

29 November 2024

Committee against Torture
Office of the United Nations High Commissioner for
Human Rights
Sent by email: cat@ohchr.org

Dear Committee members

Submission by the Chief Ombudsman of New Zealand - Follow-up to concluding observations on New Zealand's seventh periodic report

1. Thank you for the opportunity to provide a submission to the Committee, to inform your consideration of the information received from New Zealand on follow-up to the concluding observations on its seventh periodic report.

Background

2. In July 2023, the Committee against Torture (Committee) adopted concluding observations ([CAT/C/NZL/CO/7](#)) on New Zealand's seventh periodic report ([CAT/C/NZL/7](#)), including four recommendations for follow-up in accordance with the Committee's follow-up procedure.¹ In August 2024, New Zealand submitted its follow-up information ([CAT/C/NZL/FCO/7](#)).
3. I make this follow-up submission² primarily in my capacity as a National Preventive Mechanism (NPM) to fulfil New Zealand's obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). As set out in [my submission to the 77th session of the Committee](#) (in July 2023) for consideration of the seventh periodic report submitted by New Zealand, I am designated as a NPM for the purpose of examining and monitoring the treatment of persons detained in:
 - a. prisons and otherwise in the custody of the Department of Corrections;
 - b. premises approved or agreed under the Immigration Act 2009;
 - c. health and disability places of detention including within privately run aged care facilities;

¹ As set out in the Committee against Torture's *Guidelines for follow-up to concluding observations* ([CAT/C/55/3](#)).

² As detailed in the Committee's Guidelines, the focus of an alternative follow-up report by national human rights institutions, non-governmental organisations, and other stakeholders is on the implementation by the State party of recommendations identified for follow-up. The follow-up procedure has become an important means of assessing the degree to which compliance with the Committee's recommendations has had an impact. It has also become an integral part of the reporting cycle. State parties are requested by the Committee to promptly and urgently implement the recommendations for follow-up.

- d. residences established under section 114 of the Public Safety (Public Protection Orders) Act 2014; and
 - e. court facilities.
4. My complaint-handling and investigation role in relation to public sector agencies (under the Ombudsmen Act 1975) and as a member of the Independent Monitoring Mechanism (IMM) constituted under the United Nations Convention on the Rights of Persons with Disabilities (UN Disability Convention) also inform my comments on the State party's follow-up information being considered by the Committee. I am particularly conscious of New Zealand's obligation to actively involve disabled people in decision-making about matters that affect them.³

Summary of my comments

5. My comments in this submission are focused on two of the follow-up recommendations made by the Committee for the State party:⁴
- a. To improve the provision of gender- and age-specific and culturally appropriate medical services to all persons deprived of their liberty, particularly those with intellectual or psychosocial disabilities.
 - b. Increase efforts to reduce the disproportionately high number of Māori in prisons and recidivism, and intensify efforts to eliminate direct and indirect discrimination against Māori in the administration of justice, including through human rights training programmes for penitentiary personnel.⁵
6. My over-arching comments are that:
- a. The State party's response to the Committee's follow-up recommendations either do not address key aspects of the recommendations or do not meaningfully engage with the recommendations. I am concerned that the State party's follow-up information generally only relates to people in prisons, whereas the Committee's follow-up recommendation relates to all places of detention.
 - b. There is a lack of detail in the State party's response regarding the actual or planned actions to implement the recommendations, with some of the information provided relating to policies, programmes or actions that existed prior to the Committee's recommendations.

³ Pursuant to the UN Disability Convention, art 4(3) - State parties are required to ensure that disabled people are closely consulted and actively involved, through their representative organisations, in decision-making processes concerning issues related to persons with disabilities.

⁴ At paras 28(c) and 32 ([CAT/C/NZL/CO/7](#)).

⁵ I note for completeness that this recommendation also relates to training for law enforcement officials and the judiciary.

Conditions of detention (health/medical services)⁶

7. I am concerned that the State party's follow-up information does not discuss health/medical services in health and disability places of detention (my comments on this are further below), given the Committee's follow-up recommendation relates to all persons deprived of their liberty and with a particular focus on those with intellectual or psychosocial disabilities. The State party's follow-up information predominantly outlines the work of the Department of Corrections.⁷ This is particularly concerning given the over-representation of disabled people and tāngata whaikaha Māori⁸ in all places of detention. This may suggest that there has not been meaningful engagement with these issues in other places of detention by the State party, further to the Committee's concluding observations.

Prisons

8. In response to the Committee's follow-up recommendations, the State Party's follow-up information does not detail particular actions or steps taken to implement the Department of Corrections' various action plans and strategies, or mechanisms for assessing the impact or effectiveness of the plans and strategies. Some of the programmes and initiatives in respect of gender, age and cultural appropriateness of health services within prisons appear to have been in progress prior to the Committee's concluding observations (in July 2023).
9. In August 2024, I highlighted to the Justice Committee the importance of the Department of Corrections urgently addressing mental health support and services including through ensuring proper resourcing and infrastructure – being long-standing and critical concerns of mine.⁹ I am extremely concerned that access to adequate health/medical services will be further exacerbated by:
- a. The increase in the prison population,¹⁰ already being seen and noted in the State party's follow-up information, will likely increase the demand on prison health services as well as have a direct impact on the health, safety, and wellbeing of people

⁶ I note that the Committee uses the term 'medical services' in its recommendation at para. 28(c). I have used the term 'health' and 'health care' to encompass medical care.

⁷ There is also some information included in the State party's follow-up information related to Oranga Tamariki – the Ministry for Children. I have not commented on some of this information in relation to children and young people where it falls outside of my designation (and sits with Mana Mokopuna – the Children and Young People's Commission).

⁸ Tāngata whaikaha is a word created within the Māori disability community, with whaikaha meaning 'to have strength, to have ability, otherly abled, enabled'. See [Te Reo Hāpai: The Language of Enrichment](#).

⁹ See the [speaking notes for my investigation into the Department of Corrections](#), presented to the Justice Committee on 8 August 2024.

¹⁰ The prison population, as at 25 November 2024, is 10,150. The historic high in March 2018 was 10,800, but has been falling for the last four years. The prison population was predicted to reach a low of 7,200 in 2024. See further my submission to the Committee (July 2023) at [186] – New Zealand has a high imprisonment rate compared to the rest of the OECD, with around 170 people in prison per 100,000 people, compared to the OECD average of around 147.

in custody. For example, through an increase in the use of double-bunking,¹¹ and reduction in time out of cell/and or access to prison yards.

- b. There being no additional resourcing currently identified for the provision of health services. I understand that the Department of Corrections is in the process of reviewing all mental health services provided to people in prisons, but no final decisions have been made yet regarding what the services will look like.¹²
10. I note that one of the key justice-sector announcements in the Government's May 2024 Budget was an 810-bed extension to Waikeria prison to eventually have capacity for 1865 beds.¹³ The [Justice Committee](#) - in its scrutiny of the 2024/24 Estimates for Vote Correction (August 2024) – expressed its concern about the proposed decrease in funding for the planned mental health unit at Waikeria prison (from \$24 million to \$12 million).

APPROPRIATE FOR DISABLED PEOPLE IN PRISON

11. The State party's response outlines that the Department of Corrections is implementing its first Disability Action Plan 2023- 2027, and that immediate actions have been delivered through establishing a Disability Advisory Group, adding the Washington Short Set of Questions on Disability (WGSS) to all health screening tools, and creating four social worker roles specific to disability and older persons.
12. While it is important to acknowledge the work of the Department of Corrections in developing and implementing its Disability Action Plan (launched in February 2023), I remain concerned that this strategy alone does not adequately address the Government's responsibility to provide targeted and appropriate health and disability care to disabled people and tāngata whaikaha Māori in prison. For example, the Disability Action Plan does not include specific or targeted provision for intellectually disabled people held in the Department of Corrections' custody.
13. The [Disability Action Plan](#) refers to the WGSS as a 'valid measurement of the number and functionality of tāngata whaikaha Māori/disabled people coming into prison'. I note that the WGSS is a set of six questions designed to identify individuals who are at a greater risk than the general population of facing barriers to full social participation, due to difficulties completing certain activities. I understand the WGSS is not designed to estimate the prevalence of disability within a population, determine the need for services or

¹¹ The Department of Corrections [publishes data on double-bunking](#). At 30 September 2024, 42% of the male prison population were double-bunked, and 49% of the female prison population were double-bunked. The data does identify an increasing trend from 2021 to 2024.

¹² Reported on 6 November 2024 at <https://www.rnz.co.nz/news/national/532993/corrections-axes-mental-health-contracts-for-jails>. Funding for the delivery of 'rehabilitation and reintegration services' to people on remand is contingent on a comprehensive review of rehabilitation services and an implementation plan based on this review. See: <https://budget.govt.nz/budget/pdfs/summary-initiatives/b24-sum-initiatives.pdf> at p 26.

¹³ See <https://www.beehive.govt.nz/release/19-billion-investment-keep-nz-safe-crime>. It has been [reported](#) that the bulk of the government's \$1.9 billion Budget announcement would go towards construction. It has also been [reported](#) that the Department of Corrections has requested that Auckland Prison (Paremoremo) be listed in proposed fast-tracking legislation for projects of national significance, despite there being no immediate plans to expand the facility, to be able to increase the maximum number of prisoners from 681 (current) to 1200.

interventions that can improve the lives of disabled people, or identify people with mental health issues (as it largely focuses on a person's physical needs).¹⁴

14. I have been raising concerns for some time about the lack of early identification of, support for, and ongoing review of individual needs for disabled people in custody. I am yet to see whether use of the WGSS will improve the identification of specific disabilities within the prison population and the specific needs of individuals, and the actual supports and accommodations provided to meet those needs. In light of the obligations in the UN Disability Convention, particularly Articles 13 and 14, I repeat the comments from my July 2023 submission regarding my ongoing concerns on the lack of co-ordination to meet the needs of disabled people in custody, the need for sufficient, suitable accommodation, and more tailor support for people with cognitive impairments.¹⁵
15. Further, there is limited commentary in the State's follow-up information about how it envisages the establishment of four new social worker roles (specifically for disability and older persons) will help to improve services in prisons.
16. Finally, I note that the State party's response does not detail how it has made efforts to actively engage with disabled people and tāngata whaikaha Māori, through their representative organisations, in accordance with the UN Disability Convention.

CULTURALLY APPROPRIATE (IN PRISON)

17. The State party's follow-up information refers to the Department of Corrections advancing efforts to ensure that health services are culturally and evidence-informed to ensure equitable health outcomes (including for the needs of Māori and Pacific peoples). Examples provided are testing of traditional Māori healing system at several prisons, and a preliminary framework to guide bi-cultural practice within psychology. I have not yet observed these examples being trialled at prison sites visited, rather I continue to observe that people in custody often do not have timely access to quality health care, including appropriate mental health services, and continue to experience poor health outcomes as a result.

AGE APPROPRIATE (IN PRISON)

18. The State party's follow-up information refers to the Department of Corrections' Ageing Well Action Plan 2023 – 2026 (launched in August 2023) and the Ageing Well Assessment designed to address age-related changes for people in prisons. I have observed in some recent inspections that there continue to be limits in the provision of health services to meet the needs of the ageing prison population.
19. Where I have seen young people, and young adults who would otherwise be in a youth unit, housed in the same wings as adults, I have observed a detrimental impact, including in terms of access to the same health services. Rangatahi Māori— who, as of March 2023, made up 65% of those in prison below the age of 20- remain overrepresented within every

¹⁴ See further information produced by Whaikaha – Ministry of Disabled People: [Information on the Washington Group Short Set of Questions on Disability](#) (2017), p 3.

¹⁵ Ombudsman New Zealand [Submission to the 77th session of the Committee against Torture, for consideration of the Seventh periodic report submitted by New Zealand](#) (July 2023) at [201].

stage of the justice system. I have observed this in my OPCAT examinations across the country and have commented on this matter in *Kia Whaitake: Making a Difference* (discussed further below). I consider that the State party's response to the Committee's recommendation needs to reflect the intersectionality inherent in providing age, culture, gender and disability appropriate care.

GENDER APPROPRIATE (IN PRISON)

20. In respect of women in prison, the State party's response outlines that Department of Corrections is informed by its Women's Strategy 2021 – 2025. The Department further notes it extended the National Cervical Screening Programme's self-testing for Human Papilloma Virus (HPV) in women's prisons. The Department refers to supporting gender-diverse people when determining accommodation placements (arising from amendments to the Corrections Regulations 2005) from July 2023.
21. Again, I cross-reference the concerns raised in my July 2023 submission to the Committee, particularly around there being little evidence of the implementation of the Women's Strategy (although related to the 2017 – 2021 Strategy), and the lack of tailored management plans for women being inconsistent with the 2021 – 2025 Strategy.¹⁶
22. Although the overall prison population has shown a sharp upward trend in the last 12-18 months, I note that the female prison population has increased at a disproportionately higher rate. I will continue to monitor how this trend may impact the conditions and treatment of women in prison. I am also still deeply concerned regarding the over-representation of Māori women in prisons, and the difficulty experienced in accessing culturally appropriate support.

Health and disability places of detention

MENTAL HEALTH SERVICES

23. In my July 2023 submission to the Committee, I highlighted the lack of specific consideration of the needs of young people in adult mental health facilities including the use of practices such as seclusion and restraint on young people, with no apparent evidence of additional consideration given to their age and associated vulnerabilities.¹⁷ I note that the proposed Mental Health Bill, introduced to the New Zealand Parliament/House of Representatives on 1 October 2024, would apply to children and young people, with only limited specific provisions or safeguards for this group.
24. I also highlighted in my previous submission to the Committee the high numbers of seclusion events and length of seclusion hours in many mental health services, and the potentially harmful effects on tāngata whai ora (those receiving mental health services), particularly those who are Māori. The proposed Mental Health Bill provides that all persons performing functions in the mental health system 'must use their best endeavours to eliminate the placement of patients in seclusion'. The Ministry of Health has recognised seclusion serves no therapeutic purpose and, as such, I consider that seclusion should not

¹⁶ At [214].

¹⁷ At [286].

occur. Further, I have observed that where it does occur, it is poorly practiced and documented. While my view is that seclusion should not be permitted in the new legislation, if it is going to be provided for, further protections should be included such as:

- a. requiring all instances of seclusion (and restraint) to be reviewed,
- b. provide time limits around seclusion, and
- c. to explicitly recognise that tāngata whai ora must never be subjected to solitary confinement (and that any occurrence of this would likely amount to cruel, inhuman and degrading treatment).

25. I [recently published](#) (in July 2024) 12 reports on OPCAT examinations of mental health services. I raised concerns at the significant number of repeat recommendations made, including around the high use of seclusion and ensuring safe staffing levels. I also continued to observe over-occupancy issues across both acute and forensic mental health services which, combined with outdated and tired facilities, are resulting in varied and serious negative impacts on conditions and treatment for tāngata whai ora. Concerning practices observed included tāngata whai ora being accommodated in spaces not designed as bedrooms, such as seclusion rooms, lounges, and office spaces. As I've noted, it is disappointing that the State's follow-up information does not engage with these highly important issues outside of a prison detention environment, and particularly in respect of tāngata whai ora.
26. I note that the proposed Mental Health Bill does not explicitly support and promote models of care that provide better experiences and outcomes for Māori and Pacific peoples.

AGED CARE

27. Finally, I note my [submission to the Health Committee inquiry](#) (August 2024) into the aged care sector's current and future capacity to provide support services for people experiencing neurological cognitive disorders. In this submission, I highlighted my concerns in respect of a lack of process for verification of the legal authority for placement in aged residential care, including decision-making capacity assessments and the 'consent' of an authorised representative or a court order. I also commented on these issues in my July 2023 submission.¹⁸ I remain concerned that people in secure aged residential care are effectively deprived of their liberty, without appropriate legal processes being followed and/or documented, and that there are a lack of appropriate safeguards or legal protections for these residents. I have communicated these concerns to Health New Zealand | Te Whatu Ora and will continue to monitor progress in this area.

Indigenous Peoples in the criminal justice system

28. The Committee's follow-up recommendation in respect of indigenous peoples in the criminal justice system is wide-ranging. I acknowledge that a whole of system approach is needed in respect of improving outcomes for Māori in the criminal justice system. In [Kia](#)

¹⁸ At [321] – [323].

[Whaitake - Making a Difference: investigation into Ara Poutama Aotearoa, Department of Corrections](#) (published on 28 June 2023),¹⁹ I formed the opinion that the Department of Corrections had omitted to develop and execute a long-term capability strategy that would ensure it had developed Māori/Crown relationships and cultural capabilities required to implement important organisational strategies, such as Hōkai Rangi.²⁰ Further to this, I note the importance of the Department of Corrections ensuring it assesses the effectiveness of such strategies in achieving desired outcomes, particularly operational outcomes.

29. In my July 2023 submission to the Committee, I discussed how overrepresentation of Māori in prison is deeply concerning in and of itself, and while complex in its causes, demands sustained and urgent attention.²¹ The State party's follow-up information acknowledges that the Māori prison population may increase because of the tightening of some criminal laws.²² In this respect, I reinforce the concerns raised in my July 2023 submission.
30. One of my recommendations in *Kia Whaitake | Making a Difference*, was that the relevant legislation be reviewed to ensure a greater emphasis on the obligations under Te Tiriti o Waitangi / Treaty of Waitangi, the New Zealand Bill of Rights Act, and relevant domestic and international law. The Corrections Amendment Bill, which I provided a [submission](#) to the Justice Committee on in August 2023, had contained a new section to refer to the Crown's 'intention to give effect to the principles of te Tiriti o Waitangi / the Treaty of Waitangi'. I note that this provision was removed from the Bill following the Select Committee stage in June 2024.

Programmes for people in prisons

31. The State party's follow-up information refers to the Department of Corrections' Māori Pathways programme which aims to provide family-centred and culturally specific approaches for Māori with the aim of lowering the proportion of Māori in the corrections system.²³ In *Kia Whaitake | Making a Difference*, I noted that the work being undertaken through this programme was being delivered in specific units rather than across the entire prison site. I continue to observe that access to culturally-focused initiatives such as those under the Māori Pathways programme is inconsistent and depends significantly on the site and the individual unit.

Training for prison staff

32. In *Kia Whaitake | Making a Difference*, I set out a number of systemic issues which, in my view, inhibited the Department of Corrections from making significant and sustained improvements for those in prison. These include workforce capability issues that have

¹⁹ I note that I referred to this investigation in my July 2023 submission to the Committee, but at the time of my July 2023 submission, my investigation report had not been published.

²⁰ The Department of Corrections' five-year organisational strategy launched in 2019.

²¹ My July 2023 submission, above n 15, [198].

²² At [21].

²³ At [29].

impacted, and continue to impact, the Department's ability to implement the recommendations of oversight entities. Two such issues were:²⁴

- a. 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.
 - b. a lack of cultural capability, impacting on the treatment of people in prison and their whānau (family), and on the ability of the Department to work in real partnership with Māori.
33. The State party's follow-up information refers to prison staff receiving training about their responsibility to maintain the human rights of people in prison.²⁵ No further information is provided regarding the specifics of this training. In *Kia Whaitake | Making a Difference*, I reported that my investigators specifically reviewed the online training module provided for new prison officers 'Our Way and Human Rights', which provided basic information about New Zealand's international human rights obligations and the role of various oversight entities. I considered that the training did not sufficiently focus on the application of human rights in the day-to-day running of a prison, nor did it appear to cover how frontline staff would apply this in practice.²⁶ Further that the training failed 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.
34. The State party's follow-up information refers to the Department of Corrections' nationally delivered induction training including a significant Māori cultural component.²⁷ In *Kia Whaitake | Making a Difference*, my investigation identified that the Department of Corrections was unable to provide details of delivery at prison sites specifically about its cultural capability uplift programme (E Toru Ngā Mea),²⁸ and that there was insufficient resourcing to provide the necessary cultural competency training.²⁹ The State party's response does not contain specifics about this training or delivery across prison sites.
35. Again, the State party's follow-up information refers to further pathways for strengthening cultural competency being developed, but there are no specifics provided about this training.³⁰
36. My recommendations in *Kia Whaitake | Making a Difference* included that the Department develop a whole-of-organisational response to the issues I identified, including workforce capability strategies and cultural capability across the entirety of its workforce. I

²⁴ *Kia Whaitake | Making a Difference* at [445].

²⁵ At [32]. The State party's initial response to the list of issues identified that all new custodial staff participate in the 'Our Way and Human Rights' learning programme, to reinforce their understanding of human rights.

²⁶ *Kia Whaitake | Making a Difference* at [458].

²⁷ At [32]. Note that this induction training module is known as Ara Tika.

²⁸ *Kia Whaitake | Making a Difference* at [490] - [493].

²⁹ At [462].

³⁰ At [32].

acknowledge that the Department accepted all the recommendations in my report in full, and has developed an organisational roadmap to prioritise and sequence the Department's work in response to *Kia Whaitake | Making a Difference*. The Department now publishes a thematic reporting dashboard, on oversight agency findings and recommendations on a six monthly basis.³¹ This includes updates related to staff training (including for custodial staff) and cultural capability.

37. While I commend the Department for these steps, I am still deeply concerned about ensuring there is comprehensive resourcing and training for staff for the proper management of people in custody.³²

Concluding comment

38. I appreciate the opportunity to provide this follow-up submission to the Committee. I would be happy to discuss or expand upon any of the matters outlined in this submission, should this be of assistance.

Yours sincerely



Peter Boshier
Chief Ombudsman

³¹ This implements one of the recommendations made in *Kia Whaitake | Making a Difference* (see para 508(iii) - (c)(iii)). See the Department of Corrections' website '[Monitoring Entity Recommendations Themes](#)'.

³² My July Submission, above n 15, at [167].