responses and have reviewed and revised my opinion where necessary.

49 The National Learning Centre and Tactical Facility are the premises where new staff complete their initial training programme and existing staff undertake ongoing training.

50 The members of my expert panel are named in my [Acknowledgements](#).

Te Tiriti o Waitangi and stewardship

64. As noted above, when I notified my investigation, I indicated that I would look at the Department's actions in the context of the Department's Te Tiriti o Waitangi and stewardship obligations. My expectations regarding each of these are set out below.

Te Tiriti o Waitangi

65. The Department has obligations with respect to Te Tiriti o Waitangi | Treaty of Waitangi, including as set out in the Public Service Act 2020. In reference to the Crown's relationships with Māori, the Act stipulates that *'[t]he role of the public service includes supporting the Crown in its relationships with Māori under the Treaty of Waitangi (te Tiriti o Waitangi).'*⁵¹ Those relationships are framed and informed by the principles of Te Tiriti o Waitangi.
66. In 2017, the Waitangi Tribunal considered under urgency whether the Crown was acting consistently with its Te Tiriti o Waitangi obligations with respect to the disproportionate rate of Māori reoffending.⁵² The Tribunal's report *Tū Mai te Rangī!*, sets out — albeit in relation to the particular inquiry issues before it — the Crown's obligations under Te Tiriti o Waitangi given effect through the Department, and the application of its principles drawing on *'previous Tribunal reports and their interpretation and application of Treaty principles.'*⁵³ The Tribunal set out those obligations as being:⁵⁴
- **kāwanatanga and rangatiratanga** – where kāwanatanga is the right of the Crown to govern and make laws for the country, in exchange for the right of Māori to exercise tino rangatiratanga over their land, resources, and people;
 - **active protection** – which requires the Crown to protect Māori interests as far as is reasonable in the circumstances;
 - **equity** – which is the obligation to act fairly and which, like active protection, can require positive intervention by the Crown to reduce disparities; and
 - **partnership and reciprocity** – which describes how the Crown and Māori relate to each other and entails a relationship founded on good faith and respect.
67. This provided an authoritative starting point for me in considering whether the Department's acts, omissions, decisions, or recommendations meet the Crown's obligations under Te Tiriti o Waitangi | Treaty of Waitangi.

51 Public Service Act 2020, s 14(1).

52 Waitangi Tribunal *Tū Mai te Rangī! Report on the Crown and Disproportionate Reoffending Rates* WAI 2540 (2017).

53 Above n 52 at 21.

54 Above n 52 at 21 – 23.

Stewardship obligations

68. 'Stewardship' is an established obligation for public service agencies, within a series of formalised statements of government expectations and, consistently since 1988, under statute.⁵⁵ While the term 'stewardship' has various definitions (none of them statutory), my view is that stewardship is, and requires, taking a long term, proactive, and collaborative approach to maintaining the 'fitness' of a system. It requires the responsible entity to work with their minister to maintain oversight of a system's component parts, which includes taking timely, proportionate, and reasonable steps to ensure the system is able to operate effectively and deliver on intended outcomes. This ensures the system is best able to fulfil its purpose and so serve the public interest.
69. At the level of statute, there are stewardship responsibilities under the Public Service Act 2020, which originated in its predecessor: the State Sector Act 1988.
70. The Public Service Act 2020 frames stewardship as one of five public service principles that Chief Executives are responsible for upholding, including:⁵⁶
- (e) *to proactively promote stewardship of the public service, including of—*
 - (i) *its long-term capability and its people; and*
 - (ii) *its institutional knowledge and information; and*
 - (iii) *its systems and processes; and*
 - (iv) *its assets; and*
 - (v) *the legislation administered by agencies.*
71. The purpose of stewardship in the public service context is to not only maintain confidence in publicly funded and public-serving entities, but to ensure the public service has a focus on the enduring 'fitness for purpose' of the system that those entities administer and are part of. For the Department, my view is that its 'fitness for purpose' is evidenced in part by:
- how it treats those detained in custodial facilities;

55 Statements of government expectations have been expressed since 1997 and updated several times subsequently, most recently in Te Tai Ōhanga | The Treasury [Government Expectations for Good Regulatory Practice](#) (April 2017). This guide states (at 3):
The government expects regulatory agencies to adopt a whole-of-system view, and a proactive, collaborative approach to the care of the regulatory system(s) within which they work.

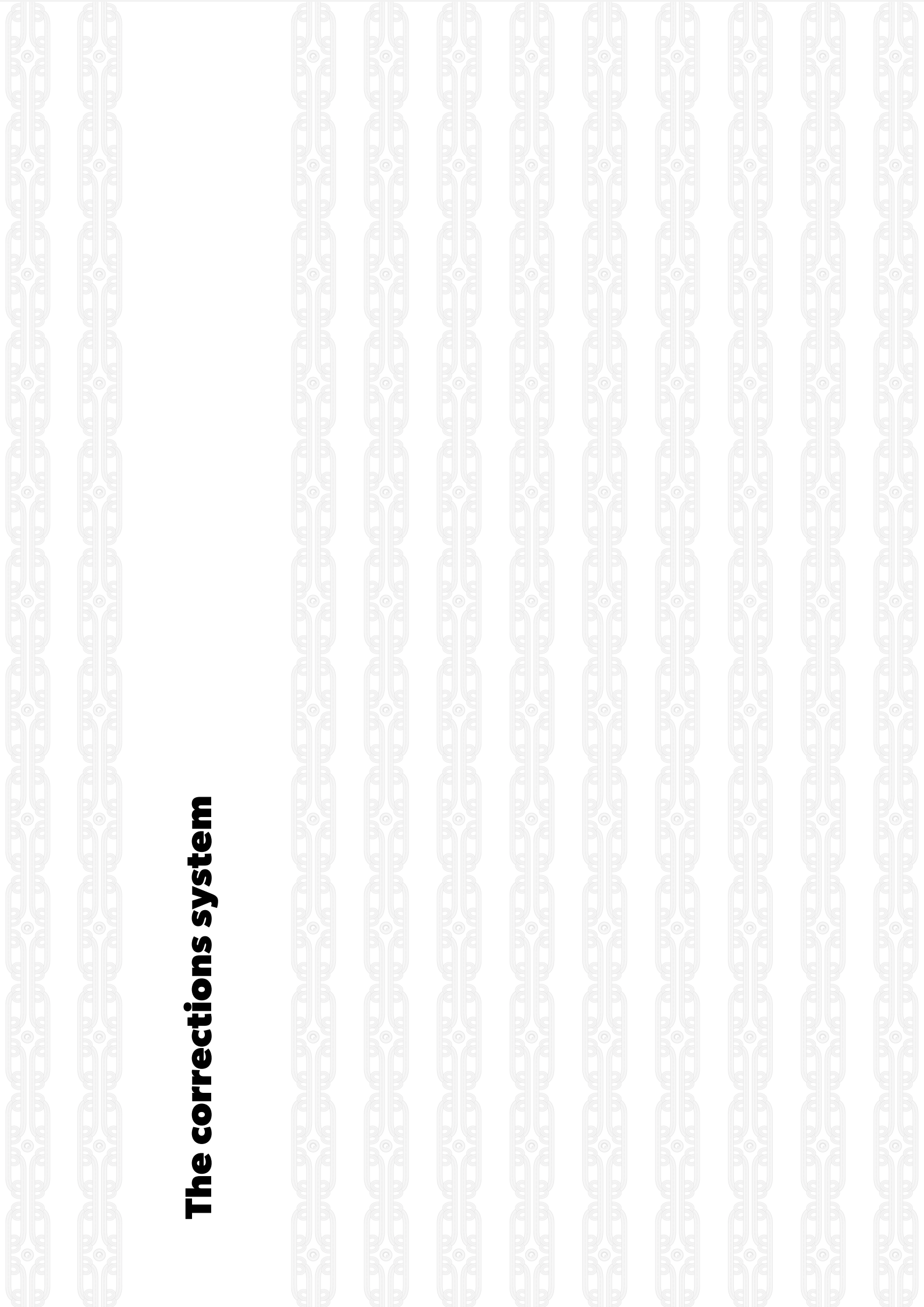
This regulatory stewardship role includes being responsible for:

- *monitoring, review and reporting on existing regulatory systems;*
- *robust analysis and implementation support for changes to regulatory systems; and*
- *good regulatory practice*

56 Public Service Act 2020, s [12\(1\)\(e\)](#).

- its ability to improve that treatment in an enduring way, when issues are identified by, in particular, entities with formalised oversight functions; and
 - how it administers and implements its legislation.
72. In my view, sound system stewardship requires, as a minimum, the following:
- a. **Leadership and strategy** — Senior leaders of the agency take a whole-of-system view, not only by recognising the role of the agency within the wider public service, but also by taking a long-term strategic view of agency performance in meeting its legislative and public service obligations. Senior leaders set the tone at the top and enable achievement of the overarching organisational strategy.
 - b. **Culture** – The agency has clearly articulated values, which are deeply embedded in the conduct of the staff and which align with Te Tiriti o Waitangi | Treaty of Waitangi, statutory, and public service obligations advancing transparency, fairness, diversity, tolerance, and understanding. The conduct and attitudes of the agency staff are also routinely and independently evaluated and assessed.
 - c. **Systems and practices** – Agency systems and practices are well designed, fit for purpose and integrated across all teams. Staff and stakeholders are genuinely engaged in system design and know and understand the use of the agency’s systems and practices, which are routinely audited and adapted to meet best practice.
 - d. **Structure and resources** – Organisational design ensures alignment of functions with the overarching organisational strategy and is resourced to deliver services and functions effectively. There is clear long-term strategic capability planning which is fit for purpose and proactively supports staff training and the health and wellbeing of staff and people affected by the activities of the agency.

The corrections system



The corrections system

73. While my investigation focused on the way the Department has been operating, I must also acknowledge the wider context of the correctional system in New Zealand. Responsibility for the acts, omissions, decisions, and recommendations of the organisation as it exists now rests with the Department. However, my investigation highlights that the correctional system, and the complex set of socio-cultural factors influencing the demographics of those entering it, are part of a wider justice system, which is relevant to achieving transformative and enduring change.

History

74. The New Zealand penal system has its roots in the nation's colonial past and in British military-style institutions, which emphasised incarceration and harsh punitive conditions. Early legislation reflected Victorian attitudes toward crime, with the primary aim of prisons being to deter future offending through punishment, harsh living conditions, strict control, and hard labour.⁵⁷

75. Since the 19th century, changing attitudes and international norms have led to some incremental changes to improve prisoner welfare — including the idea that imprisonment should reduce rather than increase the chances of reoffending.

76. Concerns about the inherent fitness of custodial sentences to reform and restore have been raised for decades, including in a historical ministerial enquiry⁵⁸ and by academics and justice system reformers.

77. Most recently, the Human Rights Commission published two reports,⁵⁹ one of which, *Maranga Mai!* provided an account of *'the dynamics and impacts of white supremacy, racism, and colonisation upon tangata whenua in Aotearoa New Zealand'*.⁶⁰ That report pointed

57 For example, the Prisons Act 1873 had a strong emphasis on punishment in addition to sentence (see for instance s 20, which provides for hard labour).

58 Committee of Inquiry into Violence [Report of the Ministerial Committee of Inquiry Into Violence, 'The Roper Report'](#) (1987).

59 Te Kāhui Tika Tangata | Human Rights Commission ['Recognising tino rangatiratanga key to national plan to end racism'](#) (3 February 2023). I understand that the two reports contribute to the work being done by the Ministry of Justice to give effect to the Government's commitment to develop a National Action Plan Against Racism. In 2017, the United Nations Committee on the Elimination of Racial Discrimination (CERD) expressed concern about 'the lack of a current national action plan on racism' as required by Article 2 of International Convention on the Elimination of Racial Discrimination. See [CERD/C/NZL/CO/21-22: Committee on the Elimination of Racial Discrimination: Concluding observations on the combined twenty-first and twenty-second periodic reports of New Zealand](#) (2017) at C.6. The CERD made associated recommendations and in its 2019 response to the Universal Periodic Review recommendations, the New Zealand Government committed to developing a comprehensive national action plan to target and eliminate racism.

60 *Tangata Whenua Caucus of the National AntiRacism Taskforce (2021-2022)* and *Ahi Kaa Maranga Mai!* (Te Kāhui Tika Tangata | the Human Rights Commission, 2023) title page.

out that ‘when rangatira Māori signed Te Tiriti in 1840, they did not envision a future where large numbers of their young people, men and women would be incarcerated’.⁶¹ This echoes the views reflected in earlier reports of Ināia Tonu Nei and Te Uepū Hāpai i Te Ora Safe and Effective Justice Advisory Group, about the intergenerational impacts of the criminal justice system on whānau Māori.⁶²

78. Historically, the impacts on Māori in New Zealand’s penal system have been made worse by an assumption that ‘the purpose of the criminal justice system and imprisonment is and has always been the same for the Māori and non-Māori citizens of New Zealand’.⁶³ As Moana Jackson pointed out, this is not the case; the imposition of a colonial-style prison system denied Māori the right to punish and correct according to their own tradition.⁶⁴

It is one of the tragedies of Western history that the culture-specific nature of its own systems of law has blinded it to the existence of law in other societies. This monocultural myopia, when coupled with the economic demands of an imperial ethic, has led to a dismissal of other cultural systems as not being ‘legal’, and a subsequent imposition of the Western way.

...

Part of this ‘limited appreciation’ has led Pakeha anthropologists and jurists to foster the myth that Maori society had no system of law. Rather, it had merely a complex set of customs and lore which regulated the behaviour of its people.

...although the Maori system shared with the Pakeha a clear code of right and wrong behaviour, its philosophical emphasis was different. The system of behavioural constraints implied in the law was interwoven with the deep spiritual and religious underpinning of Maori society so that Maori people did not so much live under the law, as with it. It was part of their everyday existence, and although many of the institutions may no longer be in place, the beliefs which shaped them remain to this day.

...

61 Above n 60 at 92.

62 Te Ohu Whakataki *Ināia Tonu Nei Hui Maori Report* (July 2019); Te Uepū Hāpai i te Ora: Safe and Effective Justice Advisory Group *He Waka Roimata – Transforming our criminal justice system (First report)* (June 2019) and *Turuki! Turuki! Move together! Transforming our criminal justice system (Second Report)* (December 2019).

63 Kim Workman ‘*Whānau ora and imprisonment*’ *Ngā Pae o te Māramatanga, New Zealand’s Māori Centre of Research Excellence, Te Arotahi Paper Series No. 03* (September 2019) at 2.

64 Moana Jackson *The Māori and the Criminal Justice System, A New Perspective: He Whaipanga Hou, Part 2* (Department of Justice, 1988) at 35-36.

An understanding of the process by which the Maori system was thus replaced by the Pakeha explains much about current Maori views about the criminal justice system. It places in context perceptions of systemic bias. It illustrates the difficulties seen by many Maori people in the maxim of 'one law for all', and it permits consideration of Maori calls for authority to deal with Maori offenders in an appropriately Maori way.

79. How the interests of Māori are served by the system is still a 'live' question. On 5 August 2021, Waitangi Tribunal Chair Chief Judge Wilson Isaac initiated Te Rau o te Tika: Justice System Kaupapa Inquiry.⁶⁵ This is a wide-ranging inquiry covering matters raised in a series of claims, including discrimination against Māori in the statutory and institutional framework for the administration of justice in colonial and modern times; institutional racism and bias in the policy and practice of justice sector organisations, policing policy, and practice; as well as prison conditions, and the treatment of Māori remand and sentenced prisoners.⁶⁶
80. The Waitangi Tribunal is also inquiring into the treatment of wāhine Māori through the Mana Wāhine Kaupapa Inquiry, which includes claims specific to the treatment of wāhine Māori in the justice system, including in the correctional environment.⁶⁷
81. The Department remains responsible for the performance and functionality of the prison system, and it is required to meet specific obligations to those in its care. This is the primary focus of my investigation, but I acknowledge that there are fundamental and salient questions as to the fitness of the system the Department administers and works within, which fall outside the scope of my investigation.
82. I also acknowledge that some consider time is up for incarceration as it is currently practised, and that a fundamentally different approach to criminal justice is required. While some believe this can be achieved through incremental reform, others are of the view that transformative change requires something more.
83. Such matters are beyond my role, but in the context of the persistent harm caused over many decades, particularly for Māori, they form the backdrop to this investigation.

65 Waitangi Tribunal [Te Rau o te Tika: Justice System Kaupapa Inquiry](#) WAI 3060. Kaupapa inquiries are thematic rather than specific to any district. The Waitangi Tribunal refers to them as dealing with 'nationally significant issues affecting Māori as a whole'. See [Kaupapa inquiries](#).

66 In bringing forward this inquiry, Chief Judge Isaac explained, 'I am satisfied that the number and range of applications for urgency in recent years concerning justice sector issues indicates a weight of claimant concern sufficient to merit an early start to the Tribunal's inquiry into justice sector claims'. See [Memorandum — Directions of the Chairperson commencing a kaupapa inquiry into claims concerning the justice system](#) (5 August 2021) at 3.

67 Waitangi Tribunal [Mana Wāhine Kaupapa Inquiry](#) WAI 2700.

Extrinsic influences and barriers

84. It is also important to touch on the extrinsic influences and settings that can act as direct or consequential impediments to change. There can be no doubt that the Department is affected by policy and legislative constructs originating in other parts of the justice system.
85. For example, it is well documented that criminal justice ‘settings’, particularly those relating to remand and sentencing, can impact on the circumstances in which accused people are held in prison, the type of offences for which imprisonment is a sentencing option and, consequently, on prison population numbers.
86. Shifts in political agendas and public attitudes to crime and punishment can influence, if not determine, such settings at the legislative or operational level.
87. The Department’s Chief Executive and members of the Executive Leadership Team (ELT) have both influence and responsibility within the justice sector through their membership in the JSLB, including through the JSLB’s two Deputy Chief Executive Groups (Strategy and Operations), and the Justice Sector Chief Financial Officers Forum.⁶⁸
88. The JSLB’s terms of reference (signed in late 2018) describe its purpose as *‘to govern the justice sector so that it achieves the Government’s goals’* and to *‘ensure through strong leadership and the collective collaboration of the six agencies, the Sector will be effectively governed to achieve the Government’s long-term vision of creating safe and effective justice system for New Zealand’*.⁶⁹ In addition to working together on agreed priorities for Budget 2021/22, some members of the JSLB⁷⁰ worked together as the ‘Justice Cluster’ to agree cluster-level priorities.
89. Changes in New Zealand’s wider social and economic landscape also impact on the administration and operation of prisons. The Department is dealing with a greater level of complexity resulting from a range of factors, including increasing rates of inequity, the establishment of new gangs, and a greater focus on the victims of crime.

68 Above n 47 at 17.

69 Te Tāhū o te Ture | Ministry of Justice *Justice Sector Leadership Board Terms of Reference* (signed by Chief Executives in 2018).

70 Ara Poutama Aotearoa | Department of Corrections, Te Tāhū o te Ture | Ministry of Justice, Nga Pirihimana o Aotearoa | New Zealand Police, Te Tari Ture o te Karauna | Crown Law, and Te Tari Hara Tāware | Serious Fraud Office.

The legal framework

90. As a public service agency, the Department is part of the Crown and subject to the standards, rules, and requirements set out in domestic legislation, as well as relevant international conventions signed and ratified by New Zealand. Collectively, these create the organisation's functions, powers, responsibilities, and obligations in the administration of prison sentences and orders, and in the care and management of the people subject to those sentences and orders.

Corrections Act 2004 and Corrections Regulations 2005

91. The legislation that most directly determines how prisons operate is the Corrections Act 2004 (the Corrections Act) and the Corrections Regulations 2005 (the Regulations).
92. The purpose of the corrections system as set out in the Corrections Act is *'to improve public safety and contribute to the maintenance of a just society'*, including by ensuring that custodial sentences are administered in a safe, secure, humane, and effective manner, by operating prisons in accordance with rules based on, among other matters, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), and by providing for the rehabilitation and reintegration of offenders in the community.⁷¹
93. The principles that guide the operation of the corrections system are set out in section 6 of the Corrections Act. The principles provide that *'the maintenance of public safety is the paramount consideration in decisions about the management of persons under control or supervision'*.⁷²
94. The remaining eight principles are set out in full in [Appendix 3](#). They include:
- to reduce the risk of reoffending, a person's cultural background, ethnic identity and language must be taken into account in relation to rehabilitative programmes and other interventions, and sentence planning and management;⁷³
 - sentences and orders must not be administered more restrictively than is reasonably necessary to ensure the maintenance of the law and safety of the public, corrections staff, and people in the corrections system;⁷⁴ and

71 Corrections Act 2004, s [5\(1\)](#).

72 Corrections Act 2004, s [6\(1\)\(a\)](#).

73 Where appropriate and to the extent possible within the resources available. See Corrections Act 2004, s [6\(1\)\(c\)](#).

74 Corrections Act 2004, s [6\(1\)\(g\)](#).

- people in the care of the Department must, so far as is reasonable and practicable in the circumstances within the resources available, have access to activities that may contribute to rehabilitation and reintegration.⁷⁵
95. The Regulations provide detailed rules to ensure the good management of the corrections system and safe custody of prisoners, in accordance with the Corrections Act.⁷⁶

The New Zealand Bill of Rights Act 1990

96. The New Zealand Bill of Rights Act 1990 (NZBORA) reflects New Zealand's commitment to the International Covenant on Civil and Political Rights (ICCPR), and it is the primary legislative protection for human rights in New Zealand. Two rights have specific relevance to people detained in the Department's custody:
- the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment;⁷⁷
 - the right to be treated with humanity and with respect for the inherent dignity of the person.⁷⁸
97. The Department must interpret its legislation and administer the corrections system consistently with the rights in the NZBORA⁷⁹ Where it breaches a right without sufficient justification, the Department may be liable for public law compensation.⁸⁰

Other key statutes

98. The work of the Department is carried out under, and governed by, a range of other statutes.
99. Some are specific to the corrections system or the wider justice sector, such as the Bail Act 2000, the Sentencing Act 2002, and the Parole Act 2002.

75 Corrections Act 2004, s 6(1)(h).

76 The Corrections Regulations 2005 include rules about: the general duties of different Corrections staff, the release and transport of prisoners, prisoner property and finances, the security classification of prisoners, the placement of prisoners in correctional facilities, the segregation of prisoners, prisoner treatment and welfare (including health care), visits to prisons, drug and alcohol testing, use of force, discipline and order, and complaints. It is noted that, as secondary legislation, the Regulations are different to the Corrections Act in that they can be challenged by courts on the ground of invalidity or exceeding the powers conferred on them by the Corrections Act 2004. See David McGee 'Chapter 28 — Delegated Legislation' in *Parliamentary Practice in New Zealand* 4th ed. (Oratia Books, 2017): 459; and the Parliamentary Counsel Office webpage 'Secondary legislation reforms'.

77 New Zealand Bill of Rights Act 1990, s 9.

78 New Zealand Bill of Rights Act 1990, s 23(5).

79 New Zealand Bill of Rights Act 1990, s 6.

80 *Simpson v Attorney General* [1994] 3 NZLR 667 (CA) [*Baigent's case*]. The Department is frequently subject to proceedings seeking compensation.

100. In addition, there is legislation that is not specific to the work of the Department but which has particular relevance. This includes the Public Service Act 2020 (and its predecessor, the State Sector Act 1988), the Health and Safety at Work Act 2015 and the Code of Health and Disability Services Consumers' Rights.⁸¹ Relevant information about, and extracts from, these legislative instruments are set out in [Appendix 4](#).

International conventions

101. New Zealand is party to several international treaties and other instruments intended to protect and promote human rights. In signing up to these, New Zealand has agreed to comply with obligations under international law to respect, protect, and fulfil the human rights of everyone. These obligations provide additional context to the acknowledged need for fair and humane treatment.
102. The following are of particular relevance to this investigation.
- United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture)
 - Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)
 - United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)
 - Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
 - United Nations Convention on the Rights of Persons with Disabilities (Disability Convention)
 - The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
 - United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)
103. Further information about the international conventions can be found at [Appendix 5](#).

81 The [Code of Health and Disability Services Consumers' Rights](#) is a regulation under the Health and Disability Commissioner Act 1994.

About the Department of Corrections

104. The Department is one of New Zealand's largest government agencies. It is responsible for 18 prisons⁸² and 106 community corrections sites, supported by 15 District Offices, 4 Regional Offices, and the National Office in Wellington.
105. The prison network comprises 'a mix of current, aging, and legacy infrastructure'.⁸³
106. There are 3 women's prisons — Christchurch Women's Prison, Arohata Prison in Wellington, and Auckland Region Women's Correctional Facility — and 15 men's prisons. New Zealand's oldest operating prison (Invercargill Prison) was built in 1910, although it has had considerable investment in recent years. Further details about the prison network can be found at [Appendix 6](#).
107. In 2021–2022, the Department's operating expenditure was \$1.9 billion, and it had an asset base of more than \$4.6 billion.⁸⁴
108. At 30 June 2022, the Department employed 9,694 full-time, part-time and casual staff⁸⁵ (down from 10,254 at June 2021), including approximately 3,612 corrections officers and 230 nurses working in prisons⁸⁶. Staff identifying as Māori totalled 21.6 percent.⁸⁷

Leadership and governance

109. The Department is led by the Chief Executive of Corrections (the Chief Executive), who is appointed by the Public Service Commissioner under the Public Service Act 2020.⁸⁸ The Public Service Commissioner is also responsible for reviewing the performance of the Chief Executive.
110. The current Chief Executive was appointed by the Public Service Commissioner in 2019 for a term of three years and reappointed in late 2022 for a further five years.

82 Seventeen prisons are publicly managed by Corrections, and one (Auckland South Corrections Facility (ASCF)) is privately operated by Serco New Zealand under a public-private partnership with the Department of Corrections. Leadership and management of ASCF is therefore separate to that of the Department of Corrections. However, the Department's Chief Executive retains ultimate responsibility for prisoners at ASCF.

83 Ara Poutama Aotearoa | Department of Corrections *Hōkai Nuku Business Case* (2019) at Appendix H.

84 Ara Poutama Aotearoa | Department of Corrections *Annual Report 1 July 2021 – 30 June 2022* (2022) at 44–45.

85 Above n 84 at 23.

86 Justice Select Committee Annual review 2021/22 of Department of Corrections (2022) at [Appendix 9](#).

87 Above n 84 at 23.

88 As well as appointing Chief Executives (s 44(d)), the general functions of the Public Service Commissioner as set out in the Public Service Act 2020 include promoting integrity, accountability, and transparency (s 44(b)) and working with public service leaders to develop a highly capable workforce (s 44(c)).

Key leadership roles

111. The Department is led by the ELT, made up of the Chief Executive, the National Commissioner, and five Deputy Chief Executives (DCEs), including a DCE Health Services.⁸⁹ In addition, there are 4 Regional Commissioners, 17 Prison Directors and 17 Health Centre Managers.
112. Prison Directors hold the statutory powers and functions of prison managers as set out in the Corrections Act.⁹⁰ This includes ensuring that the prison they manage operates in accordance with the purposes and principles of the Act,⁹¹ as well as ensuring the safe custody and welfare of prisoners received by the prison. Prison Directors may, subject to certain limitations, make appropriate rules for the management of the prison, and for the conduct and safe custody of prisoners.⁹²
113. Prison Directors each report to one of four Regional Commissioners (see [Figure 2](#) below), who in turn report to the National Commissioner. The National Commissioner is also responsible for Community Corrections, which manages people serving sentences or orders in the community.
114. Health Centre Managers are responsible for ensuring the provision of health care and treatment to prisoners.⁹³ The Corrections Act states that the standard of health care *'must be reasonably equivalent to the standard of health care available to the public'*.⁹⁴
115. Prior to 2020, Health Centre Managers reported to Prison Directors. They now report to Regional Operations Directors, who are part of the wider Health Services function, reporting up through the Chief Nurse to the Deputy Chief Executive Health Services.

89 The remaining four DCE roles are People and Capability; Finance, Planning and Assurance; Infrastructure and Digital Assets; and Māori.

90 Corrections Act 2004, s [12](#).

91 Corrections Act 2004, ss [5](#) and [6](#).

92 Corrections Act 2004, s [33\(1\)](#).

93 Corrections Act 2004, s [19A\(4\)](#)

94 Corrections Act 2004, s [75\(2\)](#)



Figure 2: High-level organisational structure — includes detail for reporting lines of Prison Directors and Health Centre managers.

Office of the Inspectorate

- 116. The Department also includes the Office of the Inspectorate, which is led by the Department’s Chief Inspector.⁹⁵
- 117. The Chief Inspector and their staff assess prisons against relevant legislation and the Inspectorate’s *Inspection Standards*.⁹⁶ They have specific powers and functions under the Act,⁹⁷ including investigating complaints, visiting and inspecting prisons, examining the treatment and conduct of people in prison, and *‘enquiring into abuses or alleged abuses’* in relation to the treatment of those persons.⁹⁸ The Inspectorate also carries out thematic inspections and special investigations and has other functions, including investigating all deaths in custody.
- 118. The Inspectorate noted that it does not make recommendations or suggestions for improvement in prison inspection reports *‘but rather makes findings to the Department, to drive site-based accountability and put the onus on the Department for improvements.’*⁹⁹ It does, however, make recommendations in its thematic reports.

95 Sections 28 and 29 of the Corrections Act 2004 provide for the appointment of Inspectors with the power to make recommendations considered appropriate.

96 The Inspection Standards were developed by the Inspectorate and are informed by international principles and guidance, including the [United Nations Standard Minimum Rules for the Treatment of Prisoners](#) (the Mandela Rules) General Assembly resolution 70/175, annex, adopted on 17 December 2015.

97 Corrections Act 2004, s 29

98 In response to my provisional opinion, the Chief Inspector noted that it is *‘not correct’* that the Inspectorate examines the conduct of people in prison, and that it does not use the language of enquiring into abuses and alleged abuses (4 April 2023).

99 Inspectorate’s response to the Chief Ombudsman’s provisional opinion (4 April 2023).

119. The Inspectorate is part of the Department. However, it has stated that it is *'independent of prison management, and its staff are independent of the activities they review'*.¹⁰⁰
120. Since 2018, the Chief Inspector has reported directly to the Chief Executive.

Governance and assurance

121. Governance and assurance are provided through a number of internal committees, advisory groups and boards (see [Appendix 7](#)) including the following.
- Te Poari Hautū Rautaki Māori | the Māori Leadership Board ensures the Department *'acts in accordance with te Tiriti to achieve the goals of Hōkai Rangī, those of the individual, and the family'*.¹⁰¹ Co-chaired by the Chief Executive and an iwi Poari member, membership includes members of the Department's ELT and representatives of iwi organisations.
 - The Audit and Risk Committee provides advice *'on the Department's systems and control environment'*.¹⁰² Membership includes an independent Chair (appointed by the Chief Executive) and two additional independent members.
 - The Health, Safety and Wellbeing Risk Governance Group provides *'strategic direction and organisational governance to ensure the Department of Corrections meets its goals for health, safety and wellbeing. This Group has overall responsibility for health, safety and wellbeing at the Department of Corrections and holds management to account for strategic health, safety and wellbeing performance'*.¹⁰³ Chaired by the Chief Executive, membership includes the ELT, General Manager Health and Safety, and independent expert advisor/s.

100 See information published on the Inspectorate webpage [Our History](#)

101 Ara Poutama Aotearoa | Department of Corrections *Te Poari Hautū Rautaki Māori | Māori Leadership Board: Terms of Reference* (August 2022) at 4.

102 Ara Poutama Aotearoa | Department of Corrections *Audit and Risk Committee Terms of Reference* (July 2019) at 1.

103 Ara Poutama Aotearoa | Department of Corrections *Health, Safety & Wellbeing Committees Terms of Reference* (August 2019) at 4.

- The Wellness and Wellbeing Insights & Advisory Group for People in the Care of Ara Poutama Aotearoa and Their Whānau. The purpose of this advisory group is to *'deliver candid advice to the Executive Leadership Team on areas relating to improving the wellness and wellbeing of persons under the care and management of Ara Poutama Aotearoa'*.¹⁰⁴ Membership includes eight external members and the Chief Executive, DCE Māori, DCE Health, and the National Commissioner. The Chief Executive and one external member are Co-Chairs.

Strategies and plans

122. The Department has published several key organisational strategies and plans that are relevant to its operation and decision making, which form part of this investigation.

Hōkai Rangī

123. In 2017, the Waitangi Tribunal found that the Crown (through the Department) had acted inconsistently with Te Tiriti o Waitangi | Treaty of Waitangi principles of active protection and partnership.¹⁰⁵
124. The Waitangi Tribunal recommended that the Department and its Māori Advisory Board¹⁰⁶ work together to design, develop, and implement a strategy that addressed Māori reoffending rates.
125. The strategy, Hōkai Rangī,¹⁰⁷ was developed to meet that recommendation. It was subsequently adopted by the Department as its overall organisational strategy and launched in August 2019. There is an acknowledgement within the strategy itself,¹⁰⁸ as well as across various other documents,¹⁰⁹ that it will be the *'tuakana'* strategy for the Department, and that all other departmental actions and plans will flow from and align with it.

104 Ara Poutama Aotearoa | Department of Corrections *Terms of Reference: Wellness and Wellbeing Insights and Advisory Group for people in the care of Ara Poutama Aotearoa and their whānau* (June 2021). This group was originally established by the Chief Executive in 2017 and was known as the Prisoner Welfare Advisory Board.

105 Above n 52 at X.

106 The Māori Advisory Board was established in 2015 and following the Waitangi Tribunal's recommendation in *Tu Mai te Rangī!* it was renamed as Te Poari Hautū Rautaki Māori | Māori Leadership Board. The terms of reference immediately prior to those adopted in August 2022 stated that the purpose of the Board was to *'provide strategic leadership around the development of policy and initiatives designed to reduce and prevent offending by Māori'*. (Te Poari Hautū Rautaki Māori | Māori Leadership Board Terms of Reference, March 2018)

107 Above n 14.

108 Above n 14 at 4.

109 Ara Poutama Aotearoa | Department of Corrections *Māori Language Strategy 2021–2026* (June 2021) at 3; and above n 83 at Appendix P.

126. The strategy notes that the Department has a Te Tiriti o Waitangi | Treaty of Waitangi responsibility to:¹¹⁰
- *actively protect Māori interests;*
 - *treat Māori fairly;*
 - *involve Māori in designing, developing, and implementing strategies that affect Māori; and*
 - *work in partnership with Māori communities to rehabilitate and transition Māori into their care.*
127. The Department describes Hōkai Rangi as a response to ‘*the need to do things differently*’, and a strategy that will drive change in the corrections system by ‘*prioritising the oranga/wellbeing of people, including people serving sentences and orders, their whānau, victims, our staff and communities*’.¹¹¹
128. I understand the Department is currently reviewing Hōkai Rangi to assess progress and prioritise its focus areas. It has noted that ‘*Reflecting on the first three years of Hōkai Rangi will better position us to achieve our long-term purpose of: ko te oranga o te iwi — the wellness and wellbeing of people*’.¹¹²

Making Shifts Work

129. In May 2020, the Department began rolling out Making Shifts Work, a new operating model that changed how frontline custodial staff are rostered. Described as ‘*the biggest change to prison operations in 20 years*’, Making Shifts Work is intended to better meet the needs of operational delivery (including improved meal times, improved whānau visiting times, more unlock time in high security, and greater access to rehabilitation), to ensure better work–life balance for staff, and to reduce staff fatigue.¹¹³

Violence and Aggression Programme

130. In July 2021, the Department, Te Pūkenga Here Tikanga Mahi | Public Service Association (PSA) and the Corrections Association of New Zealand (CANZ) signed an agreement and corresponding plan focused on addressing and mitigating assaults on prison staff.¹¹⁴ The

110 Above n 14 at 5.

111 Ara Poutama Aotearoa | Department of Corrections [Briefing to the Incoming Minister 2020](#) at 12.

112 Above n 84 at 15.

113 Ara Poutama Aotearoa | Department of Corrections [Annual Report 1 July 2020 - 30 June 2021](#) (2021) at 47.

114 Ara Poutama Aotearoa | Department of Corrections [Violence and Aggression Programme Agreement Document](#) (July 2021) and Ara Poutama Aotearoa | Department of Corrections [Violence and Aggression Joint Action Plan](#) (draft dated April 2021).

programme centres on preventing and de-escalating tension in order to reduce the likelihood of incidents, and on minimising the impact of harm to staff during and after incidents. Workstreams include:

- holding prisoners to account;
- delivering appropriate training;
- ensuring personal protective equipment (PPE) is fit for purpose;
- ensuring prisons are staffed appropriately; and
- supporting staff wellbeing.

Women’s Strategy: Wāhine — E Rere Ana Ki te Pae Hou

131. In October 2021, following the HRC’s release of the report, First Do No Harm,¹¹⁵ and five reports by the Department’s Chief Inspector,¹¹⁶ the Department launched a new women’s strategy, Wāhine — E Rere Ana Ki te Pae Hou: Women Rising Above a New Horizon.¹¹⁷ The strategy follows on from the 2017 Women’s Strategy (with the same name), bringing an approach to the management of women in prison based on the recognition of their needs being different to those of men in prison.
132. The 2021 Strategy aims to ‘*reduce reoffending through gender and culturally responsive programmes and services*’ and sets out how the Department plans to do so over the next four years.¹¹⁸

Disability Action Plan 2023–2027

133. The Department released its Disability Action Plan in February 2023.¹¹⁹
134. The Disability Action Plan is intended to recognise both the domestic and international obligations the Department has to tāngata whaikaha Māori/disabled people under its care and management. It includes three outcome areas:
- equitable access and choices;
 - mana-enhancing practice for all tāngata whaikaha Māori/disabled people; and
 - participation led by tāngata whaikaha Māori/disabled people — ‘*Nothing about us without us*’.¹²⁰

115 See [Appendix 2](#), report 35.

116 See [Appendix 2](#), reports 36, 37, 38, 39 and 43.

117 Above n 15.

118 Above n 15 at 6.

119 Ara Poutama Aotearoa | Department of Corrections [Disability Action Plan 2023 - 2027](#) (2023).

120 Above n 119 at 15.

The people in our prisons



The people in our prisons

- 135. It is widely accepted that there are a range of risk factors and vulnerabilities that combine to make it more likely that a person will end up in the criminal justice system, if not in prison.
- 136. As illustrated in [Figure 3](#), those who are in prison are more likely than the general population to have a history of substance abuse and/or mental health needs, to have a learning disability, to have been the victim of violence, to have had a traumatic brain injury, to have post-traumatic stress disorder, to have lower levels of educational achievement, and to have grown up in areas of high socioeconomic deprivation.¹²¹

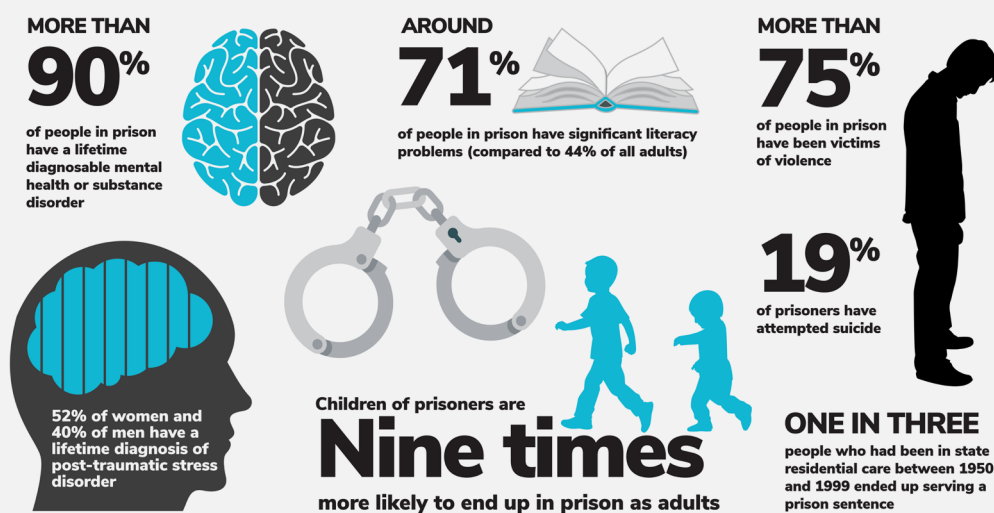


Figure 3: People in the Department’s care¹²²

- 137. In August 2022, the Royal Commission of Inquiry into Abuse in Care | Mō te Kōmihana a te Karauna published its *Care to Custody: Incarceration Rates Research Report*,¹²³ which examined the

121 Office of the Prime Minister’s Chief Science Advisor *Using evidence to build a better justice system* (March 2018).

122 Sources include: n 121 above and Devon Indig, Craig Gear and Kay Wilhelm *Comorbid substance use disorders and mental health disorders among New Zealand prisoners* (Department of Corrections, June 2016); Natalie Horspool, Laura Crawford, and Louise Rutherford *Traumatic brain injury and the criminal justice system* (Ministry of Justice, December 2017); Warren Brookbanks ‘Protecting the Interests of Vulnerable Defendants in the Criminal Justice System: The New Zealand Experience’ (2019) *Journal of Criminal Law* 83(1): 55; Marianne Bevan ‘New Zealand prisoners’ prior exposure to trauma’ (July 2017) *New Zealand Corrections Journal* 5(1); Te Tāhū o te Ture | Ministry of Justice webpage *Hāpaitia te Oranga Tangata*; and Jill Bowman ‘Assessing the literacy and numeracy of prisoners’ (April 2014) *New Zealand Corrections Journal* 2(1): 39. Also see Royal Commission of Inquiry into Abuse in Care *Care to Custody: Incarceration Rates Research Report* (August 2022), which shows that people who spent time in state residential care were more likely to end up in prison.

123 Abuse in Care Royal Commission Inquiry *Care to Custody: Incarceration Rates Research Report* (August, 2022).

incarceration rates of children and young people who had been in state residential care between 1950 and 1999. The findings indicate that those children and young people were significantly more likely to serve a custodial sentence later in life than those who had not been in state residential care, with up to 1 in 3 (33 percent) receiving a custodial sentence.¹²⁴

- 138. The situation is even worse for Māori tamariki and rangatahi, with up to 42 percent of those who had been in state care going on to receive a prison sentence,¹²⁵ compared to 7.7 percent¹²⁶ of the general population.
- 139. Disabled people are also over-represented in the prison population.¹²⁷

The prison population

- 140. After reaching a peak of 10,820 during March 2018,128 the total prison population steadily declined over a four-year period, reaching 7,669 at 31 March 2022.¹²⁹ Between 31 March 2022 and 31 March 2023, the total prison population increased by 707, to 8,376 (an increase of 9.2 percent).

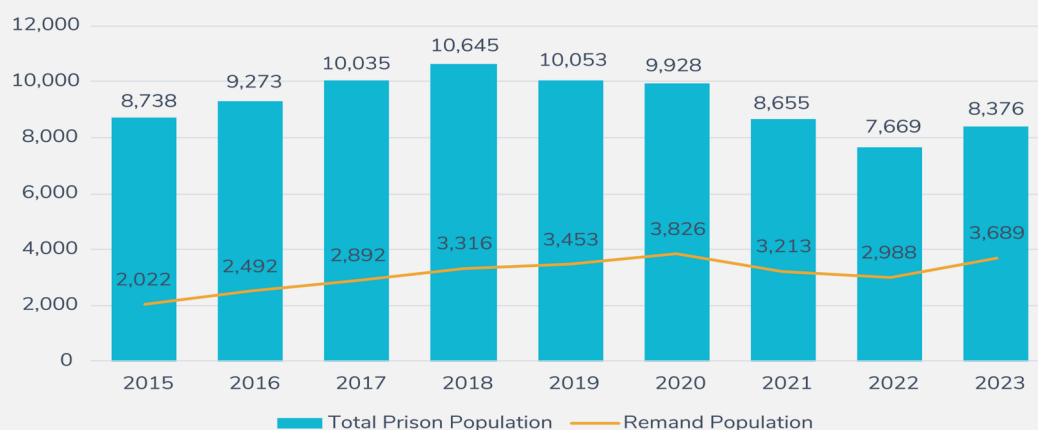


Figure 4: Changes in the prison population March 2015 to March 2023¹³⁰

124 For the matched cohort (those who had not been in state residential care), the incarceration rate was up to around 1 in 13 (7.7 percent). Above n 123 at 8.

125 Above n 123 at 9.

126 Above n 123 at 8.

127 For example, 57 percent of people in prison have dyslexia compared to 10 percent of the general population, and roughly 12 percent have foetal alcohol syndrome compared to 5 percent of the general population.

128 Ara Poutama Aotearoa | Department of Corrections *Annual Report 1 July 2018 - 30 June 2019* at 12.

129 Figures sourced from Ara Poutama Aotearoa | Department of Corrections webpage [Prison statistics](#).

130 Above n 129.

141. At 31 March 2023:¹³¹
- there were 513 female prisoners and 7,863 male prisoners (a total of 8,376);
 - Māori made up 52.8 percent (4,422) of the total prison population;
 - Pasifika people made up 11.2 percent (938) of the total prison population; and
 - people being held on remand made up 43.4 percent (3,416) of the men's prison population and 53.2 percent (273) of the women's prison population.
142. I note that, as at 5 June 2023, the total prison population had further increased, to 8,641.¹³²
143. Many of those in prison are likely to have been there before. The Department's 24-month follow-up data for 2019/20 shows that 56.5 percent of those released from prison were reconvicted within two years, with 35.8 percent serving another term in prison.¹³³

People on remand

144. People held on remand are either:
- waiting for a bail hearing or to go to trial (remand accused); or
 - waiting to be sentenced (remand convicted).
145. Prisoners on remand are generally required to be kept separate from sentenced prisoners.¹³⁴
146. Information provided by the Department¹³⁵ indicates that the average period spent on remand in the year ending 30 June 2022 was 78 days. However, some people remained on remand for much longer — 217 people had been on remand for 1 to 2 years and 54 people for more than 2 years.

131 Ara Poutama Aotearoa | Department of Corrections [Prison facts and statistics - March 2023](#).

132 Information provided by the Department to my Office about the prison population at 5 June 2023.

133 Above n 84 at 177.

134 Remand-accused are also required to be kept separate from remand-convicted people. Exemptions that allow for different categories of prisoners to be mixed may be authorised in some circumstances — for example, if there is a physical infrastructure issue, or insufficient staffing for the safe operation of separate units.

135 Email from the Department's Monitoring Agency Relationships Team dated 20 October 2022.

- 147. Currently, there is no official system to provide a security classification for those on remand, meaning they are accommodated and managed as high-security prisoners.¹³⁶ In general, this means that they are less able to access rehabilitation and are managed under a more restrictive regime.
- 148. The current Justice Sector Projections indicate the remand population will increase from 3,500 in November 2022, to 4,700 by June 2032 — an increase of almost 35 percent.¹³⁷

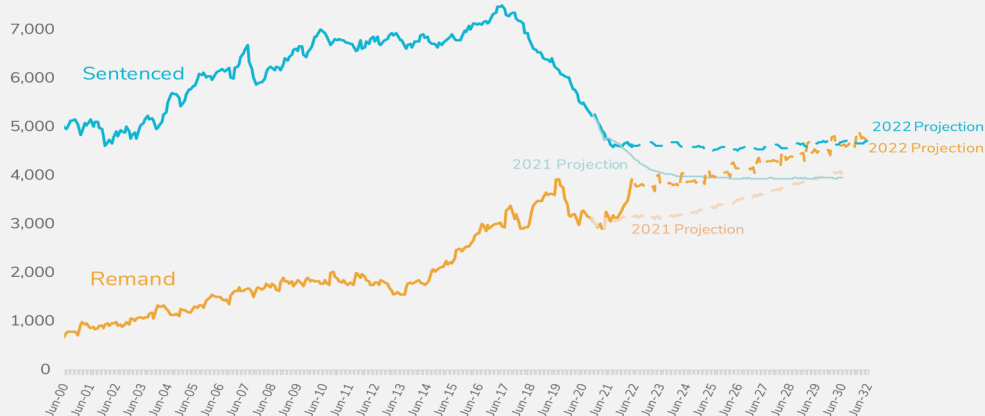


Figure 5: Prison population broken down into sentenced and remand populations, actual and projected¹³⁸

- 149. If the projections are correct, by 2032:
 - half of the prison population will be people on remand (see Figure 5); and
 - the average time a person will spend on remand will be 90 days, up from 54 days in 2011 and 76 days in November 2022.¹³⁹
- 150. Te Tāhū o Ture | Ministry of Justice has previously identified the increasing remand population as having the potential to create a range of issues for the Department, including accommodation

136 In 2014, the Department began piloting a Remand Management Tool, to enable remandees to be managed under a regime appropriate to the risk they posed. That tool continues to be used at four sites only. More recently, the Department developed a Remand Security Classification Tool, with a view to reducing the number of remandees occupying high-security beds, but operational issues have prevented its implementation. Information provided by Ara Poutama Aotearoa | Department of Corrections to the Chief Ombudsman on 5 September 2022.

137 Te Tāhū o te Ture | Ministry of Justice *Justice Sector Projections 2022–2032* at 17.

138 Above n 137 at 18.

139 It should be noted that this is the **average**. Data from Stats NZ shows that in the year to June 2022, there were 4,002 remand periods of 2 weeks or less, and 1,461 remand periods of 6 months or more. Stats NZ explains that its data measures distinct remand periods — that is, the number of new remand period starts within a financial year, not the number of unique offenders. If an offender starts more than one remand period within a year, then the offender is counted more than once. A person is counted for the most serious offence category for which they were prosecuted.

capacity issues, problems in providing appropriate accommodation for prisoners at different security settings, compromised safety, and compromised ability to deliver effective rehabilitation services.

Prison population projections

- 151. In 2021, Te Tāhū o Ture | Ministry of Justice projected a prison population of 7,530¹⁴⁰ at March 2023, reducing to 7,200 in 2024, before increasing again.
- 152. Contrary to the 2021 projections, the prison population has steadily tracked upwards since March 2022, reaching 8,376 at 31 March 2023.¹⁴¹
- 153. In November 2022, Te Tāhū o Ture | Ministry of Justice revised the 10-year total prison population projections upwards, suggesting this would be driven by a relatively stable sentenced population but an increase in the remand population.¹⁴² In 2022, the total prison population was projected to increase to 9,404 by January 2031 comprising 4,781 people on remand and 4,623 sentenced prisoners.¹⁴³

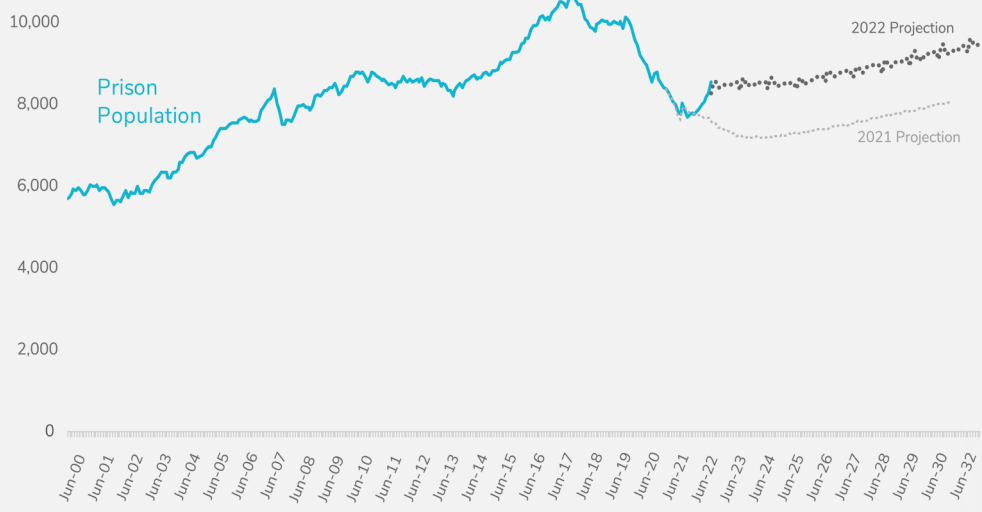


Figure 6: Total prison population, actual and projected ¹⁴⁴

140 Te Tāhū o te Ture | Ministry of Justice webpage [Data for the Justice Sector Projections 2021](#).
 141 Above n 129.
 142 Above n 137 at 17.
 143 Te Tāhū o te Ture | Ministry of Justice webpage [Data for the Justice Sector Projections 2022](#).
 144 Above n 137 at 17.

Security classification

154. Every person sentenced to a term of imprisonment exceeding three months must be assigned a security classification which ‘reflects the level of risk posed by that prisoner while inside or outside the prison, including the risk of escape and the risk that escape would pose to the public’.¹⁴⁵
155. For those who have been sentenced, most (80.6 percent) are classified as minimum, low, or low-medium security.

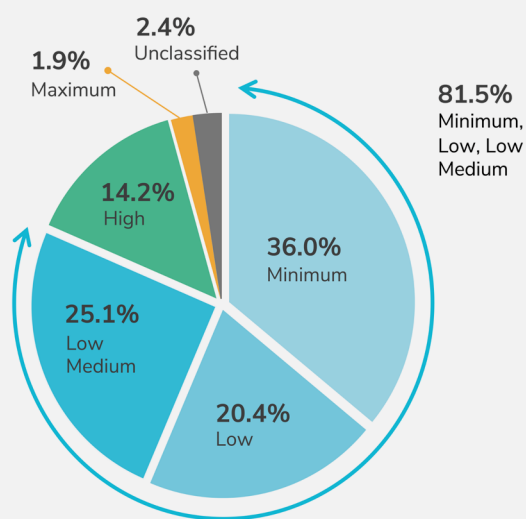


Figure 7: Security classification of the sentenced prison population as at 31 March 2023¹⁴⁶

Impact of imprisonment on Māori

156. For decades, Māori have been over-represented in the prison population statistics and indeed in all parts of the criminal justice system. From less than 3 percent of the total prison population in the 1800s, by 1980, 50 percent of those imprisoned were Māori.¹⁴⁷ It follows that Māori whānau have disproportionately borne the impact of having a whānau member in prison.

145 Corrections Act 2004, s 47. Section 47(3) provides that a prisoner’s security classification must be reviewed at least once every six months (unless exempted from this requirement), or whenever there is a significant change in their circumstances. The Corrections Regulations 2005 set out two principles of security classification. First, prisoners should be assigned the lowest level of security classification at which they can be safely managed (reg 44(1)). Second, once a security classification has been assigned, the prisoner must be placed and managed in a facility and regime consistent with that classification (to the extent practicable) (reg 44(2)).

146 Above n 131.

147 Te Uepū Hāpai i te Ora | Safe and Effective Justice Advisory Group *He Waka Roimata Transforming Our Criminal Justice System* at 23.

157. It is not my role here to examine the complex and multifaceted reasons for this. I acknowledge those with expertise in this area, such as Tracey McIntosh and Tā Kim Workman, who have identified the ongoing impacts of colonisation and failures to give effect to Te Tiriti o Waitangi | Treaty of Waitangi as factors contributing to the ‘mass incarceration’ of Māori:¹⁴⁸

To better understand the ‘statistical gulf’ that exists between Māori and Pākehā, Māori researchers insist that they must be interpreted in the broader context of colonisation, dispossession of land, Māori urbanisation, the imposition of the Western system of common law, cultural assimilation and the undermining of tikanga and traditional forms of Māori social control.

158. Leaving aside the reasons, the result is that while 17 percent of the total population in New Zealand identify as Māori, at 31 March 2023, Māori made up 52.8 percent of the prison population.¹⁴⁹
159. The figures for youth and women are still more disproportionate, with Māori making up 65 percent of those in prison below the age of 20. Wāhine Māori make up 57 percent of the total female prison population. Thirty years ago, that figure was 20 percent. Today, when compared to the United States, Canada and Australia, New Zealand has the highest rate of imprisonment of indigenous women.¹⁵⁰
160. Through my OPCAT work, and having considered the information before me through this investigation, I have little doubt that the solutions to these complex problems include the need, as the late Moana Jackson identified, for ‘the justice system to see itself through the eyes of the community from which most of its defendants come’.¹⁵¹ More recently, a call for Māori-led solutions for the criminal justice system has been articulated in the 2019 *Ināia Tonu Nei — Hui Māori Report*.¹⁵²

The women in prison

161. Although only making up around 6.2 percent of the total prison population, women in prison have different characteristics and needs from men in prison.

148 Tracy McIntosh and Kim Workman ‘Māori and Prison’ in Antje Deckert and Rick Sarre (eds) *The Palgrave Handbook of Australian and New Zealand Criminology, Crime and Justice* (Palgrave MacMillan, 2017): 725 at 727.

149 In the 19th century, the Māori prisoner population was very low — usually less than 3 percent. There was a gradual rise in the first half of the 20th century, and a more marked increase in the 1950s and 1960s. By 1971, the Māori prisoner population had reached 40 percent and, since 1980, around 50 percent of the total prisoner population have been Māori.

150 See Tracey McIntosh *Māori women are the most imprisoned indigenous women in the world*.

151 Moana Jackson *The Māori and the Criminal Justice System, A New Perspective: He Whaipanga Hou, Part 1* (Department of Justice, 1987) at 44.

152 Te Ohu Whakataki *Ināia Tonu Nei Hui Maori Report* (July 2019).

162. A number of the complexities and risk factors noted above are even more prevalent among female prisoners than male prisoners.¹⁵³
- Sixty-two percent of women in prison have had both (comorbid) mental health and substance addictions across their lifetime (41 percent of men in prison).
 - Seventy-five percent of women in prison have been diagnosed as having mental health needs within the last 12 months (61 percent of men in prison).
 - Forty-six percent women in prison have lifetime alcohol dependence (35 percent of men in prison).
 - Fifty-two percent of women in prison have a lifetime diagnosis of post-traumatic stress disorder (40 percent of men in prison).
 - Sixty-eight percent of women in prison have been the victim of family violence.
 - Fifty-three percent of women in prison have experienced sexual assault (15 percent of men in prison).¹⁵⁴
163. Female prisoners are more likely than male prisoners to be serving a sentence for a public order offence (such as drug or traffic offences), or for property crimes (such as burglary and dishonesty), and are much less likely than men to have offended against an individual. They are less likely than men to be reconvicted within two years of release and are less likely to have gang affiliations.
164. Women are more likely than men to be caring for children. It is estimated that almost one-third of women in prisons had a direct parenting role prior to imprisonment.¹⁵⁵ Consequently their imprisonment may cause wider disruption for children and whānau.
165. It is important to also acknowledge the implications of women making up a relatively small proportion of the prison population, in terms of having their specific needs and characteristics acknowledged and addressed. While not specific to New Zealand, guidance on the Bangkok Rules states:¹⁵⁶

Prison systems and prison regimes are almost invariably designed for the majority male prison population — from the architecture of prisons to security procedures, facilities for healthcare, family contact, work and training. As a consequence, few prisons meet the specific needs of women and often do not prepare them for release with gender-sensitive rehabilitation programmes.

153 Unless otherwise stated, figures are taken from Ara Poutama Aotearoa | Department of Corrections, above n 15.

154 See Te Tāhū o te Ture | Ministry of Justice webpage [The Hāpaitia legacy](#).

155 See [Appendix 2](#) report 37 at 15.

156 Penal Reform International [Guidance document on the Bangkok Rules](#) 2nd ed. (December 2021) at 31.

Other groups with individualised needs

166. The Department also has in its care a range of people who have individualised needs, including needs associated with:

- disability and accessibility;
- their age;¹⁵⁷ and
- their gender identity.¹⁵⁸

157 Above n 131. As at 31 March 2023, 7.2 percent of those in prison were age 60 years or over. For the same reporting period, 1.2 percent of the prison population were under the age of 20.

158 In May 2022, the Department confirmed that at any one time around 30 to 40 people in its prisons identify as transgender. See ['Total number of transgender prisoners in women's prisons'](#) (27 May 2022) (Obtained under Official Information Act 1982 request to Ara Poutama Aotearoa | Department of Corrections).

The Department's response to oversight



The Department's response to oversight

167. In this section of my report, I set out what my investigation has found in terms of the Department's response to the concerns raised by oversight entities, and their findings and recommendations.¹⁵⁹
168. First, I set out my understanding of the systems and processes the Department has had for receiving and responding to oversight entity findings and recommendations. I then set out the steps taken by the Department to address the common themes raised by oversight entity findings and recommendations, as well as the challenges encountered by the Department in taking those actions. This provides the context for understanding the barriers I have identified to creating long-lasting change for people in prison.

Systems and processes for oversight reports and recommendations

169. The insights from oversight entities are crucial to ensuring the fair, safe, and humane treatment of prisoners. In this context, and taking into account the principles of Te Tiriti o Waitangi | Treaty of Waitangi and the Department's stewardship obligations, I would expect the Department's systems, processes, and practices to:
- have clear lines of accountability and responsibility to consider, respond to, and address the findings of oversight entities' reports, and to monitor progress with the implementation of remedial actions;
 - ensure there is a collective view throughout the organisation — and, importantly, via its leadership and governance structures — about issues raised by oversight entities; and
 - consider and treat the oversight entities' findings and recommendations as opportunities to improve overall performance of the prison estate.
170. I note that after my investigation commenced, the Department developed a new process for managing oversight entities' reports and recommendations. This includes:

¹⁵⁹ I acknowledge that not all oversight entities make formal recommendations or suggestions for change. But for the purposes of this report, I have included oversight findings when using the term 'recommendation'.

- the tabling of all oversight entities' provisional reports at the Department's Organisational Performance Committee (OPC) *'to ensure [the] entire executive leadership team has visibility of the recommendations and can take ownership of the response'*,¹⁶⁰
- the development of a new quarterly OPC dashboard to present *'an overview on themes arising from monitoring agency reports, and associated recommendations and actions'*.¹⁶¹ This dashboard is intended to *'provide enhanced visibility and insights to executive leadership of themes from monitoring entity recommendations'* and *'helped lift ... focus from compliance of individual recommendations'*,¹⁶² and
- a new interactive tool to track and monitor all findings and recommendations, called the Recommendation Reviewer.

171. The Chief Executive has confirmed that the Department *'has in the past had different mechanisms, centrally and locally, for tracking recommendations'*. He also acknowledged there had been a *'lack of consistent organisation-wide tools, resources and processes'* and that the Department *'did not have in place appropriate mature and robust organisation-wide processes to track, monitor, assure and close recommendations from monitoring entities'*.¹⁶³

172. The Chief Executive's observations are consistent with other evidence showing that the Department has had a range of systems, processes, and practices for receiving and responding to oversight entity findings and recommendations in the past decade. It also indicates several changes in responsibility for the management of reports and recommendations, as follows.

160 Letter from the Chief Executive of the Department to the Chief Ombudsman (11 November 2022).

161 The Department's cover letter to 'Information Request 6' dated 10 December 2021 from my Office (20 December 2021).

162 Above n 160.

163 Above n 160.

- Until 2017, communications with oversight entities (excluding the HDC and the Inspectorate) were the responsibility of the Department's Ministerial Services team based at National Office. The Ministerial Services team was responsible for requests for official information, engagement with the Ombudsman, and ministerial correspondence.¹⁶⁴ Reports from the HDC may have at some point been handled by the Health Services team based in National Office.¹⁶⁵ Since July 2017, reports by the Inspectorate have been provided directly to, and managed by, the National Commissioner's office.¹⁶⁶ Since 2020, they have also routinely been provided to the Deputy Chief Executive Health.¹⁶⁷
- In late 2017, oversight entity responsibilities were transferred to a newly established External Assurance team. This team also had responsibility for HDC complaints. Interview evidence suggests the creation of the External Assurance team was intended to address a persistent concern that oversight entity reports and recommendations had not been receiving the requisite attention within the Department.
- In October 2020, the External Assurance team was moved back into Ministerial Services and renamed as the Monitoring Agency Relationships (MAR) team.¹⁶⁸ I was told this was to ensure *'that the team had greater connection with the wider organisation and more seamless access to, and visibility from, all executive leaders'*.¹⁶⁹ Along with the Media team and the Internal Communications team, the MAR team sits within the Public Affairs group.

173. During the course of this investigation, I received evidence that a number of prisons and each of the four Regional Offices developed their own processes to log recommendations and track progress on implementation.¹⁷⁰ For instance, one Regional Commissioner referred to a *Findings Recommendations Action Plan*, which they used for monitoring and assurance purposes. Another Regional Commissioner had developed an *Events Review Database* in 2020 to improve performance across the region in relation to oversight entity reports and recommendations.

164 Ara Poutama Aotearoa | Department of Corrections *Process Flow for the Office of the Ombudsman, the Privacy Commissioner, the Health and Disability Commissioner, and Other Government Agency Correspondence* (unpublished, 16 November 2015).

165 The information I received about whether the Department's responses were coordinated by the Ministerial Services team was not consistent.

166 Prior to 2017, they were provided to the Deputy Chief Executive Corporate Affairs.

167 Letter from the Chief Inspector to the Chief Ombudsman (4 April 2023).

168 Above n 161.

169 Above n 160.

170 Ara Poutama Aotearoa | Department of Corrections *Memorandum to the Organisational Performance Committee* (November 2022) at 2.

Previous improvements to systems and processes

174. During interviews, National Office staff involved in the management of oversight entity reports referred to being overwhelmed by *'the thousands and thousands'* of recommendations and consequently being unable to prioritise or *'focus on the big things'*. My records show that from 2008 to 2021, this Office issued 873 recommendations to the Department.¹⁷¹ Clearly, other oversight entities have also made a number of recommendations over the years. However, I note that, historically, the team responsible for managing oversight entity reports also had wider responsibilities including responding to Official Information Act 1982 requests and complaints, ministerial correspondence, and responses to parliamentary questions under strict time pressures.
175. To assist the Department in its consideration of reports and recommendations, oversight entities have sought to improve their processes. For example, the HDC advised my investigators that it now looks to make recommendations that support broader change, rather than seeking change through amending or refining specific individual policies or targeting individual practices. My OPCAT staff have also actively engaged with the Department, particularly over the last two years, to improve the delivery of findings and concerns identified through prison visits. Reports are now generally shorter, with fewer recommendations. Further, there is clearer distinction between strategic or longer term recommendations and those that are more operationally focused. The Chief Executive has noted his appreciation for these changes.¹⁷²
176. The Department itself has previously made several attempts to improve its processes, or to implement a new process, for receiving and considering oversight entity concerns, findings, and recommendations, and to monitor the implementation of recommendations. This includes at least four initiatives in the five years prior to the start of my investigation.¹⁷³
177. The material I have examined suggests the Department was aware, from at least the end of 2015, that there were gaps in its systems and processes for escalating oversight issues to its senior leadership and

171 This consisted of 765 recommendations arising from OPCAT prison visits; 86 recommendation arising from Ombudsmen Act 1975 investigations, including self-initiated investigations; and 22 recommendations from Official Information Act 1982 investigations.

172 Above n 160.

173 I refer in particular to National Findings and Recommendations Oversight Group (NFROG) established in 2017, the 'Action Tracker' process established in October 2018, the proposed establishment of the Corrections Actions Review Group (CARG) in November 2018 and the MAR team process developed in late 2020/early 2021.

for monitoring the progress and outcomes of reviews.¹⁷⁴ I understand that this was raised by members of the Department's Audit and Risk Committee as a result of their review into the 2014/15 Special Monitor's operational review of allegations of Fight Clubs at Mount Eden Corrections Facility.¹⁷⁵

178. In that case, members of the Audit and Risk Committee who undertook the review found a number of deficiencies in the processes followed for escalating and finalising the Special Monitor's report. On this basis, they recommended that the Department (emphasis added):¹⁷⁶

...develops a centralised system which will provide a deeper level of monitoring and oversight of all reviews being conducted throughout the organisation, and which includes a mechanism for identifying high risk reviews and escalating these to the attention of the Executive Leadership Team.

...

*The register could **record progress of the review and the findings and progress of implementation of the subsequent agreed actions should be monitored by the appropriate governance committee within the Department.***

179. It would appear that the Department subsequently established the National Findings and Recommendations Oversight Group (NFROG). Its Terms of Reference, dated March 2017, stated that the purpose of this group (which consisted of Regional Directors Practice Leadership and Advisor Deputy National Commissioner) included:

- reviewing findings and recommendations from reports generated by external agencies and the Corrections Inspectorate, and any other reports at the direction of the National Commissioner;
- contributing to a national database containing findings and recommendations;

174 From 2010 to 2015, Mount Eden Corrections Facility had been managed by Serco, a private operator. In July 2014, the National Commissioner directed an operational review into allegations of organised fighting, and two Special Monitors were appointed (as required by ss 172 and 199E of the Corrections Act 2004 at the time) to undertake an investigation. A final draft of the Special Monitor's report was completed on 9 July 2014 and a copy delivered to the office of the National Commissioner on the 17 July 2014 and again on the 22 April 2015, but it was never considered 'finalised'. Neither the Chief Executive nor the ELT (as a whole) received the draft report, findings, and recommendations at the time. The Chief Executive stated that he learnt of the report when it was leaked to the media in July 2015.

175 Ara Poutama Aotearoa | Department of Corrections [Review of the Handling of a Special Monitor's Report into Allegations of Organised Fighting within Mt Eden Corrections Facility](#) (2015).

176 Above n 175 at 2 and 9.

- maintaining oversight of progress by delegated responders against findings and recommendations;
- providing a monthly report to Corrections Services Leadership Team¹⁷⁷ of progress against findings and recommendations;
- identifying issues or themes that may be evident as a result of reviews, which are not subject to findings and recommendations but which would benefit from further consideration or action by the Department; and
- ensuring that lessons learnt are disseminated appropriately and in a timely way, in order to promote a culture of change.

180. This suggests that the Department has had mechanisms in place to maintain oversight of findings and recommendations since at least 2017, if not earlier.

181. Nevertheless, in 2018,¹⁷⁸ the Department sought to introduce a more efficient process, via an Action Tracking tool.¹⁷⁹ This centralised database was designed to collate recommendations made between 2010 and 2017. The document outlining the process implemented at that time summarised deficiencies in the previous arrangements:¹⁸⁰

The Department has a range of people running their own versions of MS Excel based spreadsheets with differing processes for updating them. These are managed in an ad-hoc manner and reporting and monitoring is managed manually by a range of advisors and managers throughout the Department. There are duplications of action tracking, insufficient analysis, a lack of consistent understanding of risk related to these actions, and a great deal of time and effort taken to monitor and update the progress of actions.

There has long been a call for establishment of a 'single source of truth' for recording, tracking, monitoring and reporting on recommendations and actions falling out of a range of major external and internal reviews.

182. Three years after the introduction of the 'Action Tracking' tool, and following the announcement of my investigation, the Inspectorate conducted an Assurance Review of a sample of the closed findings

177 The Corrections Services Leadership Team is made up of the following positions that report to the National Commissioner: Commissioner Extreme Risk Directorate, Deputy National Commissioner, COVID Resilience Lead, General Manager Custodial/Chief Custodial Officer, General Manager Integrated Practice and Innovation, General Manager Operations Delivery, General Manager Prison Industries, General Manager Probation and Community/Chief Probation Officer, Programme Director (Future of Electronic Monitoring), Regional Commissioners (x4) and Workstream Lead Women's Network Programme (x2).

178 I note one document provided by the Department suggested that the Action Tracker was established in 2010. However, this is not consistent with the range of other documentary and interview evidence I received.

179 Ara Poutama Aotearoa | Department of Corrections *Action Tracker* (3 October 2018).

180 Above n 179 at 3.

and recommendations made by oversight entities.¹⁸¹ Significantly, this review identified a number of challenges with the Department's processes for monitoring the implementation of recommendations, which in turn impacted the ability to provide assurance of the completed or closed actions. Particular challenges included:¹⁸²

- a limited understanding of the evidence required to close a recommendation. Many findings were closed on the basis of a future plan or event, rather than when those actions were completed or substantially underway;
- a lack of systems for tracking progress against findings and recommendations. The Action Tracker had not been consistently resourced or maintained;
- a lack of clarity about who was responsible for progressing findings and recommendations. Some findings and recommendations were assigned to named roles which had been disestablished, others were not assigned to a specific person, and some had been escalated from a prison to the Regional Office or the National Office; and
- prison sites not having consistent processes for routinely reviewing their own practices.

183. Despite the steps taken in 2018, the findings of the Inspectorate's Assurance Review in 2021 suggest that the changes envisaged had not been consistently implemented or embedded.

184. For example, I have been advised the work undertaken to update the centralised national database had fallen away. While new recommendations were being added, there was no tracking and updating of progress on implementation. Interview evidence suggests that a range of factors affected the implementation and consistent use of the processes that were in place at the time. These include insufficient resourcing, changes in personnel, the effects of organisational restructuring, loss of institutional knowledge, and decisions to focus on matters considered more important or urgent.

185. In any case, the default starting point for considering oversight entity recommendations appears to have been to ask whether the matter was one that could be addressed by the Prison Director. If yes, it was assigned to them for completion or closure. Those identified as being outside the Prison Director's delegated authority were generally assigned to a tier 3 manager. Work undertaken in response to findings and recommendations therefore appears to have been largely transactional, driven by a 'tick box' or 'compliance' approach. This approach was identified as significant barrier by a number

181 Above n 39.

182 Above n 39 at 3.

of departmental interviewees and in documents related to the 'Black Hats' or pre-mortem exercise the Department conducted in response to my investigation.¹⁸³

186. Further, at interview, Prison Directors and Regional Commissioners expressed frustration about their inability to progress recommendations that fell outside their delegation levels, as well as those that were allocated to National Office on a generic basis. Interviewees struggled to explain what occurred with these recommendations, and there appeared to be confusion about who specifically was responsible for addressing these issues, and who was accountable when appropriate actions were not taken. It is clear there was little shared understanding within the Department about the responsibilities (individual or shared) and accountabilities associated with addressing oversight entities' findings and recommendations.
187. Overall, I have found that the Department's approach to receiving, considering, and monitoring findings and recommendations over the past decade has been inconsistent and fragmented. On the basis of what has occurred in the recent past, the challenge would appear to be less in identifying a process to respond to recommendations, and more in embedding appropriate lines of accountability, and ensuring processes are properly implemented and adhered to on an ongoing basis.

Recent changes to systems and processes

188. As noted above, in May 2022 the Department launched a new Recommendation Reviewer tool.¹⁸⁴ This tool was 'socialised with all regions and groups at National Office and local relationships were leveraged to help create the buy-in for change'.¹⁸⁵ The Department's internal messaging has noted that:¹⁸⁶

...staff across the organisation have positively adapted and embedded its use into their different areas of work.

...there has been a strong uplift in practice around tracking the progress of actions against recommendations from reviews and assurance of action completion.

183 Further information about this 'Black Hats' exercise is set out under the heading 'Organisational culture' at page 106 of my report.

184 Above n 170. The new tool was an enhanced version of the Action Tracking tool originally developed and used by the Northern Region. The Department describes it as a way to manage, close, and assure recommendations from internal and external reports.

185 Above n 170 at 2.

186 Above n 170 at Appendix 3.

189. In November 2022, the Department conducted a review into how the tool was being used.¹⁸⁷ This included a dip-sample of 45 closed monitoring entity actions, which found that 73 percent met the assurance principles, while 23 percent did not meet one or more of the applicable assurance principles.¹⁸⁸ The Department also noted that the tool is being used to support business groups in their work through 'increased visibility of actions'.¹⁸⁹
190. I appreciate that a failure to meet the assurance principles may not mean no action was taken. However, it would appear significant that in terms of the twelve actions that did not meet one or more of the assurance principles, five related to **systemic** recommendations that were owned by the National Office, as compared to the seven actions that were site-based recommendations owned by the regions. That said, I acknowledge that the results of this dip-sample suggest a substantial improvement from the Inspectorate's 2021 Assurance Review.¹⁹⁰
191. I also accept that the effectiveness of the other changes introduced by the Department — including the tabling of oversight entity provisional reports with the OPC and the development of thematic dashboards — will take longer to become apparent. However, I would encourage the Department to maintain its commitment to continuous improvement. It should continue to ensure that any processes it may have in place to receive, consider, address, and track progress of oversight entities' findings and recommendations are well designed and fit for purpose, with clear lines of accountability.¹⁹¹ In particular, there should be sufficient safeguards in place to address likely issues such as insufficient resourcing; loss of institutional knowledge; and the diversion of organisational effort to other, more pressing priorities. Further, it is critical that the Department ensures that staff across the organisation maintain up-to-date knowledge of the processes, and that the systems and processes themselves are routinely (and independently) audited and adapted to meet best practice.

187 Above n 170 at [Appendix 3](#).

188 The Department's five assurance principles were used as a guide to complete a secondary assurance review of a random sample of closed actions. The principles are 'Justified and evidenced — the action owner has provided rationale for each step and relevant supporting documents are available'; 'Fair and proportionate — the action (and related assurance) is reasonable and addresses the agreed response to the recommendation with a level of detail and resource that is commensurate with its risk'; 'Addresses the issue — the action taken fulfils Corrections' commitments in the agreed response to the recommendation/finding and has created real improvement'; 'Realistic and sustainable — the action taken can be embedded into practice and relevant tools and resources have been put in place to support this to maintain and measure the improvement in the long term'; 'Responsive and inclusive — where applicable, the action taken considers gender, age, disability and cultural responsiveness in line with our strategic direction of Hōkai Rangī'.

189 Above n 170 at 5.

190 Above n 39.

191 See comments under the heading 'Stewardship obligations' on page 28 of my report.

Identification of wider issues

192. Many oversight entity reports will relate to a particular prison. Although recommendations in those reports will be made in the context of findings about that site, they may also be relevant to other sites, the organisation as a whole, or indeed the wider sector.
193. Accordingly, I would expect the Department to have effective processes for ensuring that the wider implications of findings and recommendations are identified, considered and acted upon. This includes identifying whether a finding or recommendation may be relevant to other sites and/or symptomatic of a wider issue, either at the subject site or across the prison estate. I would also expect the Department to ensure that Prison Directors are empowered and supported to rectify matters identified as their responsibility. Overall, the Department should be considering systemic insights from recommendations, and whether there is anything further it can do at an organisational level to prevent a recurrence of the same or a similar issue.
194. In his correspondence with me about this investigation, the Chief Executive noted:¹⁹²

...one of the challenges for the Department in the past has been how to ensure we are able to receive and consume a high volume of individual reports and recommendations thematically, at an organisational governance level, to more clearly identify and address root causes and underlying systemic issues.

195. As indicated above,¹⁹³ the Terms of Reference for the NFROG in 2017 would suggest that the Department appreciated the need for a process to ensure the broader implications of individual findings and recommendations were considered. It appears that the appreciation did not necessarily translate to an effective and consistently implemented process for the identification of systemic issues.
196. Interview evidence from a range of staff indicated that individual recommendations have, where possible, been assigned to the relevant Prison Director to address. There have been opportunities for Prison Directors to discuss relevant issues with one another, including through regular meetings with their Regional Commissioners and the National Commissioner, and such discussions do appear to have occurred. This would, to some extent, have addressed the question of whether a recommendation relating to one site might be relevant to other sites. However, there appears to

192 Above n 160.

193 See comments under the heading 'Previous improvements to systems and processes' on page 59 of my report.

have been no structured process for ensuring this occurred regularly and consistently, or that other possible implications of findings and recommendations were identified and considered.

197. I also received evidence about the limited extent to which those assigned responsibility for addressing a particular recommendation — notably, Prison Directors — were able to do so. This was often a matter of resourcing, with disagreement over whether a particular improvement could or should be funded through existing site budgets. At the same time, I heard about a degree of resistance to implementing changes in response to an oversight entity's recommendation with which the particular Prison Director did not agree, but which had already been accepted by the Department.
198. As noted above, the Department has, in response to my investigation, developed a new approach to receiving, considering, and tracking monitoring agency reports. This includes a quarterly dashboard for the OPC. Although the Department is still embedding this process, it is evident that since I commenced this investigation, its consideration of my reports has started to change. An October 2021 memorandum to the OPC about my provisional report following a prison inspection identified five issues that should be considered systemic and, as such, should be monitored by that committee. This is a positive sign, and I encourage the Department to continue its efforts to identify wider themes and consider a more systemic response to the issues raised by oversight entities, and to conduct more probing root-cause analysis where warranted.

Involvement and consideration by the Department's various governance groups

199. It is my expectation that an effective process for responding to oversight entities' findings and recommendations would include the involvement of an agency's governance, advisory, assurance, and leadership groups. Such groups play a critical role in holding relevant departmental decision makers to account for meeting identified or agreed objectives, and in identifying and addressing root causes or systemic issues. Where such groups include independent members, they provide an important external or counter perspective, assisting an agency to reduce the impacts of bias and group-think, as well as promoting sound decision making. Moreover, in the context of the partnership and participation obligations arising from Te Tiriti o Waitangi | Treaty of Waitangi, the active participation of Māori in all such groups is essential.
200. In the case of the Department, it has been difficult for my investigation to establish the exact arrangements that have been in place.

201. The view expressed by members of the Department's ELT (at the time I commenced my investigation) was that, historically, there was a low level of visibility of, and engagement with, oversight entities' findings and recommendations by senior leadership. This was at odds with what I heard from former staff, who indicated that oversight entity reports were routinely discussed and considered by the ELT. In any case, I appreciate the possibility that the Department's senior leadership may not have always been aware of the specific progress on individual recommendations, or at least not until a further report highlighting the lack thereof. The apparent absence of a comprehensive collective view would have also been compounded by the lack of a consistently followed process for ensuring the wider implications of findings and recommendations were identified and brought to the attention of senior managers or the ELT. In my view, this appears to have arisen from a lack of clear and consistent leadership by the Department.
202. Prior to the notification of my investigation, there was no consistent line of sight of oversight entity reports across the Department's numerous governance, advisory, assurance, and leadership groups. Reports produced by the Inspectorate appear to have had greater visibility within the governance and assurance groups (as well as with the Chief Executive) than those from external oversight entities.¹⁹⁴ Further, I understand that the Inspectorate engages directly with the National Commissioner about its reports,¹⁹⁵ rather than via the MAR team, as is the case for other oversight entities. I expect this has had a positive impact on the level of engagement with the Inspectorate's reports.
203. Looking across the documentation I have received from the Department about its governance, advisory, assurance, and leadership groups, I have identified three groups that I consider should have had direct visibility of oversight entity reports and recommendations but did not: the former Prisoner Welfare Advisory Board (now the Wellness and Wellbeing Insights Advisory Group),¹⁹⁶ the Audit and Risk Committee, and Te Poari Hautū Rautaki Māori | Māori Leadership Board.¹⁹⁷ The omission with respect to the latter is especially significant for the Department's role in supporting the Crown in its relationship with Māori and the obligations of partnership and participation arising from Te Tiriti o Waitangi | Treaty of Waitangi.

194 For example, the Audit and Risk Committee's Terms of Reference dated July 2019 stated it 'receives reports and special investigations prepared by the Office of the Inspectorate, along with the Inspectorate's analysis of any emerging systemic issues as required'.

195 And, since 2020, with the Deputy Chief Executive Health.

196 I understand that the Prisoner Welfare Advisory Board (established in 2017 and updated in 2019) was replaced with the Wellness and Wellbeing Insights Advisory Group in June 2021. In his letter to me in November 2022, the Chief Executive advised that this group would now be provided the thematic dashboard prepared for OPC.

197 Above n 101.

Prisoner Welfare Advisory Board and Audit and Risk Committee

204. The Prisoner Welfare Advisory Board's Terms of Reference specifically stated that its key areas of focus included *'overseeing responses to findings from independent reviews such as those carried out by the Inspectorate and the Ombudsman'*.¹⁹⁸ Further, the Board was expected to *'review investigation reports, particularly from the Inspectorate and the Ombudsman, on significant or potentially significant events ensuring root causes have been correctly identified and monitoring correction actions arising'*.¹⁹⁹ I have carefully reviewed the minutes of the Prisoner Welfare Advisory Board (and its successor) for the period between May 2017 and October 2021. I found no evidence that any Ombudsman reports were provided to or discussed with this Board — unlike those of the Inspectorate, which were routinely discussed.
205. The Audit and Risk Committee's Terms of Reference provide that its purpose included *'risk management framework, internal controls, integrity framework, legislative compliance and framework, internal and external audit functions, financial and other external reporting, and governance framework and processes'*. Further, its duties included receiving *'reports and special investigations prepared by the Office of the Inspectorate, along with the Inspectorate's analysis of any emerging systemic issues as required'*.²⁰⁰
206. I asked the Chief Executive to clarify why, despite their purposes and roles as articulated under their respective Terms of Reference, neither the Prisoner Welfare Advisory Board nor the Audit and Risk Committee (prior to June 2021) appear to have been provided with copies of oversight entity reports, apart from those issued by the Inspectorate.
207. The Chief Executive accepted that neither group was provided reports but observed that key themes or significant topics arising from, or related to, the findings and recommendations of monitoring entities were raised with, and discussed by, these various groups. As noted above, the Chief Executive also stated that the Department found it a challenge to *'consume'* the number of reports it received.²⁰¹
208. It is also evident from the meeting minutes for these groups that they discussed matters related to the treatment of prisoners more broadly, rather than considering the specific concerns of oversight entities. In the absence of direct visibility of the exact issues reported by oversight entities, there would have been limited opportunities

198 Ara Poutama Aotearoa | Department of Corrections draft *Prisoner Welfare Advisory Board Terms of Reference* (May 2017) at 2. Similar terms were contained in August 2019 Terms of Reference for this Board.

199 Above n 198 at 3.

200 Above n 102 at [1.1] and [2.5].

201 Above n 160.

for members of these governance and advisory groups to hold relevant departmental decision makers to account, or to offer a counter perspective in terms of any intractable issues, particularly in relation to repeated recommendations across both individual prisons and the wider network.

209. As noted above,²⁰² it is my view that system stewardship requires effective leadership, and it is a core part of effective public sector leadership to have appropriate systems and practices in place to identify and address systemic issues and root causes.²⁰³ Given the purpose and roles of the Prisoner Welfare Advisory Board and the Audit and Risk Committee, I consider these groups could have played a key role in this regard. As such, I consider the Department's ability to effectively address concerns raised by oversight entities was compromised by the omission to involve such governance and advisory groups in the process for considering and responding to oversight entity reports.

Te Poari Hautū Rautaki Māori — Māori Leadership Board

210. In terms of Te Poari Hautū Rautaki Māori, I note that in *Tū Mai Te Rangī! Report on the Crown and Disproportionate Reoffending Rates*, the Waitangi Tribunal found it necessary to recommend an enhanced Māori Board whose role would be 'more substantial than providing advice, or signing off on particular documents' and would 'provide space for iwi and hapū to act in a partnership of equality', and went on to say:²⁰⁴

We are persuaded that an enhanced Māori Advisory Board could allow the Crown's Treaty partner to be at the table to meaningfully engage in designing Departmental strategy, policy and programmes that affect Māori, to apply Māori concepts meaningfully in and across programmes. It could also allow the Māori Advisory Board to hold the Department accountable for its partnership arrangements with specific iwi and hapū, and to measure the progress of these according to criteria set in a Māori-focused strategy. The opportunity is there for the Department and Māori to exercise a workable partnership. It must be taken.

211. This is significant in terms of my earlier comments about the Department's governance arrangements and oversight entity reports. Unfortunately I have seen no evidence that the specific concerns raised by oversight entities about the treatment of Māori in prison have been brought to the direct attention of the revised

202 See comments under the heading 'Stewardship obligations' on page 28 of my report.

203 See 'General responsibilities of chief executives of departments and departmental agencies' under s 52 of the Public Service Act 2020.

204 Above n 52 at 64.

Te Poari Hautū Rautaki Māori. In my view, oversight entity reports should have been considered in this forum in order to help realise the Waitangi Tribunal's vision for the Advisory Board.

Steps taken by the Department to address common themes

212. As identified above,²⁰⁵ a review of oversight entity reports reveals consistent issues across three broad themes: the treatment and conditions of prisoners, the provision of constructive activities, and the Department's performance monitoring and review measures. In this section, I have set out what my investigation has found, in terms of the steps taken by the Department at the organisational level to address these common themes. I have also commented briefly on the apparent challenges or difficulties encountered by the Department, as these point to the systemic barriers that I discuss in further in the next section of my report.²⁰⁶

Treatment and conditions

Unlock hours and the timing of meals

213. A recurring theme in oversight entity reports across many years has been unlock time — the amount of time prisoners are able to be out of their cells. In the case of OPCAT inspections undertaken by staff from my Office, I found that, due to roster patterns and the availability of staff, many prisoners were not afforded sufficient periods of unlock time and, in some cases, they did not receive their minimum entitlement of at least one hour of exercise in the open air daily.²⁰⁷ Most of the recommendations about these concerns were accepted or partially accepted by the Department.²⁰⁸
214. One of the consequences of the unlock regime relates to the timing of prisoners' meals.²⁰⁹ In particular, concerns were raised about some prisoners being served dinner as early as 3.30pm, while breakfast was served around 8.00am to 8.30am. With some prisoners were facing up to 16 hours between dinner and breakfast, I and Ombudsmen before me made a number of repeat recommendations to the Department about normalising meal times.

205 See comments under the heading '[Repeated concerns over years](#)' at page 18 of my report.

206 See comments under the heading '[Barriers to sustained change](#)' at page 90 of my report.

207 As required by Rule 23 of the [Mandela Rules](#) and ss 69(1)(a) and 70(1) of the Corrections Act 2004. See [Appendix 2](#), reports 9, 10, 11, 12, 13, 14, 18, 19, 24, 25, 26, 27, 30, and 31.

208 The Department rejected a small number of recommendations relating to access to at least one hour of exercise in the open air.

209 Rule 22 of the [Mandela Rules](#) provides that food should be served at the 'usual time'. See [Appendix 2](#), reports 2, 4, 9, 10, 11, 12, 14, 16, 17, 18, 19, 20, 22, 24, 25, 26, 27, 28, 29, and 39.

215. For some years, the Department rejected those recommendations on the basis that there was no obligation under the Corrections Act to provide meals to prisoners at a usual or normal time.²¹⁰ However, since 2017, the Department began to accept some recommendations relating to the standardisation of meal times, albeit *'in principle, subject to the operational needs and resources available in the prison'*.²¹¹
216. As noted above, the Department embarked on a redesign of its roster system about five years ago, known as the Making Shifts Work project.²¹² I was informed this would have a range of benefits, including increasing unlock hours (in turn providing for more opportunities for meaningful activity) and the normalisation of meal times for prisoners.²¹³ Project documentation similarly noted the following objectives (emphasis added):²¹⁴

The new rosters will move from the current rigid 8-hour shifts to 8-, 10-, and 12-hour shifts, creating a foundation for more flexible work practices that in turn allow the following benefits:

- ***enabling increased prisoner unlock hours, providing more opportunities for meaningful activity to support offender rehabilitation***
 - *improved work-life balance for staff, with flexible arrangements that appeal to a modern workforce and reduce risks of long term build-up of fatigue*
 - ***enhanced compliance with national and international regulations through shifts that enable more appropriate timings for meals and medication***
 - *enhanced technology that supports variable shift patterns, reduces manual processing, and delivers a better user experience*
 - *ongoing financial sustainability through a solution that is 'cost neutral' with current staffing levels, and better alignment of resource deployment with national standards.*
217. I understand however, that the project encountered a number of delays, initially relating to the software underpinning the new roster and payroll system. Other reasons included insufficient staff numbers at certain prison sites to give effect to the new rosters, and the late realisation within the Department about just how differently each prison operated. Further, implementation of Making Shifts Work

210 See [Appendix 2](#), reports 16, 18, 22, and 26.

211 See [Appendix 2](#), reports 11, 17, and 19.

212 See comments under the heading ['Making Shifts Work'](#) at page 43 of my report.

213 See [Appendix 2](#), report 24.

214 Ara Poutama Aotearoa | Department of Corrections *Making Shifts Work Investment Case* (19 September 2019) at 3 and 13.

was, and continues to be, affected by the specific arrangements required to manage the COVID-19 pandemic. The pandemic has also exacerbated staffing shortages.

218. My investigation also identified a lack of consistent prison-wide systems and processes to record and track prisoner unlock hours and the timing of meals (and medication runs).²¹⁵ Accordingly, even for any prison that may have resumed normal or near-normal operations post COVID-19–related lockdowns, the extent to which Making Shifts Work has achieved all the intended benefits for prisoners remains uncertain.

Privacy screens and CCTV cameras

219. Another area of repeated concern is the issue of the lack of dignity and privacy afforded to certain prisoners. Across numerous reports going back as far as 2010, concerns have been raised that unscreened toilets and CCTV cameras in certain units gave prison staff (and others) the ability to observe prisoners undertaking their ablutions or in various stages of undress, either directly or through camera footage²¹⁶ As I have said in my reports, I consider this amounted to degrading treatment for the purpose of the Convention Against Torture.²¹⁷ Accordingly, a number of recommendations have been made about screening to protect prisoners' dignity and privacy.
220. Until 2017, the Department rejected such recommendations on the basis that such surveillance is necessary for high-risk prisoners because they may harm themselves when out of camera view, and this would leave the Department vulnerable to criticism.²¹⁸ The Department's additional response to repeated findings and recommendations regarding privacy screens has been to refer to the Regulations, which provide 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'*.²¹⁹ The Department previously argued that the legislative settings constrained its ability to fully address the concerns about the lack of privacy and dignity afforded to prisoners.
221. After some discussions with my Office over the issues, in 2017 the Department established a working group to consider how it *'could better meet its privacy obligations to those prisoners held in the At Risk Units and Separates cells'* and to recommend any enhancements

215 I note that in November 2022, the Department began providing my Office with weekly updates on instances where prisoners have been denied their minimum entitlement to one hour per week of physical exercise (and also on access to visits).

216 See [Appendix 2](#), reports 2, 9, 10, 11, 12, 14, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, and 29.

217 See [Appendix 2](#), reports 22 and 26.

218 Above n 217.

219 Corrections Regulations 2005, sch 2, [pt C](#). See [Appendix 2](#), reports 16, 22, and 26.

needed.²²⁰ In a 2018 report, the Department noted that its research into policies and practices nationally and internationally suggested there were differing views as to best practice.²²¹ Therefore, it was suggested there was nothing to 'obligate the Department to consider regulatory amendments to delete the prohibition on privacy barriers in these cells'.²²² The report recommended that, while the Department could consider the development of a CCTV policy for the use of cameras in cells that would include consideration of privacy-enhancing technology or other limitations, amending the Regulations was **not** the preferred approach

222. In September 2019, I provided the Department with my comments on this report, disagreeing with a number of matters. I note that in July 2021, the Department decided to pursue regulatory amendments to enable privacy screening. I understand that Waikeria Prison Development Programme Board²²³ was advised in November 2019 that it could not house people segregated for their mental health because all 96 cells in the unit have privacy barriers (and artificial light switches inside and outside the cells).

223. The Department noted any further changes to the design of Hikitia — the mental health and addiction service — 'would be very disruptive to the delivery of the facility' and would have significant financial implications.²²⁴

If the changes to the Regulations regarding privacy barriers and in-cell access to light switches are not progressed, it will mean Hikitia will not be able to legally use Te Wai o Pure to operate from, incurring significant cost for a potentially redundant facility. Alternatively, the Waikeria build will have to be altered meaning a delay to the project, which comes with a significant financial cost and further impact to the operation of Waikeria.

Further, any delay in implementation of access to privacy screens and in-cell light switches, and mixing of accused and convicted prisoners, would impact the operationalisation of Hikitia.

220 Ara Poutama Aotearoa | Department of Corrections *At Risk Units & Separate Cells – Enhancements to Privacy Management Terms of Reference* (31 May 2017) at 1.

221 Ara Poutama Aotearoa | Department of Corrections *Review of privacy screens and cameras in Intervention and Support Units (formerly known as At Risk Units) and separates cells* (6 August 2018) at 3 and 13–30.

222 Above n 221 at 35.

223 The Board is overseeing the build of a new prison at Waikeria Prison. It will include a dedicated mental health and addiction service named 'Hikitia'.

224 Ara Poutama Aotearoa | Department of Corrections *Executive Leadership Team Strategy Governance Committee Paper* (13 July 2021) at 11 and 5.

Health

224. Aside from OPCAT and Inspectorate reports, there have been a plethora of other reports in the last two decades, raising concerns about health care for prisoners.²²⁵
225. In the context of the disproportionate number of Māori in prison, I note also the findings of the Waitangi Tribunal in 2019 *Hauora* report,²²⁶ which identified that Māori have on average the poorest health status of any ethnic group in New Zealand, with statistical evidence demonstrating that, despite reform and readjustments, Māori health inequities have persisted for the last two decades. The Tribunal found:²²⁷
- [The] Crown has breached the Treaty of Waitangi by failing to design and administer the current primary health care system to actively address persistent Māori health inequities and by failing to give effect to the Treaty's guarantee of tino rangatiratanga.*
226. Further, the Health and Disability System Review identified that New Zealand has unacceptable Māori health inequities, institutional racism, and general health systems that have not improved Māori health outcomes.²²⁸
227. Under the Corrections Act, prisoners must be provided with a standard of health care that is 'reasonably equivalent' to the standard that is available to the public.²²⁹ The Department has clearly sought to improve health services for prisoners over the years. For example, in 2016, it introduced the Change Lives Shape Futures

225 In addition to reports issued by the Health and Disability Commissioner, other reports commenting on prisoner health have been issued by the Office of the Ombudsman (see [Appendix 2](#), reports 32 and 40) and the Inspectorate (including thematic reports on [Older prisoners: the lived experience of older people in New Zealand Prisons](#) and [The Lived Experience of Women in Prisons](#)). See also: Tumuaki o te Mana Arotake | Office of the Auditor-General *Performance audits from 2008: Follow-up report* (April 2010) and *Performance audit report: Mental health services for prisoners* (March 2008); Manatū Haora | Ministry of Health *Results from the Prisoner Health Survey 2005* (December 2006) and *Health Status of Māori Male Prisoners: Key results of the Prisoner Health Survey 2005* (2008); Bridget Robson B and Ricci Harris (eds) *Hauora: Māori Standards of Health IV. A study of the years 2000–2005* (Wellington: Te Rōpu Rangahau Hauora a Eru Pōmare, 2007); Human Rights Commission (see [Appendix 2](#), reports 41 and 42); Te Tūāpapa Tarukino o Aotearoa | New Zealand Drug Foundation *New Zealand Drug Foundation submission to Controlling and Regulating Drugs: An Issues Paper on the Review of the Misuse of Drugs Act 1975* (2010); Hunga Kaititiro i te Hauora o te Tangata | National Health Committee *Health in Justice: Kia Piki te Ora, Kia Tika! — Improving the health of prisoners and their families and whānau: He whakapiki i te ora o ngā mauhere me ō rātou whānau* (Ministry of Health, 2010); and Government Inquiry into Mental Health and Addiction *He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction* (November 2018).

226 Waitangi Tribunal *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* WAI 2575 (2019).

227 Waitangi Tribunal webpage [Tribunal releases report on stage one of health services and outcomes](#).

228 Hauora Manaaki ki Aotearoa Whānui | New Zealand Health and Disability System Review *Final Report Pūrongo Whakamutunga* (2020).

229 Corrections Act 2004, s 75(2).

Strategic Plan,²³⁰ and provided a greater level of mental health, alcohol, and other drug support to prisoners. In addition, Budget 2019 allocated \$128.3 million over 4 years to mental health and addiction services for offenders. In more recent times, there has been a renewed focus by the Department on the oranga of those in its care, which is expressly provided for under Hōkai Rangī.²³¹ The Department's Health Services team was structurally realigned in 2020, and a Kaupapa Māori Health Service is under development.²³² A Disability Action Plan was published in February 2023.²³³

228. However, my investigation identified that staff unavailability has continued to contribute to situations where the Department has been unable to meet the health needs of people in prison and fully address reports and recommendations of oversight entities. Low health and custodial staffing levels (more recently exacerbated by COVID-19) have caused prisoners to experience delayed prisoner access to health appointments. For instance, the Inspectorate's report about Auckland Region Women's Corrections Facility in June 2020 noted:²³⁴

We heard from staff that, at times, hospital appointments had to be rescheduled due to the unavailability of custodial staff.

...

We observed that appointments for nurses' clinics could be rebooked multiple times. Staff told us this was due to a shortage of both nursing and custodial staff. In addition, when incidents occurred in the prison, this removed essential staff away from the clinics.

229. The Deputy Health and Disability Commissioner advises that the most common theme in complaints made to the HDC about health services in prisons is the negative impact of custodial and health staffing levels.²³⁵

230 Ara Poutama Aotearoa | Department of Corrections [Change Lives Shape Futures: Investing in better mental health for offenders](#) (2016).

231 Above n 14.

232 Waitangi Tribunal Health Services and Outcomes Kaupapa Inquiry [Brief of Evidence of Juanita Ryan, Deputy Chief Executive Health at Department of Corrections](#) WAI 2575 (13 June 2022).

233 Above n 119.

234 See [Appendix 2](#), report 43 at 40 and 41.

235 Letter from the Deputy Health and Disability Commissioner to the Chief Ombudsman (28 March 2023).

Facilities

230. I and other oversight entities have regularly raised concerns over the last decade across a number of sites about the standard of prison facilities. This has included issues related to general maintenance;²³⁶ cleanliness and hygiene standards overall, as well as specifically in communal areas such as yards, recreation spaces, and showers;²³⁷ lack of therapeutic facilities;²³⁸ use of double bunking;²³⁹ cell size;²⁴⁰ ventilation and lighting;²⁴¹ painting and general maintenance, including repairs to prisoner information kiosks;²⁴² and breaches of the Mandela Rules in respect of the use of dry rooms.²⁴³
231. I have also expressed my concerns about the layout of some prisons presenting mobility challenges for people with physical disabilities.²⁴⁴ On several occasions, I have recommended that prisons develop an equality and diversity strategy or policy.²⁴⁵
232. The Inspectorate has also highlighted concerns about facilities. For example, in the 2019 inspection of Waikeria Prison, the Department's Chief Inspector stated, *'[t]he high security units continue to be an environment not conducive for the humane treatment of prisoners.'*²⁴⁶
233. The Department's ongoing prison quality review work suggests that it has been aware of the poor conditions of some of its facilities. For example, in a March 2020 internal memorandum, the Department noted that *'The prison network has 19% of units that contain old and obsolete beds, a further 35% that are nearing sub optimal'* and that some units in use were *'end of life.'*²⁴⁷
234. The Department identified in 2020 that fit-for-purpose prison facilities are key to implementing the new operating model under Hōkai Rangī, and that its facilities did not always provide or support a humanising and healing environment required under that strategy.²⁴⁸ The Department has also recognised that the size and configuration of the current male and female prison network is not optimised to support or deliver Hōkai Rangī.²⁴⁹

236 See [Appendix 2](#), reports 2, 9, 12 and 13.

237 See [Appendix 2](#), reports 11, 12, 29, 30, and 44.

238 See [Appendix 2](#), reports 2, 25, and 44.

239 See [Appendix 2](#), report 20.

240 See [Appendix 2](#), reports 2 and 19.

241 See [Appendix 2](#), reports 2, 9, 11, 12, 14, 25, and 29.

242 See [Appendix 2](#), reports 11, 12, 15, 16, 17, 18, 19, and 24.

243 See [Appendix 2](#), report 24.

244 See [Appendix 2](#), reports 20, 24, and 25.

245 See [Appendix 2](#), reports 9, 10, and 24.

246 See [Appendix 2](#), report 1.

247 Ara Poutama Aotearoa | Department of Corrections *Prison Unit Quality Review* (March 2020) at 2.

248 Ara Poutama Aotearoa | Department of Corrections *Network Configuration* (Internal Memorandum, 18 March 2020) at 6.

249 Ara Poutama Aotearoa | Department of Corrections [2022/23 Estimates Examination of the Department of Corrections: Justice Select Committee: Responses to written post-hearing questions 166–173](#) (7 July 2022) at 15.

235. For the most part, the Department accepted the oversight recommendations relating to the physical conditions at prison sites. Concerns that could be remedied within the financial delegations of individual Prison Directors (such as minor repairs or addressing ventilation issues) appeared to have a greater chance of being progressed quickly, as compared with those that are assigned to National Office and need a greater level of investment to address (such as the decommissioning of facilities deemed not fit for purpose).
236. In my recent discussions with the Chief Executive, we have agreed that, as part of my OPCAT prison reporting, longer-term infrastructure-related recommendations will be directly addressed to the Chief Executive and National Office. This will be done on the understanding that the Department may need several years to achieve such recommendations. However, if my Inspectors find that conditions in prisons remain unchanged in the meantime, I will continue to report on them.
237. It would seem that the Department's primary focus in the period leading up to 2018 was on reacting to urgent and, ostensibly, unforeseen capacity demands. It appears that this led to less attention being given to strategic asset management, including infrastructure upgrades, refurbishments, remodels, and replacement of end-of-life assets (at the level below major works). However, from 2019/20 onwards, the Department strengthened its strategic asset management function *'to build a more comprehensive understanding of current asset condition, end-of-life assets, and future operating requirements across the estate, and developed a rolling three-year capital programme informed by 10 and 5-year views of the asset base'*.²⁵⁰ This was in addition to the establishment in 2019 of the Network Configuration Team, which was tasked with *'strategic planning and aiming to deliver a fit-for-purpose and future-focused national network'*.²⁵¹
238. Developing an optimum prison network requires dedicated organisational effort and the alignment of a range of factors, including bed capacity and prison population, supported by the strategic management of assets and an appropriate operating model. The Chief Executive advised me that the Network Configuration Team was due to deliver the first outline of the Long-Term National Configuration Plan in November 2022. Subsequently the Department advised that the ELT *'met to discuss the plan at a November meeting'*,²⁵² and then advised that a plan did not yet exist, but one would be available in March 2023.

250 Above n 160.

251 Above n 160.

252 Email from the Director Review and Response to my Office (30 November 2022).

Constructive activities

239. Over the years, I have made a number of recommendations relating to the provision of constructive activities for people in prison.²⁵³ These recommendations have generally centred on the need for people to be provided with more opportunities for meaningful or purposeful activity — including education and vocational training, programmes and short courses, work opportunities and recreational activities.²⁵⁴ The Inspectorate has made similar findings.²⁵⁵
240. For the most part, the Department has accepted my recommendations relating to the provision of constructive activity and both the Inspectorate and I have, on occasion, observed good or at least improved opportunities for constructive activity at some prisons. However, in some cases, my OPCAT inspectors have found little evidence of improvement from one inspection to the next.²⁵⁶
241. Prisoners' ability to engage in purposeful activity is dependent on a number of factors, including staff availability and unlock hours, as discussed above. While it is important for all people in the care of the Department to have opportunities for constructive activity, my recommendations reflect that remand has been an area of particular concern.²⁵⁷ I note that the issue of people on remand having insufficient out-of-cell time was also raised back in 2013 by the United Nations Subcommittee for the Prevention of Torture.²⁵⁸
242. As noted above, people on remand are a significant and growing proportion of the prison population, with forecasts indicating continued growth over the next decade.²⁵⁹ In addition, more prisoners are spending longer on remand, and a significant proportion of remand prisoners (around 25 percent) are released at sentencing on the basis of 'time served', having had no opportunity to access rehabilitative or reintegration programmes in the interim.²⁶⁰

253 See [Appendix 2](#), reports 9, 10, 11, 12, 14, 16, 24, 26, 29, and 45.

254 The Department also noted in its response to my provisional opinion the role of paid chaplains, service providers and volunteers in providing meaningful or purposeful activities, including for people on remand.

255 See [Appendix 2](#), reports 3, 4, and 46.

256 See for example [Appendix 2](#), reports 4, 7, 8, 27, and 44.

257 See [Appendix 2](#), reports 11, 12, 14, 16, 24, 26, 27, and 29.

258 United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment *Report on Visit to New Zealand undertaken from 29 April to 8 May 2013: Observations and Recommendations addressed to the State Party* CAT/OP/NZL/1 (5 November 2013) at 25.

259 See comments under the heading 'People on remand' on page 48 of my report. It should be noted that this does not mean the **number** of prisoners on remand will necessarily increase. The proportion will continue to grow if the number of sentenced prisoners decreases at a faster rate than a decrease in the number of remand prisoners.

260 Information provided by the Department on 24 January 2022.

243. The length of time some people spend on remand certainly raises concerns about access to justice. It is widely acknowledged that too many people on remand are waiting too long.²⁶¹ This affects those who are ultimately found not guilty, as well as those who are convicted but receive a non-custodial sentence, or who are convicted having already served more time on remand than the length of their sentence. For people who are convicted and imprisoned, it may also delay their ability to access rehabilitation programmes and ultimately their eligibility for parole.²⁶² Community safety, including the safety of victims, can also be compromised through further offending, if people released on the basis of time served are not provided with the appropriate opportunities to address their needs while on remand in prison.
244. I note that several third parties I spoke to for my investigation said they were routinely disregarded by the Department and prevented from entering prisons to support prisoners and provide opportunities for constructive activities, and often at the last minute, with no explanation from the Department.
245. In December 2022, the Inspectorate published a report that included findings related to the failure of the Department to facilitate access to rehabilitation and reintegration programmes for the LynnMall attacker.²⁶³ This person had spent about four years on remand in a number of prisons. The report is relevant, as it includes a detailed review of the constructive activities available for one prisoner over the course of their time in prison. The Inspectorate's report found that for a period of six months, the Department did not assign a case manager to this prisoner.²⁶⁴ This was in breach of the Department's policy and most likely due to staffing constraints.²⁶⁵ The Inspectorate observed:²⁶⁶

The absence of a case manager for over six months meant that Mr Samsudeen was effectively without a dedicated link between custodial staff and Community Corrections; this would have resulted in missed opportunities to create appropriate rehabilitation and reintegration pathways for Mr Samsudeen's eventual return to the community.

261 See for example: Edward Gay '[Chief justice: Covid-19 has caused unprecedented challenges in NZ's courts](#)' (Stuff, 4 March 2022); and Anna Rawhiti-Connell '[Justice system backlog at "acute pinch point"](#)' (The Spinoff, 29 July 2022).

262 Charlotte Cook '[Parole Board says prisoners waiting for rehab, psych help](#)' (Radio New Zealand, 11 August 2021).

263 See [Appendix 2](#), report 47.

264 A case manager is a Departmental employee whose role is to 'work with people in custody to facilitate services and deliver active and caring support to prepare them to live an offence-free life and to ensure a successful transition to probation colleagues or directly into the community'. Further information is available on the Department's webpage [Case management and planning](#).

265 Above n 263 at [21]–[22].

266 Above n 263 at [174].

246. I note that the Inspectorate was careful not to draw any correlation between the Department's management of this prisoner and his subsequent offending.²⁶⁷ Nevertheless, it is significant that the Inspectorate found that throughout his time in custody, this prisoner *'received almost no Corrections-designed or structured rehabilitation or reintegration programmes'* in order to address his risk of violent extremism, and that the Department *'failed to consider any community-led rehabilitation programme'*.²⁶⁸ Overall, the Inspectorate concluded that, due to the acute risks this prisoner presented, the Department should have taken a broader approach to rehabilitation and reintegration options, and planned more actively for his release and reintegration into the community.²⁶⁹
247. In terms of action the Department has taken that might have improved the provision of constructive activities at a broader organisational level, three initiatives stand out: Making Shifts Work, the Remand Security Classification Project and the High Impact Innovation Programme. I have already discussed the implementation of Making Shifts Work above,²⁷⁰ and I set out my understanding of progress on the latter initiatives below.

The Remand Security Classification Project

248. The Remand Security Classification Project was initiated by the Department in early 2020. This would have allowed those on remand to be accommodated and supported under a regime appropriate to the level of risk they pose, rather than being subject to the standard high-security regime used for remand.
249. Work had been done in this area previously. A pilot project was started at five prisons in 2014, using a Remand Management Tool (RMT) within existing legislative settings. However, as use of the RMT could be discontinued — when there were staffing or infrastructure issues, for example — it was applied inconsistently.²⁷¹ The intention in 2020 was to seek regulatory changes **requiring** all remandees spending more than 20 days in prison to have a security classification. The Department identified a number of potential benefits, including a reduction in violence and aggression in prisons.²⁷²

267 Above n 263 at [14].

268 Above n 263 at [205] and [24]–[25].

269 Above n 263 at [28] and [206].

270 See comments under the heading **'Making Shifts Work'** on page 43 of my report; and under the heading **'Unlock hours and the timing of meals'** on page 69 of my report.

271 Ara Poutama Aotearoa | Department of Corrections *Remand Security Classification Tool: Development, Validation & Operational Impact Analysis* (Internal Memorandum, 27 September 2021) at 11.

272 Letter from the Department to Chief Ombudsman advising of its proposal to introduce security classifications for people on remand (28 February 2020).

250. A project team was established, and a new Remand Security Classification Tool was developed and tested. The trial showed that 82 percent of women and 65 percent of men could be classified as low security.²⁷³ However, in May 2021, the Department decided not to pursue regulatory change.²⁷⁴ The project team, in consultation with Prison Directors, had identified a number of 'operational barriers', relating largely to the unavailability of low-security accommodation; the potential need for more staff; the difficulty with offering programmes, activities, and work opportunities; and the inability to mix remand-accused and remand-convicted prisoners.²⁷⁵ In September 2021, the project team advised that further analysis was needed and that, at that time, there was no capacity within the Department to lead this.²⁷⁶
251. It has since been suggested that this work is now being progressed through other projects.²⁷⁷ While that may be the case, there appears to be no timeframe for completion of an initiative that has the potential to have a positive impact for a large number of people who are on remand, not least through increased opportunities to engage in constructive activity. It is also one that, as the Department itself said, would ensure consistency with the legislated principle of people being held in the least restrictive setting required to manage risk.²⁷⁸ The generalised approach to managing remand populations as high security has also been identified by Te Tai Ōhanga | The Treasury as a likely driver of additional cost.²⁷⁹

The High Impact Innovation Programme

252. The growth of the remand population is, at one level, outside the Department's control — being a consequence of settings in the wider criminal justice system, ranging from policing decisions through to court timeframes. As such, it is worth noting the work the Department has done with its justice sector partners to address

273 The trial was conducted between September and December 2020 at four sites: Rimutaka Prison, Waikeria Prison, Auckland Region Women's Corrections Facility, and Mount Eden Corrections Facility.

274 The Department further advised the Minister of Corrections of this decision in late June 2021 through its weekly report to the Minister, noting that the Department had closed the project and would not implement remand security classifications nationally or change the Regulations to mandate their use.

275 Remand accused prisoners are generally required to be separated from remand convicted and sentenced prisoners. This is mandated in s 186(1) of the Corrections Regulations, and is a requirement under r 11 of the [Mandela Rules](#).

276 Above n 271.

277 Interview with Deputy National Commissioner. It is also noted that the RMT continues to be used at four of the five pilot sites, meaning some people on remand at those sites are managed as low security. In September 2021, there were around 300 such people.

278 Above n 272.

279 Te Tai Ōhanga | The Treasury [Justice Cluster Spending Review Final Report](#) (17 February 2022).

the increasing remand population. This includes the High Impact Innovation Programme (HIIP), a Department-led, cross-agency response comprising a number of initiatives.

253. Established in 2018, the HIIP was initially focused on reducing the remand population through community alternatives, but it has since expanded to include initiatives aimed at improving the system more broadly.²⁸⁰ Pilot projects for several initiatives have been extended or rolled out more widely and appear to be achieving some positive outcomes. This includes, if not a reduction in average time spent on remand, a slower rate of increase than there would otherwise have been.²⁸¹ The Department has also supported the Criminal Process Improvement Programme (CPIP), a judicially led cross-sector initiative to reduce the backlog of court cases.²⁸²
254. Notwithstanding these efforts, and as noted above, a significant number of people continue to leave prison from remand on the basis of 'time served', having had little if any constructive activity while in prison. This is a matter that the Department (and the wider sector) should pay attention to as part of its efforts to reduce rates of reoffending.

Performance monitoring and review mechanisms

Complaints process

255. A robust complaints process enables an agency to effectively track and monitor areas of concern and take remedial action where needed. In the case of the Department, it is important that prisoners and their advocates are able to raise concerns, through processes that are clear, robust, responsive, and consistently applied across the prison estate. This is vital to the Department maintaining and safeguarding the integrity and accountability of the prison system as a whole and assuring that the rights of those in prison are being protected.
256. The effectiveness of the Department's complaints process has been frequently raised in complaints made to my Office and in my OPCAT prison reports as far back as 2010. The Department has generally accepted my associated recommendations, but improvements have

280 For example, the Sentencing Ready initiative was set up to help to address the high remand-convicted population by managing cases through the sentencing process, the Bail Support Service is focused on providing better support for people to apply for and maintain bail, and the High Security Parole Ready initiative was designed to help prepare young people in high-security units for the transition back to their communities.

281 Te Tāhū o te Ture | Ministry of Justice *Justice Sector Projections 2021–2031* (2021) at 9; Justice Sector *Long Term Insights Briefing Public Consultation – Focus on Imprisonment in Aotearoa* (2022) at 13; Ara Poutama Aotearoa | Department of Corrections *Annual Report 1 July 2019 – 30 June 2020* (2021) at 53; and Justice Sector Leadership Board Meeting Minutes (unpublished, August 2018) at 2.

282 Above n 84 at 63.

often been lacking or inconsistent. Prisoner surveys often point to difficulties accessing complaint forms, and to low levels of trust in the Department's processes.²⁸³ For instance, in the report into Auckland Region Women's Correction Facility in 2020, the Inspectorate found that *'the complaints procedure, while well understood by the wāhine, was not always timely, effective or well administered by staff'*.²⁸⁴ Concerns about the complaints processes were also raised by the Minister of Corrections in March 2021:²⁸⁵

For many years I have held serious concerns about the complaints process used in the Corrections network. I acknowledge that some changes have occurred over the last three years, but this does not go far enough.

257. In terms of the earlier changes referenced by the Minister,²⁸⁶ I understand they followed a KPMG review of the complaints process commissioned by the Inspectorate and completed in February 2019. This review identified the following challenges:²⁸⁷

- inconsistent complaints processes that were not clearly understood by the Department or prisoners;
- barriers to accessing the complaints system, especially for those with poor written or English language skills;
- lack of visibility of complaint status and resolution;
- multiple complaint systems with no single source of accurate complaint information; and
- limited ability to analyse complaints data to identify and address systemic risks or issues.

258. In response to the Minister's comments noted above, a further review of the Department's complaints process was carried out by an independent reviewer, overseen by the Chief Inspector. This review sought *'to test to what extent the problems identified in the earlier reviews remained true'* and to *'identify the achievable and aspiration changes to the complaints system to improve outcomes'*.²⁸⁸ The reviewer's 2022 report noted similar challenges to those previously identified. These included difficulties for prisoners accessing the complaints system; administrative challenges leading to complaints

283 See [Appendix 2](#), reports 1, 2, 5, 6, 8, 9, 11, 15, 19, 29 and 30.

284 See [Appendix 2](#), report 43 at 6 and 34.

285 A copy of the Minister's letter is available at: Justin Giovanetti ['Review, apologise, overhaul: Kelvin Davis dramatically changes tune on women's prison abuses'](#) (*The Spinoff*, 22 March 2021).

286 There was an earlier attempt by the Department in 2013 to review its complaints process. This made a number of recommendations for improvement.

287 KPMG *Complaints Framework Review: Department of Corrections* (February 2019) at 2.

288 Erin Judge [Redesigning the Ara Poutama Complaints System](#) (Office of the Inspectorate, January 2022) at [3] and [5].

being lost, delayed, or responded to in the wrong way; and challenges with the way in which complaints were being managed, resolved, and responded to. The report noted:²⁸⁹

There is a strong consensus that the current complaints system does not work well. From a complainant, whānau and supporter perspective, the system is confusing and frustrating. From a staff perspective, the system is time consuming and stressful.

In my view, the current problems are not often caused by individuals, but rather by a system that is not set up to support successful resolution. This negatively affects the culture within the complaints system and the wellbeing of people impacted by it.

259. The Department accepted 22 of the Inspectorate's recommendations relating to the redesign of the complaints process and partially accepted one recommendation. The Department has stated it has a substantial programme of work underway to improve the complaints system.
260. I note the Deputy Health and Disability Commissioner's comment that the HDC has recently observed significant progress in respect of complaints about health and disability services provided to people in prison.²⁹⁰

Use of force and segregation

261. Another theme raised in oversight entity reports relates to the use of force and the segregation of prisoners.²⁹¹
262. The Corrections Act permits the use of force and segregation in certain limited circumstances. The Department is required to ensure that proper documentation and records of its use of force and segregation are kept and maintained, to enable the necessary reviews and audits to be undertaken. OPCAT inspections have identified some instances where the use of force against a prisoner was either unwarranted or where the necessary safeguards were not followed, in addition to identifying instances of people held in restrictive conditions without being subject to a segregation order ('de facto segregation').²⁹² There has also been a recurring issue with record-keeping failures relating to the use of force and segregation,

289 Above n 288 at [44]-[45].

290 Letter from the Deputy Health and Disability Commissioner to the Chief Ombudsman (28 March 2023).

291 See [Appendix 2](#), reports 9, 11, 14, 18, 22, 23, 30, 31, 36, 37, and 38.

292 See [Appendix 2](#), reports 9, 11, 14, 18, 22, 23, 30, and 31.

thereby impacting the ability to conduct post-event reviews or audits. Accordingly, I have made recommendations that action be taken to address such issues.²⁹³

263. Although the Department has, for the most part, accepted findings and recommendations relating to the use of force and segregation, oversight entities have continued to identify concerns about these matters. Recommendations have included the need to ensure use of force paperwork is accurate (including when pepper spray is deployed) and that use of force incidents be subject to timely and comprehensive review to ensure records align with CCTV footage.
264. As an example of the unwarranted use of force, my OPCAT report on Auckland Prison in 2020 identified an incident which I consider amounted to cruel treatment in breach of the Convention Against Torture:²⁹⁴

My Inspectors reviewed CCTV footage of an incident involving the use of pepper spray on a prisoner who had activated his cell sprinkler. Footage showed the prisoner moving some of his personal belongings from his cell to the adjacent yard before setting off the sprinkler, and then standing in the yard waiting for staff response. Once the water supply to the sprinkler had been turned off, a group of officers entered the prisoner's cell, stood at the entrance to his yard and ordered him to move to the back of the yard, get down on his knees and put his hands behind his back. Although footage showed that the prisoner immediately obeyed the order, he was nonetheless pepper sprayed whilst on his knees, with his hands fully visible behind his back.

I do not consider this a legitimate or necessary use of force and as such view it as a breach amounting to cruel treatment under Article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('Convention against Torture').

Furthermore, the incident report (as well as a prisoner misconduct report) did not reflect what my Inspectors saw in the footage they reviewed. Staff had failed to accurately report the incident at the time of inspection, and the incident had not been reviewed by management, meaning that the incident could not be addressed in a timely manner.

293 Recommendations have included the need to ensure use of force paperwork is accurate (including when pepper spray is deployed) and that use of force incidents be subject to timely and comprehensive review to ensure records align with CCTV footage.

294 See [Appendix 2](#), report 14 at 10.

I made four associated recommendations, which the Department accepted.²⁹⁵

265. In terms of segregation, the Inspectorate's 2021 report of the investigation of the management of three wāhine at Auckland Region Women's Corrections Facility found that the Department had segregated these wāhine without following the proper processes.²⁹⁶ This report, along with four others relating to the management of women in prison published by the Inspectorate in 2021,²⁹⁷ prompted the Inspectorate to launch a separate review into the use of force and segregation across the prison network.²⁹⁸
266. My investigation suggests that the Department's ability to meaningfully address oversight entities' concerns about the use of force and segregation has been adversely impacted by the capability of the custodial workforce and the training provided to them, as well as the deeply embedded culture of risk aversion within prisons.

Conclusion about Department's response to oversight

267. I consider that prior to mid-2021, the Department's handling of oversight entities' findings and recommendations had not been adequate. My investigation has found that, over time:
- the Department's various systems and processes for responding to findings and recommendations were not consistently followed, and agreed improvements were either not fully implemented and/or not properly resourced on an ongoing basis;
 - there was a lack of clear lines of accountability and responsibility within the Department for addressing the findings of oversight entities, and for monitoring implementation of remedial actions; and
 - there was an absence of a collective view and understanding via the Department's leadership and various governance structures about the specific issues, as well as the root causes and systemic issues, raised by oversight entities.

295 I recommended that on-body cameras are always operational and turned on prior to use of force, and footage is saved as required; use of force paperwork is comprehensive and accurate, including when pepper spray is deployed; use of force incidents are subject to timely and comprehensive review to ensure records align with CCTV footage; and the Prison Director ensures robust processes are in place to ensure incidents of use of force are referred to the police in a timely manner at prisoners' requests. Above n 294 at 22.

296 See [Appendix 2](#), report 36 at 7.

297 See [Appendix 2](#), reports 37, 38, 39, and 43.

298 The Inspectorate's review is focused on directed rather than voluntary segregation, which prisoners can request if they feel unsafe.

268. The information to hand suggests that the Department's accountability and governance mechanisms for addressing oversight entities' recommendations were not sufficiently robust to improve system outcomes. Generally, the findings and recommendations were not substantively considered as opportunities to improve **overall** performance of the prison network. Instead, they appear to have been progressed by the Department in a transactional manner, with mixed results.

269. I appreciate that, following notification of my investigation in 2021, the Department has developed a new process for managing oversight entities' reports and recommendations.²⁹⁹

270. More broadly, the Chief Executive has advised me that, since I commenced my investigation:³⁰⁰

...I have led my executive team and the wider organisation on a journey of continuous improvement. We have continued to better align our structures, oversight and governance mechanisms to receive insights from monitoring entities and to achieve our Hōkai Rangi outcomes. I am committed to ensuring we continue this journey and improve outcomes for our staff, people we manage, their whānau, and the wider community...

271. The Chief Executive noted that as part of that journey, the changes he had made to the process for receiving, responding to, resolving, and monitoring oversight entity recommendations, are 'part of a wider and deliberate focus on developing the organisational maturity across risk management and all three lines of assurance'.³⁰¹

272. I am also mindful that, over the last three years, the Department has had a number of other significant projects in various stages of progress, including:

- the realignment of Health Services (including the establishment of new senior health positions) and the development of a kaupapa Māori health service;
- the development of Hikitia — the new 96-bed mental health and addiction service at Waikeria Prison; and
- the HIIP, a Department-led, cross-agency response comprising a range of initiatives to reduce the number of people in the corrections system.

299 Above n 160.

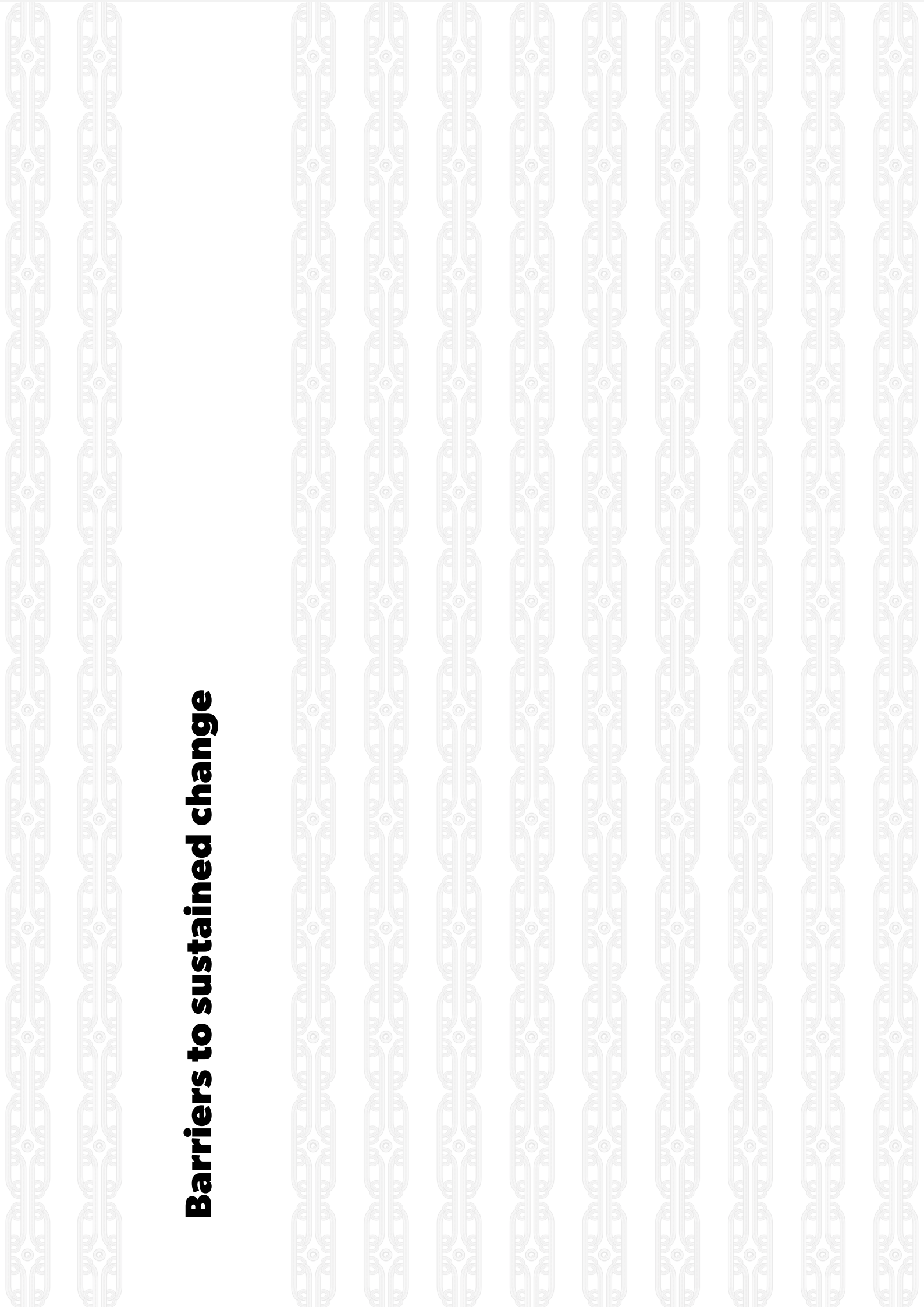
300 Above n 160.

301 Above n 160.

273. Changes the Department has outlined in relation to the handling of oversight entity findings and recommendations may well address the deficiencies I have identified. However, as I have indicated elsewhere, it is too early to assess the effectiveness of the Department's actions in this regard.
274. Throughout my investigation, I consistently heard about the various efforts of the Department over time to address persistent issues; the list of pilots, projects, and initiatives is long, and that has been the case for a considerable period of time.³⁰² While these initiatives have the potential to be beneficial at some level, many do not appear to have resulted in timely, sustained, or systemic improvement for all people in prison. It seems to me that this is because the Department has not necessarily focused the weight of its organisational effort on addressing the barriers that appear to impede its ability to create long-lasting change for those in its care. My analysis of those barriers is set out below.

302 An example of this can be seen in the Department's 2022 [Submission to the Petitions Select Committee](#) regarding a petition proposing to ban prolonged solitary confinement.

Barriers to sustained change



Barriers to sustained change

275. My examination of the Department's response to oversight entities' findings and recommendations (both in terms of its systems and processes, and in terms of the various steps that could address the common themes) has helped me identify significant barriers the Department faces in creating long-lasting change for those in its care. In my view, these relate to the Department's:

- legal framework (including the Department's interpretation of it);
- organisational culture and leadership (including the Department's view of its organisational purpose); and
- workforce capability and capacity.

276. I have addressed each of these four matters below.

Legislation and legal obligations

277. In my view, the following factors relating to the Department's legal framework have contributed to failures to implement changes recommended by oversight entities.

- The Department has failed to give sufficient emphasis to its human rights obligations under the NZBORA and international law, including the Mandela Rules.
- The Department has taken the view, sometimes questionably, that the law prevents change being made.
- The Department has failed to advise on the need for law changes to effectively implement some changes.

278. These factors are often interrelated, as set out in the following examples.

Meal times

279. Rule 22 of the Mandela Rules provides that food should be served at the 'usual time'.³⁰³ As noted above,³⁰⁴ the Department repeatedly rejected recommendations about standardising meal times on the basis that, unlike the Mandela Rules themselves, the Corrections Act was silent on the timing of meals. Therefore, the Department

303 Above n 209.

304 See comments under the heading 'Unlock hours and the timing of meals' at page 70 of my report.

considered it had no obligation to provide prisoners with meals at a usual or normal time. In its response to an OPCAT inspection of Arohata Prison in 2015, the Department stated (emphasis added):³⁰⁵

The Department considers the current meal times at Arohata Prison and other sites meet our operational requirements while taking staffing levels and the 8am to 5pm unlock regime into account.

As you are aware, the United Nations Standard Minimum Rules for the Treatment of Prisoners is an international convention that has effect in terms of the way it has been implemented into New Zealand law, in this case being the Corrections Act 2004 and Corrections Regulations 2005.

The key provision regarding diet is section 72 of the Corrections Act 2004, which requires that every prisoner is provided with 'a sufficient quantity of wholesome food and drink based on the food and nutritional guidelines for the time being issued by the Ministry of Health.' The section makes no reference to the times food is to be served but is related to quality and quantity.

280. The Department also observed that:³⁰⁶

...concerns about hunger between dinner and breakfast are mitigated by the provision of a sufficient quantity of nutritional food, the provision of supper with the evening meal, and the ability of prisoners to purchase additional food items to sustain them if necessary. It is the prisoner's choice as to when they consume their supper; it is intended to be consumed between dinner and breakfast.

281. In response to subsequent reports, the Department began to accept recommendations relating to the standardisation of meal times.³⁰⁷ However, it continued to maintain that meal times complied with section 72 of the Corrections Act.

282. While section 72 does not explicitly incorporate Rule 22 of the Mandela Rules word for word, my view is that the Department's approach does not give sufficient weight to the additional positive obligations inherent in the Mandela Rules and section 23(5) of the NZBORA regarding the treatment of people deprived of liberty. Observance of the Mandela Rules is *'directly relevant to [New Zealand's] compliance with the international law equivalent of s 23(5), the International Covenant on Civil and Political Rights, art 10'*.³⁰⁸ Clearly, there is nothing in the Corrections Act itself that would have

305 See [Appendix 2](#), report 18 at 21.

306 Above n 305 at 22.

307 See [Appendix 2](#), reports 11 and 19.

308 *Valent v New Zealand Department of Corrections* [2022] NZHC 3194 at [47].

precluded the Department from standardising meal times to be more in line with the Mandela Rules and what people might expect outside prison.

283. In my view, the Department's response to this issue shows how it takes an unduly narrow approach to its duties to prisoners, or at least an approach that is not sufficiently focused on a holistic view of the fair, safe, and humane treatment of prisoners.³⁰⁹ In my view, the Department must give greater emphasis to the rights in the NZBORA and the Mandela Rules, recognising them as a source of obligations that complement the Corrections Act.

Application of the Mandela Rules (and international human rights obligations)

284. In a recent discussion document, the Department commented on the Mandela Rules as follows.³¹⁰

While not legally binding in the same way as our domestic law, the Nelson Mandela Rules are specifically referenced in the Act as guiding how our system operates.

285. I appreciate the Mandela Rules are only directly enforceable in New Zealand to the extent they have been incorporated into domestic law. However, any rules that have not been expressly incorporated should still influence how domestic legislation is interpreted. It is a well established principle of statutory interpretation that legislative provisions should be read consistently with international obligations, so far as possible and without any strain to meaning.³¹¹ As outlined above, compliance with the rules is necessary for New Zealand to meet its international obligations.
286. There is an additional point I wish to raise here, which relates to how the Mandela Rules are referenced within the Corrections Act itself. Before I do so, it is important to acknowledge decisions about legislation ultimately fall to ministers and Parliament (although an Ombudsman may form an opinion that the law on which an act, omission, or decision is based is unreasonable and should be reconsidered).³¹²
287. In terms of the Corrections Act itself, the Mandela Rules are referred to in a rather oblique manner. In particular, the Act states that the purpose of the corrections system is to improve public safety and contribute to the maintenance of a just society by:³¹³

309 A rights-consistent interpretation of legislation is required by the NZBORA, s 6.

310 Ara Poutama Aotearoa | Department of Corrections *Options to Achieve Improved Outcomes in the Corrections System: Discussion Document 2022* (September 2022) at 6.

311 *New Zealand Airline Pilots Association Inc v Attorney-General* [1997] 3 NZLR 269 (CA) at 289.

312 Ombudsmen Act 1975, ss 22(1)(b) and 22(3)(e).

313 Corrections Act 2004, s 5(1)(b).

...providing for corrections facilities to be operated in accordance with rules set out in this Act and regulations made under this Act that are based, amongst other matters, on the United Nations Standard Minimum Rules for the Treatment of Prisoners...

288. This can be contrasted with some overseas jurisdictions that have adopted legislation with a more explicit international human rights framework.
- Australian Capital Territory legislation recognises the inherent dignity of all human beings, and that the criminal justice system should respect and protect all human rights in accordance with the Human Rights Act 2004 and international law. It also provides that sentences are imposed on offenders as punishment, not for punishment.³¹⁴
 - Queensland legislation explicitly recognises the basic human rights of a prisoner — *'This Act recognises that every member of society has certain basic human entitlements, and that, for this reason, an offender's entitlements, other than those that are necessarily diminished because of imprisonment or another court sentence, should be safeguarded'*.³¹⁵
289. I consider that the obligations under international human rights instruments should (but do not currently) have similar prominence under the Corrections Act in New Zealand.
290. The somewhat oblique articulation of the Mandela Rules in the Corrections Act appears to have contributed, at least in part, to the weight the Department has placed on them (that is, operational difficulties being given greater emphasis than the needs of prisoners), as evident in its responses to the issue of prisoner meal times. As outlined above, the Department needs to recognise that the Mandela Rules and the NZBORA create obligations that are in addition to the minimum standards set in the Corrections Act. A change to the way the Mandela Rules are currently referenced in the Corrections Act may be needed, to shift attitudes and operational practice.
291. At this point, it is also worth noting that several staff and third-party interviewees advised that the Department's Prison Operations Manual (POM) is considered to be the sole authoritative source of custodial practice by those on the frontline; one interviewee described it as a Corrections Officer's day-to-day *'playbook'*. However, interviewees also observed that the POM is anchored in outdated historic approaches, is highly prescriptive, and is frustratingly difficult to update or change. While the need to review the Department's

314 Australian Capital Territory Corrections Management Act 2007, [Preamble](#).

315 Queensland Corrective Services Act 2006, s [3\(1\)](#).

key operational policies was identified in Hōkai Rangi in 2019,³¹⁶ I understand that, as yet, there has been no substantial progress made with revising the POM. It would appear from interview evidence that there are differing views within the Department on the approach. In my view, the POM must incorporate and reflect relevant NZBORA rights and the Mandela Rules, to help ensure the observance of human rights by frontline staff.

Bill of Rights Act 1990 and duty of humane treatment

292. Irrespective of the status of the Mandela Rules (or any other international human rights obligations) in the Corrections Act, the NZBORA affirms the right of prisoners to be treated with humanity and with respect for their inherent dignity.³¹⁷ This mirrors the interests and rights protected by various international instruments that New Zealand has ratified — most particularly the International Covenant on Civil and Political Rights.³¹⁸

293. The Supreme Court has described the right under section 23(5) of the NZBORA as creating a positive duty of humane treatment:³¹⁹

...a positive instruction to the New Zealand Government, of protecting a person deprived of liberty and therefore particularly vulnerable (including a sentenced prisoner) from conduct which lacks humanity ... which demeans the person ... or which is clearly excessive in the circumstances...

294. Significantly, the right in section 23(5) may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.³²⁰

295. In addition, the NZBORA separately provides that every person has the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment.³²¹ The courts have found that the rights and freedoms in the NZBORA must be given a purposive and generous interpretation so as to

316 Above n 14 at 31.

317 New Zealand Bill of Rights Act 1990, s 23(5).

318 [International Covenant on Civil and Political Rights](#) (ICCPR) 999 UNTS 171 (opened for signature 16 December 1966, entered into force 23 March 1976).

319 *Taunoa v Attorney-General* [2007] NZSC 70 at [177] per Blanchard J; see also at [7] and [78]–[79] per Elias CJ, and at [294] per Tipping J; and see *Taunoa v Attorney General* (2004) 7 HRNZ 379 at [273].

320 New Zealand Bill of Rights Act 1990, s 5.

321 New Zealand Bill of Rights Act 1990, s 9.

secure their effective enjoyment.³²² Further, wherever possible, legislation must be given a meaning that is consistent with the rights in the NZBORA.³²³

296. In other words, the Department must interpret and exercise its powers and obligations, as expressed in the Corrections Act and its Regulations, in a manner consistent with the right of prisoners to humane treatment.³²⁴
297. I have seen an absence of emphasis on and incorporation of this right into the work of the Department.

Strip searches

298. The issues relating to the Department's application of its legislation vis-à-vis the rights under the NZBORA (and relevant international instruments) are best illustrated in the cases involving the strip searching of prisoners.
299. The NZBORA provides for the right to be secure against unreasonable search or seizure, which extends to people in prison.³²⁵ The Corrections Act permits strip searches to be carried out only for specific reasons and in specific circumstances.³²⁶
300. For instance, a Corrections Officer **must** conduct a strip search (there is no discretion) when a prisoner is first admitted to a prison, when a prisoner is received following transfer from another prison, and each time an at-risk prisoner enters an at-risk cell (until an at-risk management plan is established for that prisoner). In contrast, an officer **may** conduct a strip search (that is, there is a discretion) after a visit with whānau (or any of the specific situations listed in the Corrections Act³²⁷ or if the officer has reasonable grounds for believing that the prisoner has in their possession an unauthorised item.³²⁸
301. In their joint investigation report of 2005 into the Department, former Ombudsmen John Belgrave and Mel Smith observed that the Ombudsman historically received a number of complaints

322 See for example, *Ministry of Transport v Noort* [1992] 3 NZLR 260 at 268 and 278, and *Flickinger v Crown Colony of Hong Kong* [1991] 1 NZLR 439, in which the Court of Appeal approved Lord Wilberforce's statements in *Minister of Home Affairs v Fisher* [1980] AC 319 (PC) at 328 and 329.

323 New Zealand Bill of Rights Act 1990, s 6. See also *Ministry of Transport v Noort*, *Police v Curran* [1992] 3 NZLR 260.

324 The exception to this would be if the language of a particular section or regulation is so clearly inconsistent with s 23(5) of the NZBORA that a rights-consistent interpretation is not possible. This is the effect of s 4 of NZBORA.

325 New Zealand Bill of Rights Act 1990, s 23.

326 Corrections Act 2004, s 98.

327 Corrections Act 2004, s 98(6).

328 Corrections Act 2004, s 98(3)(a). This is subject to approval from a Prison Director, but can be overridden if the delay in obtaining approval would endanger the health and safety of any person, or would prejudice the maintenance of security at the prison.

regarding the strip searching of prisoners.³²⁹ They found no systemic problem with such searches, but identified that there was ‘some misunderstanding by some Corrections Officers of the rules on strip searching’ and that the Department had addressed the matter by issuing appropriate reminders and instructions to staff.³³⁰

302. Since then, the Department’s practices around strip searches have come under significant criticisms from the courts.³³¹ Nevertheless, OPCAT inspection visits suggest that prisoners continue to be subject to questionable strip search practices. In an inspection of Hawke’s Bay Regional Prison in 2016, I observed that every prisoner was strip searched after visits, which appeared to be inconsistent with the provisions of the Corrections Act. I noted in my report:³³²

Sections 98(6)(h) and (i) of the Corrections Act specify that prisoners ‘may’ be strip searched before and after any person visits or has visited the prisoner.

The blanket application of strip searching of prisoners after visits appears to be disproportionate to the risk of contraband being passed and secreted during a visit, as reflected in the very small amount of such contraband being found. My inspectors were made aware that drugs, tobacco and mobile phones have been found in the Prison, but it is reasonable to conclude that visits [are] not the primary route for their introduction. Deployment of finite staff resources to strip search every prisoner after visits appears inefficient, ineffective and inappropriate.

303. Following that inspection, I recommended that the Department review its policy of strip searching every prisoner after visits at the prison. The Department agreed with this recommendation and noted:³³³

Corrections agrees that not every prisoner should be strip searched after every visit and the Prison Director has communicated Corrections’ policy to all staff at Hawke’s Bay Regional Prison.

The Chief Custodial Officer sent a practice reminder on strip searching to all prison directors on 7 February 2017.

329 See [Appendix 2](#), report 32 at 18–19 and 33–34.

330 See [Appendix 2](#), report 32 at 34.

331 *Forrest v Attorney-General of New Zealand* [2010] NZHC 2190; *Forrest v Attorney-General* [2012] NZCA 125, [2012] NZAR 798; *Reekie v Attorney-General* [2012] NZHC 1867; *Mitchell v Attorney-General* [2017] NZHC 2089, NZAR 1538; and *Taylor v Attorney-General* [2018] NZHC 2557.

332 See [Appendix 2](#), report 9 at 50.

333 See [Appendix 2](#), report 9 at 74.

304. Notwithstanding these reminders, my inspection of Whanganui Prison in February 2018 found that there was routine strip searching of prisoners after visits.³³⁴ Once again, I made a recommendation about this, which was accepted by the Department. It also advised that a practice reminder was sent to all staff in February 2018 and to all managers, Principal Corrections Officers and Senior Corrections Officers in May 2018.³³⁵
305. In terms of the strip searching cases before the courts, there have been a number of awards for damages. Notwithstanding security concerns, the courts have been willing to uphold prisoners' right (under section 21 of the NZBORA) to be free from unreasonable search and seizure in cases where the Department has failed to consider the individual circumstances for those searched. Further, the courts have found that instances of ongoing and repeated breaches of section 21 can amount to a breach of the more fundamental right, under section 23(5) of the NZBORA — the right to be treated with humanity and respect.³³⁶ In one instance, a Court increased the amount of damages awarded to *'to bring home to the Department the importance of compliance with the legislation and of heeding what the Courts have now said regarding s 98 on several occasions'*.³³⁷
306. The pattern of repeated NZBORA breaches by the Department is concerning, given that there are references in both the Corrections Act and Regulations to the humane treatment and care of prisoners. Notwithstanding this, almost none of the custodial staff interviewed as part of my investigation talked about prisoners' rights or about undertaking a weighing and balancing exercise — or at least not in a way that extended beyond a bald statement referencing the overriding risk to the safety of the public or security concerns. This is surprising, both because it suggests a disregard for the value of human rights by the Department and, more prosaically, because of the legal risk it exposes the Department to.

Dignity and surveillance

307. Another area of concern in terms of the Department's approach to its legislation and the duty to provide humane treatment relates to the lack of dignity and privacy afforded to prisoners at risk of self-harm, as a consequence of unscreened toilets and CCTV monitoring. Above, I set out my concerns about both this issue and the Department's rationale for earlier rejecting oversight recommendations in this regard.³³⁸

334 See [Appendix 2](#), report 24 at 49.

335 See [Appendix 2](#), report 24 at 73.

336 New Zealand Bill of Rights Act 1990, s [23\(5\)](#). See above n [331](#).

337 *Taylor v Attorney-General* [2018] NZHC 2557 at [93].

338 See comments under the heading '[Privacy screens and CCTV cameras](#)' at page [72](#) of my report.

308. As noted above, the Department had previously indicated that the Regulations constrained its ability to fully address the concerns raised by oversight entities. However, the Department was in a position to advise its Minister on the need for amendments to regulation and primary legislation, including where the need arises from consideration of humane treatment. Providing effective policy advice that includes reference to relevant human rights and international obligations is inherent in the Department's stewardship obligations. I note also that, unlike primary legislation, which is enacted by Parliament, regulations are amended by Orders in Council.
309. I understand that the Department is now pursuing amendments to the Regulations to protect the privacy and dignity of prisoners at risk of self-harm. An amendment to the Regulations (or to the primary legislation) may ultimately resolve the issues raised by oversight entities. I am concerned that if it were not for other drivers (such as those related to the development of Hikitia at Waikeria Prison), there may have been little appetite for progress in terms of the substantive issue.
310. I consider this issue is illustrative of a wider systemic failure by the Department to recognise that:
- operational approaches should actively consider the need to respect the dignity and privacy of those in its care; and
 - to the extent the law inhibits more humane treatment, it is the Department's role to advise ministers on the need for appropriate amendments.

Provision of constructive activities for remand prisoners

311. As noted above,³³⁹ the lack of constructive activities for remand prisoners is a matter that has been raised repeatedly by oversight entities for some time, and the Department has generally accepted relevant recommendations.
312. The reasons behind findings and recommendations for improvement in this area are not particularly complicated. First and foremost is the contribution that purposeful activity can make to a person's physical and mental wellbeing — and, conversely, the harm that can result from the lack of such activity. Purposeful activity assists with rehabilitation and reintegration, which can in turn reduce the risk of reoffending and the number of people returning to prison. The completion of some programmes may be a factor in a person's eligibility for parole. Purposeful activity can also contribute to the good order and safety of a prison, by alleviating boredom and

339 See comments under the heading 'Constructive activities' at page 78 of my report.

fostering positive relationships between prisoners and staff. Overall, the provision of programmes is critical in terms of the Department's duty to promote the fair, safe, and humane treatment of prisoners.

313. I acknowledge the Department's comments in its response to my provisional opinion about the readiness of some remandees to participate in rehabilitation programmes. The Department also referred to interventions about the provision of health, education and reintegration aimed at improving the wellbeing of people on remand.³⁴⁰
314. However, I consider it significant that a number of frontline staff interviewed for my investigation expressed the view that they *'could not'* provide rehabilitation programmes to remand prisoners. I accept that some staff were reflecting the practical difficulties — particularly during COVID-19 lockdowns and staffing shortages — in providing access to activities and programmes more generally to remand prisoners. However, others were clearly reflecting a view that the Department is **precluded by law** from offering any rehabilitation programmes to remand-accused prisoners, as their guilt had not been established by the courts.
315. This is not consistent with my reading of the Corrections Act. There is nothing in the Act that precludes the Department from offering remand prisoners the opportunity to complete rehabilitative or other programmes. Rather, there is no obligation to provide them, unlike for sentenced prisoners. That said, I acknowledge that it would be entirely inappropriate to **require** remand-accused prisoners to attend programmes focused on addressing offending where they would be invited to acknowledge guilt. In any case, the Corrections Act already provides for remand prisoners to have access to constructive activities, including employment and education.³⁴¹ This generally reflects the position under the Mandela Rules.³⁴²
316. Through their recent OPCAT inspections, Ombudsmen have found some evidence of good or improved provision of programmes for some people on remand — clearly it is possible.³⁴³ However, this is inconsistent across the prison network. Many people on remand appear to have limited access to programmes and other meaningful activity — the impacts of this are significant, as demonstrated by the Inspectorate's recent report, which found that the Department failed to facilitate access to rehabilitation and reintegration programmes for the LynnMall attacker.³⁴⁴

340 Department's response to the Chief Ombudsman's provisional opinion (20 April 2023).

341 Corrections Act 2004, ss 66 and 78.

342 See Rule 4 of the [Mandela Rules](#).

343 See [Appendix 2](#), reports 2, 5, 8, and 27.

344 See [Appendix 2](#), report 47.

317. Overall, this raises the question of whether the Department in fact requires a stronger legislative lever to ensure people on remand are more consistently able to access constructive activity. Again, in my view, the Department's stewardship obligations require it to identify these issues and advise ministers on the need for reform.

Public safety

318. Through its Chief Executive, the Department's responsibilities include ensuring that the corrections system operates in accordance with the purpose set out in section 5 and the principles set out in section 6 of the Corrections Act.³⁴⁵

319. As noted above, the Corrections Act states the purpose of the corrections system is *'to improve public safety and contribute to the maintenance of a just society'*, including by:³⁴⁶

- ensuring that community-based and custodial sentences are administered in a safe, secure, humane, and effective manner;
- operating prisons in accordance with rules based on, among other matters, the Mandela Rules;
- assisting with the rehabilitation and reintegration of offenders into their community where appropriate, reasonable, and practicable; and
- providing information to the courts and the New Zealand Parole Board.

320. The Act requires that, in the operation of the corrections system, *'the maintenance of public safety is the paramount consideration in decisions about the management of persons under control or supervision'*.³⁴⁷

321. Public safety is not defined in the Corrections Act. However, section 5 seems to anticipate that public safety can be served in one of four ways, including by the rehabilitation or reintegration of prisoners into the community. That said, other sections of the Act identify the rehabilitation and reintegration of prisoners, and public or community safety, as separate and potentially conflicting considerations.³⁴⁸

322. In this regard, the Department's Chief Inspector frequently references four guiding principles in her inspection reports and suggests that these are sometimes balanced against one another (emphasis added):³⁴⁹

345 Corrections Act 2004, s 8(1)(a).

346 Corrections Act 2004, s 5(1).

347 Corrections Act 2004, s 6(1)(a).

348 Corrections Act, ss 6 and 62.

349 See [Appendix 2](#), report 4 at 2; and see reports 46 at 2 and 48 at 2.

Inspections are carried out against a set of healthy prison standards derived from United Nations guidelines on the treatment of people in detention. These standards consider all aspects of prison life, with a particular focus on four guiding principles:

Safety: Prisoners are held safely.

Respect: Prisoners are treated with respect for human dignity.

Rehabilitation: Prisoners are able, and expect, to engage in activity that is likely to benefit them.

Reintegration: Prisoners are prepared for release into the community, and helped to reduce their likelihood of re-offending.

*These principles reflect the essential **purpose of the prison system, which is to protect society from crime, both during imprisonment and after release.***

*They also highlight the **complex demands** that are placed on prison staff and management. In an ideal world, prisons would be able to deliver on all four principles on all occasions. In practice, safety, humane treatment, and rehabilitation and reintegration needs are sometimes balanced against one another, and **short term requirements sometimes take precedence over longer-term needs.***

323. The Department has previously asserted that it interprets 'public safety' as having a broad meaning:³⁵⁰

...do not accept the allegation ... that we place public safety, through an emphasis on containment and control, over and above reducing re-offending by rehabilitating and reintegrating offenders. But we cannot treat these obligations in isolation. We have to think about delivering rehabilitation and reintegration in a manner that is consistent with public safety. ...there is a balance to be struck between the Department's obligations and normally we can manage these two obligations together — we can normally deliver rehabilitation and reintegration services in a manner that does not compromise public safety. The Department has to constantly reconsider the balance between facilitating rehabilitation and reintegration and an acceptable level of risk, because there are no completely risk-free activities in the area of rehabilitation and reintegration.

350 Waitangi Tribunal Department of Corrections and Reoffending Prisoners Claim [Brief of evidence of Vincent Patrick Arbuckle](#) (WAI 2540, 13 June 2016) at [10]. See also [Crown Closing Submissions](#) (WAI 2540, 15 August 2016) at [39] and [45.1].

324. Elsewhere in my report I discuss the Department’s approach to risk.³⁵¹ However, for present purposes, I note my investigation has found that the Department adopts a view of public safety that is narrow — that is, too often focused exclusively on prisoner containment for community and/or staff safety.
325. During an interview, a former Chief Executive explained the priorities for the Department as follows:

Top of the list was the safety of staff ... and number two was public safety and they kind of went together, in the sense that ... if you couldn’t guarantee the safety of the public, then your credibility as a Corrections entity was very quickly diminished in the public’s mind. And then you really couldn’t do anything else. You would spend all your time in that space of trying to guarantee public safety and there is a lot of perceptions around public safety.

...

The biggest overwhelming issue for Corrections is dealing with ... was the media profile. It is an easy story to tell, a story of failure at one level for which there seemed to be very low levels of tolerance. And that drives the organisation into a conservative place, where again it will prioritise safety, even when those were more perceptions of safety than real safety issues.

326. A broader view of public safety would recognise the critical role of the fair and humane treatment of prisoners (such as through the provision of rehabilitation and reintegration programmes, constructive activities, timely meals, and healthy living conditions), in terms of promoting the safety of the public and communities when a prisoner is released. It also creates a less hostile environment within prisons, thereby enhancing the health and safety of those within.
327. A consistently referenced example of the narrow view of safety during interviews for my investigation was the cessation of the Release to Work programme in 2014, following a high-profile escape. Many staff and third-party interviewees stressed the negative and long-lasting ripple effect of this across prisons, particularly in terms of prisoners’ reintegration needs.
328. Other examples of the Department’s approach to public safety that excludes the interests of prisoners include the removal of mauri stones from some prisoners at Tongariro Prison,³⁵² the routine illegal internal searches at Auckland Region Women’s Corrections Facility

With a flick of a switch, I had to call them all back in, bring them all in, pull ‘Release to Work’ ... from a community perspective ... they lost odd 50 workers. We lost some reputation, we lost some key employers. From a prisoner perspective, those guys lost their income — they got hit in the back pocket, they lost their sense of purpose. We changed their lives through no fault of theirs.

Prison Director

351 See comments under the heading ‘[Impact of negative publicity](#)’ at page 108 of my report.

352 Tony Wall ‘[Prison inmates have spiritual stones taken away for security reasons](#)’ (Stuff, 5 February 2020).

between 2006 and 2016,³⁵³ and the inconsistencies across the prison estate around prisoners in high-security units being given access to hot water.³⁵⁴

329. The evidence before me suggests that the Department does not consistently interpret public safety in a way that promotes the fair, safe, and humane treatment of prisoners.

Maintaining currency of the Corrections Act

330. I note that in 2017, the Waitangi Tribunal recommended that the Corrections Act be amended to state the Crown's relevant Te Tiriti o Waitangi | Treaty of Waitangi obligations to Māori.³⁵⁵ Critically, this recommendation has still not been achieved. I sought an explanation from the Chief Executive, who advised:³⁵⁶

Following the launch of Hōkai Rangi in August 2019, the focus of responding to the Waitangi Tribunal recommendations shifted to the scoping and legislative bid for Treaty clause proposals. Throughout much of 2021, Corrections completed the drafting and analysis of potential options and consulted extensively with internal stakeholders and relevant other agencies on their experiences implementing Treaty clauses, the external Technical Treaty Experts group, and with the inter-agency Treaty Provisions Oversight Group. Ministerial agreement and Cabinet approval were sought for the scope of proposals in late 2021 and early 2022, with these decisions feeding into the public consultation process that commenced in August 2022.

331. I have since learnt that Cabinet agreed in December 2022 to seek amendments to the Corrections Act to incorporate both a reference to Te Tiriti o Waitangi | Treaty of Waitangi and three new principles derived from the principles of Te Tiriti o Waitangi | Treaty of Waitangi.³⁵⁷ I understand that a new Bill has yet to be introduced into Parliament, and note that when that occurs, there are several stages it has to pass before it could be enacted into law. As such, even though nearly six years have passed since the Waitangi Tribunal issued its recommendation, legislative change is still some way off.

353 David Fisher 'Up to 34 female inmates undergo improper internal examinations by doctors in prison' (*Stuff*, 26 March 2019).

354 See [Appendix 2](#), report 9 at 25.

355 Above n 52.

356 Above n 160.

357 Cabinet Social Wellbeing Committee (Minute of Decision) [Amendments to Corrections Legislative Framework: Improving Safety, Rehabilitation and Reintegration Outcomes](#) SWC-22-MIN-0244 (14 December 2022) at [21]–[23]; Cabinet Minute of Decision [Report of the Cabinet Social Wellbeing Committee: Period Ended 16 December 2022](#) CAB-22-MN-0589 (19 December 2022).

332. In the Department's response to my provisional opinion, the Chief Executive referred to an updated legislative work programme. He explained that this includes reviewing how international obligations and considerations are reflected in the Corrections Act and the Regulations.³⁵⁸
333. Public sector Chief Executives have specific statutory responsibilities to proactively promote stewardship of the legislation administered by their agency, and to give advice on the long-term implications of policies.³⁵⁹ Further, the 2017 Government's Expectations for Good Regulatory Practice identify that, among other matters, agencies should be alert to *'problems with legislation that may be significantly compromising the agency's ability to discharge its responsibilities to a reasonable or expected standard'* and that regulatory systems should *'support compliance with New Zealand's international and Treaty of Waitangi obligations'*.³⁶⁰ Agencies, and Chief Executives in particular, are expected to take a whole-of-system, proactive, collaborative, and long-term approach that can anticipate and respond to changes over time.
334. I appreciate that, from time to time, the Department has provided advice to its Minister and to Cabinet on the need for amendments to the Corrections Act and Regulations. However, I consider that the approach to reviewing legislation has been reactive, ad hoc, and limited to immediate operational needs. In his correspondence with me about this investigation, the Chief Executive accepted that the Department had been reactive in the past. He provided the following rationale:³⁶¹

I accept that Corrections' legislative and regulatory work programme has, in the past, mainly been reactive to operational needs, Government policy priorities and commitments, and external drivers (such as changes in the wider New Zealand or international legal context). This includes responding to and collaborating on legislative reform driven from elsewhere in government. However, I would suggest this is likely to be true of most operational public sector agencies. Our obligations to meet ministerial expectations and ensure continuity of service delivery mean our finite policy resource must be prioritised towards responding to Ministerial and Government priorities and identifying solutions to urgent operational issues that emerge.

358 Above n 340.

359 Public Service Act 2020, s 12(1)(e)(v); see also State Sector Act 1988, s 32(1)(d)(ii).

360 Above n 55 at 5 and 2.

361 Above n 160.

335. I acknowledge the realities of the external authorising environment facing the Department. This is a significant challenge. Nevertheless, the Chief Executive has accepted that, in respect of the Department's regulatory stewardship responsibilities, it *'must also identify and advise on regulatory reform that may be necessary to safeguard the long-term public interest in Corrections' service delivery*.³⁶² He suggested that resourcing this work in an operational agency is challenging, due to the extrinsic factors noted above. He went on to say the Department has developed a plan for its regulatory and legislative work programme out to 2025.
336. In this regard, I refer again to the Department's recent discussion document *Options to Achieve Improved Outcomes in the Corrections System*.³⁶³ In reviewing this document, it was not clear to me that the Department had conducted a full NZBORA analysis in respect of the relevant proposals or options which seek to limit these or other rights, to ensure that any such constraints are lawful, necessary, and proportionate, and that they amount to the least possible interference with the right(s) in question. In addition, the discussion document's approach to the issue of fundamental human rights is particularly concerning where it may otherwise lead readers to draw a conclusion that human rights stand in opposition to safety or security in prisons. In my view, championing respect for the inherent dignity of prisoners would assist to achieve greater safety and security, as well as being consistent with the principles of Hōkai Rangī.³⁶⁴
337. My comments above go to a wider concern about agencies that are primarily responsible for operational service delivery obligations, but which also have leadership of the policy development for what the future legislative framework should look like. I would expect the Department's work plan to include measures to recognise and address this tension.

Culture and leadership

338. An agency's culture is a shared set of core values and beliefs that guide the behaviour of those within it. It is the expression of a collective ethos in norms of behaviour and communication. Organisational culture can be largely accidental, or it can be deliberately nurtured by leadership and staff. The culture fostered and modelled by leadership can be seen in the policies and approaches adopted by an agency (with associated messaging) and, in turn, in how this is reflected in the attitudes and practices of staff.

362 Above n 160.

363 Above n 310.

364 Above n 14.

339. In addition to the matters I outlined at the start of my report about the requirements of good system stewardship,³⁶⁵ I would expect to see the Department establish and promote an organisational culture of continuous improvement, aimed at ensuring the fair, safe, and humane treatment of those its care. This would include deliberate leadership responses to aspects of organisational culture that do not align with that.

Organisational culture

340. In my investigation I have discerned a marked difference between the culture at the Department's National Office and that at each of the prisons visited — with the prison sites strongly reflecting real fears and concerns about staff safety in light of the particular demographics of their prisons, the needs of various types of prisoners based on their security classifications, and the day-to-day operational challenges unique to each site.

341. At interview, frontline leaders were generally more forthcoming about the issues they were facing, and they spoke compellingly about their frustrations and inability to embed long-lasting change. In stark contrast, interviews with members of the ELT were focused less on such challenges and more on the successes with current strategies and initiatives as key to achieving transformational change within the Department.

342. Notwithstanding this, the Department is generally aware of the cultural barriers within the organisation to properly give effect to the findings and recommendations of oversight entities. I refer in particular to a session the Department undertook in mid-2021. I understand that following the announcement of my investigation, the Department decided to conduct a 'Black Hats' session where departmental participants were invited to:³⁶⁶

... 'wear their blackest hat' — i.e. to try to see Corrections as its harshest critics might, particularly through the lenses of prisoner welfare and rehabilitation — in order to challenge [its] own assumptions, ensure against any organisational complacency, and identify possible issues and linkages between them.

343. I consider this was a useful exercise, as it enabled the Department to identify a number of concerns, including a:³⁶⁷

- *'culture associated with incident response, suppression, fear of failure';*

365 See comments under the heading '[Stewardship obligations](#)' on page 28 of my report.

366 The Department's cover letter to 'Information Request 7' dated 20 January 2022 from my Office (31 January 2022).

367 Ara Poutama Aotearoa | Department of Corrections *Black-hat session report back to ELT strategy* (internal presentation document, 26 July 2021).

Barriers to sustained change

- *'picture of a top-down compliance culture, tendency to be reactive or incident driven, lack of effective systems to assure or validate'; and*
- *'culture focused on "ticking the box" — compliance and output delivery; risk aversion; problem suppression'.*

344. Through my investigation, I have identified similar issues with the Department's organisational culture that appear to impede its ability to fully give effect to the type of overall changes envisaged by oversight entities. I have set these out below.

Impact of sentinel events

345. During the course of my investigation, I received evidence of a history of significant sentinel events, such as the high-profile escape noted above,³⁶⁸ that have driven the Department back to its enduring operating model, which interviewees regularly described as risk averse, and where security was prioritised above all else.

346. This is entirely consistent with risk-averse approaches identified in OPCAT inspection reports. I refer in particular to my report into the 2020 inspection of Auckland Prison, in which I stated:³⁶⁹

In July 2018, a new maximum security facility was opened at the site and the Auckland East maximum security division was decommissioned. The new facility was intended to help move from an operating model based on 'containment' of difficult prisoners to a modern, therapeutic facility. Given this intention, I was disappointed that the prison culture had not changed. In my view, the Department's intention to shift from an operating model centred on 'containment and management' to one of 'rehabilitation and reintegration' is yet to be realised. I encourage the Prison Director and their staff to continue their efforts in this area.

347. In my interview with a former Chief Executive, the metaphor used to describe the Department was that of a big ship that is very difficult to steer and turn, and which reverts to its natural course without the constant attention and efforts of leadership all at levels. The former Chief Executive went on to explain:

Organisations ... they have all got a history and the history tends to define their behaviours ... When I arrived, the place had a sense of being defined by these really big actions where people had murdered people ... and the various other [events relating to the] safety of our own people. So, you join an organisation and what you get is a lot of stuff that is around that. ...

368 See comments above at paragraph 326 of my report.

369 See [Appendix 2](#), report 14 at 1.

Reducing reoffending [focus] had gone down because the public safety [focus] had gone up because of these murders ... So when I said I want to cut reoffending rates so therefore we're going to have to take some chances, people were kind of like 'You won't last long. You've must be kidding'. We started off down that track and we got a distance ... and then I ran into my own difficulties ... [with a number of] sentinel events. What happens with those [sentinel events] is that ... they throw you off course, massively. You always get tied back to this behavioural stuff, out of control behaviour of prisoners, rioting, murders of members of the public. ...

What does that do to your overall ambition? Well, it drives you back into the public safety route. The big outcry became we had failed in our fundamental and first priority as far as the public and victims were concerned, and that was the safety of the public.

348. This aligns with my observations above about the Department's narrow approach to public safety, which focuses on prisoner containment.³⁷⁰

349. Other current and former senior leaders reflected similar comments about the 'long memories' of prisons. For example, at interview for this investigation, the current Chief Executive noted:³⁷¹

The historic culture ... some of our staff have got 20 plus years of employment history with us and those memories last for a long time. And it is very easy for ... the anchored history of how we've operated to endure.

Impact of negative publicity

350. The Department is and has always been subject to significant negative public commentary, as acknowledged by the Crown in its 2016 closing submissions on the claim in the Waitangi Tribunal relating to the disproportionate rates of Māori reoffending:³⁷²

The Department understands that it will always be subject to criticism from one quarter or another because issues such as crime and punishment, the treatment of prisoners and public safety concerns are matters of public interest and are subject to wide ranging, and often strongly held, views and philosophies.

370 See comments under the heading 'Public safety' on page 100 of my report.

371 See also comments made by a former Chief Executive as reported by the New Zealand Herald – Derek Cheng 'Prisons boss ends six years' hard labour' (*New Zealand Herald*, 21 December 2010).

372 Waitangi Tribunal Department of Corrections and Reoffending Prisoners Claim [Crown Closing Submissions](#) (WAI 2540, 15 August 2016) at [44].

351. Ombudsman Mel Smith's report into the criminal justice sector in 2007 made similar observations and suggested this had an undermining effect (emphasis added):³⁷³

*The criminal justice sector has, all too often, been in the news because of some mistakes. Such mistakes, however minor and isolated in themselves, often receive considerable (sometimes sensational) publicity and are portrayed as an accumulation of systemic incompetence. As a consequence, it **is not unnatural for individuals who work within the system to adopt a cautious approach and ensure that they have complied with 'the rules'** should any of their decisions make the headlines on radio or television or feature on page 1 of the next day's newspaper. A policy of risk aversion is eminently sensible in these circumstances, although it might **not always necessarily be in the best interests of either the offender or the effective and efficient management of the criminal justice system.***

352. Many interviewees for this investigation also identified that constant negative scrutiny of the Department has resulted in a reactive and risk-averse culture. Both staff and third parties interviewed for this investigation described an organisation that is inward looking (a 'closed shop') and constantly feeling 'under siege'.

353. At interview, a former Chief Executive suggested that maintaining public confidence in the face of negative scrutiny was a significant challenge, and that it limited the Department's ability to be 'progressive'. Similarly, in his interview, the current Chief Executive suggested that the Department had been constrained by its 'whack-a-mole' approach, where it was 'always responding to the next big thing'.

354. I also heard concerns from some staff and third parties about the level of perceived influence exerted by the Department's Communications team, suggesting that it was overly concerned with managing risk, ahead of everything else:

There was a feeling that ... Comms run everything in that organisation. You're not allowed to do anything without Comms being across it first, which took away the ability of people to just get on and do their job and do the right thing.

355. It appears that in its effort to maintain public confidence (which in and of itself is a legitimate and necessary undertaking) the Department sometimes overlooks ensuring appropriate levels of

373 See [Appendix 2](#), report 49 at 84–85.

accountability and transparency. This would involve acknowledging the Department's deficiencies or stating what is not working well, while also noting what is working well.³⁷⁴

356. I am aware that the current Chief Executive is making efforts to transform the way the Department operates. For example, in its response to my provisional opinion, the Department referred specifically to workstreams within its Enterprise Risk Management and Maturity Improvement Programme.³⁷⁵ I am mindful of the similar efforts of previous Chief Executives, as disclosed in their interviews with me. However, it seems to me that the reactive and risk-averse culture that is deeply rooted within the Department — along with a limited view of public safety that is primarily focused on secure containment of prisoners — has impeded the efforts of successive Chief Executives.

The relationship between the National Office and frontline staff

357. Throughout my investigation, interviewees consistently described a deeply divided organisation and a pattern of disconnection at all levels.
358. In particular, there appears to be a significant disconnect between the National Office and prison sites, and between the ELT and those leading at the front line. I heard about change programmes being *'centrally developed but locally delivered'*, but that there was a lack of understanding as well as lack of resource or support at the local prison level to deliver the required change. Many frontline interviewees expressed frustration and dissatisfaction with how National Office *'lobs'* new projects or change initiatives at prisons without a proper appreciation of their operating environments or needs.
359. Significantly, a number of frontline staff indicated that they were not directly involved in work being undertaken for the Māori Pathways,³⁷⁶ as it was driven by staff *'flying in and out from National Office'*. Further, my investigators heard that the work being undertaken through Māori Pathways is only being delivered in specific units, rather than

374 Recent examples of this include the Department public responses to: the Inspectorate's publication in November 2021 of three reports into the management of women in prison (Ara Poutama Aotearoa | Department of Corrections ['Launch of new strategy for women'](#) (press release, 28 October 2021)); the 2021 report commissioned by the Human Right Commission into segregation and restraint of women (Ara Poutama Aotearoa | Department of Corrections ['Corrections response to Dr Sharon Shalev's report'](#) (media statement, 4 November 2021)); and my follow-up inspections of Whanganui and Christchurch Men's Prisons in 2021 (Ara Poutama Aotearoa | Department of Corrections ['Whanganui and Christchurch Men's Prison OPCAT reports'](#) (media statement, 2 June 2021)).

375 Above n 340.

376 Māori Pathways are a range of initiatives the Department is undertaking, aimed at lowering the proportion of Māori in the corrections system.

across the entire prison site. One Regional Commissioner described this as a challenge for staff working in the other units, with the potential for tension between *'the haves and the have-nots'*. The Department noted in its response to my provisional opinion that Māori Pathways are being piloted at specific units, but acknowledged the criticisms may imply room for improved communication.³⁷⁷

360. While not uncommon for large public sector agencies, the disconnect between National Office and the frontline is one that has been reported on previously. In 2005, former Ombudsmen John Belgrave and Mel Smith observed:³⁷⁸

A major concern is the conflict between the understanding of National Office of the Department as to certain areas of difficulty, and the perceptions of the Department's staff at the front-line (which corresponded to those expressed by prisoners). We refer to the lack of work, programmes and other meaningful activity for prisoners, the lack of recreation, the extent of property loss, the effect of HRX categorisation, and the '66% rule'. Front-line staff seemed to perceive far greater problems than were demonstrated in formal correspondence to us from National Office.

In the light of our experience gained from this investigation and our prior routine work, we prefer the picture presented by front-line staff. However, even if we were persuaded that this were to be misguided, we would remain disturbed at the gulf that emerged between the understanding of the Department's National Office and its staff in the prisons. We consider that this is something that should be addressed and that there needs to be greater meaningful liaison between National Office and front-line staff. Put another way, National Office should obtain the views of staff more often, and listen more attentively to staff.

361. Based on the interviews conducted for this investigation, the perception of those on the frontline remained starkly different from that of staff based at National Office. There appear to be few mechanisms for National Office to engage meaningfully with those on the frontline, and the work being undertaken at the centre (including the development of many strategies and plans) does not appear to reflect what is needed at the frontline to effect meaningful change. It would seem little has changed in the 17 years since the former Ombudsmen's comments. This may help explain the lack of progress in terms of the repeated findings and recommendations made by oversight entities, as, over time, frontline staff have become unclear about what is expected of them.

377 Above n 340.

378 See [Appendix 2](#), report 32 at 73.

Organisational purpose

362. Across its accountability documents, the Department has stated:³⁷⁹

Kotahi anō te kaupapa: ko te oranga o te iwi — There is only one purpose to our work: the wellness and wellbeing of people.

363. It is entirely appropriate for an agency to adopt a wide framing of the various and sometimes conflicting responsibilities it has. However, it became apparent through my investigation that many staff are confused by such an open-ended framing of its purpose. Some see it as relating to prisoners, while others view it as relating primarily to staff welfare and wellbeing.

364. In 2012, the Department's Performance Improvement Framework (PIF)³⁸⁰ report found that it had a very clear purpose: to reduce reoffending by 25 percent. One former senior leader talked about that purpose having a 'galvanising effect' on staff at the time. While the Department has not abandoned the overall goal to reduce reoffending, many interviewees felt that the Department is currently unclear about its purpose, with one interviewee describing this succinctly as the Department having to be 'everything to everyone'. I consider that this confusion about its purpose adversely affects the Department's ability to change and, moreover, to ensure that it focuses on the fair, safe, and humane treatment of prisoners.

365. The uncertainty around purpose has created a vacuum that appears to have been filled, in some quarters of the organisation, by a narrative that prioritises staff wellbeing and safety over the wellbeing and safety of prisoners. Strong and effective leadership is needed to avoid perceptions that the two objectives are mutually exclusive.

366. The health and safety of those who live and work in prison is vitally important, and the Department has very real duties to both prisoners and staff. However, an organisational response that is focused primarily on control and safety tools³⁸¹ does not adequately acknowledge or address the complex ecosystem and physical environment within prisons, or the causes of violence in that

379 Such as Annual Reports, Statements of Intent, and the current organisational strategy, Hōkai Rangi (above n 14).

380 Performance Improvement Framework reporting is an initiative of the Public Service Commission (formerly the State Services Commission) for evaluating the performance of agencies as a whole and identifying actions necessary for improvement.

381 This includes items such as on-body cameras, stab-proof vests and pepper spray, in addition to tactical communication and de-escalation training.

environment. While it may provide immediate safety (at the cost of other equally important considerations), it fails to provide longer-term solutions that would keep prisoners, staff, and the public safe.³⁸²

367. While some staff identified that these control and safety tools acted as a barrier to creating long-term safety, these staff were generally a minority voice in the organisation. Instead, there appears to be a louder voice actively seeking access to more severe forms of control for prisoners who are violent or aggressive, such as access to tasers for frontline staff. This was evident in the documentary material related to the Department’s Violence and Aggression Programme and Plan. I acknowledge the Department’s comments regarding other elements of the plan, such as strengthened training for staff in de-escalation techniques; consistent practice for searches that centre on the safe and fair treatment of people; and initiatives to increase staff wellness and resilience, so that they in turn can take greater care of the wellbeing of people in prison.
368. Nevertheless, if the Department intends to equip staff with any further tools, such as tasers, it must actively ensure that these do not undermine either the right to humane treatment as affirmed by section 23(5) of the NZBORA, or public safety in the longer term.³⁸³
369. In the Department’s response to my provisional opinion,³⁸⁴ the Chief Executive noted that the Department had also recognised the need to better reconcile staff safety and wellbeing, and prisoner safety and wellbeing:

Staff safety must be a central consideration; however, this should not be at the expense of prisoner safety and wellbeing, or recognition of the humanity and rights of those we manage.

The thing is — prisoners in New Zealand are barely seen as people, let alone ‘ordinary’ or ‘reasonable’. You can say anything you like about them. It seems you can also do anything you like to them. You can house them in shipping containers; feed them poor quality food; lock them up for 23 hours a day; deny them access to mental health treatment when they’re suicidal; expose them to fight clubs and violence; withdraw opiate pain medication when they need it; deny them access to the dentist when they have toothache or an abscess; prevent them from voting in elections; prevent them from talking to the media — the list goes on.

Third-party commentator

382 [Nga Tūmanakotanga – Turning the Tide on Prison Violence](#), is a project led by Dr Armon Tamatea and sponsored by the University of Waikato. Ara Poutama Aotearoa | Department of Corrections (as well as various other agencies) has produced a number of articles and presentations that discuss the ecologies of prisons and violence therein. Further information is available on the Nga Tūmanakotanga webpage [Outputs](#). I refer also to the 2013 report from the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which queried, among other things, whether the increasingly strict prison regime, lack of employment opportunities, lost parole, and long hours of lockdown may have a bearing on increased levels of violence (above n 258 at [35]).

383 This aligns with the observations of the 2020 Social Sector Safety Forum report. The Forum brought together a number of service delivery agencies, including the Department, to discuss whether effective systems are in place to address the physical and psychological risks for staff associated with service delivery. The report observed that the usual controls in place were ‘largely weighted towards personal protective equipment and administrative controls, such as tactical communication training, on-body-cameras, and various safety protocols’ and that these ‘are least effective on the hierarchy of controls’. Notably, the report suggested that ‘designing services and systems with the end-user in mind may reduce the likelihood of a negative experience which could lead to violent and aggressive behaviour’. Government Health & Safety Lead [Social Sector Safety Forum Report](#) (2 December 2020) at 4 and 8.

384 Above n 340.

370. At the same time, he noted the importance of acknowledging that:

Corrections must retain the trust and confidence of its government stakeholders and the wider public, and the context of particular decisions, or communications may require a primary focus on more immediate public safety interests.

Public perceptions about prisoners

371. There are a number of other factors relevant to the Department's organisational culture. These include the history of the penal system in New Zealand, which I have addressed above.³⁸⁵ There are also some environmental factors that are pertinent, including the Department's perceptions around social licence, which dovetails with the public commentary around crime and punishment issues.

372. In Ombudsman Mel Smith's 2007 report into the criminal justice sector, he noted:³⁸⁶

...the issues of crime and criminal justice have become highly politicised and often the subject of uninformed and superficial public and media comment. There has been, and continues to be, a lack of constructive and clear headed public debate about the issues. As a consequence there is an absence of rational decision making based on any critical examination of the issues. This tends to act as an impediment to constructive change.

373. Tā Kim Workman has suggested that the views of some of the public — that prisoners are less deserving of civilised treatment — impedes the ability of departmental officials to transform prison culture:³⁸⁷

It is not just a struggle with organisational transformation. Over recent years, there has been a view, articulated strongly by some members of the public and politicians that prisoners, because of their crimes, are less deserving of civilized treatment. From this perspective, prisoners should not be afforded a standard superior or equal to any free citizen. Prisoners assaulted or maltreated may claim compensation, but are not entitled to keep it.

Politicians use the victims' rights movement as a vehicle for arguing that in order to 'restore the balance' between victims and offenders rights, it is necessary to reduce offender's rights, (rather than advance the rights of victims).

385 See comments under the heading 'History' on page 31 of my report.

386 See [Appendix 2](#), report 49 at 4.

387 Tā Kim Workman 'The Moral Performance of New Zealand Prisons' (presentation to the Institute of Policy Studies Conference, Wellington, 2009) at 19.

374. In terms of social licence, several staff interviewed identified that a significant barrier to embedding change within the organisation was the authorising environment and the strong negative attitude the public had towards prisoners. They referred to adverse public commentary that prisoners should not be entitled to *'privileges'*. It may also explain the organisational effort that appears to be focused on attempting to meet minimum entitlements (as listed under the Act), as opposed to seeking to ensure the fair, safe, and humane treatment of prisoners.
375. Third parties that I interviewed, on the other hand, questioned the basis of this perception about social licence, and highlighted the detrimental effect of the public messaging by the Department about prisoners, referring to comments such as *'the most dangerous people in New Zealand'*.³⁸⁸ It was suggested that, through this type of messaging, the Department itself is part of setting the tone and reinforcing external attitudes towards prisoners. At interview, only one member of the ELT appeared to acknowledge that the Department had a role to play in terms of influencing the public discourse. The Department's role in this regard is recognised to some extent through the public consultation process for developing Long-term Insights Briefings as set out under the Public Service Act 2020.³⁸⁹ Other jurisdictions, notably Norway, recognise that public sector agencies responsible for penal systems have a role to play as a *'visible societal actor'*.³⁹⁰

Leadership across the organisation

376. In my investigation, I have identified significant concerns about consistent leadership across the organisation. A number of former staff and third-party interviewees expressed concerns about the extent of the authority conferred on Prison Directors in terms of their respective prisons, leading to a lack of consistency across the prison network. Given the systemic nature of my investigation, I have looked more broadly at leadership across the organisation.
377. The general responsibility under the Corrections Act for the operation of the *'corrections system'* rests with the Chief Executive.³⁹¹ In terms of how prisons operate, the Act sets out the powers and functions of prison managers:³⁹²

388 Daisy Hudson ["'Savage attack" on four officers at Otago Corrections Facility'](#) (*New Zealand Herald*, 2 November 2021). See also above n 113 at 92: *'Corrections manages some of our most difficult and challenging people, many of whom have long histories of violence and anti-social behaviour. With over 80% of our prison population having a current or prior conviction for violence there is a risk that individuals will resort to violent behaviour as a means of resolving issues and expressing themselves.'*

389 Public Service Act 2020, sch 6, cls 8 and 9.

390 Kriminalomsorgen Norwegian Correctional Service [Operational Strategy for the Norwegian Correctional Service 2021–2026](#) at 19 and 31.

391 Corrections Act 2004, s 8.

392 Corrections Act 2004, s 12.

The prison manager has, in relation to the prison for which the manager is appointed or designated as manager, the following powers and functions:

- (a) ensuring that the prison operates in accordance with the purposes set out in section 5 and the principles set out in section 6:*
- (b) ensuring the safe custody and welfare of prisoners received in the prison:*
- (c) carrying out the functions conferred on the manager by section 33:*
- (d) establishing and maintaining processes to—*
 - (i) identify the communities significantly affected by policies and practices at the prison; and*
 - (ii) provide opportunities for those identified communities to give their views on those policies and practices; and*
 - (iii) ensure those views are taken into account:*
- (e) any other powers and functions conferred under this Act or regulations made under this Act.*

378. These powers and functions appear to overlap with those conferred upon the Chief Executive, specifically those listed at subsections **8(1) (a), (b) and (k)** of the Corrections Act, which are almost identical to those noted in subsections 12(a), (b) and (d) above. Given that the Chief Executive and Prison Directors appear to share some of the same statutory responsibilities, it is perhaps inevitable that there is inconsistency across the organisation. In my view, the conflicting nature of these legislative settings appears to be adversely impacting the whole Department, in terms of having a clear view of its roles and responsibilities.

379. This confusion is also compounded by regulation **6** of the Corrections Regulations, which provides that prison managers are responsible for the good management of that facility and the fair, safe, secure, orderly, and humane management and care of its prisoners. In this regard, both current and former Prison Directors who were interviewed consistently described their role as being about the day-to-day operation of their respective prisons. They stated they were accountable to their Regional Commissioners, who also have delegations over areas impacting the operations of prisons, such as budgets and staffing.

380. Generally, Prison Directors considered themselves unable to effectively manage their prisons and address recommendations from oversight entities, due to factors such as staffing pressures, restrictive

'This place is so big that things penetrate a certain way down the line and get to a position. Nothing ever makes it to the bottom.'

Union representative

budgets, and facility limitations, which fell outside their ability to address. The comments from some Prison Directors (as well as those in other prison management roles) also suggested that, over time, their authority had been diminished because decisions are *'made to and around'* them.

Embedding change

381. It was clear to me from interviews with Departmental staff (past and present) that the Department's frontline staff are disengaged from, and distrustful of, new strategies or initiatives for a variety of reasons. There appears to be a strongly held perception that the Department constantly *'re-invents the wheel'*, and that any new strategy or initiative will be replaced by another in due course. In this regard, Hōkai Rangī³⁹³ was identified by many interviewees (from both within and external to the Department) as not being embedded or implemented well.
382. One senior staff member described the organisation as being in a deep state of inertia, with staff becoming less and less willing to *'wake up'* when a new strategy is launched. Overall, I have observed a pattern of inability to embed meaningful change. Change has often been piecemeal or ad hoc, as the organisation appears to have jumped from one crisis to another, with limited follow through.
383. This was also observed in the 2021 report commissioned by the Human Rights Commission. The report identified *'a worrying gap between policy statements and practices on the ground'*.³⁹⁴ It reported *'little evidence in the paperwork, or in practice, of staff support and encouragement of pro-social behaviour, in line with Correction's overarching Hōkai Rangī strategy'*.³⁹⁵

There is a risk of Emperor's New Clothes, and you're selling a bit of a dream with nothing of substance behind it.

Senior departmental leader

Openness and accountability

384. Several third-party interviewees also expressed the view that the Department operates under a veil of secrecy and has a culture of obscurity. Prisons by their very nature are closed institutions, so perceptions of a lack of openness and transparency are not surprising.³⁹⁶ However, in a modern, civilised democratic society — where public sector agencies are expected to serve the public

393 Above, n 14.

394 See [Appendix 2](#), report 35 at 9.

395 See [Appendix 2](#), report 35 at 35.

396 This was also an issue I noted in my 2022 follow-up investigation into Official Information Act 1982 (OIA) compliance and practice. I found that of the 12 agencies surveyed, the Department of Corrections received the lowest ratings from staff (in the initial survey) in relation to senior leaders' approach to disclosure of information under the OIA, and their approach to openness more generally. See Peter Boshier [OIA compliance and practice in Ara Poutama Aotearoa Department of Corrections](#) (Office of the Ombudsman, September 2022).

and meet obligations under Te Tiriti o Waitangi | Treaty of Waitangi, international human rights instruments, and best practice — increased transparency and openness are a necessity.

385. A concerning example of lack of transparency that I came across was with the Making Shifts Work project. As noted elsewhere in my report,³⁹⁷ this project sought to replace the 8.00am to 5.00pm rosters that had developed in prisons with longer 10- to 12-hour shifts. The Investment Case specifically noted that benefits included increased prisoner unlock hours and more appropriate timing for meals and medications.³⁹⁸ In its 2021–2022 Annual Report, the Department stated (emphasis added):³⁹⁹

*The project closed in June 2022 **having delivered full benefits to 11 prisons, near-full staff benefits to four others, and partial benefits to the remaining two prisons** under Corrections management.*

386. On this basis, in October 2022, I asked the Department to supply me with the data relied on to determine that the benefits of improved meal times and medication times had been achieved, as well as the data indicating longer unlock hours. In its response of November 2022,⁴⁰⁰ the Department advised that '[c]urrently [it] does not collect data on unlock, meals and medication times'.⁴⁰¹

387. In communications with me, the Department explained the statement in its Annual Report as follows:⁴⁰²

The wording in the Annual Report is high level and does not capture the nuance of the benefits delivered to the different sites. Through the extensive editing process, the report becomes condensed and the high level statement of benefits being delivered to all 17 sites is not a deliberate misrepresentation.

388. I also note that, as part of a response to a written parliamentary question in September 2022, the material provided by the Department, and relied upon by the Minister of Corrections, stated (emphasis added):⁴⁰³

397 See comments under the heading '[Making Shifts Work](#)' on page 43 of my report; and under the heading '[Unlock hours and the timing of meals](#)' on page 70 of my report.

398 Above n 214 at 3 and 13

399 Above n 84 at 56.

400 The Department's cover letter to 'Information Request 20' dated 27 October 2022 from my Office (9 November 2022).

401 This can be contrasted with the weekly updates the Department has been providing my Office since November 2022 about the denial of minimum entitlements. See above n 215.

402 Above n 400.

403 Written Parliamentary Question to the Minister of Corrections: [WPQ29946 \(2022\): Simon O'Connor to the Minister of Corrections](#) (24 August 2022).

*A project team is currently being set up to follow on from MSW to work towards the department commitment to put all sites on MSW by the end of June 2023. But due to staffing levels at the sites this is unlikely to occur until a significant recruitment uplift. **The team will work towards other options or hybrid solutions to enable staff benefits for all Corrections Frontline Staff.***

All but 2 sites are now on shifts other than 8hrs which are both Auckland Regional Prison and Northland Region Corrections Facility.

*4 x sites are on Staffing level response (SLR) rosters which include 12, 10's and 8's that **enables the MSW benefits for staff but not the operations**, including MECF, ARWCF, SHCF and Arohata Prison.*

389. As such, I am not persuaded by the explanation provided by the Department about the discrepancy in its Annual Report. The statement made in that was unequivocal; full benefits (for both staff and prisoners) had been realised.
390. Overall, it is not apparent to me how it could have been possible to establish that these benefits had been realised in 11 prisons, when the Department does not collect the necessary data. Further, my investigators were advised during this investigation that the Making Shifts Work project had not been fully implemented at some sites, due to the lack of staff.

Steps taken to address culture

391. Many of the concerning features of the organisational culture that I have identified through this investigation should have been apparent to the Department's senior leaders, as they are highlighted in the results of its various staff surveys over the years. However, I found only limited evidence that the current staff survey results were being used by senior leadership to assist with understanding and addressing staff engagement as part of a wider continuous improvement approach.
392. The Department used to run a comprehensive staff engagement survey, but that format was retired in 2016 and replaced in 2019 by a short-form six-monthly pulse survey (Shaping Corrections Survey). The new survey uses an employee Net Promoter Score (eNPS) to understand how likely employees are to recommend the Department as a place to work. A memo to the ELT proposing the new survey format stated that it would *'enable us to better target our workplace initiatives and measure the impact we achieve through the*

experiences of our staff.⁴⁰⁴ It appears that the Department did not undertake any organisation-wide survey to assist it in identifying and understanding its culture between 2016 and 2019.

393. In response to my specific question on this, the Chief Executive has explained that the *'absence of surveys during this period reflects the time it took to explore options and develop the format and method for the Shaping Corrections survey'*. He went on to say that the Department had *'undertaken a range of other forms of staff engagement between 2016 and 2019, including ... [s]ignificant engagement with staff on the development of Hōkai Rangī'*.⁴⁰⁵

394. In my view, consultation with staff on any strategy or change initiative serves a different purpose to an organisation-wide staff engagement survey. The former is usually more intrinsically linked to the duties set out under the terms and conditions of employment, as opposed to an agency proactively seeking to understand the levels of staff satisfaction and engagement more generally. In any case, the Chief Executive's comments about the development of Hōkai Rangī do not correlate with evidence my investigators heard, to the effect that it was only a small group of staff who participated (around 30 people). A senior departmental leader suggested that *'it was almost done ninja style'* and that 99 percent of the organisation first saw Hōkai Rangī when it was released on the Department's intranet. They went on to say:

It was a good thing in that ... if we had the traditional hands of the business over it all the way through, you wouldn't have the same product ... it wouldn't have been that aspirational at all would be my contention, it certainly would have been very different ... In doing that I believe we've also had some growing pains...

Staff engagement

395. It is clear from a review of the engagement surveys done that there is a history of the Department rating poorly in the areas of staff engagement and managerial practice, as far back as the 2011 Staff Engagement Survey.⁴⁰⁶ This is particularly the case for frontline staff in prisons, who have tended to rate aspects of the organisation's culture more poorly than staff based in National Office.

404 Ara Poutama Aotearoa | Department of Corrections *Corporate Services 5.4-A13 Executive Leadership Team Memorandum* (20 November 2018) at 2.

405 Above n 160.

406 The 2012 PIF commented on the results of the 2011 survey that staff engagement was low, particularly among prison staff. In 2016, survey results noted that, while there had been a small improvement in engagement between 2013 and 2014, by 2016 the results had dropped below those achieved in 2013. Results from April 2019 onwards (using a different measure) also indicate declining eNPS rates, with prison sites rating the lowest.

396. My analysis of the open text responses of the Shaping Corrections pulse survey between September 2019 and March 2021 identified similar concerns to those expressed in the earlier 2011 and 2016 survey results.⁴⁰⁷ A major driver for negative feedback was staff experiencing inconsistently applied management practices, or issues with how they were supported by the Department. Common themes focused on a perceived lack of support from management, with staff using terminology such as 'lip service', 'poor performance', '(lack of) visible leadership', 'shoulder tapping', and 'box ticking exercises'.⁴⁰⁸
397. It is important to note that not all of the free text responses were negative. On the positive side, a fair number of staff complimented the Department's health and safety processes, and though a bullying culture was identified by hundreds of staff, the numbers who did have been declining over time.
398. In his communication with me about this investigation, the Chief Executive commented on the results of the pulse survey as follows:⁴⁰⁹

The Shaping Corrections pulse survey seeks to measure four key indicators: Employee Net Promoter Score ('eNPS' — a proxy for staff engagement), Health, Safety and Wellbeing Net Promoter Score ('HSW NPS' — a proxy for organisational safety climate), 'Just Culture', and employee empowerment. Despite the challenges brought about by COVID-19, the HSW NPS (scale of -100 to +100) has experienced a marginal improvement since it was introduced, indicating a mild improvement in the perception of workers that Corrections' management are committed to improving health, safety and wellbeing. The Just Culture score (scale of 0 to 10) reflects staff perceptions regarding whether the organisation focuses more on learning or seeking to blame people when things go wrong. Since 2019, this score has also improved marginally and indicates that, in general, workers feel that Corrections is more focused on learning than blaming.

399. While this is encouraging, it appears that, based on the latest results, eNPS (particularly in terms of those working in prisons) has declined over the last three years. While COVID-19 would undoubtedly have had an impact on these results, as I observed earlier, the Department has a persistent history of low staff engagement, particularly among

407 Answers from the Shaping Corrections staff survey were analysed using a machine-driven classification of open-ended responses method using R statistical software. Over 20,000 open-ended responses were processed via text-mining techniques to identify commonly raised subjects. Network analysis was then applied to subsets of responses to analyse the language that staff used in providing their feedback. Samples of responses were also read to confirm the interpretation of the network analysis.

408 Analysis indicates that September 2019 and March 2021, there were over 1,800 responses that discussed leadership or management.

409 Above n 160.

prison staff, across surveys conducted in 2011, 2013, 2014, and 2016. In light of this, the lack of sound measures to assess and respond to them, as discussed below, is concerning.

400. In my view, the approach to staff engagement is illustrative of wider systemic issues that underpin leadership and culture within the agency. As indicated above,⁴¹⁰ good leadership would be demonstrated by a comprehensive review of staff survey results and thorough analysis of the issues that require attention. At the very least, it calls for collaborative management and leadership across the organisation to set a cohesive direction. However, I saw little evidence of an organisation wide, coordinated approach to addressing the issues revealed by the staff surveys. In fact when asked, I was advised that there are no formal reports to senior leaders from the pulse survey data. Instead, the Chief Executive advised me:⁴¹¹

I have shifted away from a formal report to [the Executive Leadership Team] with the survey results as it is my expectation that leaders access the information via a self-help medium with support offered as required. I believe this is a mature approach and supports my view that senior leaders have a shared responsibility to engage with the outcomes and use the information that is available. I personally review all free text responses from the Shaping Corrections surveys before I conduct a site visit, to ensure I understand staff needs before I meet with them.

401. In my view, it is difficult to see how a joined-up view and cohesive organisational direction can be achieved, if this is the approach taken to comprehensively address the issues identified in the survey across the Department.
402. It is also unclear how seriously the Department takes critical feedback provided by surveys. It was suggested by one interviewee that, since participation rates in the survey were low, the responses were of little value. For reference, the response rate sits at about 50 percent of all staff, compared to 70 to 80 percent for the earlier engagement surveys. A response rate of 50 percent still provides the Department with a 95 percent confidence level and a margin of error within 1 percent.
403. It appears that while some frontline managers have been using feedback from surveys to inform change, this activity has been isolated, with no other clear and systematic approach to addressing criticisms. In part, the lack of a proactive, whole-of-organisation approach to feedback can be tied back to the change in survey methodology itself. Prior to the introduction of the new survey

410 See comments under the heading '[Stewardship obligations](#)' on page [28](#) of my report.

411 Above n [160](#).

format in 2019, results were comprehensively examined and formalised in reports that went directly to the Chief Executive and senior leadership. Now results are made available directly to managers online. While this has provided individual managers with ready access to results, there appears to have been a loss of focus on coordinated, centralised oversight and organisation-wide responses to the concerns raised by staff.

404. I note that in the Department's response to my provisional opinion,⁴¹² the Chief Executive agreed with my emphasis on *'the central importance of organisational culture in determining actual behaviours, experiences, and ultimately outcomes'*. He also noted that *'determinants and influencers of organisation culture are complex and interwoven, making it very difficult to effect "top down" change with reliable and predictable results'*. The Chief Executive recognised that *'leadership is key to effecting organisational culture change'* and *'embedding change requires sustained commitment and focus from the entire organisation'*. In this regard, he referred to the Department's next-stage change programme, Hōkai Rangī: Te Ara Whakamua (The Pathway Forward) which, at the time of forming my opinion, was under development.⁴¹³

Workforce capability and capacity

405. Oversight entities have raised workforce-related concerns for some time. For example, in 2020 the Department's Chief Inspector referred to the high number of custodial and health vacancies at Auckland Region Women's Corrections Facility, stating, *'This undoubtedly places a greater burden on the current staff and impacts adversely on morale and the ability to support the wāhine'*.⁴¹⁴ In the same report, the Chief Inspector found that specialist training in areas such as trauma-informed practice was not being provided on a regular basis, and that some health staff required further training to ensure they were able to undertake appropriate health triage.
406. I have previously stated that I consider system stewardship requires an agency to have clear long-term strategic capability planning which is fit for purpose and proactively supports staff training.⁴¹⁵ This is particularly pertinent for an agency that relies heavily on frontline staff to maintain a 24/7 critical service that, among other matters, is obliged to ensure the fair, safe, and humane treatment of the people in its care.

412 Above n 340.

413 In his correspondence, the Chief Executive advised that he would share this with me in due course.

414 See [Appendix 2](#), report 43 at 3.

415 See comments about structure and resources at paragraph 72 of my report.

407. My investigation has identified a number of workforce issues that have impacted, and continue to impact, the Department's ability to implement the recommendations of oversight entities. These include:

- staff shortages and a loss of institutional knowledge through turnover and restructuring, which have contributed to the Department's inability to adopt a systemic approach to considering the recommendations of oversight entities, and to a failure to monitor and assure the implementation of recommendations;⁴¹⁶
- custodial workforce shortages and roster patterns that have impacted on the Department's ability to safely increase unlock hours across the prison network in a sustainable way, and which have contributed to the Department's difficulties in making changes to meal times;⁴¹⁷
- a lack of development of workforce capability to ensure the people in the care of the Department are treated in a humane way, with respect for their human rights, as highlighted by the Department's response to concerns about privacy and the use of physical force;⁴¹⁸ and
- issues with custodial and health staff resourcing levels, contributing to delays in access to health services.⁴¹⁹

408. These apparent systemic issues led me to consider more broadly how issues of workforce capacity and capability were impacting on the Department's ability to make sustained change, and what steps the Department has taken to address workforce issues.

409. I would expect the Department to have a clearly articulated long-term workforce strategy or plan that:

- ensures its services and functions are appropriately resourced to deliver key strategies/initiatives, while maintaining operational delivery at all times;
- ensures the skills of staff are well matched to providing for the fair, safe, and humane treatment of people in the care of the Department;
- recognises and gives priority to the core training required for all staff including Te Tiriti o Waitangi | Treaty of Waitangi, Māori Crown relationships, cultural competence, human rights, and diversity and disability awareness; and

416 See comments under the heading '[Identification of wider issues](#)' on page 65 of my report.

417 See comments under the heading '[Unlock hours and the timing of meals](#)' on page 70 of my report.

418 See comments under the heading of '[Privacy screens and CCTV cameras](#)' on page 72 of my report.

419 See comments under the heading '[Health](#)' on page 74 of my report.

- has effective systems and processes in place for monitoring workforce capacity and capability, in order to respond to changes in a timely manner.
410. To meet its Te Tiriti o Waitangi | Treaty of Waitangi obligations, which include the responsibilities of the Chief Executive to develop and maintain the capability of the Department to engage with Māori and *'to understand Māori perspectives'*,⁴²⁰ I would expect the Department's long-term workforce planning to include:
- explicit strategies and actions to recruit, develop, and retain Māori Crown Māori Crown relations capability at every level of the organisation; and
 - explicit strategies and actions for the ongoing development of the cultural capability of all staff.

Strategic workforce planning

411. Despite the Department having been made aware of workforce-related concerns at least since 2017, the Department has acknowledged that it does not have a long-term workforce strategy or plan, nor has it had one since at least 2018.⁴²¹ Various reasons have been given for this, including the Deputy Chief Executive People and Capability telling my investigators that, during the *'prison crisis'*,⁴²² the Department could not engage in long-term thinking about its workforce.
412. In a written response to my request in September 2021 for copies of workforce strategies from 2018 onwards, the Department advised that *'for the period 2018 — 2021 our workforce strategies were best detailed in bargaining documents', and that a 'refreshed workforce strategy will be produced following a capability review that is now underway'*.⁴²³
413. Twelve months later, when asked about the absence of a workforce strategy or plan, the Chief Executive confirmed that the Department did not have an overall workforce strategy and said that, since the adoption of Hōkai Rangi as its central strategy, he *'preferred to limit*

420 Public Service Act 2020, s 14(2).

421 In a written response to a request from investigators when asked to provide the Department's workforce strategies for the period 2018 onwards, the Department noted such a strategy did not exist. Instead, the Department provided my investigation a copy of bargaining documents provided to the Treasury as part of a spending review, noting that these documents indicated the approach to workforce for the period 2018–2021.

422 'Prison crisis' is the term used by the Department and many interviewees to describe the period 2016–2018, when there was unexpected growth in the prison population numbers.

423 Written response from the Department to 'Information Request 3' from my Office, received October 2021. The response included a document that had been provided to the Treasury (dated 21 September 2021) detailing the Department's workforce strategy development from 2019 onwards. The Department indicated that the information in the document was highly sensitive and inclusive of information relevant to active collective employment agreement bargaining.

*the number of other documents that are framed as strategies to retain an organisational focus on plans and actions supporting and enabling Hōkai Rangī.*⁴²⁴ He noted some exceptions to this, including the Alcohol and Drug Strategy which he said was mandated by law, and the Department's 2021 Wāhine — E Rere Ana Ki te Pae Hou,⁴²⁵ which he described as setting out how the Department will achieve its Hōkai Rangī aspirations for women.

414. The Chief Executive provided no information to support what my investigators had been told earlier with respect to the development of a refreshed workforce strategy. Instead, he referred to a number of other initiatives to explain how the Department aimed to develop its workforce from 2018 to 2021.⁴²⁶ He also referred to the recent development of a Health Services People Plan 2022–2024, the Statement of Intent and the Annual Report for a *'clear picture of our overall workforce development'*.⁴²⁷
415. While the documents referred to by the Chief Executive provide a number of high-level statements about organisational health and capability, they do not, in my view, demonstrate that the Department had a long-term strategy or plan clearly articulating how it will recruit, develop, and retain the mix of knowledge, skills, and behaviours required — not least to address the significant capability and capacity issues preventing it from making sustained change in response to oversight entity concerns. For example, having reviewed the Health Services People Plan, in my view the two-page document shows limited, if any, understanding of the complexity of issues associated with the health workforce. It also fails to identify any specific actions or accountability for delivery.⁴²⁸
416. In its response to my provisional opinion, the Department acknowledged that it may have benefited from *'clearer articulation of an overarching workforce capability and capacity strategic plan, including cultural capability, in recent years'*. The Department pointed to the Ara Poutama Aotearoa People Plan, endorsed by its Executive Leadership Team in March 2023, as well as the associated Future of Learning Programme, which is in its early scoping phases. The Chief

424 Above n 160.

425 Above n 15.

426 The initiatives referred to were the Hōkai Nuku Business Case; the establishment of a People Portfolio to oversee operating performance and oversee business change of people-focused programmes and projects; collective bargaining strategies; changes to the People and Capability Structure in 2021; new money through Budget 2022 to allow investment in the workforce; and changes to the Learning and Development structure in 2022.

427 Above n 160.

428 The plan provided to my investigation appears to have been developed in March 2022 and was presented to the Health Services Leadership Team on the 6 April 2022. My investigation was advised that, at that meeting, a decision was made that the Pae Ora team would own further actions and implementation.

Executive considers that these will *'ensure an employee-centric process for attracting and recruiting the right people, providing clear capability pathways and career options, and continuous improvement'*.⁴²⁹

417. On the basis of the information provided to me during the course of my investigation, the Department appears to me to be tactically focused on addressing urgent and immediate presenting workforce issues, to the detriment of taking a long-term strategic and planned approach to building and developing its people. This is evident in a number of workforce-related issues (such as there being insufficient staff to increase unlock hours) that have contributed to the concerns of oversight entities and have ultimately prevented the Department making sustained change.

Resourcing levels

418. Over the course of my investigation, it became increasingly evident that the Department has experienced significant staff shortages due to turnover and lower levels of recruitment, and that it continues to do so.⁴³⁰ My investigators heard from many frontline managers about challenges in filling rosters sufficiently to provide for minimum entitlements and for the implementation of Making Shifts Work.
419. Later in my investigation, the Chief Executive advised me that, as a result of staff shortages, he would be delaying substantive changes to the Department's operating model due to the need to focus on recruitment and retention.⁴³¹ In August 2022, the Department provided an update to the judiciary, the legal profession, and the justice sector on the steps being taken to ease resourcing pressures in the prisons. These included:⁴³²
- rolling surge staffing to support Mount Eden Corrections Facility and Spring Hill Corrections Facility;
 - plans to consolidate the prison population into fewer units;
 - the implementation of alternative rosters to enable the provision of critical services; and
 - planning for prisoner movements around the country to reduce pressure on sites most impacted by staffing shortages.

429 Above n 340.

430 A review of the data related to unfilled established full-time-equivalent custodial positions dating back to June 2017 indicates the Department has consistently had fewer custodial staff than planned for. The situation appears to have worsened in 2019/20 and then again in 2022/23. In addition to unfilled positions, the Department has staff unavailable for rostering (for example, due to injury) which further exacerbates the difficulties Prison Directors have in maintaining prison rosters.

431 Meeting between the Chief Ombudsman and the Chief Executive of Corrections (14 September 2022).

432 Ara Poutama Aotearoa | Department of Corrections *'Work to ease staffing pressures in the prison system'* (August 2022).

420. Staff shortages⁴³³ continue to have impacts on unlock regimes and visits across a number of prison sites, which I am currently monitoring through weekly reporting to me by the Department.
421. Although the ongoing impacts of COVID-19 are being felt by many employers, resourcing pressures across the prison network are not new. For example, in responding to concerns about vacancies in 2018, the Chief Custodial Officer said the Department had 60 vacancies across the prison network and 170 frontline prison staff unavailable for work,⁴³⁴ meaning a total of 230 frontline positions were unavailable for rostering.
422. In June 2022, the Department said the number of frontline vacancies totalled 438 positions, and a further 341 of the total 3,632 frontline staff employed were unavailable for work.⁴³⁵ This meant a total of 779 frontline positions were unavailable for rostering. The significant growth in the vacancy numbers (and of staff unavailable for work) coincides with a period in which the Department did not have a workforce strategy or plan. While I acknowledge the Department's comments about '*other coinciding factors*',⁴³⁶ vacancy numbers were growing prior to the COVID-19 pandemic. Regardless of COVID-19, the Department as steward of the corrections system must ensure it plans for global and national events such as pandemics and disasters. I would expect such plans to consider issues related to maintaining the custodial and health workforce at such levels as to ensure the rights of those in prison are not diminished.
423. As well as being raised by oversight entities, my investigation heard that Prison Directors and Health Centre Managers have expressed concerns about resourcing levels to more senior managers and the impact this has on the day-to-day operation of the prisons, including their ability to meet the health care needs of people in their care. I also learnt that, in May 2021, CANZ raised the issue of staffing levels in a letter to the Chief Executive about staff safety and welfare, and holding prisoners to account. In that letter, CANZ referred to there

433 In reply to Written Parliamentary Question [1203 \(2023\)](#). [Toni Severin to the Minister of Corrections - New Zealand Parliament \(www.parliament.nz\)](#), the Minister of Corrections reported Corrections Officer vacancies had increased from 58.89 FTEs at 30 June 2021 to 509.55 at 31 December 2022. For the same period, vacancies for Nurses had increased from 23.30 to 50.10 FTEs.

434 Harrison Christian 'Prisons across the country are short hundreds of staff, Corrections reveals' (Stuff, 25 June 2018). Corrections use the terminology 'unavailable for work' to refer to situations where, for example, a prison officer may have a long-term injury, be on ACC, or be suspended due to disciplinary action in progress.

435 By January 2023, the number of Corrections Officer vacancies was reported in the media (based on information provided by the Department) as having increased to 494 positions, See Tom Hunt '[Jail population grows by 600, Corrections recruitment lags](#)' (Stuff, Friday 6 January 2023).

436 Above n [340](#). The Department referred specifically to COVID-19 and the emerging post-COVID world, pay freezes, high employment mobility and slowly re-opening borders.

being ‘a staffing crisis across the Prison Estate’, creating an environment where staff were taking unacceptable risks (such as not operating in pairs at all times) to make things work.⁴³⁷

424. The Department did significantly increase frontline recruitment activity in response to the unexpected growth in the prison population in the years 2016 to 2018, but I was told by several interviewees (including unions representing staff and those that have been involved in recruitment) that, as the prison population started to decline, the ‘recruitment tap’ for frontline prison staff was turned off and the focus shifted to recruiting for additional National Office roles. The Chief Executive considers this perception to be unfounded, stating that it has taken frontline recruitment seriously despite the recent impacts of COVID-19 and a tight labour market. He stated further:⁴³⁸

I continue to stand by my [previous] comments that the focus of the uplift in National Office staff has been on developing strategic capabilities to set the foundations for our longer-term change programme and support organisational maturity and capability building.

425. A review of data provided by the Department (see [Figure 8](#)) confirms that, prior to September 2020, recruitment of Corrections Officers largely kept ahead of those leaving.⁴³⁹ However, from November 2020, as the number of custodial staff leaving began to steadily increase, recruitment began to fall behind, resulting in a net loss of staff (this is likely to have been exacerbated by the impact of staff who had joined the Department at the outset of the COVID-19 outbreak resigning to return to their previous careers).

437 Letter from the President of the CANZ to the Chief Executive of the Department (7 May 2021).

438 Above n [340](#).

439 Note that those leaving is a mix of Corrections Officers, Senior Corrections Officers and Principal Corrections Officers. Due to the nature of the career path, the Department generally recruits at the level of Corrections Officers, who over time may progress to Senior and Principal roles.

Barriers to sustained change

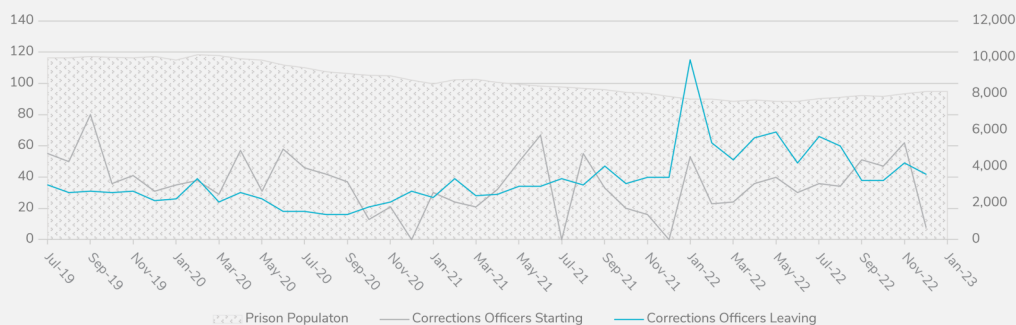


Figure 8: Recruitment of Corrections Officers vs those leaving July 2019–December 2022⁴⁴⁰

426. When considered on an annual basis (Figure 9), the same data⁴⁴¹ confirms that in 2018/19 and 2019/20, the Department recruited more custodial staff than were leaving. This is in line with the Department having received additional baseline funding in Budgets 2016, 2017, and 2018 in response to the rising prison population and the complex needs of those serving sentences and orders in the community. This undoubtedly contributed to an increase in the prison workforce establishment of 664 full-time-equivalent staff (FTEs) over a 4-year period up to 2020. However, in the following 2 years, the prison workforce establishment reduced by 110 FTEs.

440 Data provided by the Department in response to Written Parliamentary Questions to the Minister of Corrections: [WPQ 30057 \(2022\). Toni Severin to the Minister of Corrections - New Zealand Parliament \(www.parliament.nz\)](#) and [WPQ 30060 \(2022\). Toni Severin to the Minister of Corrections - New Zealand Parliament \(www.parliament.nz\)](#). Data for the period September 2022 to December 2022 was provided directly to the investigation in January 2023, with the Department noting that among the recruited staff in this period were prior Corrections staff returning (some as Senior Corrections Officers and some as Principal Corrections Officers).

441 Above n 440.

Barriers to sustained change

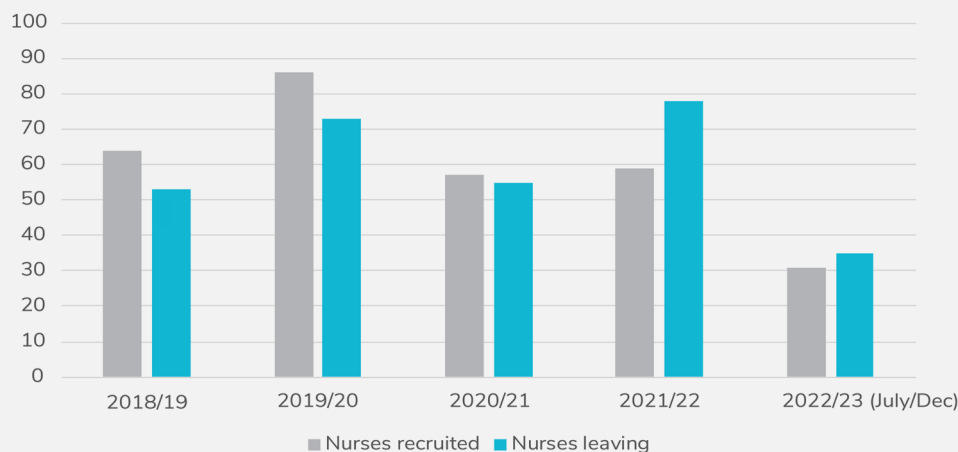


Figure 9: Annual recruitment of Corrections Officers vs those leaving

427. I heard a level of frustration from some Prison Directors about the growth they had observed in National Office resourcing levels at a time when they were experiencing delays and difficulties replacing custodial and health staff who were leaving. Data provided by the Department (see [Figure 10](#)) indicates that the National Office establishment increased from 879 FTEs in 2017 to 1,309 FTEs in 2022 — an increase of almost 49 percent. Over the same period, the total prison workforce FTEs increased by 11 percent.

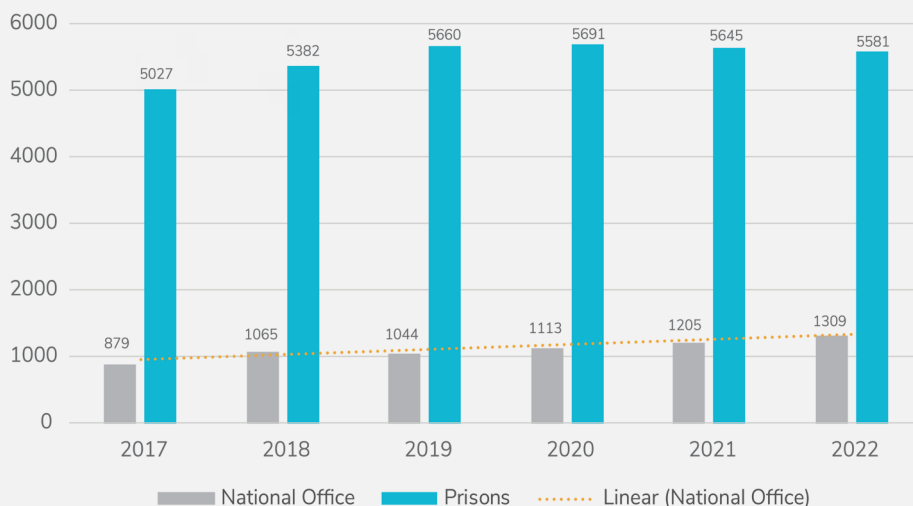


Figure 10: Changes in establishment full-time equivalent roles 2017–2022

428. I have given some thought to whether the reduction in the prison population between 2020 and mid-2022⁴⁴² might have had some bearing on the either the overall decrease in the prison workforce establishment or the turning off of the custodial recruitment tap. However, I have seen no evidence to persuade me this was the case. In any event, given the increasingly complex needs of the

442 The total prison population decreased from 9,500 to 7,700 people in this period.

prison population, the repeated recommendations related to staff shortages, and the Making Shifts Work initiative indicating that resourcing levels were not sufficient at all sites to fully implement new rosters, I do not consider a leveling off, or a reduction in prison staff FTEs would have been an appropriate response to the reduction in prison numbers.

429. Equally compelling, if not more so, are the justice sector forecasts, with the most recent projecting the prison population will increase to 9,400 in June 2032. As detailed above,⁴⁴³ the prison population has already exceeded 8,000 people, reaching 8,641 by early June 2023.⁴⁴⁴
430. I prefer to accept the Chief Executive's explanation⁴⁴⁵ that much of his focus in recent years has been on developing strategic capabilities at the centre (National Office) to enable a change programme over the longer term, and as a means of developing the Department's maturity ahead of the longer term transformation envisaged by the Hōkai Nuku Business Case.⁴⁴⁶ He also noted that the increase in capability at National Office had been achieved, despite investment in Budget 2020 having not been secured for this purpose. I take this to mean that funding was reprioritised from within baseline, to fund these additional capabilities.
431. Growing the maturity of the organisation is undoubtedly a good thing, and I applaud the Department for taking steps to invest in additional capability to support longer-term change. The need to reprioritise funding to achieve this approach is one of the many challenges I have identified that the Department faced, as it attempted to implement a number of ambitious strategies and initiatives which had the potential to address oversight entity concern, without having first secured the necessary investment required to prepare the custodial and health workforce.
432. I would expect that decisions to reprioritise funding to focus on developing strategic capabilities at the centre would be based on a thorough understanding of the potential risks to operational delivery across the prison network. Decision making should be informed by a variety of information, including an understanding of the wider operating environment, resourcing patterns, turnover data, and information gathered from staff leaving, as well as the concerns of the various oversight entities. This matters, because decisions that impact on frontline resourcing levels affect the most fundamental rights to fair treatment and conditions for those in the Department's

443 See comments under the heading 'The prison population' on page 47 of my report.

444 Above n 132.

445 Above n 160.

446 Developed in 2019, the Hōkai Nuku Business Case is described as providing 'objective analysis for decision-makers, enabling informed investment decisions to make the foundational changes needed to deliver the outcomes articulated in Hōkai Rangī'. See above n 83 at 11.

care. And, as demonstrated by the severe staff shortages that are now evident, the effects on those detained in prison are significant — for example, through being relocated to prisons away from whānau and existing support networks, disruption to rehabilitative activities, limited or no access to face-to-face visits, and extended periods of lockdown.

Impact of staffing levels on achieving the benefits of Making Shifts Work

433. As I have already noted, the Department has told me for some years that its Making Shifts Work initiative would address the concerns of oversight entities about meal times, unlock hours, and access to programmes.⁴⁴⁷
434. In my investigation, I identified that, despite being described as the most significant operational change in the Department's history, the Making Shifts Work project team discovered at a late stage that the Department did not have a sufficient understanding of how each prison was operating their shift patterns.⁴⁴⁸ At interviews, my investigators were told that Prison Directors had raised concerns with the Making Shifts Work project team about the gap between existing staffing establishment levels and the levels that would be required to adopt the new 12-hour rosters.⁴⁴⁹
435. A member of the ELT reiterated the findings of the project team, telling my investigators that the Department had been (emphasis added):

...

We probably started off quite optimistic thinking we had one prison system to sort, and I think that's been the biggest lesson for me around the complexity of change in this organisation, it had to be stretched out because every prison was so completely different. And so we've had to build the

447 See comments about Making Shifts Work in response to concerns about [Unlock hours and the timing of meals](#) on page 70 of my report.

448 Phase 1 of the Making Shifts Work project was completed in September 2016. This phase included problem definition and reaching agreement with the unions on rostering principles. By March 2017, Phase 2 had been completed — this included identification of the high-level design principles and rostering rules. In an April 2018 update to the Corrections ELT, it was noted that the project had identified that the National Office understanding of how prisons were operating was inaccurate, and that there were differences between prisons sites for managing shifts. This resulted in Corrections working with a third-party consultancy to undertake a detailed analysis of each prison site between July and October 2018, which also highlighted gaps in the resourcing levels required to roll out new shift patterns.

449 My investigation also identified a level of resistance to the changes to rosters due to the impact of longer shift hours on custodial staff, suggesting Corrections still has some way to go to embed the changes across the prison network, even if it achieves the staffing levels required.

*rosters individually for every prison to make sure that we hit those meal times, that we hit those medication runs, and **we delivered the benefits that we promised to our unions and to our staff**, and that's quite a complex proposition to do that.*

*...the technology will be deployed [to sites that have not moved to Making Shifts Work yet], the challenge was — and **one of the limitations that we put on it** — [] that we were given the money to do the project, which was the change and the technology and all of those parts, **but we needed to achieve it within our current FTE envelope**. So there wasn't money sent to say — oh if you think you need another 50 staff at this prison in order to do this then you can have another 50 staff.*

...the difference is at Auckland Men's, MECF, and Auckland Women's because they're very different with the nature of their business, we'll have to look at can you run the prison in a different way safely that would allow you to get some more of the benefits from this. So we're not walking away from it, the Project will formally wrap-up once we've deployed the technology.

436. Ultimately, the shortage of staff was one of the primary reasons for delays in the implementation of the new shift patterns.⁴⁵⁰ Some Prison Directors told my investigators they would not be able to implement the new rosters until such time as they had sufficient custodial staff available to operate the new roster patterns.⁴⁵¹

450 The Making Shifts Work Investment Case (above n 214) stated that all prison sites would be operating the new roster patterns and that all operational changes would be in place by November 2020. Eleven sites transitioned to the Making Shift Work rosters between July 2020 and September 2021. Advice provided to the Minister for Corrections in September 2022 (in support of the response to Written Parliamentary Question 29946 (above n 403)) indicated that, by 30 November 2020, four sites had transitioned to Making Shifts Work, with a further seven transitioning between February 2021 and September 2021. Four sites (Spring Hill Corrections Facility, Mount Eden Corrections Facility, Auckland Regional Women's Corrections Facility and Arohata Women's Prison) were on 'Staffing level response' rosters that enable benefits for staff but not prisoners. Two sites (Auckland Regional Prison and Northland Region Corrections Facility) remained on 8-hour shifts.

451 Further evidence supporting this was seen in an internal memorandum from the Making Shifts Work Project Team to the Project Governance Board in February 2020, which noted that baseline potential unlock hours calculated for the Investment Case include assumptions about shift hours that were found to be incorrect, resulting in an overestimation of potential unlock hours. One of the consequences of this was identified as additional full-time equivalents (FTEs) being required to staff the Making Shifts Work rosters, above what was assumed in the Business Case.

Addressing staff turnover

437. Despite concerns related to resourcing levels having been raised by unions and prison managers as a factor limiting the ability of the Department to make sustained change,⁴⁵² the Department has repeatedly reported that turnover was not a concern, due to the average turnover being below the average for the wider public sector.⁴⁵³ The Department also reported that it did not collect data on the reasons for people leaving.⁴⁵⁴
438. While it may be correct that, as a whole Department, turnover was below the average for the wider public sector, the information the Department provided to the Treasury in 2020 indicates that it was aware that key sites (including Mount Eden Corrections Facility and Auckland Region Women’s Corrections Facility) were experiencing recruitment and retention challenges — including turnover for nurses *‘still being high’*.⁴⁵⁵ The Hōkai Nuku Business Case also identified that when looking at turnover by function, nurses had the highest rates of turnover in 2019, at 24 percent.⁴⁵⁶ The Business Case workforce analysis went on to find:

High turnover rates, in particular for nurses and psychologists (as compared to other roles), and constrained labour markets, have a direct impact on the number of staff with these skills required to provide and improve custodial care, and is likely to exacerbate workforce shortages.

439. I also found that the information provided in the Annual Review about the Department not collecting data on the reasons people leave, and the increasing turnover, was at odds with the Department’s internal reports to the People Portfolio Governance

452 As well as resourcing levels underpinning concerns raised by oversight entities (such as unlock hours, access to health services requiring greater custodial support) as far back as at least 2017.

453 See for example Ara Poutama Aotearoa | Department of Corrections [Response to the 2018/19 Annual Review of the Department of Corrections](#) (15 November 2019) at 103; and [Response to the 2019/20 Annual Review of the Department of Corrections](#); (12 February 2021) at 108; and [Response to the 2020/21 Annual Review of the Department of Corrections](#) (10 December 2021) at 113. In its February 2023 [Response to the 2021/22 Annual Review of Department of Corrections](#), the Department’s response for staff turnover for 2021/22 indicated a significant increase, with the Department noting that it had *‘extensive business continuity plans in place across the country to meet the required staffing levels across a range of different situations, including health emergencies, natural disasters, and the ongoing response to COVID-19’* (at 118 and 121)

454 Ara Poutama Aotearoa | Department of Corrections [Response to the 2020/21 Annual Review of the Department of Corrections](#) (10 December 2021) at 115.

455 Ara Poutama Aotearoa | Department of Corrections unpublished document provided to The Treasury. In this document recruitment and retention issues at Mount Eden Corrections Facility and Auckland Region Women’s Corrections Facility were indicated as sitting at 13 percent, compared to 9 percent across the prison network, and turnover for nurses in 2020 was flagged as being high, at 20 percent.

456 Above n [83](#) at Appendix G.

Committee.⁴⁵⁷ Those reports (covering the same reporting period) indicated increasing levels of turnover across a number of prison sites, and made it clear that exit surveys were being undertaken, with information from these being provided to members of the Committee.

440. For example, in March 2021, the People Portfolio Governance Committee received a report on 227 completed exit surveys, which identified the three main reasons for people leaving as being:
- career development;
 - better work/life balance; and
 - culture and climate.
441. The responses by the Department in respect of these staffing issues suggest a lack of appreciation of the impact that resourcing shortages have on both the people in the care of the Department and on the wellbeing and safety of staff.⁴⁵⁸ For example, when I specifically raised resourcing pressures in July 2022,⁴⁵⁹ the response I received from the Chief Executive suggested that, while acknowledging the employment situation was *'fragile'*, the Department did not appear to consider there to be a staffing crisis. The Department also considered that it was taking steps to address retention issues through local responses to workforce needs, such as the provision of transport for staff to reduce their individual fuel costs.⁴⁶⁰
442. Despite these assurances, media reports (based on information obtained from the Department through Official Information Act 1982 requests) indicate that in early August 2022, the Chief Executive considered declaring a prison emergency at Mount Eden Corrections

457 Terms of Reference for this group were approved on 19 August 2020, when the group was established. The purpose of the People Portfolio Governance Committee is described as being *'to provide stewardship over our people and organisational culture to ensure Ara Poutama Aotearoa has the capacity and capability to achieve the outcomes defined by Hōkai Rangī'*.

458 In contrast, the authors of the Hōkai Nuku Business Case commented that the lived experience insights they had gathered suggested that *'high turnover rates have a clear impact on the number of skilled staff in roles that are required to effectively provide custodial care'*. See above n 83 at Appendix G.

459 I raised issues of resourcing pressures with the Chief Executive at our quarterly meeting in July 2022.

460 This is despite having advised the Justice Select Committee in May 2022 (in the context of being asked about staff groups and risks critical to the delivery of essential services under Vote Corrections) that it had experienced both recruitment and retention challenges, particularly in the past 12 months. See Ara Poutama Aotearoa | Department of Corrections [Response to the 2022/23 Estimates Examination of the Department of Corrections](#) (20 May 2022) at 33.

Facility and Spring Hill Corrections Facility.⁴⁶¹ This would have allowed the Department to request the assistance of the New Zealand Defence Force.⁴⁶²

443. Two months later, the Department launched a major recruitment campaign targeting frontline Corrections Officer roles. The Department has told my office that, since launching the campaign, it has seen an increase in the number of applications for custodial roles, and that it has also recruited some staff who previously worked for the Department into Senior and Principal Corrections Officer roles. Despite this, the number of staff leaving, combined with the challenges of the current labour market (both in New Zealand and internationally), I expect it will be many months, if not several years,⁴⁶³ before the Department has a workforce sufficient to consistently and sustainably increase unlock hours and thereby address concerns about meal times and access to rehabilitation.

Workforce capability

444. Through my investigation, it has become clear to me that the staff who have the most impact on the fair, safe, and humane treatment of people in prison are the frontline custodial and health staff. Their day-to-day decision making and interactions with those in the Department's care appear to have the greatest impact and influence on a prisoner's welfare and wellbeing (together with the environment itself). It is perhaps not surprising, therefore, that many of the people spoken to in the course of my investigation identified the capability of the Corrections workforce as impacting on the ability of the Department to address the concerns of oversight entities and to make sustained change.

445. Three issues emerged most clearly:

- the need for a professionally qualified custodial workforce with the skills and knowledge to work with the people in prison, who have increasingly complex needs;
- a lack of clear agreement on what should be included in core and ongoing training, and a failure to adequately ensure all staff have detailed knowledge about the rights of people in prison, including the right to be treated fairly and humanely; and

461 See Maiki Sherman 'Corrections spend \$4m on TV ad amid desperate staffing shortages' (1 News, 28 October 2022).

462 The Department did not declare such an emergency and noted in response that there was no immediate risk of injury or to life of the public. See above n 461.

463 In September 2022, the Chief Executive told me that he estimated Corrections would have addressed the most critical staffing needs some time between March and June 2023.

- a lack of cultural capability, impacting on the treatment of people in prison and their whānau, and on the ability of the Department to work in real partnership with Māori.

Professionalising the custodial workforce

446. A significant number of people (including those with experience of imprisonment) spoke about the need for a professionally qualified workforce as one of the key enablers to address the concerns of oversight entities, and for the Department to be able to make sustained change. The Chief Executive has also made this point to me in one of my routine meetings with him. I note that previous Chief Executives reflecting with me on their tenure also considered this to be one of the critical enablers of change.
447. A number of third parties drew attention to the various different qualification requirements in other custodial environments. Most frequently, my investigators heard comparisons between New Zealand's training programme for new recruits and Norway's two-year training programme, which requires higher education entrance qualifications.⁴⁶⁴ In raising these matters, there was recognition that this would involve a significant change for existing staff, but also that current remuneration levels for Corrections Officers are unlikely to attract a tertiary-qualified workforce.⁴⁶⁵ I consider that this may well be a limiting factor for the Department in that its current funding structures would not support a tertiary-qualified custodial officer workforce. This is in contrast to the requirements for the health care staff working within the prisons, who are required to hold recognised nursing qualifications as members of a professional workforce and who are held to account by their professional bodies.
448. In its 2021–22 Annual Report, under the heading '*Professionalising the Workforce*', the Department states:⁴⁶⁶

We continue to invest in the safety, capability, and wellbeing of our workforce to ensure they have the skills and resources they need to be safe, do their jobs well, and help people make positive change in their lives.

464 The Department advised that the Custodial Officer Development Pathway now involves ten weeks of initial training, followed by on-site training, support and integrated assessments throughout the remainder of the first year of employment as part of the pathway to attain a Level 3 New Zealand Certificate in Offender Management.

465 Information available on the Corrections website indicates that the starting salary for a Corrections Officer is \$59,519, which increases up to \$64,197 on achievement of a National Qualifications Level 3 qualification and \$69,363 on achievement of a National Qualifications Level 4. The Level 4 certificate is described on the [NZQA website](#) as being for those working in senior frontline operational roles such as Senior Corrections Officer roles. For comparison purposes, the two-year higher education qualification required to work in the prison service in Norway would be the equivalent of a National Qualifications Level 5 or 6 Diploma.

466 Above n 84 at 24.

449. All of those actions are of course important. But my investigation did not identify evidence that indicated a sense of urgency or appreciation by the Department of the steps that are required to create a professional custodial workforce. For example, I would expect to see an overarching capability strategy that includes consideration of legislative reform to strengthen the regulatory framework to increase professionalism and competence, evidence of the Department working with education sector to identify the steps towards creating higher education qualification pathways, and development of long-term plans to create a pipeline of future custodial staff. Such an evidence-based strategy may well assist the Department in making and securing funding through the budget process to transition from the current custodial workforce model to a professionally qualified workforce.

Training strategy

450. The issue of ensuring staff are appropriately trained (including maintaining annual certifications) features in a number of oversight entity reports.

451. My investigators were advised that the Department made changes to its training design and delivery model in 2018. This included moving to a mixed delivery modality — that is, a mix of face-to-face, online and on-the-job training. The Department described the changes as being informed by:⁴⁶⁷

... a better understanding of neuroscience and research on the way people learn ... changes we are making are about meeting the demands of busy workplaces where it isn't practical to be taking people out of the workplace for long periods and giving ongoing access to expertise via other available technologies as and when people need it.

452. The changes resulted in new staff attending a five-day learning programme, Ara Tika, at the National Learning Centre in Upper Hutt.⁴⁶⁸ The programme is intended to 'start new staff on their learning journey' and covers the Department and its values, rehabilitation, safety, integrity, privacy, family violence, and gangs, and it includes presentations from unions.

453. On completion of Ara Tika, new custodial staff begin their Corrections Officer Development Pathway (CODP), intended to ensure they 'can operate successfully in the workplace'.⁴⁶⁹ This

467 Correspondence between CANZ and the Department, dated December 2019 and January 2020.

468 Although COVID-19 disrupted use of the National Learning Centre, changes were made to ensure course content could be delivered at prison sites.

469 Te Pūkenga Here Tikanga Mahi | Public Service Association and Ara Poutama Aotearoa | Department of Corrections *Collective Agreement 2019-2021* at cl 3.4.1.

programme is delivered via a mix of face-to-face learning at the National Learning Centre, and online learning supported by on-the-job training.

454. While it is evident that the leadership and staff of the National Learning Centre have worked hard to deliver the programmes asked of them, including making significant changes to deliver through long periods of COVID-19 lockdown, I consider the Department's training does not currently equip staff with the knowledge, skills, and competency they require to ensure the fair, safe, and humane treatment of the people in its care.⁴⁷⁰

455. This was reflected in many interviews and summed up best by a Prison Director, who stated:

We have probably got the most vulnerable people in our care, we have most power over people. And yet we are not supporting our staff to maintain their skills.

456. Responsibility for this does not rest with the staff of the National Learning Centre. It is my understanding that their role is to deliver the training programme, which is determined by staff at National Office. However, I received different and strong views on what should (or should not be) included in the training for new recruits, and on how that should be delivered. For example, there was resistance from CANZ to the inclusion of training focused on developing the cultural competency of new custodial recruits. This was set out in an email from CANZ to the Department in 2022.⁴⁷¹

...training should not be focused on ethnic groups or have ethnicity as its central pillars.

In theory the Hōkai Rangi strategy has merit, however in practice it has been an abject failure, as the only ones it benefits and is applied to are prisoners.

Custodial recruit training should only be focused on the core basics of a frontline Officer's daily duties such as:

Lock and unlock;

Rub downs;

Strip searching;

Cell searching;

Applying handcuffs;

Moving / escorting prisoners;

470 In the Department's response to my provisional opinion, the Chief Executive stated that he disagreed with this view, but acknowledged there was always more the Department could do in this space.

471 Email chain and response from the Manager of the National Training Centre to criticisms made of the National Learning Centre made by CANZ.

Incident reports;

Misconducts;

Tactical option — scenario-based training, legislation, and a specific use of a tactical option for the session;

H&S Tracker

[Prison Tension Assessment Tool].

457. I agree that it is necessary for new recruits to receive training in the areas identified by CANZ. But it is equally, if not more, important that new recruits receive training specific to working within the New Zealand prison context — where Māori make up over 50 percent of those in prison, but only 21 percent of the Department’s workforce are Māori. I saw evidence, through my investigation, of staff of the National Learning Centre understanding this and indeed strongly advocating for an approach that was aligned to achieving the outcomes envisaged by Hōkai Rangī.⁴⁷²
458. It is also important that new recruits receive training about human rights and the various international instruments New Zealand is a signatory to, including the prevention of torture.⁴⁷³ Given my concerns about the treatment of those in prison, my investigators specifically reviewed the online training module provided for new Correction Officers, *Our Way and Human Rights*, which provides basic information about New Zealand’s international human rights obligations and the role of various oversight entities.
459. I consider the training available does not sufficiently focus on the application of human rights in the day-to-day running of a prison, nor does it appear to cover how frontline staff would apply this in practice. It fails to provide staff with sufficient information about the rights of those who are imprisoned, or New Zealand’s international obligations and how these apply in the prison environment. This appears to influence the levels of understanding staff have of these matters.
460. Notably, any mention of human rights was absent from the interviews conducted with the Department’s staff (at all levels) and from discussions with staff during prison visits. Similarly, there was an absence of any specific reference to the obligations of the Department with respect to Te Tiriti o Waitangi | Treaty of Waitangi. Although some people spoke of Hōkai Rangī,⁴⁷⁴ their comments did not appear to be grounded in an understanding of Te Tiriti o Waitangi | Treaty of Waitangi.

472 Above n 14.

473 See comments under the heading ‘[Application of the Mandela Rules \(and international human rights obligations\)](#)’ at page 91 of my report.

474 Above n 14.

461. If the views of CANZ officials (who are also employees of the Department) — expressed both above and through interviews as the need to learn ‘prison craft’ — reflect the views of their membership,⁴⁷⁵ it would seem that the Department has failed to clearly articulate and reinforce the practice changes that are required to give effect to its strategy, so that staff understand the context for cultural competency being included in the training for new recruits. A senior member of staff expressed a similar view when discussing the Department’s approach to recruitment. This person expressed their frustration at the lack of action on the part of the Department’s senior leadership (despite it being one of the early actions listed in Hōkai Rangi) to progress work to describe, and recruit for, the cultural competencies required to deliver Hōkai Rangi.
462. As well as differing views about what training is required, my investigation identified a number of additional workforce-related factors contributing to the Department not making sustained change, including:
- a lack of clarity about, and different understandings of, the role of Corrections Officers, and therefore what training is required;
 - insufficient resourcing to provide the necessary cultural competency training;
 - an ongoing lack of agreement on how to best train frontline staff, which was described to my investigators as *‘a disconnect between ELT and the next level down Regional Commissioners, and even between the Regional Commissioners and the Prison Directors as to where we are going’*. In particular, there has been disagreement about whether training should be provided/ delivered by the National Training Centre, Regional Offices and/ or Prison Directors (or a combination of all three);
 - ongoing resistance from CANZ, some staff, and a significant number of those in prison management roles to the new ways of learning introduced in 2018 — for example, to the introduction of online learning for training they consider should be delivered face to face (such as training for responding to suicide);⁴⁷⁶

475 Although the Public Service Association also represents Corrections staff, CANZ told my investigation in September 2021 that they had approximately 3,600 members across the prison network (including the Private Prison).

476 In their submission during the consultation period in 2018 (*Proposed L & D/H & S Restructure – CANZ submission*), CANZ also noted that the movement from classroom-based learning to a greater use of technology and online learning would not work, as *‘staff are struggling to complete core duties now, let alone find time or motivation to drive their own training and learning needs’*.

- staff often not completing individual courses offered by the Department — for example, due to rostering patterns or having to cover staff shortages;⁴⁷⁷
- in the view of some Prison Directors, a lack of effective basic training or what they described as *'prison craft'* or *'core custodial skills'* (for example, rub downs), which can present a risk to staff and prisoners;
- differing understandings about the purpose of core training, along with inconsistent roll-out of some training such as the Mental Health 101 programme;⁴⁷⁸
- a lack of specialist training, including trauma-informed training and training focused on the particular needs of women; and
- poor training attendance record keeping.

463. The Chief Executive has told me that, since April 2022, he has been engaging with staff to develop the best approach to staff development, including for new recruits.⁴⁷⁹ This includes the introduction of a development pathway model, drawing on experts from sites, developing their skills as trainers to lead development learning. From its description, this would appear to be similar to existing approaches which I have been told draw on Principal Corrections Officers and Unit Managers to coach new staff as they progress through their training. He also told me that Health Services will be part of a new Developmental Pathway model that was expected to be finalised in November 2022, and that this would include creating a detailed plan for specialist areas such as health.

464. Implementation of the approaches suggested by the Chief Executive will likely require sites to be fully staffed,⁴⁸⁰ and the Department will need to have a clear capability strategy and cohesive overarching training plan that gives uniform direction about its expectations of frontline staff.

477 Including, for example, completion of refresher training in areas such as the use of control and restraint — an area of particular concern to me, given the repeat recommendations I have made in this regard, which have all been accepted by the Department). New staff complete their initial five-day Control and Restraint training at the National Learning Centre, and then are required to undertake a one-day recertification every twelve months at their place of work (at the prison site).

478 The Department has made numerous statements about the roll-out of mental health training over the past two to three years. However, a review of the sites at which it has been delivered and the staff who have attended indicates little progress in rolling this out to custodial staff.

479 Above n 160.

480 My investigators were told by a number of people that it was not always possible for staff to complete their training or keep up to date with their certifications, due to sites being short staffed. It was also suggested that the introduction of the Making Shifts Work rosters had exacerbated this, due to the fewer days staff are rostered on and the need to maintain sufficient staff on the prison floor.

Development of cultural competence and Māori Crown relations capability

465. A number of documents associated with Hōkai Rangī⁴⁸¹ refer to the significant cultural uplift required for staff to be able to adopt new ways of working and to achieve a focus on the wellbeing and welfare of the people in prison. Although not explicitly stated within the strategy, I consider such a focus, if achieved, would go some way to addressing the concerns of oversight entities and ensuring the fair and humane treatment of prisoners.

466. For example, the Hōkai Nuku Business Case identified workforce and culture as being a 'foundational building block' and one of the five areas of change required to 'bridge the gap between the way Ara Poutama Aotearoa currently operates and a corrections system that is enabled to deliver the future described in Hōkai Rangī'.⁴⁸²

467. This was further articulated as follows.⁴⁸³

Ara Poutama Aotearoa will enable and empower its workforce with the time and skills to build genuine and respectful relationships underpinned by a te ao Māori worldview. This will foster humanising and healing environments that support the rehabilitation and wellbeing of those in Ara Poutama Aotearoa's care and management, while enhancing workforce health and safety.

To achieve this, Ara Poutama Aotearoa will:

- *Refocus frontline roles, with an emphasis on strong values-based practice leadership.*
- *Establish a competency-based framework and qualifications framework to put the policies and practices of frontline roles on a more professional footing, support career progression and honor the Aotearoa New Zealand Skills Pledge.*

468. The Business Case includes a number of appendices, one of which provides an analysis of the workforce. One of the key findings of the analysis was:⁴⁸⁴

481 Above n 14. The associated documents include the Hōkai Nuku Business Case, papers to the Minister of Corrections, the Treasury-led Gateway Review and the 2022 Justice System spending review.

482 Above n 83 at 12 and 58.

483 Above n 83 at 47.

484 Above n 83 at Appendix G.

There are on average four times the number of Māori in prisons to the number of Māori staff. This may impact the rate of change required to the capability and capacity of staff, to understand and support the cultural needs of Māori in Ara Poutama Aotearoa's care and management, and their whānau.

469. Outside of work being undertaken by the Deputy Chief Executive Māori to develop iwi relationships, my investigation did not identify specific strategies or plans to develop Māori Crown relations workforce capability as a step towards strengthening local relationships and relationships between prison staff and those in the care of the Department. Rather, my investigators heard from a number of Māori working within the justice system, non-governmental organisations (NGOs), and Māori organisations who described the challenges they have experienced trying to engage with the Department in any meaningful way about the needs of Māori.
470. This echoed my 2019 OPCAT report after inspecting the Northland Region Corrections Facility (NRCF), which was the first prison to establish a formalised working relationship with mana whenua.⁴⁸⁵ I concluded then that the relationship with Ngāti Rangī was 'fragile'.⁴⁸⁶
471. At the time, it appeared there was a lack of engagement with mana whenua, as well as limited and incomplete information about prisoners' whakapapa and iwi affiliations being recorded on the Integrated Offender Management System (IOMS).⁴⁸⁷ I noted at the time that this affected the ability of the prison to ensure appropriate cultural support to prisoners who were Māori.
472. The Department accepted my recommendation that relationships with Ngāti Rangī should be re-established as a first step towards implementing a step change in the development and delivery of culturally appropriate services at the prison. The Department's response included the following:⁴⁸⁸

NRCF are actively working to re-establish relationships with Ngāti Rangī as the local iwi and in order to progress culturally appropriate services on the site.

...

485 This relationship is with Ngāti Rangī Development Society Incorporated, an entity of the local hapu.

486 See [Appendix 2](#), report 29 at 2.

487 The IOMS is a database used by frontline staff to store information about people in prison, incidents, and day-to-day operations in prisons.

488 See [Appendix 2](#), report 29 at 48.

NCRF are embarking on a cultural change programme to support the Te Ara Poutama framework and instil the Toko Rima a Maui values in preparation for the Paheretia Te Muka o Tangata (Māori Pathway).

473. Given the Department's response, I was disappointed to learn that, when my investigators visited NRCF in 2022 as part of this investigation, they observed an absence of any tangible recognition of mana whenua or their role as kaitiaki of the prison. Instead, they were told the relationship remained challenging. A similar theme had emerged through earlier interviews conducted with NRCF staff, and from speaking with local community members.
474. In the Department's response to my provisional opinion, the Chief Executive said he did not consider these comments reflect the current state of the relationship or relationships overall. He stated:⁴⁸⁹

I perceive there has been considerable mutual benefit from purposeful, local relationships with iwi and hapū. Inevitably, relationships are the deepest and most mature where there are local issues of strong interest and high priority to local Māori groups, on which we can work together. ... [Those] relationships are often conducted at the local prison level.

475. In addition to NRCF, I have made similar recommendations on a number of other occasions about ensuring that prisoners have access to culturally based programmes and developing relationships with mana whenua, including at Christchurch Men's Prison (2021), Auckland Prison (2020), Whanganui Prison (2018) and Arohata Prison (2017).⁴⁹⁰ The Department's Chief Inspector made similar findings in her 2020 Auckland Region Women's Corrections Facility report.⁴⁹¹ It is my view that such recommendations will only be achieved through a partnership approach with mana whenua.
476. Against this backdrop, in his speech launching Hōkai Rangī, the Minister for Corrections stated (emphasis in original):⁴⁹²

Our Corrections system — the way we operate — has focused on cells, walls, restrictions, keeping people locked inside, isolated, punishing them, treating them like the crime they committed.

That approach has not worked for the majority of Māori.

For many, all it has delivered is more people in prison; more Māori incarcerated; more people further broken; more whānau in distress.

489 Above n 340.

490 See [Appendix 2](#), reports 12, 14, 19, and 24.

491 See [Appendix 2](#), report 43.

492 Kelvin Davis 'Speech: Launch event for Hōkai Rangī' (Beehive.govt.nz, 19 August 2019). This is also expressed in Hōkai Rangī, above n 14 at 32.

...

The strategy's kaupapa statement is 'Kotahi anō te kaupapa: ko te oranga o te iwi' — 'There is only one purpose to our work: the wellness and wellbeing of people.'

This is reflected in the six key outcomes domains:

...

Incorporating a Te Ao Māori worldview. *Access to culture is a fundamental right, not a privilege, regardless of [a] person's circumstances.*

477. Given the Minister's comments, I was disappointed to learn in interviews of instances where participation in kapa haka competitions had been withheld in response to behavioural issues, such as individuals having complained or 'acted out'. This suggests that to some extent at least, the 'access to culture' that the Minister spoke of was still being viewed as a privilege rather than a right.⁴⁹³
478. Despite many references indicating the need to develop the Department's cultural capability, I received ongoing concerns about the cultural competency of staff as part of a wider concern about the suitability of the people being recruited to work in the prison environment. It was suggested by interviewees, that the Department's approach to recruitment had contributed to the employment of staff without the necessary capabilities required to work in the new ways envisaged by Hōkai Rangī. Despite Hōkai Rangī including 'recruitment based on competency in working with and for Māori' as a short-term action,⁴⁹⁴ I heard that a lack of leadership from National Office contributed to delays in progressing the work required.
479. More recently, the Department appears to have changed the way it is advertising for new staff, with statements about the cultural competency and the 'soft skills' required to deliver Hōkai Rangī now referenced. However, in looking further, I found that the Department continues to use a range of different position descriptions, some dating back as far as 2014, to recruit custodial staff. This leads me to conclude that Hōkai Rangī is not well understood by, or embedded in, many of those responsible for recruitment (including those in leadership roles) and, as described by one manager, remains largely a 'National Office thing'.⁴⁹⁵ In the Department's

493 My investigators were also provided examples indicating staff did not understand the importance of whānau involvement in the rehabilitation of prisoners. For example, my investigators were told of a kaumatua being prevented from entering a prison to attend a whānau member's graduation from a programme, because of a minor discrepancy on the paperwork completed for the attendance.

494 Above n 14 at 35.

495 For example, a Regional Commissioner referred to just putting the values on the wall as not being meaningful, as there had been no training or support to back it up — either for leaders or for staff.

response to my provisional opinion, the Chief Executive disagreed with this description, but accepted there was more work to do to fully implement the intent of Hōkai Rangī in its frontline recruitment practices.

480. The importance of culturally competent staff was summarised by one of the wāhine Māori who shared her experience of imprisonment in New Zealand. She spoke of the impact of there being very few Māori custodial officers and a workforce dominated by people from overseas, who had limited understanding of her cultural needs and did not take the time to listen to her. She said:

[The] guards are your family — you don't have anyone else. You look to them, talk to them like they're your family. They're like your aunties and uncles, the ones that tell you what to do or tell you off, they're those sorts of family to a lot of people. I don't know if the guards see themselves like that.

481. She also told my investigators that as someone who grew up immersed in tikanga Māori, there was nothing for her to connect to her culture in prison, as the programmes offered were very basic and assumed the women in prison were disconnected from their culture.

482. The Hōkai Nuku Business Case also made observations about the need for more Māori staff in custodial (and community) roles based on insights gained from lived experience:⁴⁹⁶

People in Ara Poutama Aotearoa's care and management noted a greater level of care given by, and increased ability to relate to, Māori staff (compared to non-Māori staff).

Capability required to work in partnership with Māori

483. Oversight entities are not the only voices raising concerns about the treatment of prisoners in the care of the Department. Through my investigation, I heard that community and justice advocates, penal reform groups, academics, and Māori organisations have been highlighting concerns about the treatment of prisoners for many years.

484. In considering their views, I was particularly mindful of the important role these groups play in supporting people in prison and their whānau, and the unique insights they are able to offer the corrections system. I was also mindful of the six strategic change areas identified in Hōkai Rangī, which include the incorporation of a

'...there is a real reluctance to involve anybody outside of Corrections. Corrections have favourite organisations that they have a relationship with. People who are a little bit more compliant perhaps. They might be a little bit more worried about a lead expressing a view about what they might see when they are visiting prisons. This is not good, as it does not help the people in prison – you need to develop relationships with community organisations which can help once people transition out of prison.'

Third-party commentator

496 Above n 83 at Appendix G.

te ao Māori worldview; leading through best practice Māori Crown relations, with shared decision making; and staff upholding the mana and dignity of those in the care of the Department.⁴⁹⁷

485. Unfortunately, in my investigation, I learnt that a number of these third parties had experienced the Department as having a closed or insular culture, with limited capability to work with Māori organisations to improve the treatment and conditions, or to provide constructive activities that would connect those in prison with their wider whānau as part of supporting their rehabilitation. They described the Department as being highly selective about the voices it listens to and actively excluding voices that do not neatly align with its own views, and they stated that, even when it seeks to engage with an outside perspective, the Department will only do so on its own terms.
486. Third parties provided me with examples of the difficulties they have experienced in recent years trying to engage with the Department on ways of working to improve outcomes for Māori. One described attending a forum of senior staff and observing that very few participants demonstrated an understanding of, or capability or interest in, developing relationships with Māori organisations wanting to support whānau and those in prison to stay connected and restore often damaged relationships.
487. Similar sentiments were expressed by the leader of a Māori organisation, who told my investigation that changes in leadership since the adoption of Hōkai Rangī in 2019 have made it more difficult to engage with the Department:
- The attitude of the staff makes a huge difference in terms of our ability as a community organisation to interact with Corrections ... most of the cutting off of us has occurred under Hōkai Rangī.*
488. In the Department's response to my provisional opinion, the Chief Executive suggested that COVID-19 restrictions may have impacted on how third parties were able to engage with prison sites. I accept that COVID-19 restrictions have impacted access to prison sites, but the comments made by third parties reflect their experience of overall engagement with the Department over a longer period of time.
489. Given the disproportionate number of Māori who are imprisoned, and the Department's obligations to support the Crown in giving effect to Te Tiriti o Waitangi | Treaty of Waitangi principles, I consider it important that the Chief Executive ensures the Department has the necessary Māori Crown relationship and cultural capability at every level of the organisation — not only at the level where strategic

497 Above n 14 at 16–17.

decisions are made (or where the Department is piloting its Māori Pathways approach), but at the local prison level, where relationships with whānau, iwi, and Māori organisations need to be strengthened.

Cultural capability training

490. My investigation identified that the training to deliver the cultural capability uplift programme was primarily the E Toru Ngā Mea programme. I was told that a number of the Department's leadership teams had undertaken the programme and found it valuable. Despite this, I was also told that there has been a lack of organisational commitment and investment, which has limited the programme's effectiveness.
491. Despite the Department's most recent Annual Report outlining the steps it is taking to develop cultural capability (including numbers of staff participating),⁴⁹⁸ when asked to provide details of delivery at prison sites, the Department was unable to verify the information it had reported,
492. In providing an explanation, my investigation team was told that information about cultural capability uplift programmes was not stored centrally and was unable to be accessed due to staff being unavailable. I was also advised that there was no central source of information about attendance at Te Tiriti o Waitangi | Treaty of Waitangi workshops and that, despite trying, the National Office was unable to locate these details.
493. Given the importance of developing cultural capability to be able to deliver Hōkai Rangī, I would have expected that the Department have robust and easily accessible information to measure its performance in this regard. I consider this to be a further example of the Department omitting to have sufficient performance monitoring processes in place, and of it failing to give sufficient attention to systemic issues arising from oversight entity reports.

Conclusion on barriers to sustained change

494. My investigation has identified a number of systemic issues which, in my view, contribute to the Department's inability to consistently and effectively address the concerns of oversight entities, and which have inhibited the Department from making significant and sustained improvements for those in prison. The Chief Executive acknowledged my report is.⁴⁹⁹

498 Above n 84 at 17.

499 Above n 340.

...arguably the most in-depth independent examination of Corrections' custodial operations since the department was established in 1995. Its observations and findings will have long-lasting impact and provide further significant impetus to change.

495. Above, I set out my analysis of the deficiencies in the Department's approach to managing oversight entities' reports, which included the lack of sufficiently robust accountability and governance mechanisms to enable improved system outcomes.⁵⁰⁰ In terms of systemic issues, it would also seem that the Department's leadership has omitted to take a whole-of-organisation approach to the various and complex issues it is tasked to manage.
496. Critically, the Department appears to me to adopt an overly narrow view of its legal obligations — one that does not give enough emphasis to the NZBORA, Te Tiriti o Waitangi | Treaty of Waitangi and international instruments. The Department has omitted to meet its stewardship obligation to advise on the need for legislative change to address these issues. This appears to me to influence the attitudes and actions of frontline staff, whose actions affect the lives of prisoners every day.
497. In my view, despite various well-intentioned efforts, senior leaders have been unable to establish and embed a clear, cohesive vision and purpose for the organisation which incorporates a deep understanding of Te Tiriti o Waitangi | Treaty of Waitangi, system stewardship, and human rights. This appears to have resulted in confusion for frontline staff about the Department's priorities and what is expected of them. Consequently, and as evidenced by the reports of various oversight entities, there are direct and negative impacts on the treatment and conditions of those in prison.
498. There has also been a lack of a long-term capability strategy or plan, resulting in a failure to create an adequate pipeline of custodial and health staff with the knowledge and skills required to ensure the fair and humane treatment of the people in prison, and to prepare the Department's staff to implement important organisational strategies. This omission appears to have contributed to the staffing crisis it has experienced in recent times, which has had significant impacts on people in prison.
499. The evidence suggests to me that the Department has had a fairly long history of dealing with issues operationally and reactively, which means it has an entrenched practice of constantly 'fighting fires' and focusing on the most immediate and urgent needs, thus compromising any longer-term objectives. There is no doubt the extrinsic environment — such as the highly political nature of the

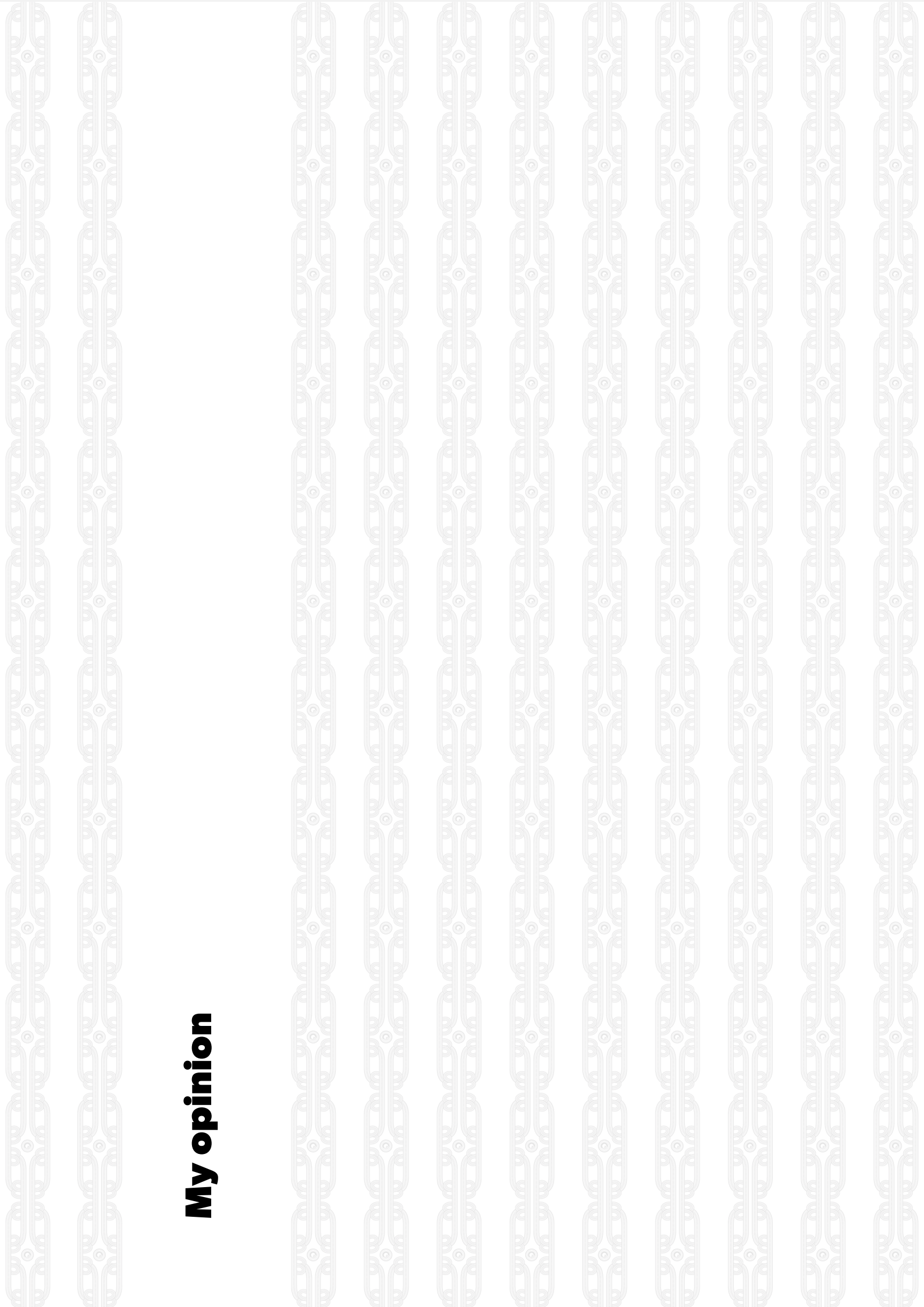
500 See comments under the heading '[Conclusion about Department's response to oversight](#)' on page [86](#) of my report.

work — has had a bearing on departmental decision makers. This has been a significant challenge for those leading the Department, both past and present.

500. I am concerned this has made it very difficult for the Department to undertake a true exposition of the issues that need addressing within. I have seen some evidence that senior leaders are overly optimistic about the Department's performance — including external reporting that is not able to be verified through data or similar means. As a good steward of the corrections system, the Department's leadership needs to guard against any tendency to 'explain away' issues identified by oversight entities and third parties. It must be able to truly identify — for itself and to those who hold it accountable — what its deficiencies are, in order to effect improvement at a deeper systemic level.
501. This is especially important given the Department's organisational strategy, Hōkai Rangi,⁵⁰¹ and what my investigation has identified about the lack of cultural competence and capability to work in partnership with Māori, across the Department. The Department has indicated that Hōkai Rangi has a tuakana relationship with all other plans and actions. Given my findings about the absence of Māori Crown relations capability maturity within the Department, there needs to be a stronger governance and accountability mechanism that would support the realisation of Hōkai Rangi as a tuakana strategy. It seems clear to me that the solutions lie in an elevation of the status and role of Te Poari Hautū Rautaki Māori | Māori Leadership Board.

501 Above n 14.

My opinion



My opinion

502. The Department has made, and continues to make, attempts to improve, but in my view it struggles to maintain momentum. To make significant and sustained change, the Department must take a long term, proactive, and collaborative approach to monitoring and managing the corrections system. In my view, this involves a deliberate and committed focus, over time, on creating better outcomes for those in its care, their whānau, and the wider community.
503. Critically, the Department is required to do so in light of its stewardship obligations, as well its responsibility to support the Crown in meeting the obligations under Te Tiriti o Waitangi | Treaty of Waitangi as articulated in the Public Service Act 2020.⁵⁰² Given that these are not new or recent obligations, I would have expected to see clear evidence of this in the Department's overall organisational response to oversight entities. Regrettably, I did not find this.
504. The Department has legal obligations to treat prisoners in a humane manner. Further, as a steward of the prison system, it has to engage with, and respond to, issues being raised by oversight entities and ensure that the Crown's Te Tiriti o Waitangi | Treaty of Waitangi obligations are met.
505. I commenced this investigation to understand why it appeared the Department had been unable to effectively address many concerns raised by oversight entities and to achieve significant and sustained improvement for those in its care. In my investigation, I identified clear deficiencies in the Department's approach to managing oversight entities' reports and recommendations. In my view, this is due to the Department's omission, over time, to focus its decision-making efforts relating to the operations of prisons on the fair, safe, and humane treatment of those within it. This is evidenced in the Department's narrow approach to the interpretation, application, and maintenance of its legislation; its lack of transparency, and its tendency to explain away the concerns and recommendations of oversight bodies; its inability to create and embed a clear organisational purpose; its risk-averse and reactive organisational culture; and an omission to take a whole-of-organisation approach to managing complex issues, such as addressing its capability requirements.
506. Through my investigation, I have identified various barriers that inhibit the Department from effectively addressing the issues highlighted by oversight entities. In my view, even though these barriers were within the Departments' control and remit,

502 Public Service Act 2020, s 14(1).

senior leadership has not taken adequate steps to address them. Accordingly, it is my final opinion that this omission, and consequently the failure to effectively address the concerns raised by oversight entities, was unreasonable.

Recommendations

507. The recommendations I am making are intended to ensure that the efforts of the Department to change result in significant and sustained improvements for the people in prison.
508. I recommend that:
- i. the Department reviews the Corrections Act 2004, and the Corrections Regulations 2005, and advises the Minister on amendments that are necessary to ensure that:⁵⁰³
 - a. Te Tiriti o Waitangi | Treaty of Waitangi, the NZBORA, and relevant international human rights obligations, such as the Mandela Rules, are given greater emphasis in the purpose, principles, and detailed provisions of the Corrections Act; and
 - b. decision making related to the operations of prisons gives greater emphasis to the fair, safe, and humane treatment of those detained in prison;
 - ii. the Department reviews its governance arrangements, and that this review includes:
 - a. establishing clear lines of senior leadership accountability for ensuring the fair, safe, and humane treatment of those in prison; and
 - b. consideration of the membership of governance groups, as well as the appointment of independent Chairs;
 - iii. the Department takes steps to address the other systemic issues that I have identified in this report. In undertaking these steps, the Department should ensure that:
 - a. in all decision making about the people detained in prison, sufficient emphasis is given to Te Tiriti o Waitangi | Treaty of Waitangi, the NZBORA, and relevant international human rights obligations, such as the Mandela Rules. To achieve this, the Department should:
 - i. communicate and embed a clear organisational purpose for the prison system that enables the fair, safe, and humane treatment of those within it;

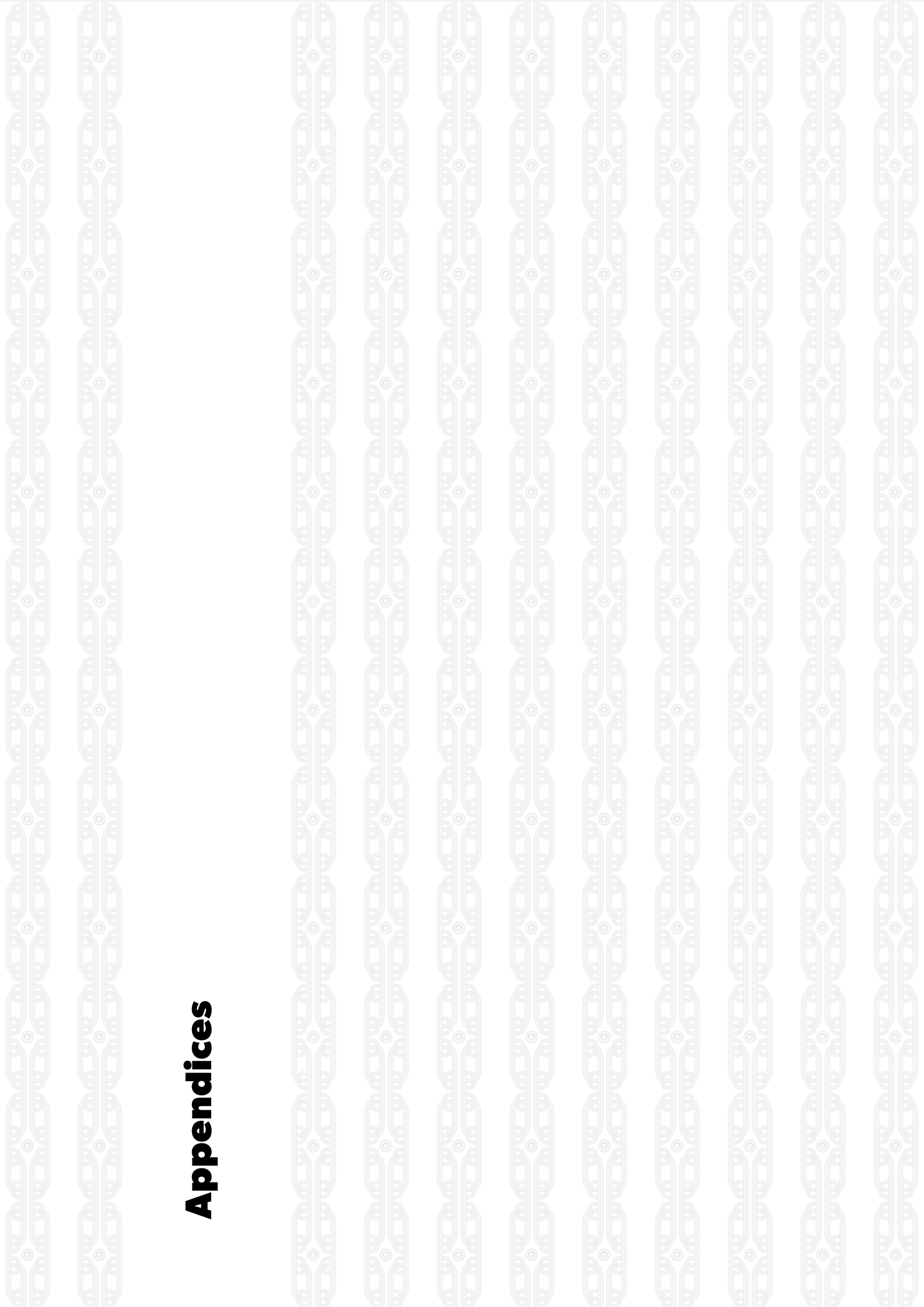
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- ii. review its operational staff manual(s) and support systems to ensure core processes and advice reflect Te Tiriti o Waitangi | Treaty of Waitangi and human rights obligations;
 - iii. ensure, through its recruitment and training, departmental staff are adequately skilled at undertaking Te Tiriti o Waitangi | Treaty of Waitangi and rights-based analysis; and
 - iv. enable and resource its policy function to have a more direct role in responding to the reports of oversight entities in order to proactively advise on the need for legislative reform, where appropriate, to achieve the changes sought by oversight entities;
- b. there is a strategic whole-of-organisational response to addressing the complex organisational culture and capability issues I have identified. The response should incorporate comprehensive and long-term culture change and workforce capability strategies. As part of these strategies, the Department should focus on:
- i. the progressive professionalisation of the custodial workforce;
 - ii. working with Te Whatu Ora | Health New Zealand to take a whole-of-system approach to the recruitment and retention of health staff;
 - iii. embedding strong Māori Crown relations organisational capability⁵⁰⁴ and cultural capability across the entirety of its workforce; and
 - iv. creating an open and honest organisational culture that has the maturity to identify, report, and address deficiencies and root causes;
- c. oversight entities' findings and recommendations are consistently considered as opportunities to improve the overall performance of the prison network. This should include ensuring that:
- i. the various systems for managing oversight reports are consistently followed, and any process improvements are properly implemented and fully resourced;

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- ii. the leadership and governance groups have a collective view and understanding of the specific concerns of oversight entities, as well as root causes and systemic issues; and
- iii. on a six-monthly basis, the Department publicly reports on the progress it has made in addressing the findings and recommendations of oversight entities;
- iv. the Department identifies and documents how it intends to measure, and report on, the effectiveness of the steps it has taken in response to my investigation; and
- v. Te Kawa Mataaho | Public Service Commission liaises with the Department and then provides advice to the Minister of Corrections on options for longer-term mechanisms for independent governance oversight and assurance over the operation and management of the Department (such as a Ministerial Advisory Board).

Appendices



Appendix 1. Glossary

Term	Definition
Bail	Bail is where a judge or police officer agrees that a person can be released from custody and stay in the community on the condition that they go to their next court appointment. The person may have to follow certain rules while they are on bail.
Criminal justice system	The criminal justice system is comprised of government agencies which enforce laws, decide sentences, and manage people while they are subject to those sentences.
Double bunking	Where two people in prison (who have been assessed by the Department as suitable to do so) share one cell.
Hōkai Rangi	The Department's five-year organisational strategy launched in 2019.
Oversight body/oversight entity	<p>In the context of this report, oversight bodies or entities include:</p> <ul style="list-style-type: none"> • Tari o te Kaitiaki Mana Tangata Office of the Ombudsman; • Tumuaki o te Mana Arotake Office of the Auditor-General; • Te Kāhui Tika Tangata Human Rights Commission; • Manaakitia ā Tātou Tamariki Office of the Children's Commissioner; • Te Toihau Hauora, Hauātanga Health and Disability Commissioner; and • Te Tari Tirohia Office of the Inspectorate. <p>All of these parties can make suggestions and recommendations to the Department.</p>

Term	Definition
Minimum entitlements	<p>As per section 69(1) of the Corrections Act 2004, people in prison are entitled to have access to:</p> <ul style="list-style-type: none"> • physical exercise; • medical treatment; • information and education; • a bed and bedding; • food and drink; • visitors; • legal advisors; and • mail and telephone calls <p>Under the Act, minimum entitlements are not ‘privileges’ and can be denied in certain circumstances.</p>
Remand prisoners	<p>People who are directed to wait in prison for their next court appointment rather than be released on bail.</p> <ul style="list-style-type: none"> • Remand-accused prisoners are people waiting in prison for their trial. • Remand-convicted prisoners are people who have undergone a trial and are waiting in prison to receive a sentence.
Sentenced prisoners	<p>People who have been directed by a judge to be detained in prison for a duration of time.</p>
Security classification	<p>A status assigned to each person in prison, based on the level of risk they pose as determined by the Department. The Department considers multiple factors when making this determination.</p>
Unlock hours	<p>Time in which people in prison are unlocked from their cells.</p>

Abbreviation	Definition
Bangkok Rules	United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders
CANZ	Corrections Association of New Zealand
CARG	Corrections Actions Review Group
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Committee on the Elimination of Racial Discrimination

Appendix 1. Glossary

Chief Executive	Chief Executive of Ara Poutama Aotearoa Department of Corrections
CODP	Corrections Officer Development Pathway
Convention against Torture	United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Corrections Act	Corrections Act 2004
CPIP	Criminal Process Improvement Programme
DCEs	Deputy Chief Executives
Department	Ara Poutama Aotearoa Department of Corrections
Disability Convention	United Nations Convention on the Rights of Persons with Disabilities
ELT	Executive Leadership Team
eNPS	Employee Net Promoter Score
FTEs	Full-time equivalents
HDC	Health and Disability Commissioner Te Toihau Hauora, Hauātanga
HIIP	High Impact Innovation Programme
HRC	Te Kāhui Tika Tangata Human Rights Commission
HSC	High Security Complex
ICCPR	International Covenant on Civil and Political Rights
Inspectorate	Te Tari Tirohia Office of the Inspectorate
IOMS	Integrated Offender Management System
JSLB	Justice Sector Leadership Board
Mandela Rules	United Nations Standard Minimum Rules for the Treatment of Prisoners
MAR team	Monitoring Agency Relationships team
NFROG	National Findings and Recommendations Oversight Group
NGOs	Non-governmental organisations
NPM	National Preventive Mechanism
NRCF	Northland Region Corrections Facility
NZBORA	New Zealand Bill of Rights Act 1990
OPC	Organisational Performance Committee
OPCAT	Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Appendix 1. Glossary

PIF	Performance Improvement Framework
POM	Prison Operations Manual
PPE	Personal protective equipment
PSA	Te Pūkenga Here Tikanga Mahi Public Service Association
Regulations	Corrections Regulations 2005
RMT	Remand Management Tool
UNDHR	Universal Declaration of Human Rights
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

Appendix 2. Oversight entity reports

1. Janis Adair [Waikeria Prison Unannounced Follow-up Inspection August 2019](#) (Office of the Inspectorate — Department of Corrections, May 2020).
2. Peter Boshier [Final report on an unannounced inspection of Waikeria Prison under the Crimes of Torture Act 1989](#) (Office of the Ombudsman, August 2020).
3. Janis Adair [Rimutaka Prison Inspection October 2017](#) (Office of the Inspectorate — Department of Corrections, April 2019).
4. Janis Adair [Waikeria Prison Inspection July-August 2017](#) (Office of the Inspectorate — Department of Corrections, March 2018).
5. Janis Adair [Northland Region Corrections Facility Inspection March 2018](#) (Office of the Inspectorate — Department of Corrections, October 2019).
6. Janis Adair [Northland Region Corrections Facility Unannounced Follow-up Inspection November 2019](#) (Office of the Inspectorate — Department of Corrections, September 2020).
7. Janis Adair [Manawatu Prison Inspection March-May 2017](#) (Office of the Inspectorate — Department of Corrections, September 2017).
8. Janis Adair [Manawatu Prison Unannounced Follow-up Inspection May 2019](#) (Office of the Inspectorate — Department of Corrections, February 2020).
9. Peter Boshier [Report on an unannounced inspection of Hawke's Bay Regional Prison Under the Crimes of Torture Act 1989](#) (Office of the Ombudsman, 6 July 2017).
10. Peter Boshier [Report on an unannounced follow up inspection of Hawke's Bay Regional Prison under the Crimes of Torture Act 1989](#) (Office of the Ombudsman, April 2019).
11. Peter Boshier [Report on an unannounced inspection of Christchurch Men's Prison Under the Crimes of Torture Act 1989](#) (Office of the Ombudsman, December 2017).
12. Peter Boshier [Report on an unannounced follow up inspection of Christchurch Men's Prison under the Crimes of Torture Act 1989](#) (Office of the Ombudsman, June 2021).
13. Dame Beverly A Wakem [Report on an announced inspection of Department of Corrections' Auckland East Men's Prison under the Crimes of Torture Act 1989 2–4 August 2010](#) (unpublished, August 2010).

14. Peter Boshier [Final report on an unannounced inspection of Auckland Prison under the Crimes of Torture Act 1989](#) (Office of the Ombudsman, December 2020).
15. Dame Beverly A Wakem *Report on an announced inspection of Department of Corrections' Manawatu Men's Prison 11–12 May 2010 under the Crimes of Torture Act 1989* (unpublished, May 2010).
16. Peter Boshier *Report on an unannounced inspection of Corrections Service Manawatu Prison Under the Crimes of Torture Act 1989* (unpublished, January 2016).
17. Peter Boshier [Report on an unannounced follow-up inspection of Manawatu Prison Under the Crimes of Torture Act 1989](#) (Office of the Ombudsman, December 2017).
18. Peter Boshier *Report on an unannounced inspection of Corrections Service Arohata Prison Under the Crimes of Torture Act 1989* (unpublished, 2015).
19. Peter Boshier [Report on an unannounced follow-up inspection of Arohata Prison Under the Crimes of Torture Act 1989](#) (Office of the Ombudsman, December 2017).
20. Peter Boshier [Report on an unannounced inspection of Upper Prison \(Arohata\) Under the Crimes of Torture Act 1989](#) (Office of the Ombudsman, March 2018).
21. Dame Beverley A Wakem *Report on an unannounced inspection at Otago Corrections Facility — Health Services Under the Crimes of Torture Act 1989* (unpublished, September 2014).
22. Peter Boshier *Report on an unannounced inspection of Corrections Service Otago Corrections Facility Under the Crimes of Torture Act 1989* (unpublished, May 2016).
23. Peter Boshier [Report on an unannounced follow up inspection of Otago Corrections Facility under the Crimes of Torture Act 1989](#) (Office of the Ombudsman, June 2019).
24. Peter Boshier [Report on an unannounced inspection of Whanganui Prison Under the Crimes of Torture Act 1989](#) (Office of the Ombudsman, August 2018).
25. Peter Boshier [Report on an announced follow up inspection of Whanganui Prison under the Crimes of Torture Act 1989](#) (Office of the Ombudsman, June 2021).
26. Peter Boshier *Report on an unannounced inspection of Corrections Service Invercargill Prison Under the Crimes of Torture Act 1989* (unpublished, May 2016).

27. Peter Boshier *Report on an unannounced follow up inspection of Invercargill Prison under the Crimes of Torture Act 1989* (Office of the Ombudsman, July 2019).
28. Dame Beverly Wakem *Report on an announced inspection of Northland Region Corrections Facility (Separates Unit, At Risk Unit (ARU) & Kea Unit) Under the Crimes of Torture Act 1989* (unpublished, December 2013).
29. Peter Boshier *Report on an unannounced inspection of Northland Regional Corrections Facility under the Crimes of Torture Act 1989* (Office of the Ombudsman, July 2019).
30. Dame Beverley A Wakem *Report on an unannounced inspection of Department of Corrections' Rimutaka Prison* (unpublished, September 2012).
31. Dame Beverley A Wakem *Report on an unannounced inspection of Department of Corrections' Rimutaka Prison* (unpublished, September 2013).
32. John Belgrave and Mel Smith *Investigation of the Department of Corrections in relation to the detention and treatment of prisoners* (Office of the Ombudsman, December 2005).
33. Dr Sharon Shalev *Thinking Outside the Box? A review of seclusion and restraint practices in New Zealand* (Human Rights Commission, April 2017).
34. Dr Sharon Shalev *Seclusion and Restraint: Time for a Paradigm Shift—A Follow Up Review of Seclusion and Restraint Practices in New Zealand* (Human Rights Commission, December 2020).
35. Dr Sharon Shalev *First, Do No Harm: Segregation, restraint, and pepper spray use in women's prisons in New Zealand* (Human Rights Commission, November 2021).
36. Janis Adair *Special investigation: Report of investigation into the management of three wāhine at Auckland Region Women's Corrections Facility* (Office of the Inspectorate — Department of Corrections, September 2021).
37. Janis Adair *Thematic Report: The Lived Experience of Women in Prison* (Office of the Inspectorate — Department of Corrections, October 2021).
38. Janis Adair *Christchurch Women's Prison Announced Inspection October 2020* (Office of the Inspectorate — Department of Corrections, October 2021).
39. Janis Adair *Arohata Prison Announced Inspection September 2020* (Office of the Inspectorate — Department of Corrections, June 2021).

40. Dame Beverley and David McGee *Investigation of the Department of Corrections in relation to the provision, access and availability of prisoner health services* (Office of the Ombudsman, July 2012).
41. Human Rights Commission *To Be Who I Am: Report of the Inquiry into Discrimination Experienced by Transgender People – He pūrongo mō te Uiuitanga mō Aukatitanga e Pāngia ana e ngā Tāngata Whakawhitiira* (2008).
42. Human Rights Commission *Monitoring Places of Detention: Annual report of activities under the Optional Protocol to the Convention Against Torture (OPCAT) 1 July 2008 to 30 June 2009* (December 2009).
43. Janis Adair *Auckland Region Women’s Corrections Facility Announced Inspection June 2020* (Office of the Inspectorate — Department of Corrections, January 2021).
44. Peter Boshier *Report on an unannounced inspection of Tongariro Prison under the Crimes of Torture Act 1989* (Office of the Ombudsman, September 2019).
45. Peter Boshier *Report on an unannounced inspection of Spring Hill Corrections Facility Under the Crimes of Torture Act 1989* (Office of the Ombudsman, August 2017).
46. Janis Adair *Hawkes Bay Regional Prison Inspection and Follow-up Inspection: July 2017 and July 2018* (Office of the Inspectorate — Department of Corrections, September 2018).
47. Janis Adair *Investigation into the Department of Corrections in dealing with the LynnMall supermarket attacker* (Office of the Inspectorate — Department of Corrections, December 2022).
48. Janis Adair *Invercargill Prison Inspection September 2017* (Office of the Inspectorate — Department of Corrections, May 2018).
49. Mel Smith *Investigation into issues involving the administration of criminal justice* (Office of the Ombudsman, 2007).

Appendix 3. Principles guiding the corrections system

Section 6 of the Corrections Act 2004 states:

- (1) *The principles that guide the operation of the corrections system are that—*
 - (a) *the maintenance of public safety is the paramount consideration in decisions about the management of persons under control or supervision:*
 - (b) *victims' interests must be considered in decisions related to the management of persons under control or supervision:*
 - (c) *in order to reduce the risk of reoffending, the cultural background, ethnic identity, and language of offenders must, where appropriate and to the extent practicable within the resources available, be taken into account—*
 - (i) *in developing and providing rehabilitative programmes and other interventions intended to effectively assist the rehabilitation and reintegration of offenders into the community; and*
 - (ii) *in sentence planning and management of offenders:*
 - (d) *offenders must, where appropriate and so far as is reasonable and practicable in the circumstances, be provided with access to any process designed to promote restorative justice between offenders and victims:*
 - (e) *an offender's family must, so far as is reasonable and practicable in the circumstances and within the resources available, be recognised and involved in—*
 - (i) *decisions related to sentence planning and management, and the rehabilitation and reintegration of the offender into the community; and*
 - (ii) *planning for participation by the offender in programmes, services, and activities in the course of his or her sentence:*
 - (f) *the corrections system must ensure the fair treatment of persons under control or supervision by—*
 - (i) *providing those persons with information about the rules, obligations, and entitlements that affect them; and*

- (ii) *ensuring that decisions about those persons are taken in a fair and reasonable way and that those persons have access to an effective complaints procedure:*
 - (g) *sentences and orders must not be administered more restrictively than is reasonably necessary to ensure the maintenance of the law and the safety of the public, corrections staff, and persons under control or supervision:*
 - (h) *offenders must, so far as is reasonable and practicable in the circumstances within the resources available, be given access to activities that may contribute to their rehabilitation and reintegration into the community:*
 - (i) *contact between prisoners and their families must be encouraged and supported, so far as is reasonable and practicable and within the resources available, and to the extent that this contact is consistent with the maintenance of safety and security requirements.*
- (2) *Persons who exercise powers and duties under this Act or any regulations made under this Act must take into account those principles set out in subsection (1) that are applicable (if any), so far as is practicable in the circumstances.*
- (3) *Subsection (1) does not affect the application or operation of any other Act.*

Appendix 4. Domestic legislation (other)

State Sector Act 1988 and Public Service Act 2020

As a public service agency, the Department and its Chief Executive have specific responsibilities under the Public Service Act 2020. As my investigation covered acts, omissions, decisions, and recommendations made both before and after the Public Service Act came into effect on 7 August 2020, the Act that it replaced (the State Sector Act 1988) is also a relevant part of the legislative framework.

The State Sector Act 1988 included as one of its purposes the promotion and upholding of a state sector system that *'is imbued with a spirit of service to the community'*.⁵⁰⁵ The Public Service Act 2020 emphasises this, describing *'the fundamental characteristic of the public service'* as *'acting with a spirit of service to the community'*.⁵⁰⁶

Under the Public Service Act 2020, Chief Executives remain responsible to the appropriate Minister for the operation of their agencies, supporting their Minister to act as a good steward of the public interest, giving advice to ministers (including on the long-term implications of policies), and the efficient delivery of goods and services provided by the Department and how effectively those contribute to intended outcomes.⁵⁰⁷ Chief Executives are required to uphold public service principles and preserve, protect, and nurture the spirit of community service among their employees.⁵⁰⁸

New Zealand Bill of Rights Act 1990 (NZBORA)

The NZBORA affirms, protects, and promotes human rights and fundamental freedoms in New Zealand, and affirms the nation's commitment to the International Covenant on Civil and Political Rights.⁵⁰⁹

Provisions of particular relevance to this investigation include:

- [section 5](#), which concerns the placing of justified limitations on NZBORA rights and freedoms;
- [section 9](#), which relates to the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment;
- [section 22](#), which relates to the right not to be arbitrarily detained; and

505 State Sector Act 1988, s [1A\(a\)](#).

506 Public Service Act 2020, ss [3\(e\)](#) and [13\(1\)](#).

507 Public Service Act 2020, s [52](#).

508 Public Service Act 2020, ss [12\(2\)](#) and [13\(2\)](#).

509 Bill of Rights Act 1990, [Title](#).

- [section 23](#), which concerns the rights of people who are arrested or detained, including the right of people deprived of their liberty to *'be treated with humanity and respect for the inherent dignity of the person'*.

Health and Safety at Work Act 2015

The Health and Safety at Work Act 2015 applies to the Department, which owes duties toward staff, contractors, volunteers, and prisoners. [Section 15](#) of the Act notes that [Part 3](#), (which deals with worker engagement, participation, and representation), does not apply to prisoners working inside a prison.

Code of Health and Disability Services Consumers' Rights (the Code)

The [Code of Health and Disability Services Consumers' Rights](#) establishes the rights of people using health and disability services, and the obligations and duties of providers — which include the Department — to comply with the Code. It is a regulation under [Part 2](#) of the Health and Disability Commissioner Act 1994.

The Code provides the following ten rights:

- Right 1 — The right to be treated with respect.
- Right 2 — The right to freedom from discrimination, coercion, harassment, and exploitation.
- Right 3 — The right to dignity and independence.
- Right 4 — The right to services of an appropriate standard.
- Right 5 — The right to effective communication.
- Right 6 — The right to be fully informed.
- Right 7 — The right to make an informed choice and give informed consent.
- Right 8 — The right to support.
- Right 9 — Rights in respect of teaching or research.
- Right 10 — The right to complain.

Appendix 5. International conventions

United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture)

Under the Convention against Torture, New Zealand is required to take effective legislative, administrative, judicial, or other measures to prevent acts of torture (by such persons) in any territory under its jurisdiction.⁵¹⁰

Article 11 relates specifically to the obligation to prevent torture in the custody and treatment of persons subjected to any form of arrest, detention, or imprisonment.⁵¹¹

Optional Protocol to the Convention against Torture (OPCAT)

The OPCAT establishes a non-judicial system of regular visits to places of detention, per-formed by agencies designated as National Preventative Mechanisms (NPMs).⁵¹²

As an entity administering a custodial system, therefore, the Department has obligations under the Convention against Torture in relation to its treatment of prisoners, and, under the OPCAT, its places of detention are subject to visits by NPMs.

510 [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) 1465 UNTS 85 (opened for signature 10 December 1984, entered into force 26 June 1987). Ratified by New Zealand in 1989.

511 Article 11 of the [Convention against Torture](#) states: *'Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.'*

512 The [Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment](#) 2375 UNTS 237 (opened for signature 4 February 2003, entered into force 22 June 2006), was ratified by New Zealand in 2007. Both the Convention against Torture and OPCAT were ratified as schedules to the Crimes of Torture Act 1989.

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

The UNDRIP does not specifically address the rights of indigenous prisoners, but it emphasises the rights of indigenous people to live in dignity; to maintain and strengthen their own institutions, cultures, and traditions; and to pursue their own self-determined development in keeping with their own needs and aspirations.⁵¹³

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Similarly, the CEDAW does not specifically address the rights of women in prison, but it provides the basis for realising equality between all women and men through ensuring women's equal access to, and equal opportunities in, political and public life, as well as education, health, and employment. Each State Party agrees to take all appropriate measures so that women can enjoy all their human rights and fundamental freedoms.⁵¹⁴

United Nations Convention on the Rights of Persons with Disabilities (Disability Convention)

New Zealand ratified the Disability Convention in 2008, and the Optional Protocol to the Disability Convention (establishing an individual complaints mechanism) in 2016.

Article 14 of the Disability Convention requires State Parties to ensure that where a disabled person is deprived of their liberty, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and treated in accordance with the Convention's objectives and principles, including by provision of reasonable accommodation.⁵¹⁵

513 The UNDRIP was adopted by the General Assembly in 2007 by 144 states, with New Zealand being one of four opposing states, along with Australia, Canada, and the United States. A further 11 states abstained. In 2020, New Zealand changed its position and expressed its support for the UNDRIP. The other opposing states have also since reversed their position. See [United Nations Declaration on the Rights of Indigenous Peoples](#) GA Res 61/295 (2007).

514 New Zealand ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1985, and the Optional Protocol to the CEDAW in 2000. See [Convention on the Elimination of All Forms of Discrimination against Women](#) 1249 UNTS 13 (opened for signature 18 December 1979, entered into force 3 September 1981); and [Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women](#) 2131 UNTS 83 (opened for signature 6 October 1999, entered into force 22 December 2000).

515 'Reasonable accommodation' is defined in Article 2 of the Disability Convention as 'necessary and appropriate modifications and adjustments, not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms'. See [United Nations Convention on the Rights of Persons with Disabilities](#) 2515 UNTS 3 (opened open for signature 30 March 2007, entered into force 3 May 2008).

Article 15 requires State Parties to take all effective legislative, administrative, and judicial or other measures to prevent disabled people being subjected to torture or cruel, inhuman, or degrading treatment or punishment.

The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

The Mandela Rules are neither a Treaty nor a binding Convention on the New Zealand Government (or by extension, on the Department), but they set out what are generally accepted as good principles and practice in prisoner treatment and prison management.⁵¹⁶ The Corrections Act 2004 specifies that one purpose of the corrections system is to establish rules for operating corrections facilities based on the Mandela Rules (and other matters).⁵¹⁷ The Mandela Rules inform the standards against which the Office of the Inspectorate undertakes prison inspections.

The Mandela Rules comprise 122 rules, starting with the obligation to treat all prisoners with respect for their inherent dignity and value as human beings; to protect against torture and other forms of ill-treatment; and to ensure the safety and security of prisoners, staff, service providers, and visitors. The remaining rules cover a range of matters such as access to legal representation, accommodation, complaints and inspections, contact with the outside world, file management, medical and health services, property, restraint, restrictions, discipline and sanctions, and staff.

United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)

Introduced in 2010, the Bangkok Rules identify standards for the minimum acceptable treatment of women prisoners.⁵¹⁸ They are underpinned by a recognition of the fact that prisons and prison regimes have largely been designed for male prisoners.

The Bangkok Rules were developed to complement and supplement the Mandela Rules and, as such, similarly inform the standards against which the Office of the Inspectorate assesses prisoner treatment and conditions.

516 [United Nations Standard Minimum Rules for the Treatment of Prisoners \(the Mandela Rules\)](#) A/RES/70/175 (adopted 8 January 2016).

517 Corrections Act 2004, s 5(1)(b).

518 [United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders \(the Bangkok Rules\)](#) A/C.3/65/L.5 adopted 21 December 2010.

Appendix 6. The prison network⁵¹⁹

Prison network

As at 30 June 2022

A Northland Region Corrections Facility
Region: Northern • Opened: 2005

Operational capacity 489
People in prison 437
Number of staff 296
Gender Custody status
Security classification

C Mt Eden Corrections Facility
Region: Northern • Opened: 2011

Operational capacity 1,112
People in prison 914
Number of staff 505
Gender Custody status
Security classification

E Auckland South Corrections Facility
Region: Northern • Opened: 2015

Operational capacity 960
People in prison 772
Number of staff 368
Gender Custody status
Security classification

B Auckland Prison
Region: Northern • Opened: 1968

Operational capacity 620
People in prison 523
Number of staff 480
Gender Custody status
Security classification

D Auckland Region Women's Corrections Facility
Region: Northern • Opened: 2006

Operational capacity 346
People in prison 249
Number of staff 316
Gender Custody status
Security classification

J Hawke's Bay Regional Prison
Region: Lower North • Opened: 1989

Operational capacity 567
People in prison 468
Number of staff 385
Gender Custody status
Security classification

K Manawatu Prison
Region: Lower North • Opened: 1979

Operational capacity 251
People in prison 231
Number of staff 171
Gender Custody status
Security classification

L Rimutaka Prison
Region: Lower North • Opened: 1967

Operational capacity 710
People in prison 564
Number of staff 565
Gender Custody status
Security classification

M Arohata Prison
Region: Lower North • Opened: 1944

Operational capacity 164
People in prison 106
Number of staff 142
Gender Custody status
Security classification

N Christchurch Men's Prison
Region: Southern • Opened: 1915

Operational capacity 841
People in prison 770
Number of staff 603
Gender Custody status
Security classification

O Christchurch Women's Prison
Region: Southern • Opened: 1974

Operational capacity 140
People in prison 83
Number of staff 136
Gender Custody status
Security classification

P Rolleston Prison
Region: Southern • Opened: 1958

Operational capacity 260
People in prison 254
Number of staff 185
Gender Custody status
Security classification

Q Otago Corrections Facility
Region: Southern • Opened: 2007

Operational capacity 457
People in prison 340
Number of staff 311
Gender Custody status
Security classification

F Spring Hill Corrections Facility
Region: Central • Opened: 2007

Operational capacity 892
People in prison 733
Number of staff 456
Gender Custody status
Security classification

G Waikeria Prison
Region: Central • Opened: 1911

Operational capacity 460
People in prison 426
Number of staff 390
Gender Custody status
Security classification

H Tongariro Prison
Region: Central • Opened: 1978

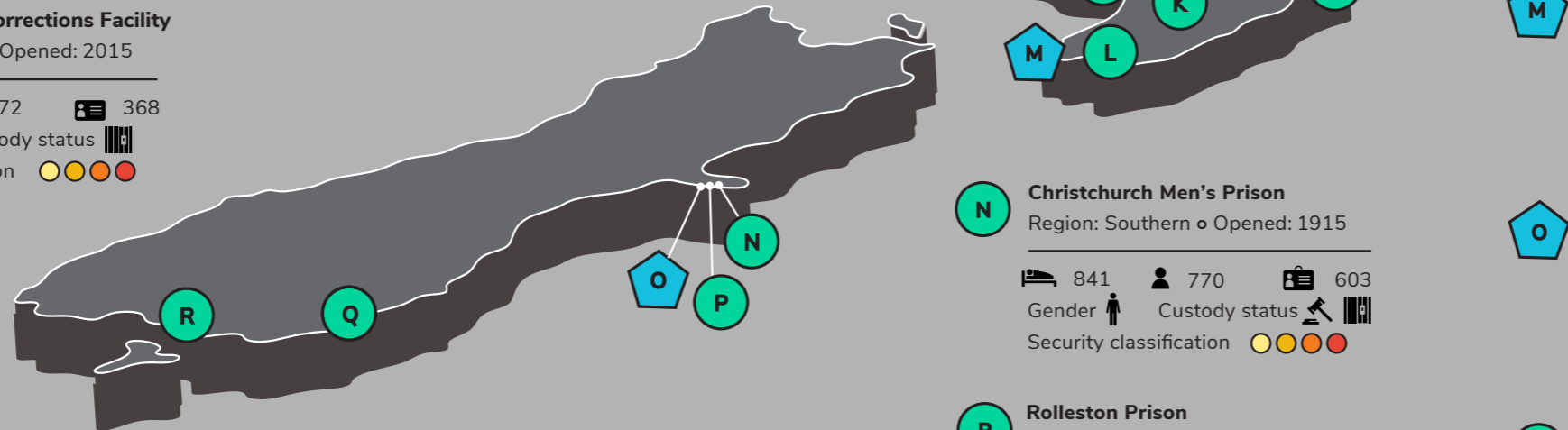
Operational capacity 370
People in prison 363
Number of staff 206
Gender Custody status
Security classification

I Whanganui Prison
Region: Lower North • Opened: 1978

Operational capacity 447
People in prison 383
Number of staff 315
Gender Custody status
Security classification

R Invercargill Prison
Region: Southern • Opened: 1910

Operational capacity 135
People in prison 112
Number of staff 110
Gender Custody status
Security classification



Key

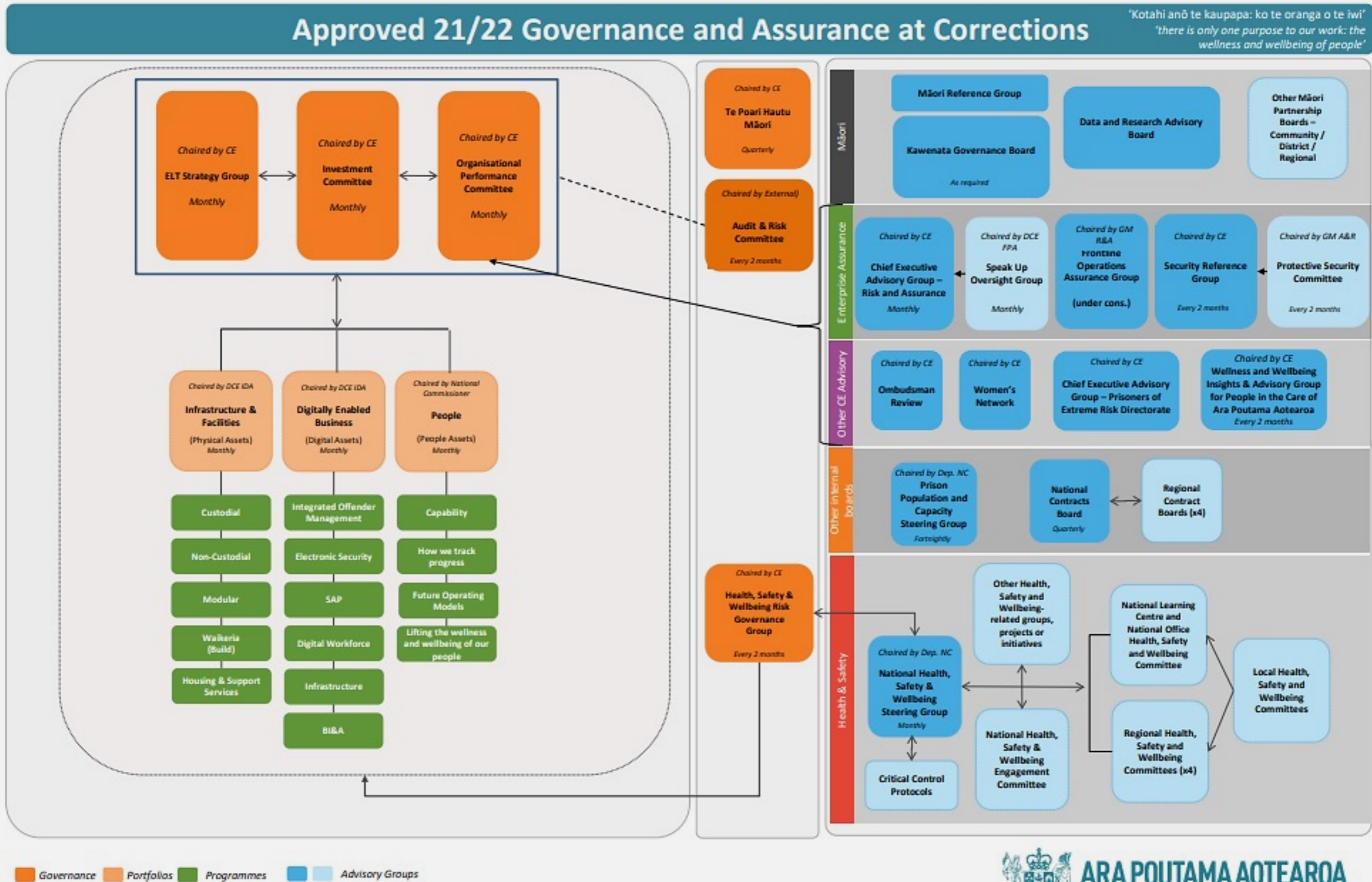
- Operational capacity
- People in prison
- Number of staff
- Gender
- Custody status
- Remand
- Sentenced

Security classification

- Minimum
- Low
- Low-Medium
- High
- Maximum

519 Reproduced from Ara Poutama Aotearoa | Department of Corrections [Annual Report 1 July 2021–30 June 2022](#) (2022) at 60–61.

Appendix 7. Governance and assurance at the Department⁵²⁰





 **Ombudsman**

Tuia kia ōrite · Fairness for all

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