



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

Distr.: General
16 March 2020

Original: English
English, French and Spanish only

Committee against Torture

**Seventh periodic report submitted by New
Zealand under article 19 of the Convention
pursuant to the simplified reporting procedure,
due in 2019* ****

[Date received: 25 September 2019]

* The present document is being issued without formal editing.

** The annexes to the present report may be accessed from the web page of the Committee.

GE.20-04019(E)



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I. Introduction

1. New Zealand is pleased to present its seventh periodic report to the United Nations Committee against Torture, responding to the Committee's list of issues prior to the submission of the seventh periodic report, dated 9 June 2017.
2. New Zealand is committed to protecting human rights. We are a small country that is proud of its record as a contributor to human rights. Nevertheless, there is always room for improvement and we value the engagement with other countries and international bodies to better protect human rights.
3. Prior to drafting the report, public engagement sessions with civil society were held and the Government consulted the public on the draft report in 2019. Topics raised during consultation included the criminal justice system, conditions in prisons and family violence.
4. The report is organised according to the list of issues. Key data is contained in the body of the report. More detailed data is in the appendices.

Summary of key developments

5. Legislative and other changes since our last periodic report to the Committee include:
 - *Hāpaitia te Oranga Tangata* – the Safe and Effective Justice programme, which started in 2018 and seeks to reform the criminal justice system
 - Enhanced efforts to combat gender-based violence
 - 2018 amendments to the National Preventive Mechanism responsibilities
 - Expanding the Office of the Inspectorate's purpose
 - Joining the Global Alliance for Torture-Free Trade in 2018
 - Supporting the Global Compact for Safe, Orderly and Regular Migration
 - Large scale inquiries into historic abuse in state care, the mental health system, and military activities in Afghanistan
 - Increasing the refugee quota from 750 to 1,500 per year from 2020/21. Furthermore, 600 additional places were filled by Syrian refugees between 2015/16 to 2017/18
 - The establishment of a new agency for Māori/Crown relations – Te Arawhiti (the bridge), to enhance input from Māori across all portfolios
 - The formation of an International Human Rights Governance Group leading cross-government work on human rights reporting
 - The establishment of Oranga Tamariki – Ministry for Children, with a child-centered operating model and increased focus on the needs of Māori children
 - The first convictions for people trafficking.

II. Specific information on the implementation of Articles 1–16 of the Convention

Articles 1 and 4

Reply to paragraph 2 of the list of issues (CAT/C/NZL/QPR/7)

Incorporation into domestic law

Protection of human rights within our constitution

6. New Zealand does not have a single written constitution. Our constitution is in a range of sources, including legislation, common law, the Treaty of Waitangi/Te Tiriti o

Waitangi (our founding document, the 1840 agreement between Māori and the British Crown), constitutional conventions, parliamentary customs and customary international law. The Human Rights Act 1993, New Zealand Bill of Rights Act 1990 (NZBORA) and Crimes of Torture Act 1989, promote and protect human rights.

7. The Human Rights Act prohibits discrimination in New Zealand. It also outlines the role of the Human Rights Commission (HRC), our national human rights institution, and the Human Rights Review Tribunal.

8. NZBORA sets out obligations relating to civil and political rights arising from the ICCPR. Section 9 prohibits torture and other cruel treatment, which mirrors the Convention against Torture. Section 23(5) states ‘Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the person.’ New legislative proposals are vetted for compliance with the rights and freedoms set out in NZBORA (for further information see paragraph 13 of our previous report).

9. The Crimes of Torture Act prohibits acts of torture against another person in or outside of New Zealand. The penalties for torture (including attempts, aiding, abetting and inciting) are comparable to those for other serious offences such as grievous bodily assault and attempted sexual violation.

Constitutional developments

10. New Zealand’s National Plan of Action on Human Rights is an online tool developed by the HRC to record UPR recommendations and monitor progress in achieving recommendations.

11. In 2018, the Supreme Court confirmed that courts have jurisdiction to declare legislation inconsistent with NZBORA. While a declaration does not affect the validity of legislation, it can help strengthen human rights protections and inform Parliament that the courts consider an Act to be inconsistent with human rights. In 2019, the Government will progress law changes to ensure an effective response when the Courts make declarations of inconsistency.

12. In 2018, the Government established a stand-alone agency to strengthen engagement between Māori and the Government (Te Arawhiti – Office for Māori Crown Relations).

13. There are no plans to review the constitutional arrangements.

Case law

14. References to the Convention in judgments are rare, as courts generally cite the equivalent provisions in NZBORA. However, the Supreme Court discussed the Convention in *Vogel v. Attorney-General* [2014] NZSC 5, regarding extended seclusion in prison (para. 0). Examples of the application of NZBORA include:

- *S v. NZ Police* (2018): breach of s23(5), right of detainees to be treated with dignity by Police (see para. 0).
- *R v. Harrison* [2016] NZCA 381: right not to be subjected to disproportionately severe treatment or punishment (s9) affecting interpretation of an Act.
- *Taylor v. Attorney-General* [2018] NZHC 2557: Court awarded \$1,000 per prisoner in compensation for a breach of NZBORA through unreasonable strip-search.

Article 2

Reply to paragraph 3 of the list of issues

Rights of people in custody

15. Section 23 NZBORA requires that all detainees are informed of their rights at the time of arrest or detention and of the charges against them, including:

- Being informed of the reasons;
- Consulting a lawyer without delay;

- Being charged promptly or released;
- Being brought before a court as soon as possible;
- Being treated with humanity and respect.

16. All frontline officers hold a ‘rights caution card’ to read out to a person being arrested, detained, or questioned, where there is sufficient evidence to charge that person with an offence. Police Instructions (provided to every officer) are designed to ensure staff know their legal obligations and the standards expected of them. The Instructions include the operational policy that staff must follow when advising detainees of their rights while in custody. Once detainees have been informed of their rights, staff and detainee sign the ‘Notice to Person in Custody’ form. For further information, see paragraphs 17–24 of our previous report.

17. For Oranga Tamariki residences, the explanations of rules must be appropriate given the child or young person’s age, culture, language, and capacity to understand. A copy of the residence’s rules and grievance procedures must be publicly displayed in residences. A child receives information and copies of:

- What to expect from the agency;
- Rights and duties including complaints;
- Rules of the specific residence;
- Residential care regulations and other legislation (copies on request).

18. National Care Standards came into force in July 2019. They set out binding standards for all children in state care and include a child-friendly Statement of Rights.

19. The Code of Health and Disability Services Consumers’ Rights establishes the rights of consumers receiving health or disability services and the obligations and duties of health and disability service providers. Consumers have the right to effective communication in a form, language, and manner that enables them to understand the information. The Health and Disability Commissioner (HDC) provides education sessions and material to support service providers to understand their responsibilities under the Code. The Government accepts the need to raise awareness of consumer’s rights, including the rights to be treated with respect, to dignity and independence, and to be fully informed. In May 2019, the Government accepted in principle, a recommendation of *He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction* to direct the HDC to undertake initiatives to promote respect for and observance of the Code by providers.

Reply to paragraph 4 of the list of issues

National Preventive Mechanism (NPM)

20. The structure, responsibilities, and budget processes for the NPM were outlined in our previous report. There were no changes to the basic structure or legislation. All five NPMs are independent of Government and the agencies they monitor. The NPMs continue to work well together by collaborating at site visits, sharing best practice, and working together on common themes. Annual OPCAT reports are tabled in Parliament.

Amendments to the designations

21. In 2018, the Minister of Justice amended NPM designations to ensure they remain fit for purpose. Detention in private aged-care facilities and in court cells was expressly included in the Ombudsman’s designation. The Ombudsman is receiving increased funding, over three years, to meet these additional demands. Some further minor amendments were made to clarify designations.

Funding

22. Like many other Government-funded agencies, NPMs need to operate within an environment of financial restraint.

NPM funding 2017/18

	<i>Funding for all functions</i>	<i>OPCAT appropriation</i>
Human Rights Commission (HRC)	Approx. \$10m	Approx. \$5–10,000 for operational cost but excluding personnel cost (not budgeted separately)
Ombudsman	\$16.725m	\$1,127,000 (for ‘monitoring of detained people’)
Independent Police Conduct Authority (IPCA)	\$4.2m	\$55,000 (but see para. 23)
Office of the Children’s Commissioner (OCC)	\$2,657,000 (including a one-off \$500,000)	No specific appropriation
Inspector of Service Penal Establishment (ISPE)	N/A	Performs functions within general budget as Registrar of the Court Martial

23. IPCA received an overall increase in baseline of \$481,000 from 2018/19. IPCA had requested a \$75,000 increase for OPCAT. The baseline increase does not specify an OPCAT portion and internally, IPCA does not separately budget for OPCAT work.

Selected activities

24. NPMs regularly monitor places of detention. Between July 2017 and June 2018, OCC conducted 12 OPCAT monitoring visits to Oranga Tamariki residences. OCC and the Ombudsman also conduct joint monitoring visits to the three Mothers with Babies Units within prisons.

25. The Ombudsman holds the NPM designation for detainees (in approximately 110 places of detention). In 2017/18, the Ombudsman carried out 39 visits, including 12 formal inspections. The ISPE carried out two unannounced visits to the military detention facility. As there are 400 Police facilities, IPCA uses opportunities during the ordinary course of work to inspect facilities on a no-notice basis. It also undertakes audits of Police custody records and works with Police to develop and monitor appropriate standards. In 2018/19, IPCA undertook a programme of detailed inspections of the 32 Police custody units where detainees are currently held overnight.

26. In addition to inspection reports, NPMs also published thematic reports, including:

- ‘He Ara Tika – a pathway forward’ (2016) – HRC report on OPCAT and aged-care and disability facilities (funded through the Torture Prevention Ambassadors project);
- ‘Thinking outside the box’ by Dr Shalev (2017) – on seclusion and restraint (commissioned by the HRC, supported through OHCHR’s special OPCAT fund);
- ‘A question of restraint’ (2017) – Chief Ombudsman on care of prisoners at risk of self-harm;
- ‘This is not my home’ (2018) – HRC compilation of essays on aged residential care;
- ‘State of Care’ (2017) – OCC’s report on secure residences.

Reply to paragraph 5 of the list of issues**Combat of gender-based violence**

27. Our rates of gender-based violence are high.

Family violence investigations

	2014	2015	2016	2017	2018
Total family violence investigations	101 465	110 129	118 923	121 753	132 978
At least one offence recorded	37 194	38 340	41 128	39 680	37 450
No offence recorded	64 271	71 789	77 795	82 073	95 528

Prosecutions and Convictions for Male Assaults Female 2013–2018

	2013/14	2014/15	2015/16	2016/17	2017/18
Number of charges prosecuted	4 113	4 134	4 692	4 792	4 745
Number of convicted charges	2 980	2 869	3 292	3 322	3 288
% of charges prosecuted	72%	69%	70%	69%	69%

28. Between 2014 and 2017, a Ministerial Group on Family and Sexual Violence was established to develop a range of measures to significantly improve responses to gender-based violence. Workforce Capability Family Violence Risk Assessment and Management Frameworks were released in 2017.

29. In 2017, a political position of Parliamentary Under-Secretary to the Minister of Justice (Domestic and Sexual Violence) was created. The Under-Secretary leads a group of Ministers coordinating cross-government work; the Government's engagement with the community; and oversees operational improvements.

30. In 2018, the Government announced a Joint Venture, comprised of Chief Executives across the public sector, to deliver an integrated approach to family and sexual violence. The Joint Venture developed a single package for Budget 2019 to align and prioritise government resources and is preparing a national strategy and action plan on family violence and sexual violence.

31. The 2017/18 Budget invested significantly to combat violence: an additional \$76m over four years was invested in frontline social services working with families impacted by family violence. Sexual abuse and treatment services received an additional \$7.5m over four years to deliver medical treatment, forensic services and referrals. This additional funding built on increased funding of \$46m over four years provided in Budget 2016/17 for specialist services for victims and perpetrators.

32. In 2019, the Government allocated \$320m over four years for initiatives and services to tackle family and sexual violence.

Legislation

33. The new Family Violence Act came into force in 2019. It aims to prevent, identify and address family violence by:

- Establishing a more integrated response to family violence, including increased ability to access risk and needs assessments and services, codes of practice, and new information-sharing provisions;
- Improving accessibility and effectiveness of protection and Police Safety Orders;
- Improving the justice response, including by creating three new criminal offences and more accurate recording of family violence.

34. In 2018, Parliament passed the Domestic Violence Victims Protection Act 2018. The Act allows victims of family violence to take leave from their employment, separate from sick leave or annual leave, to support them through violent situations or to address the effects of past or current violence. The Government has announced planned legislative changes, to be introduced to Parliament in 2019, to reduce the re-traumatisation sexual violence victims can experience in criminal trials.

Police-led initiatives

35. Under the Safer Whānau programme, Police partners with Māori, community groups, and other agencies to assist our vulnerable and disadvantaged communities.

36. Changes to Police practice and training seek to prevent further victimisation and offending. Police will be able to recognise patterns of harm and adverse circumstances earlier and take a holistic view of the issues occurring within whānau.¹ Police also introduced new risk measures and a graduated response model of safety actions, including a frontline safety plan.

37. Police designed a Family Harm Investigation app, OnDuty, to assist officers at a Family Harm Investigation to collect information, determine whether offences have occurred, and identify safety concerns. Police completed testing of on-scene video interviews for victims of violence to improve quality of evidence and reduce re-victimisation. Video interviewing is to be implemented across New Zealand.

38. Police is testing a new response model to family violence, Whāngaia Nga Pa Harakeke, whereby Police and community workers respond together after initial attendance. An evaluation is in progress with promising signs of reductions in reoffending and victimisation.

39. In 2016, a new Integrated Safety Response model pilot was launched in two districts. The multi-agency model provides an enhanced response to family violence and high-risk prison releases by improved information sharing, risk assessment, safety planning, and family-centred assistance. An evaluation of the first year delivered promising results. Proximity alarm systems are being tested.

40. In 2015, Police launched the Family Violence Information Disclosure Scheme to facilitate disclosure of information to a person about the previous violence committed by their partner. Disclosure, which is aimed at harm prevention, may be made upon request or proactively.

Improved data collection

41. Family and sexual violence data comes from national crime surveys carried out in 2006, 2009 and 2014. Surveys help ascertain the prevalence of family violence, as only about 24% of offences are reported to Police. The survey was redesigned to allow collection of richer data, including relationships between victims and perpetrators and now runs annually.

42. Evaluations have been conducted to establish baselines for sexual violence victims' experience of the justice sector, and the effectiveness of programmes for victims and perpetrators.

Additional services for victims

43. Significant investment has been made into victims' services, including additional specialist crisis and psycho-social support for sexual violence victims. Full medical services, including counselling, are available and a new sexual harm helpline went live in 2018. For further information on victims' rights see para. 0.

44. E Tu Whānau and Pasifika Proud are family strength-based programmes aimed at delivering culturally appropriate responses to violence for Māori and Pacific peoples. New funding for specialist support services includes dedicated funding for the development of kaupapa Māori² models.

45. Guidance was published in 2018 to help sexual violence victims and their supporters understand the justice process and facilities are being upgraded to increase victims' comfort in court.

¹ Whānau – extended family, family group, a familiar term of address to a number of people – the primary economic unit of traditional Māori society. In the modern context the term is sometimes used to include friends who may not have any kinship ties to other members.

² Kaupapa Māori – Māori approach, Māori topic, Māori customary practice, Māori institution, Māori agenda, Māori principles, Māori ideology – a philosophical doctrine, incorporating the knowledge, skills, attitudes and values of Māori society.

Reply to paragraph 6 of the list of issues

Trafficking in persons

46. The National Plan of Action to Prevent People Trafficking is being refreshed, supported by the 12-member Interagency Working Group on People Trafficking. It is expected that this will move us towards being able to ratify the 2014 Protocol to the International Labour Organisation's Forced Labour Convention 1930.

47. Immigration New Zealand (INZ) has carried out a range of training, including for the Labour Inspectorate and Crown Prosecutors, and is planning training with the Customs Service. INZ staff oversee the implementation of the National Plan. The Serious Offences Unit focusses on investigating and prosecuting the most serious or complex offending, including human trafficking and migrant exploitation. New Zealand actively investigates financial flows linked to trafficking. INZ works closely with Police's Financial Intelligence and Asset Recovery Units.

48. INZ partners with non-government stakeholders to prevent trafficking, protect victims, and prosecute offenders. The 'Consultative Group' comprises Anglican Diocese of Wellington, Auckland University, New Zealand Prostitutes' Collective and Stand Against Slavery.

49. In 2017, the Government adopted new measures to stop employers who breach immigration and employment law from recruiting migrant workers. More than 70 employers were prevented from recruiting migrants for varying periods since the new rules came into effect. More than 90 employers are on the 'stand-down-list'.

50. New Zealand is an active participant in the Bali Process, including the Regional Office and various Working Groups.

Prosecutions and convictions

51. The first people trafficking charges were brought in 2015. Two men were charged for arranging, by deception, the entry of 18 Indian nationals. Although they were acquitted on the trafficking charges, one was convicted on other charges.

52. The first person convicted of people trafficking (a Fijian national) was sentenced in 2016 to nine years and six months' imprisonment. He was convicted of 15 human trafficking charges and a further 27 immigration-related offences involving victims of Fijian nationality.

53. In November 2017, charges were laid against two Bangladesh-born New Zealand citizens. They were also acquitted on the trafficking charges but were convicted on 10 charges of exploitation and six other immigration-related offences. They were sentenced to four years and five months', and two years and six months' imprisonment, respectively.

54. In December 2018, people trafficking and slavery charges were laid against a New Zealand resident Samoan national, including eleven of arranging entry by deception and 13 counts of using a person as a slave.

Reported victims of trafficking*

	2014	2015	2016	2017	2018
Children (under 18) – males	0	0	0	0	
Children – females	0	0	0	1	
Total children	0	0	0	1	
Adult males	0	18	13	2	9
Adult females	0	0	6	0	1
Total adults	0	18	19	2	10
Total	0	18	19	3	10
Origin of Victims		India	Fiji Bangladesh	Samoa Fiji	Samoa

* Victims identified refer to criminal charges laid.

Updated legislation

Crimes Amendment Act 2015

55. This Act now includes trafficking within, as well as into and out of, the country. It also prohibits slavery, servitude, forced labour, and people trafficking.

Immigration Amendment Act 2015

56. Employers exploiting temporary migrant workers face a jail term of up to seven years and/or a fine up to \$100,000. Employers holding a residence visa are liable for deportation if the offence was committed within 10 years of gaining residence. New provisions include enhanced search powers for immigration officers, responsiveness to new technology, more sustainable funding and changing collection of biometric information.

Fisheries (Foreign Charter Vessels and Other Matters) Amendment Act 2014

57. All crew on fishing vessels operating in New Zealand's Exclusive Economic Zone must be employed on New Zealand employment contracts. Requiring vessels to operate under New Zealand jurisdiction and laws seeks to strengthen protection of crews' human rights.

Prostitution Reform Act 2003

58. Section 19 of this Act aims to reduce the risk of migrant exploitation by prohibiting temporary visa applicants from engaging in prostitution.

59. Most trafficking in New Zealand is linked to industries such as horticulture and construction. While there are occasional reports of exploitation of foreign sex workers, investigations have showed no evidence of systemic exploitation. No instances of trafficking have been confirmed, and in recent years, the Labour Inspectorate has not received any complaints of exploitation. Police also report there were no allegations of foreign sex worker exploitation or trafficking meeting the threshold for prosecution. Independent research in 2018 on the migrant sex industry in New Zealand, commissioned by the relevant Ministry, found no evidence of trafficking. Exploitation of foreign sex workers remains a risk and agencies remain vigilant.

Reparation for victims

60. Victims of crime can obtain compensation. Financial reparation can be sought from anyone convicted of a crime where the victims were financially affected and can be based on loss of wages resulting from exploitation or trafficking. Victims can make civil claims for restitution via assets forfeited as a result of accumulation via criminal offending, without this claim requiring a criminal conviction.

Agreements with countries

61. New Zealand signed an arrangement with the Philippines in 2015 regarding recruitment and treatment of migrant workers. It intends to reduce exploitation by improving transparency of recruitment and ensuring compliance with both countries' rules. Key areas of cooperation are debt bondage, unfair debt arrangements, and excessive deductions from salaries, which are potential indicators of trafficking.

Article 3

Reply to paragraph 7 of the list of issues

Refugees and asylum seekers

62. New Zealand works with the UNHCR to resettle refugees with priority protection needs through our refugee quota programme. The Government has increased the annual refugee quota from 750 to 1,500, effective from 2020/2021.

Legal Framework

63. Under the Immigration Act 2009, all asylum applications are considered under the Refugee Convention, then the Convention against Torture and, if still unsuccessful, the ICCPR. In the reporting period, three people did not meet the definition under the Refugee Convention but met Article 3 of the Convention against Torture.

64. Under s164 of the Immigration Act, a refugee or protected person cannot be deported, except where Article 32.1 or 33.2 of the Refugee Convention applies. A protected person may not be deported to a place where there are substantial grounds for believing they would be in danger of torture or cruel treatment.

65. In 2013, the Immigration Act was amended to include provisions to enable the detention of mass arrivals (a group of more than 30 people). These provisions have never been applied. More information regarding these provisions is in paragraph 115 of our previous report. For detention see issue 23.

66. Asylum cases, including those under mass arrival, are assessed on a case-by-case basis by trained INZ staff. Guidance is provided to immigration officers concerning the treatment of persons claiming refugee or protection status on arrival at the border, including in a mass arrival context.

Refugee resettlement

67. The Refugee Resettlement Strategy aims to enable refugees to quickly achieve self-sufficiency and social integration. UNHCR ('Quota') refugees arrive in New Zealand already holding resident visas. They undertake a reception programme at Mangere Refugee Resettlement Centre (MRRC) which provides them with information on living and working in New Zealand. When moving into the community, they are provided up to 12 months settlement support to link them to the services they require. A "Convention Refugee Navigator" position is being piloted to improve outcomes through settlement plans linked to existing services.

68. At MRRC, Quota refugees have food, a weekly allowance, and access to medical and social services, recreation facilities, telephone, and email. Quota refugees undergo a medical screening before arrival and again at MRRC, which includes dentistry and mental health. Initial treatment is provided with referrals to further services as appropriate.

Protection of vulnerable persons and victims

69. Claims of detained asylum seekers are given priority. Officers must process all vulnerable claimants in a timely and sensitive way. Guidelines were developed regarding the treatment of children and are being developed for people presenting with serious mental health issues, including victims of torture. Determining whether a claimant is a victim of torture is an integral part of the asylum application process (for training see issue 16). Claimants can present medical evidence during their claim, are eligible for legal aid, and most are represented by a government-funded lawyer.

70. Most asylum seekers awaiting determination, live in the community on temporary visas. Asylum seekers who have made a claim for refugee or protection status and are lawfully in New Zealand, can apply for welfare support. If they have a valid work visa, they can work and apply for government assistance to gain employment. They are also eligible to access publicly funded health services and children can attend school.

71. People with approved refugee or protected person status can apply for residence. All New Zealand residents have the same access to government-funded services (such as employment, education, public health, housing, benefit). Health services available include primary health care and counselling/psychological care if referred to. An organisation (Refugees as Survivors New Zealand) provides onsite support to victims of torture and ill-treatment.

72. All MRRC residents, including detainees, are informed of the comprehensive complaints process. Where issues are identified, government agencies collaborate to address them.

Reply to paragraph 8 of the list of issues

Asylum applications, returns and extraditions

73. New Zealand does not have a backlog of refugee and protection claims and there are no delays in accessing the system. Average processing time at first instance is currently 184 days and for appeals at the Immigration and Protection Tribunal (IPT), generally 4–6 months.

Asylum claims (INZ decisions)

	<i>Claims</i>	<i>Decisions</i>	<i>Approved</i>
2014	288	296	78
2015	351	288	133
2016	387	346	110
2017	449	350	113
2018	455	440	139

INZ does not disaggregate data based on whether torture may have occurred.

Appeals mechanisms

74. INZ initially considers claims and must consider the requirement to provide protection as a refugee or from torture, arbitrary deprivation of life, or ill-treatment. If the claim is declined, the claimant can appeal to the IPT. Some appellants may concurrently lodge a deportation appeal on humanitarian grounds. The IPT will consider the refugee and protection appeal first, and if unsuccessful, will consider the deportation appeal. Where any party to an appeal is dissatisfied with the IPT decision, they can seek the leave of the High Court to appeal on points of law within 28 days.

Appeals to the Immigration and Protection Tribunal

	<i>Appeals Received</i>	<i>Decisions</i>	<i>Successful</i>
2014	169	168	76
2015	126	167	65
2016	166	158	55
2017	194	177	63
2018	233	167	91

Deportation of failed asylum claimants 1 March 2014–2 August 2018

	<i>2014/15</i>	<i>2015/16</i>	<i>2016/17</i>	<i>2017/18</i>	<i>2018/19</i>	<i>Totals</i>
Adults:	27	36	33	35	5	136
Male	24	25	31	26	5	111
Female	3	10	1	9	0	23
Not recorded	0	1	1	0	0	2
Minors:	2	8	0	0	0	10
Female	0	6	0	0	0	6
Male	2	2	0	0	0	4
Totals	29	44	33	35	5	146

Consideration of torture in extradition and return

75. Surrender cannot be ordered if there are substantial grounds that the person is in danger of being subject to torture in the requesting country. If surrender is ordered, the

person may apply for judicial review in the courts. The review decision may also be appealed. In practice, no steps will be taken to give effect to a decision to surrender:

- If the person indicates they will seek judicial review (if application is filed promptly); and
- While any proceedings (including appeals) are continuing.

Mr. Clicman Soosaipillai

76. In 2001, Mr. Soosaipillai was recognised as a refugee from Sri Lanka. In 2015, the Minister of Justice ordered that he be surrendered to Switzerland to face trial for murder. Before making the decision on surrender, New Zealand made enquiries of Switzerland regarding refolement. As a result, the Minister was satisfied that Mr. Soosaipillai would not be refoled to Sri Lanka if surrendered. Mr. Soosaipillai did not seek judicial review.

Mr. Maythem Radhi

77. Australia has requested extradition of Maythem Radhi, a refugee from Iraq, to face trial for people smuggling. In August 2019, the Minister of Justice ordered his surrender and it is unknown whether Mr. Radhi will seek judicial review of this decision.

Reply to paragraph 9 of the list of issues

Diplomatic assurances

78. During the reporting period, New Zealand carried out one extradition (Sungkwan Kim) on the basis of an assurance not to impose or carry out the death penalty. In January 2018, Mr. Kim was surrendered to the Republic of Korea to face trial for murder.

79. The People's Republic of China (PRC) requested extradition of Kyung Yup Kim (who is not a New Zealand citizen) to face trial for murder. In 2015, New Zealand negotiated comprehensive assurances regarding torture and fair trial, including New Zealand Government monitoring rights. The PRC had already provided a death penalty assurance. The Minister of Justice ordered Mr. Kim's surrender. On 11 June 2019, the Court of Appeal quashed the Minister's decision to surrender and ordered the Minister to reconsider. The Crown has sought leave of the Supreme Court to appeal the decision.

80. Apart from the extradition of Mr. Kim to the Republic of Korea, New Zealand has not carried out any refolements, extraditions or expulsions based on diplomatic assurances, nor has any State offered such assurances. New Zealand has not been required to offer assurances.

Reply to paragraph 10 of the list of issues

Statelessness

81. In the reporting period, citizenship was granted three times to avoid statelessness. Any individual may contact the Department of Internal Affairs (DIA) to request consideration under the Citizenship Act 1977. There is no specific standard of proof prescribed in the Act. In practice, DIA accepts evidence proving the applicant's claim on the balance of probabilities, for example, written confirmation they have no claim to citizenship from the authorities of the countries where the applicant might have a claim.

Articles 5–9

Reply to paragraph 11 of the list of issues

Jurisdiction

82. There were no legislative changes in the reporting period. New Zealand has had no prosecutions for torture, crimes against humanity or war crimes.

Reply to paragraph 12 of the list of issues

Extradition treaties

83. New Zealand has not signed any extradition treaties since 2014. The Extradition Act 1999 allows New Zealand to make and receive extradition requests in the absence of a treaty. The definition of an extradition offence includes any offence punishable under the law of New Zealand and the extraditing country for which the maximum penalty is imprisonment for 12 months or more. The offences in Article 4 of the Convention would meet this threshold under New Zealand law.

Reply to paragraph 13 of the list of issues

Mutual judicial assistance

84. Under the Mutual Assistance in Criminal Matters Act 1992, New Zealand can provide mutual assistance to any country on an ad hoc basis, where the requirements in the Act are met. New Zealand has entered into mutual assistance agreements with China, South Korea and Hong Kong. New Zealand has not been requested to provide mutual assistance by any country in connection with prosecutions concerning charges of torture.

Article 10

Reply to paragraph 14 of the list of issues

Training of enforcement personnel

Corrections officers (prisons)

85. The Initial Training Course for Corrections Officers, includes the Convention against Torture. All new custodial staff participate in the 'Our Way and Human Rights' learning programme, to reinforce their understanding of human rights. Following the programme, participants are asked questions about prisoners' rights, including ways to protect rights and prevent violations.

Immigration officers

86. Officers who exercise enforcement powers such as detention, searching and deportation, receive training on NZBORA and international conventions. Training includes cultural awareness, interviewing, searching, detention, and use of force. Code of Conduct training emphasises the implications of breaches such as discrimination or causing distress. Use of force incidents are documented and training records are available for audit and complaint management. Officers are encouraged to report breaches and MBIE also has a complaints process for members of the public.

87. Persons-in-Charge of MRRC receive training on detention rules and regulations.

Oranga Tamariki facilities

88. New Induction training (Te Waharoa) for Oranga Tamariki staff working in secure residences emphasises their obligations under the Convention on the Rights of the Child, respect for dignity, and consequences of inappropriate behaviour. Staff are trained in a programme that emphasises de-escalation before restraint.

89. Rates of incidents requiring use of force or secure care have reduced. It is expected that numbers will decrease following the substantial change programme (described under issue 20), which introduces Te Waharoa and a Māori-focused restorative practice approach. Therapeutic techniques have also been introduced, including the use of sensory spaces in care and protection residences.

Police

90. Police officers receive training as recruits and throughout their career. They must maintain up-to-date knowledge of legislation, including NZBORA, the Human Rights Act, and Crimes of Torture Act. Failure to meet obligations under these Acts may result in misconduct proceedings and, in cases of torture, criminal prosecution. Obligations to prisoners are reinforced through Custodial Management Health Risk awareness protocols and Custodial Management Suicide awareness training that all officers must complete. Courses are assessed using role-play scenarios focused on knowledge and competencies.

Reply to paragraph 15 of the list of issues

Less-than-lethal devices

Police taser use

91. In 2015, Police decided to arm most frontline officers with tasers. Police do not routinely carry firearms and tasers are a tactical option to ensure safety of the public and Police. Other tactical options include communication, empty-hand-techniques, handcuffs, pepper-spray and firearms (in limited situations). The Police Taser Policy is in an overarching Use of Force Policy, which is consistently revised.

Training

92. All Constables undergo 16 weeks of initial training and annual refresher training to ensure they can safely use tasers and other tactical options.

93. Level one responders are trained in all tactical options, including tasers. They undergo comprehensive taser training to achieve certification, which includes online learning modules, videos, and practical training. The initial programme includes design, use, restrictions, storage and recording requirements, deployment and post-deployment procedures, such as rights caution and aftercare. Annual refresher training includes lessons learned from previous operating.

Use and complaints

94. Police publishes annual reports on tactical options use. The 2018 report shows use of force is rare (0.1% of 3.7 million formally recorded interactions with the public). A taser was used at 25% of use-of-force events. Options more commonly used are empty-hand tactics (45%), restraint (42%) and pepper-spray (29%).

Taser use and outcomes of referrals to Police Professional Conduct (PPC) for investigation

	<i>Use-of-force events</i>	<i>Taser show events</i>	<i>Taser discharge events</i>	<i>PPC Referrals</i>	<i>Not upheld</i>	<i>Upheld</i>	<i>Ongoing</i>
2014	4 823	895	119	15	10	5	0
2015	4 914	872	126	23	7	7	0
2016	5 055	1100	190	26	8	8	1
2017	4 536	1003	186	13	3	3	2
2018	4 398	865	210	16	9	0	7

Detailed outcomes in Appendix 2

95. Every Tactical Options Report and available taser footage is reviewed by a supervisor and commissioned officer. All uses involving discharge or contact stun are subject to the Police Taser Assurance Forum's review. It scrutinises reports, discharge footage, firing logs, and audit trails. The Forum focuses on reporting accuracy, adherence to policy, training, best practice, and lessons learned. It can prepare a report outlining findings or recommendations.

96. IPCA investigates complaints, monitors and reviews Police use of force, and makes recommendations. A supervisor can recommend notifying IPCA (required by legislation for some event types). In 2018, 16 out of 415 use of force complaints received and notified to IPCA related to tasers.

Use of pepper-spray in prisons

97. The Corrections Amendment Regulations 2017 enable prison directors to issue pepper-spray to trained officers. Corrections officers must undergo a four-hour training, annual refresher training, and re-certification course, as part of their Tactical Options training. They must be trained in first aid, control and restraint, and the use of On-Body-Cameras. Cameras must be activated at the earliest practicable time when pepper-spray is drawn. The initial training covers:

- Techniques for use and distance control;
- Situational awareness and threat assessment;
- Aftercare and reassurance;
- Equipment retention and self-protection.

98. De-escalation techniques are included in the Tactical Options training. The manager, prison director and Incident Line must be notified if pepper-spray was drawn. All incidents involving use are subject to review.

99. From its introduction in July 2017, to 30 June 2019, there were 744 incidents (in 18 prisons), of which:

- 68% involved drawing;
- 32% involved use.

100. As of 30 June 2019, there have been five complaints.

Reply to paragraph 16 of the list of issues

Training to identify and deal with torture victims

Judges

101. To ensure independence of the Judiciary, training and resources are provided by the Institute of Judicial Studies, the professional development arm of the Judiciary. The Institute's curriculum includes domestic human rights legislation and international human rights instruments. Members of the Immigration and Protection Tribunal are trained in the Refugee Convention and other relevant conventions.

Prosecutors

102. Crown prosecutors do not receive specific training regarding the Convention or detecting torture. Similarly, the Police Prosecution Service does not deliver any training programmes for Police prosecutors on detecting and documenting torture. However, training does include the Crimes of Torture Act.

Refugee personnel

103. Health providers at MRRC prepare Istanbul Protocol reports. A handbook helps health professionals provide services to refugees. It includes information on torture and trauma experiences, and how experiences may affect consultation. The handbook provides advice on responding to disclosures of torture, and how to explore whether individuals wish to be referred to counselling. It references the Istanbul Protocol and refers health professionals to the OHCHR website. Immigration officers receive training about the handling of sensitive claims, including victims of trauma. UNHCR's office in Canberra has provided training on mental health issues.

104. The Ministry of Health-funded Cultural and Linguistic Diversity eCALD.com-programme offers training and resources for health professionals working with refugee and

migrant communities, including a resource on medically assessing refugees who may be victims of torture. The courses use cross-cultural models to enhance engagement, trust and culturally appropriate approaches. It includes the impact of torture on health, how to manage history-taking, and how trauma may impact consultations.

Mental health and disability services personnel

105. Guidelines for the Mental Health Act are available to clinicians and administrators. Mandatory training includes restraint use, standards, reporting, monitoring, and review. Similar guidelines are available for the Intellectual Disability (Compulsory Care and Rehabilitation) Act and the Substance Addiction (Compulsory Assessment and Treatment) Act. The Mental Health Act guidelines are being reviewed.

106. The current workforces are under considerable pressure and the Ombudsman has observed issues around recruitment and retention of staff in mental health facilities, and the impact this has on the effectiveness of training and availability of therapeutic interventions. In 2019, the Government accepted a recommendation in *He Ara Oranga* to review and establish workforce development and worker wellbeing priorities. The longer-term response to *He Ara Oranga* will include pathway development and structural support to continue to increase capacity and capability.

Article 11

Reply to paragraph 17 of the list of issues

Interrogation and custody rules

Prisons

107. Instructions regarding the operation of prisons are in the Prison Operations Manual and Custodial Practice Manual. Instructions are reviewed when required. The Corrections Act does not provide for powers of interrogation and interrogation tactics are never used.

108. A new shift pattern for staff is being developed, which intends to increase unlock hours for prisoners and recognises the importance of aligning meal times to standardised hours. The recently opened redevelopment of Auckland Prison also allows for more unlock time through modernised infrastructure and provides more space for programmes.

109. Privately managed prisons must comply with the same laws relating to prisoner welfare, management, and human rights standards. Safeguards to ensure this are in place, including a full-time monitor, and extensive reporting obligations.

110. The Ombudsman has raised concerns that there are variable conditions faced by prisoners with disabilities, who are transgender, and foreign nationals with English as a second language. Corrections is working to address these issues, including by: scoping issues faced by prisoners with sensory disabilities, implementing transgender policies, and working towards translating more information.

Public Protection Orders (PPOs)

111. The High Court can impose PPOs if a person who has completed a prison sentence continues to pose a very high risk of imminent and serious sexual or violent offending. These orders are served at a civil residence. Residents are entitled to as much autonomy and quality of life as possible, while ensuring orderly functioning and safety within the residence. Orders are reviewed annually by a panel appointed by the Minister of Justice and every five years by the High Court. As at 30 August 2019, two people were subject to PPOs.

Police

112. Police operate under legislation and judicial guides for interviewing individuals in custody. NZBORA and the Chief Justice's Practice Note on Police Questioning, specify the rights of individuals while being questioned by Police. The Practice Note favours video recording of all statements. Police Instructions cover interviewing, custodial management, and give effect to legal requirements. The Instructions are regularly reviewed and contain

information on dealing with persons with different needs, such as witnesses requiring special consideration, children or prisoners. Failure to follow the Instructions may result in misconduct proceedings. Staff are also subject to a Code of Conduct.

113. There are legal protections for people questioned by Police in NZBORA and the Evidence Act. When interviewing young people, Police must comply with requirements in the Oranga Tamariki Act. This includes informing parents before commencing the interview and conducting interviews in the presence of an adult nominated by the young person or a lawyer.

Reply to paragraph 18 of the list of issues

Places of detention

Prisons

Current situation

114. Between 2014 and 2018, the prison population increased by over 2,000, peaking at 10,820 in March 2018. The female prison population increased from 533 to a peak of over 800. Reasons for the increase are complex and include a higher proportion of repeat offenders and increases in violent offending, along with recent changes to bail laws. Since March 2018, the prison population has declined. As at 31 December 2018, there were 9,785 prisoners, 678 of which were female.

115. Corrections is working to reduce the need to move prisoners out of region. This work includes identifying opportunities to reconfigure the prison network to ensure beds are available in the right locations.

Prison occupancy³

<i>As at 30/9</i>	<i>Muster</i>	<i>Capacity</i>	<i>Occupancy Rate</i>
2014	8 703	*	*
2015	9 061	*	*
2016	9 810	10 240	96%
2017	10 470	10 728	98%
2018	10 052	10 652	94%

* Not available

Percentage of remand prisoners

<i>As at 30/9</i>	<i>Remand</i>
2015	24%
2016	28%
2017	29%
2018	29%

Average time on remand

	<i>Days</i>
2014/15	58
2015/16	62
2016/17	65

³ These numbers vary on a day-to-day basis, so caution should be exercised if they are being used to inform decision-making.

	<i>Days</i>
2017/18	70

Detailed data is available in Appendices 4–5.

Reform of the criminal justice system – ‘Hāpaitia te Oranga Tangata’

116. The Government has been undertaking a criminal justice reform programme over the past year to review the system and develop proposals to address areas such as the disproportionate representation of Māori and reducing the prison population. An independent Advisory Group, Te Uepū Hāpai i te Ora, has been established to lead public discussion. Te Uepū submitted an initial report, *He Waka Roimata*, with its findings, and is currently developing options for the Government, which will inform decision-making. The final report with recommendations for changes to the system is expected later in 2019.

Steps to reduce the prison population

117. The Government is working towards improving the availability of programmes for offenders. Additional rehabilitation and re-integration programmes in prisons and the community have been made available since the previous report, including:

- Aftercare Worker Service, which supports graduates of the intensive alcohol and other drug (AOD) treatment programme (1,156 for 2018/19)
- 13 additional residential beds in AOD community treatment facilities for individuals on community-based sentences (38 places for 2018/19)
- ‘Whare’, a cross-agency, culturally responsive programme supporting, in prison and community, men under 25 convicted of acquisitive offences, like theft (targets for 2019/20 are 120 in prison and 64 in the community)
- ‘Kia Rite’, an information and skills training programme for women in the early stages of their incarceration period and is designed to be responsive to Māori women (300 in 2018/19).
- ‘Head start’ a non-offence focused information and skills training programme to help men develop coping skills and enhance wellbeing (target for 2019/20 is 366)
- Five new high intensity rehabilitation programmes for high-risk men, women, and youth.

118. Although group programmes are sometimes not available to individuals in segregation, as they are delivered in mainstream environments, individuals may still be able to access group programmes with approval from the prison director and treatment provider.

119. In 2017/18, the Government introduced the High Impact Innovation Programme, a cross-agency response to the rising prison population. This has helped reduce the number of days that people spent in prison, by 75,000 days in total. Initiatives include:

- An electronically-monitored bail initiative;
- Enhanced bail support services;
- Reducing remand times through triaging cases;
- Finding appropriate accommodation for people eligible for home detention;
- More community reintegration and rehabilitation programmes to help prisoners gain parole.

120. In 2018, the Government provided \$57.6m for additional supported accommodation for people on bail and parole. Approximately 1,100 supported accommodation places are now available annually, compared to 368 places in 2015.

Steps to reduce the disproportionate representation of Māori in prison

121. Māori continue to be disproportionately represented in prison. Māori comprise over 50% of prisoners, but only 15% of the population. This pattern is more pronounced in female and youth (18–25 years) prison populations – both approximately 60% Māori.

122. In 2017, the Waitangi Tribunal report, *Tū mai te Rangi! The Report on the Crown and Disproportionate Reoffending Rates*, found the Government:

- Has a duty under the Treaty of Waitangi to reduce inequities between Māori and non-Māori re-offending rates
- Was not sufficiently prioritising reduction of Māori re-offending and was in breach of the Treaty principle of active protection
- Had not breached the principle of partnership because of “good faith attempts to engage with Māori”, but risked breaching it if it did not fulfil its commitment to develop these partnerships.

123. Steps taken to implement recommendations from the report include:

- A dedicated Māori Services Team to improve engagement with Māori in prisons
- Changing the ‘Māori Advisory Board’ to the ‘Māori Leadership Board’ and revising the terms of reference to have greater influence over decision-making and form a more balanced partnership arrangement
- The Māori Leadership Board working with Corrections to develop a Māori strategy
- Significant resourcing for Māori-specific programmes (listed in paragraph 125) and recruitment of staff with a specific Māori focus, including new leadership roles, a Māori Strategy and Partnerships Team, and a new Cultural Capability team, to supplement the existing Māori Services team
- Training on the Treaty of Waitangi and the Māori perspective to senior staff.

124. Specific partnership projects include:

- The 2017 Corrections and *Kīngitanga*⁴ agreement to collaborate to improve the health and wellbeing of Māori in custody, rehabilitation and reintegration, and Māori re-offending rates. A women’s resettlement centre, is planned on land provided by Māori in conjunction with social and housing services
- The 2018 agreement with Ngāti Kahungunu Iwi Incorporated designed to improve the wellbeing of Māori and their families, who have contact with the criminal justice system. Initial areas of focus are work and training; a community-based reintegration centre for women; and developing a comprehensive Māori reintegration/rehabilitation pathway.

125. Corrections delivers programmes that are responsive to the needs of Māori. Tikanga concepts (Māori customs) are integrated into design and delivery, and facilitators have regular cultural supervision. Some programmes are also kaupapa Māori including:

- ‘Tikanga Māori,’ a motivational programme (1,040 places for 2018/19)
- ‘Mauri Tū Pae’, an offence-focused programme to reduce reoffending (236 places yearly)
- ‘Whare Oranga Ake’, a re-integration programme housing minimum-security people nearing release outside prison in open self-care accommodation
- ‘Kowhiritanga’, an offence focused rehabilitation programme delivered at all three women’s prisons, and in the community (163 in 2018/19)
- Two intensive AOD treatment programmes for women and young people (122 yearly)
- Corrections also contract several kaupapa Māori providers at Drug Treatment Units.

⁴ *Kīngitanga* – Māori King Movement – a movement which developed in the 1850s, culminating in the anointing of Pōtatau Te Wherowhero as King. Established to stop the loss of land to the colonists, to maintain law and order, and to promote traditional values and culture.

Alternatives to imprisonment

126. Five community sentences are available as alternatives to imprisonment. Details were provided in detail in our previous report (paragraph 181). The court can also order the payment of reparation or a fine.

127. At any given time, most of the people in the justice system are managed in the community on one or more of these sentences. As at 31 December 2018, 30,158 were managed by Corrections in the community and 9,785 people were managed in prison.

Types of sentences

<i>As at 30/9</i>	<i>Total Sentences</i>	<i>Total non-custodial</i>	<i>Home Detention</i>	<i>Community Detention</i>	<i>Intensive Supervision</i>	<i>Supervision</i>	<i>Community Work</i>	<i>Custodial</i>
2015	29 115	21 867	1 603	582	2 659	7 306	9 717	7 248
2016	29 553	21 930	1 651	492	2 812	7 905	9 070	7 623
2017	30 199	22 249	1 671	472	3 241	8 101	8 764	7 950
2018	29 913	22 373	1 717	452	3 832	8 030	8 342	7 540

Numbers reflect the primary sentences of persons, not total sentences.

The prison network

128. Since 2014, the Government has delivered 986 new beds through double-bunking (138 of which are ‘Emergency Beds’), and 59 beds through small-scale new builds. In 2015, a \$300m development of Auckland Prison was opened.

129. By 2020, over 1,200 beds will be delivered through modular accommodation units (976 beds), double-bunking, and new builds. The Government will also build a modern 600-bed facility at Waikeria Prison. This should allow the closure of sub-optimal beds and increase the network’s effectiveness and resilience.

130. Ongoing pressure in the system has made double-bunking necessary. Civil society raised concerns about overcrowded conditions in prisons. The reforms of the criminal justice system aimed at reducing the prison population would also address issues with overcrowding.

Cells shared

	<i>Number of shared cells</i>
30/06/2015	1 424
30/06/2016	1 693
30/06/2017	2 094
30/06/2018	2 182

Health care in prison

131. In 2017/18, HDC received 101 complaints about prison health care (49% increase compared to 2016/17). Most complaints related to refusal to prescribe medication the person previously received in the community and delays in treatment. Corrections is continuing to review and update health care policies, including the medication administration policy.

Mental health services in prison

132. The Government recognises the need for mental health services in prisons. 91% of prisoners have a lifetime diagnosis of mental health or substance abuse disorder. 19% of prisoners have previously attempted suicide.

133. Corrections employs approximately 225 nurses to provide primary healthcare services and contracts with doctors and other health professionals. In 16 prisons, mental health clinicians deliver primary mental health care. In two prisons, mental health nurses

deliver care. Health agencies, working closely with Corrections, provide secondary and inpatient mental health services.

134. In 2017, Corrections developed a strategy to improve mental health services for prisoners. Corrections has invested \$25m to pilot new services and support for those vulnerable to self-harm or suicide. \$14m has been allocated to:

- Contracted clinicians, counsellors and social workers
- Services for people with complex needs transitioning back into the community
- Services for families of people in prison or on community-based sentences.

135. Corrections is introducing a more therapeutic model of care for prisoners who are vulnerable to self-harm or suicide and is spending \$11m on this project over four years.

Strip-searching in prison

136. Legislation requires Corrections staff to strip-search people in prison:

- On admission
- On return after being temporarily removed in some cases
- When initially segregated due to risk of self-harm
- On return of at-risk persons into segregation
- On arrival of transfers.

137. Strip-searching is also permitted if an officer reasonably believes a person possesses an unauthorised item, and it is necessary to detect it. Corrections can also conduct searches of fully clothed people in prisons, staff and visitors through ‘scanner search’ or ‘rub-down’.

138. In 2018, the High Court awarded \$1,000 in compensation for a breach of NZBORA through unreasonable strip-search (see para. 0). In 2017, the High Court also declared that a strip-search at a women’s prison in 2010 violated NZBORA.

139. Parliament is considering amending legislation which would reduce the need for strip-searching by:

- Allowing, subject to privacy protections, imaging technology
- Introducing a new individualised approach for at-risk prisoners.

Concerns raised regarding Northland Regional Corrections Facility (NRCF)

140. In a 2019 OPCAT report, the Ombudsman raised concerns about NRCF. Specifically, that prisoners being unable to access a toilet in a timely manner amounts to degrading treatment or punishment and a breach of Article 16 of the Convention.

141. Of the report’s 31 recommendations, Corrections fully accepted 28 and partially accepted two. Work has been completed or commenced in relation to all accepted recommendations. Corrections did not accept the recommendation that prisoners have unrestricted access to toilets at all times, due to the need to maintain the safety and security of the prison by preventing people congregating in unmonitored areas. However, no one in the prison is denied access to toilet facilities, and staff work to facilitate requests as quickly as possible while ensuring the safety and security of others.

Detention in Police facilities

142. The total number of Police detainees increased between 2014 and 2017 (except for persons under 18) however, this has stabilised in 2018 and the first half of 2019 (detailed data in Appendix 3). Data on capacity and occupancy rates is not available but is being collected on detention in facilities where detainees may be held overnight.

143. Prisoners on remand may spend up to a week in Police custody but this period can be extended under specific circumstances. 25 Police custodial facilities are designated as “Police Jails” under the Corrections Act and can be used to hold prisoners on behalf of Corrections on a temporary basis on remand or after sentencing.

144. Police cells are not designed for sentenced prisoners or other long custodial stays. Over the last 10 years, a national cell remediation programme sought to address the state of repair, design issues and suicide prevention measures in Police cells. The IPCA and Police are assessing the conditions of cells to develop a work programme to upgrade cells across the country.

Material state of court cells

145. Following an IPCA investigation (para. 0) into a suicide in 2015, the Government completed a \$32m Cell Safety Programme to ensure ligature free cells. The programme upgraded 385 cells and 102 secure non-contact interview rooms and included the addition of privacy screens. As recommended by the responsible NPM, CCTV will be installed in every cell while complying with the Privacy Commissioner's guidelines. CCTV supports the safety of staff and prisoners including those at risk of self-harm.

146. A small number of cells were gazetted as prison facilities to cope with prisoner overflow. This means prisoners could be accommodated for longer periods.

Defence Force facilities

147. The corrective cell facilities within Devonport Naval Base, on HMNZS PHILOMEL, were closed. A temporary arrangement is in place within Devonport Base using a barrack room until a new purpose-built facility can be delivered.

148. In the reporting period, the Defence Force Services Corrective Establishment (SCE) has only been used for disciplinary penalties. SCE ensures there is never overcrowding. In each of the last two financial years, there were approximately 15 detainees in SCE. The duration ranged from 5–28 days except for two cases of 112 and 150 days (detailed data is in Appendix 6).

149. The health detainees at SCE is monitored by weekly medical officer visits. Unwell detainees are treated, and for persons detained for more than a week, a care plan is in place. All detainees are visited weekly by a visiting officer who deals with complaints.

150. There have not been any deaths in Defence detention facilities in the last 20 years. No complaints were received from detainees during the reporting period. The 2017 NPM report found no concerns.

Reply to paragraph 19 of the list of issues

Solitary confinement

Human Rights Commission review of seclusion and restraint

151. A 2017 independent review commissioned by the Human Rights Commission, *'Thinking Outside the Box: A review of seclusion and restraint practices in New Zealand'* by Dr Shalev, highlighted issues regarding the use of restrictive practices across many settings. A 2017 Chief Ombudsman report raised issues about prisoner management in At-Risk-Units. Both reports are based on findings in 2016.

Health facilities

152. The Ministry of Health has accepted all of Dr Shalev's recommendations. Restrictive practices can compromise therapy and trigger trauma. They can inhibit human rights and do not align with evidence-based high-quality care.

153. Seclusion is authorised under the Mental Health Act and the Intellectual Disability Act. Under these Acts, seclusion can only be used when no other safe and effective intervention is possible. The Mental Health Act states that 'every patient is entitled to the company of others'. For details on these Acts see paragraph 0.

154. In 2018, 'Zero Seclusion: Towards eliminating seclusion by 2020' was launched by the Health Quality and Safety Commission in partnership with service providers and other health sector organisations to implement evidence-based practices to safely reduce and eliminate seclusion. This project uses quality improvement methodologies and takes a co-

design approach with service providers, consumers, and their families. Zero Seclusion builds on the National Workforce Centre for Mental Health, Addiction and Disability (Te Pou o te Whakaaro Nui), which is funded to develop information, guidance and training to reduce restrictive practices. Dr Shalev identified the resources promoted by Te Pou, as examples of good practice.

155. The training programme Safe Practice Effective Communication (SPEC) was launched in 2016 to provide national consistency and best quality, evidence-based therapeutic interventions to reduce restraint and seclusion in inpatient mental health units and intellectual disability secure forensic services.

Night safety procedures

156. Transitional guidelines published in 2018 work towards eliminating night safety procedures by December 2022. Night safety procedures involve locking involuntary special patients or special care recipients in their rooms overnight for safety reasons. They have no therapeutic function and constitute a form of environmental restraint. Reasons for this practice include building design, staffing, and risk. The guidelines require that rights of patients and staff are protected.

Mental Health Reports

157. Since 2006, annual statistics on the use of seclusion have been publicly available. Statistics show a reduction in the use of seclusion in mental health services. From 2009–2017:

- 28% decrease of people experiencing seclusion during mental health treatment in an adult inpatient service (1143 to 775)
- 59% decrease of hours spent in seclusion (76% of events lasted less than 24 hours in 2017)
- The use of seclusion has plateaued following a seven-year decline.

158. Statistics also highlight areas of concern:

- Between 2014 and 2017, while the number of seclusion hours decreased by 11%, the number of people increased by 5%
- In 2017, 98 people aged 19 years and under were secluded (285 seclusion events)
- In 2017, Māori were 4.5 times more likely to be secluded in an adult inpatient service (41% Māori).

159. Work towards reporting the use of seclusion for people with intellectual disabilities is progressing to enable a better understanding of seclusion.

Restraint practices

160. The use of restraint in health facilities is legislated for under the Crimes Act and the Mental Health Act. The Ministry of Health supports reducing the use of restraint in mental health services and the training programme SPEC (para. 155) seeks to achieve this. The Ministry is developing guidelines on the use of restraint to ensure consistency of practice and enable collation of data at a national level.

Disability Action Plan

161. The Office for Disability Issues is finalising the Disability Action Plan 2019–2023. The Action Plan aims to deliver the outcomes of the New Zealand Disability Strategy 2016–2026. The Action Plan consists of a package of cross-government work programmes that are underway or are being planned that have an explicit disability perspective. The Independent Monitoring Mechanism has identified seclusion and restraint as one of the most pressing disability issues in New Zealand.⁵ The Ministry of Health and Corrections

⁵ The IMM consists of the Human Rights Commission, Ombudsman and a coalition of Disabled Persons Organisations, and is responsible for monitoring and supporting implementation of New Zealand's compliance with the Convention on the Rights of Persons with Disabilities.

jointly lead a work programme focused on reducing the use of seclusion and restraint. These agencies will develop a shared understanding of what constitutes various forms of restraint (including seclusion and segregation) across different sectors.

Prisons

162. Corrections uses segregation when required and in accordance with the Corrections Act and the Prison Operations Manual. The prison director must decide and justify the denial or restriction of prisoners' association with other prisoners based on the need to:

- Manage risk to safety or good order;
- Provide protective custody, including at prisoners' request; or
- Assess or ensure prisoners' physical or mental health.

163. Parliament is considering amendments to legislation to introduce a framework for the management of prisoners at-risk of self-harm, separate from the segregation regime. Under the proposed framework, all new prisoners would be assessed for risk of self-harm. At-risk prisoners would have a tailored management plan, outlining how Corrections would address their risk including their association with other prisoners. Corrections is reviewing policies relating to prisoner privacy.

164. Under the new model of care being developed with the Ministry of Health (para. 135), seclusion and restraint will not be the default response. Funding has enabled three pilots, including in a women's prison. Elements of the model have been introduced in all prisons.

165. In its 2014 report, the SPT raised concerns about Auckland Prison management units. In 2018, a new mental health facility was opened at Auckland Prison. Prisoners can associate under controlled conditions and access appropriate programmes, exercise yards, and a sensory garden. A specialist Intervention and Support team provides on-site treatment and support. The SPT report also raised hygiene issues with the management units at Mount Eden Corrections Facility, which have been addressed.

166. The Ombudsman raised concerns that Corrections officers did not have adequate mental health training to manage people in the Intervention and Support Units. Mental health training has been delivered to staff at three pilot sites, and Corrections has received funding to deliver training to all sites over three years. Non-pilot sites have mental health clinicians who deliver mental health education to frontline staff in prisons.

People in Intervention and Support Units

	<i>Offenders</i>
30/06/2015	86
30/06/2016	127
30/06/2017	110
30/06/2018	101

Note: the number of placements per year would be significantly higher (e.g. over 4,000 placements in 2015/16)

Average time spent in Intervention and Support Units

	<i>Average days</i>
2014/15	7
2015/16	6
2016/17	6
2017/18	7

Use of restraints in prisons

167. Following 2016 inspections at five prisons, the Ombudsman considered the use of tie-down beds and waist restraints for a small number of prisoners amounted to cruel, inhuman or degrading treatment (Article 16). Measures taken to address concerns include:

- Amending Corrections' policy in 2017 to limit the use of tie-down beds to four prisons, and only where other means of preventing injury and ensuring safety are ineffective
- Tie-down beds have not been used since November 2016, and Corrections has decided to remove them from prisons altogether
- At-Risk-Units were redeveloped into specialist Intervention and Support Units.

168. Currently, restraint use over 24 hours is not expressly permitted by legislation. Proposed amendments to the Corrections Act would allow the use of restraint for more than 24 hours when prisoners are treated in hospital if it is necessary to maintain public safety or prevent escape. Corrections Regulations aim to provide protections, for example, escorting officers must take into account the advice of the medical practitioner and implement any reasonably necessary measures to ensure the restraint does not adversely affect the health and comfort of the prisoner.

Restraints in Police facilities

169. Police continue to use restraint chairs where necessary. All details are recorded in use-of-force reports and in individuals' records.

Reply to paragraph 20 of the list of issues**Minors in detention**

170. Youth Courts deal with young persons' offending, other than certain serious offences, including murder and manslaughter. Judges receive special training to deal with young people. Most young people in the Youth Court are between 14–17 years old, however 12 and 13-year-olds will be included if charged with serious offences.

171. The youth justice age was raised to include 17-year-olds from July 2019, which better aligns with international definitions. Most 17-year olds will be considered in the youth justice system and will be transferred to adult courts for specified offences. The youth justice system aims to hold offenders accountable and encourages them to accept responsibility while keeping them out of the adult system. The system aims to address their needs and gives them the opportunity to develop.

172. The 10-year cross-agency Youth Crime Action Plan was launched in 2013, aiming to reduce offending and re-offending. In addition, an expert panel review led to establishing Oranga Tamariki-Ministry for Children, in 2017. Oranga Tamariki is implementing new services and support to help keep young people out of the adult system and respond more effectively to those in the youth justice system (for details see para. 191).

173. Data collection has improved. A new dataset incorporating data from relevant agencies was used to produce the Youth Justice Indicators Summary Report 2018. It provides a better picture of how young people flow through the system. According to the report, the youth justice system is performing well against some key measures. Between 2009/10 and 2016/17:

- Offending rates declined by 59% for 10–13-year-olds and by 63% for 14–16-year-olds
- For Māori young people, offending rates declined by 60% for 10–13-year-olds and by 59% for 14–16-year-olds
- Youth court appearance rates decreased by 38%.

174. Since 2013/14, there was a significant reduction in total sentences:

Children under 17 years given an order in Court

	<i>Total sentences</i>	<i>Adult sentences</i>	<i>Supervision with residence</i>	<i>Supervision with activity, intensive supervision</i>	<i>Supervision, community work</i>	<i>Education, rehabilitation programmes</i>	<i>Monetary, confiscation, disqualification</i>	<i>Discharge, admonish</i>
2013/14	786	60	108	63	153	6	210	183
2014/15	633	33	87	75	114	12	162	150
2015/16	549	33	90	63	99	6	132	129
2016/17	573	39	87	63	105	6	135	135
2017/18	540	33	105	87	90	6	105	114

175. Data also indicates there is room for improvement, particularly regarding outcomes for Māori and the high use of remand. 75% of persons in youth justice residences are Māori. Government agencies are developing a plan to address this, for example, Oranga Tamariki is working with Māori to develop new interventions for Māori (see para. 194).

Detention facilities

176. Different statutory provisions determine whether young people (under 18) can be detained in youth justice residences, youth units in prisons, or in general adult prisons. Placement depends on the young person's age, whether their offending has been considered in the youth justice system or the adult system, and whether they are being detained on remand or following sentence. Between 2014 and 2019, the number of young people in prisons has reduced from 60 to less than 10.

Youth units in prisons

177. Pathways to determine whether a young person is placed in a youth justice residence or a youth unit in prison are complex and are set out in the Oranga Tamariki Act 1989, the Criminal Procedure Act 2011, and the Corrections Act 2004. Placement is guided by the best interests and safety of the young person and/or others.

178. There are three youth units in adult prisons. They can accommodate young men aged 14–17 years, and vulnerable 18 and 19-year olds. Currently there are no young people under 17 in youth units in prisons.

179. No mixing occurs between young people on remand and young people who have been sentenced, unless the Chief Executive is satisfied that there are exceptional circumstances. Keeping young people apart from the adult population and from young people who have been sentenced may amount to segregation if they are the only young person in the unit. In these cases, efforts are made to prevent isolation and keep young people meaningfully occupied. Youth units provide a range of age-appropriate programmes and supports. Over the past year, enhanced programmes were introduced, including:

- A Youth Alcohol and Drug programme;
- Education tutors;
- Youth activities coordinators.

180. Units hold multi-disciplinary team meetings and the on-site mental health nurse can provide advice and intervention. While youth units generally follow the same procedures as mainstream prisons, there are some differences, including:

- Higher staff-prisoner ratio;
- No general separation by security classification during unlock hours;
- Medical staff visiting units to provide treatment.

Young people in adult prisons

181. In rare circumstances, a young person may be removed from a youth unit if they present an unmanageable risk to others. In these cases, the young person must be kept apart

from people aged 18 or older, unless the Chief Executive is satisfied that mixing is in their best interests. This would be achieved through a separate unlock regime for the young person.

182. There are no youth units for females given their low numbers. If a young female is detained in an adult prison, prisons may enable mixing with older low-risk female prisoners to avoid isolation. As of 31 July 2019, there were no females under 18 years detained in adult prisons.

Youth justice residences

183. Oranga Tamariki youth justice residences seek to provide a supportive environment where young offenders learn life skills and how to manage problems, with the aim of rehabilitation. Since July 2019, remand detention in a youth justice residence is reviewed every 14 days.

184. Oranga Tamariki is moving towards a system that supports young people to stay in the community, including in Māori-operated facilities, instead of placements in large youth justice residences. Oranga Tamariki is increasing the availability of community placements as an alternative to secure residences and to support the transition to communities. Since 2017, Oranga Tamariki has developed five community remand home services (capacity 23) and is working towards 14 homes (capacity 60).

Oranga Tamariki residences

185. There are currently four youth justice residences with a capacity of 156 beds and four care and protection residences with 33 available beds. Oranga Tamariki manages these seven residences. A further residence for young people with harmful sexual behaviours is managed by an NGO under contract to Oranga Tamariki. In all residences, Māori are overrepresented, but this number is reducing (67% in June 2017 to 58% in June 2019).

186. In youth justice residences, young persons are subject to court orders and cannot leave voluntarily. Care and Protection residences are for children in state care when it is not possible to have their needs met within the community and safe contained care is required. Oranga Tamariki is committed to phasing out the use of residences for care and protection purposes.

187. In 2017, the Children's Commissioner (NPM) found that the secure residences generally met OPCAT standards, although there are areas for improvement. The Children's Commissioner agreed with Dr Shalev's report that some secure care units were inappropriate.

188. Oranga Tamariki is undertaking projects based on a child-centred operating model, to transform the experience of young people in residences. The Child-Centred Youth Justice Residences Project will establish residences as therapeutic, rehabilitative environments, and introduce a consistent approach to the care of young offenders. A programme to enhance the physical environment of youth justice residences has been completed.

189. The regulatory framework that applies to residences is being reviewed to determine how it can align with best practice and support the new operating model. For youth justice, a restorative practice approach based on Māori values will be piloted in one facility (para. 194).

190. Changes to the Oranga Tamariki Act place significant obligations on the Chief Executive of Oranga Tamariki to reduce disparities for Māori. The legislation requires that Oranga Tamariki strengthen its commitment to the Treaty of Waitangi by, for example, considering Māori values, setting measurable outcomes to reduce disparities, partnering with Māori, and public reporting on progress.

Segregation

191. In seven out of eight Oranga Tamariki residences, young people can be held in 'secure care' units, which are separate units with lockable bedrooms. A staff member is always present. No disciplinary practices within residences amount to solitary confinement.

Oranga Tamariki is committed to reducing the use of secure care and making secure units look and feel less stark.

192. Secure care can only be used to prevent physical harm or absconding. The power to place young people in secure care can only be used in limited circumstances prescribed in legislation, and there are reporting requirements. On entering, all young people are made aware of the reason of their entry. Daily reviews of placements are required, and the young person can participate in reviews. A young person cannot remain in secure care longer than three consecutive days without Court approval.

193. Secure care is different from segregation in prisons since those in secure care can mix with one another between 8am and 8pm. A child or young person placed in secure care may be confined to their own room only in certain circumstances, such as an emergency and for no longer than is necessary. This intervention is closely monitored and set out in legislation. A review of the grounds for confinement must be made frequently, for example, every five minutes between 8am and 8pm and usually every 30 minutes overnight.

194. Oranga Tamariki is developing alternative approaches to dealing with challenging behaviour. Whakamana Tangata is an approach specifically developed for youth justice residences. It uses five Māori values (*mana*, *tapu*, *mauri ora*, *piringa*, *ara tikanga*)⁶ and four restorative principles (relationships, respect, responsibility and repair) to build, maintain and repair relationships through preventative and restorative practice. A trial is underway in one unit.

195. There are high rates of mental health issues for young people in residences. Access to specialist mental health treatment for young people in residences can be challenging as there is a shortage of services. In 2016, a new 10-bed specialised youth forensic inpatient unit was opened for 13–17-year-olds severely affected by mental health issues, who are involved in the youth justice system. The unit incorporates Māori models of care, encourages school attendance and engagement in therapeutic programmes.

Young people in Police custody

196. There are concerns about young people being held in Police cells for extended periods (over 24 hours). The Children’s Commissioner considers that over time, the option to remand children to Police cells after the first court appearance should be removed from legislation.

197. Police cells do not meet the needs of young people. The Oranga Tamariki Act only permits holding young people in Police cells in the following circumstances:

- Detention for over 24 hours following arrest (prior to first appearance in Youth Court) on joint agreement by Police and Oranga Tamariki, where the young person is likely to abscond or be violent and where suitable facilities for safe custody are not available to Oranga Tamariki;
- By Youth Court order, pending hearing, where the young person is likely to abscond or be violent and where suitable facilities for safe custody are not available to Oranga Tamariki;
- Where the Youth Court has ordered the young person to be placed in the custody of Oranga Tamariki pending hearing, they can be detained for up to 24 hours in Police custody if Police and Oranga Tamariki are satisfied they are likely to abscond or be violent and that suitable facilities for safe custody are not available to Oranga Tamariki;
- Since July 2019, reviews by the Youth Court of Police detention are required every 24 hours unless clearly impracticable.

198. When a young person is held in a Police cell, this is usually because a suitable place in an Oranga Tamariki facility is unavailable or there are no transport options available (e.g.

⁶ The *current* simplified working definitions used for the Whakamana Tangata pilot programme are: *mana* – the respect people deserve from others and give to others by virtue of the dignity a person is born with, *tapu* – the boundaries necessary for protecting *mana*, *mauri ora* – the vitality and fullness of an active life, *piringa* – the process of building and restoring connection through face-to-face discussion, *ara tikanga* – the call to the right path.

departing flights from regional areas). Social workers and Police work closely to find the best solution and minimise time in Police custody.

199. The Remand Options Investigation Tool is being rolled out to reduce the number of young people held in custody while awaiting court hearings. The tool supports Police and Oranga Tamariki to assess and decide whether to oppose bail in court and identify what bail arrangements are possible to avoid custodial remand.

14–16 year olds held in a police cell over 24 hours

	<i>Number of youths</i>
2014–15	50
2015–16	149
2016–17	284
2017–18	165
2018–19	106

This data is provided by Oranga Tamariki and may differ from data held by Police. For data on young people held in Police cells who have experienced mental health issues, see para. 0.

Young people in mental health units

200. Young people may be detained in a mental health unit for compulsory assessment and treatment if they meet the criteria under the Mental Health Act. Where practicable, treatment is provided in a child and youth mental health facility, in line with Article 37 of the Convention on the Rights of the Child. If this is not practicable, a young person may be separated from adults in a mental health unit.

201. Young people who are subject to the Mental Health Act have the same rights and safeguards as adults. Additionally, the assessment of people aged under 17 should be conducted by a specialist child and adolescent psychiatrist.

202. In 2018, the Mental Health Commissioner raised concerns regarding young people in Oranga Tamariki's care remaining in inpatient mental health units because of lack of suitable placements. The Ministry of Health shares these concerns and is working with agencies, to address these issues and monitor the situation.

Persons 17 and under detained for compulsory assessment and treatment in a mental health inpatient unit

	<i>Number of clients</i>
2014	72
2015	55
2016	58
2017	77

Article 37 of the Convention on the Rights of the Child

203. Under Article 37, every child (under 18) deprived of liberty shall be separated from adults unless it is considered in their best interest not to do so. New Zealand has reserved its right not to apply this provision under certain circumstances. Facilities generally meet the requirements of Article 37 and efforts are made to ensure young people are separated from adults. However, avoiding age-mixing is not always possible due to limitations of existing facilities or because it is necessary to avoid isolation.

Reply to paragraph 21 of the list of issues

Inter-prisoner violence

204. The 2016/17 OPCAT report notes concerns about levels of violence in prisons.

Serious prisoner-on-prisoner assault

	2013/14	2014/15	2015/16	2016/17	2017/18
Serious prisoner-on-prisoner assaults (requiring overnight hospitalisation)	42	38	45	25	42

205. In 2015, the Chief Inspector of Corrections undertook a major investigation into organised prisoner-on-prisoner violence at Mount Eden Corrections Facility, which at the time was privately run. All 21 recommendations were accepted, including taking appropriate and timely action in response to violent prisoners. The prison has returned to Corrections' management.

206. Corrections has a zero-tolerance policy for violence in prisons. Despite a 7.7% increase in the prison population in 2016/2017, and a 1.9% increase in 2017/2018, rates of violent incidents have remained relatively static. All instances of violence that are reported are reviewed at the site.

207. We note that not all instances of violence are reported and that surveys conducted by the Ombudsman indicate a culture of fear and intimidation in prison. There are ongoing efforts to improve prevention, detection, and response to violence, including by:

- Recruiting 474 officers in 2017/2018 to enable active management of prisoners;
- Increasing the number of prisons with on-site teams trained in dealing with emergencies;
- Launching a five-year gang strategy in 2017 to reduce harm caused by gangs in prison;
- Establishing safer custody panels in prisons to discuss incidents, trends and learnings around safety at the site;
- Establishing a national reducing violence in prisons working group to support prisons;
- Developing a prison tension assessment tool for custodial staff to easily assess tension levels in a unit;
- Utilising prisoner forums and discussion groups at some sites to involve prisoners in the management of prisons.

208. Since 2014, there have been no matters before the courts involving inter-prisoner violence where judicial findings of negligence were made against staff.

Reply to paragraph 22 of the list of issues**Deaths in custody****Police****Deaths in Police custody***

	<i>Gender</i>	<i>Ethnicity</i>
2014	Male	Māori
2015	Male	European
2015	Male	Māori
2015	Male	Māori
2015	Male	European
2017	Female	European

	<i>Gender</i>	<i>Ethnicity</i>
2017	Male	Māori

* *Causes of death:* heart attack (1), intoxication (4), brain haemorrhage caused prior detention (1), suicide (1). Table includes Mr. Taitoko and Mr. Walters.

209. Results of investigations:

- Criminal charges laid but staff acquitted (1);
- Performance conversations with staff (3);
- No staff fault (2);
- Ongoing (1).

210. No compensation was paid.

Mr. Sentry Taitoko

211. In 2014, 20-year-old Mr. Taitoko died in Police custody. He was highly intoxicated. The IPCA report found Mr. Taitoko should have been hospitalised or an ambulance called. Risk assessment and monitoring were inadequate.

212. IPCA made recommendations including training, risk assessments and cross-agency work. Police accepted the findings and apologised to Mr. Taitoko's family. Police introduced new training and are actively engaging with medical emergency services to better address the needs of dangerously intoxicated persons. Restraint chairs are placed in the district's units to prevent harm. Performance conversations were held with nine Police staff and no criminal charges were laid.

Mr. Dwayne Walters

213. IPCA investigated the 2015 suicide of Dwayne Walters in a District Court cell. Mr. Walters was awaiting transfer to a prison. IPCA found the cell condition, in particular, ligature points, were a significant contributing factor. The work to remedy issues with court cells to prevent suicides is described at paragraph 0. Police continuously assess its procedures to ensure best practice is used to identify at-risk persons.

Prisons

214. Since July 2013, there were 30 unnatural deaths in prisons. In the year 2017/18, seven were deemed to be unnatural. Detailed data is in Appendix 7.

215. Suspected unnatural deaths are referred to the Coroner for independent investigation and determination. Additionally, Inspectors of Corrections investigate all death-in-custody events in prisons. Where issues are identified, the Office of the Inspectorate makes recommendations to Corrections and this report is submitted as evidence at Coroner inquests. The Ombudsman is also notified of deaths in custody and may decide to investigate.

216. In 2017, Corrections established the External Assurance team that tracks, and responds to, all recommendations by the Inspectorate, Coroner and the External Monitoring Agencies, such as the Ombudsman, Privacy Commissioner, and Health and Disability Commissioner.

217. Since 2014, the Coroner has issued eight death-in-custody reports, with a range of findings, from recommending amended policies for at-risk people to staff training in suicide risk assessment. Corrections' primary response has been to improve the management of people at-risk of self-harm and suicide through operational changes and specialist Intervention and Support Units (see para. 0). Compensation was paid to relatives in two of the cases falling within the reporting period.

Health places of detention

218. In 2017, there were 11 recorded deaths of people who were in an inpatient unit subject to an inpatient order under the Mental Health Act at the time of death. Of these, seven people died of causes other than natural or medical (of which three were undetermined). For some of these cases, an inquiry is still ongoing. Detailed data is in Appendix 8.

219. Under the Mental Health Act, any death must be reported within 14 days. The Director of Mental Health must also be informed of any investigations. These deaths are also subject to coronial inquiry. Any recommendations outlined in a review or coronial inquiry are referred to the District Health Board (DHB) for implementation. Due to restrictions in the Coroners Act 2006, the inquiry outcomes are withheld. DHBs also investigate serious events, such as deaths in custody. In 2015, guidance was developed to help DHBs develop observation and engagement policies to address patient safety within mental health inpatient units.

220. Coronial data for suicides in aged care facilities indicates that the number of suicides was 2 in 2014, 0 in 2015, 4 in 2016 and 1 in 2017.

221. In 2018, following a family member's complaint, the Health and Disability Commissioner found a private dementia unit service provider breached the Code of Consumers' Rights. In 2015, a dementia patient was assaulted by another patient and died.

222. No compensation was paid by the Ministry of Health following a death in custody. Data on criminal or disciplinary proceeding does not need to be reported to the Ministry and it is not aware of any.

Reply to paragraph 23 of the list of issues**Asylum seekers' detention**

223. The majority of asylum seekers live in the community on a visa. Asylum claimants or undocumented passengers who were refused entry can be detained in a low security open immigration facility or in prison. Applications concerning detained asylum seekers are formally prioritised. Detained asylum claimants or turnaround cases have a right to legal representation and habeas corpus.

224. A small number of asylum seekers are detained in New Zealand. Whether and at what level detention is necessary is based on a trained immigration officer's case-by-case assessment, which must have regard to the Refugee Convention.

225. Decisions on whether to detain or otherwise restrict the freedom of movement of persons claiming refugee or protection status, including for mass arrivals, are based on the overriding principle that, if freedom of movement is to be restricted, it should be restricted to the least degree and for the shortest duration possible. Particular care must be given in any decision involving women (particularly pregnant women and adolescent girls), children, and members of other vulnerable groups.

226. As a general rule, children and young persons under 18 years of age should not be detained, and it would only be in extenuating circumstances that their detention in prison could be justified as necessary. Any restriction on the freedom of movement of an unaccompanied child or young person under 18 years of age should only occur after Oranga Tamariki's involvement.

227. Any decision to restrict freedom of movement in this context must be justified as necessary at the time of the decision and must continue to be justified as necessary.

Length of detention

228. Detention of asylum claimants can be for up to 96 hours without a Warrant of Commitment. Detention beyond 96 hours requires a judge's Warrant of Commitment and renewed every 28 days. Immigration officers regularly review detention decisions. If a person is recognised as a refugee or protected person, detention ends immediately.

229. The Immigration Act allows for the detention of refugees arriving as part of a mass arrival. Although these provisions have never been used, they allow for detention, if necessary, for an initial period of up to six months, which is then renewable at 28-day intervals. The Act sets out when an immigration officer may apply to the court for a Warrant of Commitment to authorise the detention. For example, if it is necessary to effectively manage the mass arrival group, or to manage any threat or risk to security or to the public. All the circumstances surrounding the arrival would be considered.

Mangere Refugee Resettlement Centre (MRRC)

230. MRRC can accommodate up to 28 people under “administrative” immigration detention, accommodated separately from quota refugees. On 17 June 2019, three adult asylum claimants were accommodated under warrants detained there, the total from 2014 to 2019 is 44 persons.

231. Individuals must reside at MRRC and are subject to conditions including needing to be granted permission to leave and return at stipulated times. Due to the administrative nature of detention, powers are more limited than in prisons. Physical force may only be used under narrow circumstances (e.g. to prevent a person causing harm) and there are reporting requirements where force is used. Body-searching is prohibited, as is searching residents’ rooms.

Detention in prisons

232. If a Warrant of Commitment is granted, people liable for deportation or turnaround are generally detained under remand-like conditions in a prison.

233. INZ and Corrections work together on a case-by-case basis to provide the best possible detention outcome for detainees. Corrections are informed that immigration detainees are not facing criminal charges. Detainees can notify Corrections should they feel unsafe or if they feel that their rights have been violated.

Asylum claimants detained in prisons

<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>
5	15	24	27	18

Reply to paragraph 24 of the list of issues

Non-consensual commitment on health grounds, including intellectual disability

234. There are different bases for detaining people in our health system, including those with intellectual disabilities. Safeguards are built into legislation and the Nationwide Health and Disability Advocacy Service operates a free and independent advocacy service to support people having issues with providers.

235. There have been calls for reform of the grounds for non-consensual treatment, and for consideration of mental capacity law and practice with concerns including gaps in the legal framework and shortcomings of safeguards.

236. The Government has accepted a recommendation of He Ara Oranga to repeal and replace the Mental Health (Compulsory Assessment and Treatment) Act 1992 (the Mental Health Act). The Substance Addiction (Compulsory Assessment and Treatment) Act 2017 contains a requirement for the Act to be reviewed three years after coming into force.

Overview of the Mental Health (Compulsory Assessment and Treatment) Act 1992 and the Substance Addiction (Compulsory Assessment and Treatment) Act 2017

237. The Mental Health Act provides for compulsory psychiatric assessment and treatment. The Substance Addiction Act provides for the compulsory assessment and treatment of people considered to have severe substance addictions and lack capacity to decide on treatment. The Substance Addiction Act is used as a last resort. It aims to balance the rights of a person to make decisions about treating their addiction and protect them from serious harm. Specific threshold criteria (clinical and legal) must be met.

238. Free District Inspector services are available to ensure consumer rights are upheld (see para. 0). The Mental Health Act allows a person to request a review of their condition by a judge during the initial one-month compulsory assessment process. Everyone subject to compulsory treatment has a ‘responsible clinician’ assigned to them who must formally review their condition every six months. The clinician must advise the person, and people concerned with their welfare, of the review’s legal consequences, and their right to apply to the Mental Health Review Tribunal for review.

239. Any assessment or treatment beyond the initial period may occur only with a judge’s agreement. They must examine the person within 14 days, consult with two health professionals, and hold a hearing to decide an order and its terms. The person is entitled to a lawyer and to obtain independent psychiatric advice. The judge can make a community treatment (default) or an inpatient order.

240. The Substance Addiction Act allows patients to nominate any adult to protect their interests, consult an approved specialist for a second opinion and request a lawyer.

Inpatient treatment orders under the Mental Health Act

	<i>Number of inpatient treatment orders (s30)</i>	<i>Average number of patients under s30 on a given day</i>	<i>Number of patients per 100,000 on a given day</i>
2014	1 784	619	14
2015	1 791	654	14
2016	1 722	589	12
2017	1 690	651	13

Note: Table does not include patients entering the system through the Courts or prisons or are detained based on a court order because they pose a danger to others. Those patients are treated at one of five forensic psychiatry services. Data for the Substance Addiction Act is not yet available.

241. In 2017, Māori were 3.4 times more likely to be subject to an inpatient treatment order than other ethnic groups.

Occupancy rates of mental health units

242. Concerns have been raised, including by the NPM and the Auditor-General, about high occupancy rates in some mental health inpatient units. The factors contributing to high occupancy rates are complex, and include capacity, demand, and models of care. National bed occupancy data below does not include patients on leave and therefore may underestimate the total occupancy rates. Occupancy rates vary between regions.

Bed occupancy rates for mental health inpatient units:

	<i>Occupancy Rate</i>
2014/15	90%
2015/16	91%
2016/17	90%
2017/18	90%

Note: Not everyone is receiving treatment on a compulsory basis.

Alternative treatments

243. Most people access mental health and addiction services voluntarily. In 2017, of the 176,310 people who engaged with those services, 5.8% were subject to Mental Health Act orders.

244. Most people subject to compulsory treatment under the Mental Health Act access treatment in the community (87% in 2017). The responsible clinician can convert an inpatient order to a community order or grant leave for up to three months. On any day in 2017, on average, 4,259 people were subject to a community treatment order and 165

people on temporary leave. Under the Substance Addiction Act, the clinician may permit the patient to be absent from a treatment centre for any period.

245. Mentally ill offenders detained in a forensic mental health service may be eligible for community leave. This is typically used to attend appointments, work, rehabilitation programmes or visit family. After increasing periods of successful unescorted leave, some individuals can progress to a less secure setting. Individuals may move to an open hospital unit and eventually reside in the community, supported accommodation or with family.

Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003

246. This Act allows for compulsory care orders to provide care and rehabilitation for persons with intellectual disabilities who are charged or convicted of an offence. The Act has safeguards to uphold an individual's rights. District Inspectors perform various functions, including:

- Inspecting facilities, including documentation processes;
- Handling complaints and referrals to the health and disability commissioner;
- Inquiries and investigations.

247. Care recipients are subject to a six-monthly review by qualified psychologists. Individuals can appeal orders or seek a second opinion about use of medication whilst under compulsory care. At the end of 2017 there were 115 individuals subject to an order under the Act with 57 people under a supervised order and 58 people under a secure order. In some instances, support provided will reflect the needs of the individual and not based solely on the level of order they are subject to. Only individuals on a secure order can be placed in hospital. At any given time up to 66 individuals may be placed into Intellectual Disability Secure Hospital Level Services.

Protection of Personal and Property Rights Act 1988 (PPPR Act)

248. This Act assists with decision-making when adults lack mental capacity. It does this via tools such as court orders (personal, property or welfare guardianship), and enduring powers of attorney. Personal orders can be made for a person to enter a specific institution or requiring certain living arrangements. This does not include psychiatric hospitals or licensed institutions under mental health legislation but can include private hospitals and rest homes. Orders can include the use of reasonable force, for example for medical treatment.

249. There is no national data on how many orders are made under this Act for people to live in rest homes or other specified living arrangements. Between 2013 and 2017, around 127 personal orders were made per year. The number of orders in force will be different and not all orders will be for living arrangements. A court must review orders at least every five years. There can be delays with accessing the court, for example, due to priority matters involving children. The person subject to an order has independent legal representation in proceedings. They can seek a review at any time, as can other persons such as family members.

250. The Ombudsman raised concerns regarding the number of people detained under this Act in the absence of a court order. We are unable to determine the scale of this issue, as data is collected only where an order has been made. A Law Commission review of *laws related to adults with impaired decision-making capacity* is to be started during 2019/20. Work is yet to be scoped but may include issues around people detained under this Act.

Right 7(4) Code of Health and Disability Services Consumers' Rights

251. Right 7(4) provides an exception to the general requirement for informed choice and consent. It provides a legal ground to treat people lacking capacity to consent if the treatment is in their best interest. Under right 7(4), the service provider must follow certain steps, including taking reasonable steps to ascertain the consumer's views.

252. Data on the number of people detained under right 7(4) is not collected. However, based on a report published by the HRC in 2018, it is estimated that for a third of people lacking mental capacity in secure aged care facilities, there may be no authorisation beyond right 7(4). The legal limits of right 7(4) are unclear and it does not offer the same

safeguards as other legal authorities for detention. There are more appropriate mechanisms to treat and/or detain a person who is unable to consent to treatment.

253. The Health and Disability Commissioner is drafting a report that considers health and disability research involving adult participants who are unable to provide informed consent.

Short-term detention of persons with acute mental health issues in Police cells

254. Police are often the first service called to assist at mental health events. Police provides guidance for officers on how to act when an incident involves a person with a mental impairment. The primary concern is harm prevention.

255. Concerns were raised about individuals being held in Police custody while awaiting a psychiatric assessment. Although Police cells are generally inappropriate for these individuals, sometimes it is necessary due to immediate health or safety concerns.

256. To reduce detention in Police custody, Police has worked with the Ministry of Health and mental health services to develop an alternative response. Where the immediate security of detention is not required, Police will transport individuals to the hospital and stay with them until they are assessed by a mental health practitioner. Calls for Police assistance at mental health events are now triaged by mental health practitioners assessing what service is needed and diverting to Police or ambulance as appropriate.

257. The proportion of mental health cases transported to a Police station (as opposed to health facilities) decreased from 15% to 11% from 2014 to 2016. The proportion of attempted suicide cases (or threats) transported to police stations has decreased from 20% to 12%.

Individuals with a mental health event held in Police cells

	<i>Adults (17 or older)</i>		<i>Youth (16 or younger)</i>	
	<i>Number</i>	<i>Average hours</i>	<i>Number</i>	<i>Average hours</i>
2013/2014	4 413	03.31	350	03.17
2014/2015	4 143	03.15	296	02.51
2015/2016	2 629	03.29	164	03.36
2016/2017	2 248	03.45	145	04.02
2017/2018	1 826	03.49	170	03.21

Note: Youths in detention are discussed further under issue 20.

Articles 12–13

Reply to paragraph 25 of the list of issues

Complaints, investigations, proceedings

258. No prosecutions for torture were laid in the reporting period. Comprehensive, national data on complaints and investigations of detainees' ill-treatment is not available because there are several different complaints mechanisms and complaints are not always categorised relating to ill-treatment in detention. Therefore, the information provided here may not cover all complaints. For complaints mechanisms see issue 26.

Complaints of excess force or ill-treatment in Police custody

	<i>Excess Force</i>	<i>Ill-treatment</i>	<i>Excess Force & Ill-treatment</i>	<i>Total</i>
2013/2014	8	5	1	14
2014/2015	9	4	0	13
2015/2016	6	1	0	7

	<i>Excess Force</i>	<i>Ill-treatment</i>	<i>Excess Force & Ill-treatment</i>	<i>Total</i>
2016/2017	4	2	0	6
2017/2018	0	0	0	0
Total	27	12	1	40

Health places of detention

259. The Ministry of Health does not collect data on all complaints of torture or ill-treatment in health facilities. Data is available on complaints to the Health and Disability Commissioner (HDC). HDC is the independent ‘watchdog’ investigating complaints and making recommendations to health and disability service providers. HDC publishes annual reports. In its 2017/18 report, HDC notes that as a consequence of actions taken on complaints, wide-reaching recommendations were made for improvements to health and disability services.

260. Consumers can complain directly to HDC about a health or disability service they received. Complaints can be made by the person who received the care or a friend or family member of that person, a service provider, or any other concerned person. In 2017/18, HDC received 2,498 complaints (13% increase since 2016/17). These cover a wide range of issues. 102 formal investigations were completed, of which, 70 resulted in breach opinions. 11 providers were referred to the Director of Proceedings responsible for bringing cases to the Health Practitioners Disciplinary Tribunal or the Human Rights Review Tribunal.

261. Complaints to HDC relating to mental health inpatient units:

- 2015/16: 69
- 2016/17: 85
- 2017/18: 87

262. In 2017/18, the Ombudsman conducted nine formal inspections and 17 informal visits in health and disability places of detention, as NPM for OPCAT. Following the inspections, the Ombudsman made 81 recommendations, of which, 74 were accepted or partially accepted. Areas of improvement included occupancy rates, seclusion rooms used as long-term bedrooms, and the use and recording of restrictive practices.

Prisons

263. In the reporting period, no New Zealand Court found a breach of s9 NZBORA (torture and cruel treatment). A breach of s23(5) (treatment without humanity and dignity) was found (see para. 0).

264. Following individual communications in 2014, the Human Rights Committee found in 2018 that the preventive detention of Messrs Miller and Carroll amounted to arbitrary detention breaching ICCPR due to its length, and failure to appropriately adjust conditions. The Committee called for a review of legislation.

265. For Mr. Vogel’s communication and compensation payments see issue 29.

Oranga Tamariki – Ministry for Children

Complaints escalated to residences’ grievance panels 2014–2017

	<i>Allegations</i>		<i>Resolution process</i>	
	<i>Justified</i>	<i>Unjustified</i>	<i>Formal</i>	<i>Informal</i>
<i>Youth justice residences</i>				
Physical abuse	10	5	14	1
Verbal abuse	30	4	22	12
Other*	131	13	45	99
	171 (89%)	22 (11%)	81 (42%)	112 (58%)

	<i>Allegations</i>		<i>Resolution process</i>	
	<i>Justified</i>	<i>Unjustified</i>	<i>Formal</i>	<i>Informal</i>
<i>Care and Protection residences</i>				
Physical abuse	9	9	6	12
Verbal abuse	23	5	1	28
Other*	120	17	3	134
	152 (83%)	31 (17%)	10 (5%)	174 (95%)

* Compliance with other policies.

266. This table does not include complaints escalated to other bodies such as the Children’s Commissioner. In the year to June 2017, 91 grievances (28% of all complaints) were referred to a grievance panel, with 28 found to be justified and 16 escalated to the Children’s Commissioner. A complaint may have been justified in the initial investigation but escalated as the complainant was not satisfied with the outcome.

267. If allegations of abuse are made against youth justice residence staff, Police may also investigate.

Reply to paragraph 26 of the list of issues

Independent Police Conduct Authority (IPCA); complaints mechanisms; discretion to prosecute

Independence of IPCA

268. IPCA is an independent Crown entity. Under the Independent Police Conduct Authority Act 1988, IPCA must “act independently in performing its statutory functions and duties and exercising its statutory powers”.

269. IPCA has revised its processes in response to the Committee’s concerns that most of investigations were conducted by Police rather than IPCA. Previously, some complaints were referred back to Police for investigation and IPCA had no involvement until it reviewed the outcome. That is no longer the case.

270. If a person deprived of liberty wishes to complain about treatment by Police, they can complain to IPCA or Police. Information is available online and in all Police stations. Frontline staff also receive training on dealing with complainants. If a person wishes to complain to Police rather than IPCA, legislation requires the complaint be referred to IPCA within five days.

271. When a complaint is received, IPCA obtains all information from the complainant and Police and determines whether there is an issue that needs to be addressed. In making that decision, IPCA considers whether the person has a reasonable grievance (including whether an officer may have engaged in misconduct or neglect of duty).

272. Where IPCA determines that a complaint raises a potential issue, the case is managed through either:

- Independent investigation by IPCA, making findings and recommendations
- Referral back to Police’s Professional Conduct Group for investigation with active IPCA oversight and review
- Resolution through agreed redress to the complainant.

273. An IPCA investigation will usually be accompanied by a parallel investigation by Police, since only Police can initiate criminal or employment proceedings.

274. When matters are referred back to Police, IPCA maintains in contact with the investigating officer. Issues and timeframes are agreed at the outset. All documentation, including interview statements, are reviewed when available, and any concerns about the direction or scope of investigations are discussed and escalated if necessary. If Police

investigations are not conducted robustly, that may result in an IPCA investigation and lead to public scrutiny.

275. IPCA is funded through the Ministry of Justice budget. As discussed under issue 4, IPCA has received increased funding to undertake its functions. IPCA is nearing completion of an intensive programme of inspections of all Police cells where detainees are held overnight (\$160,000 of funding received). It is also conducting quarterly audits of Police detention records to ensure proper management processes are followed and issues can be raised.

Effective Complaints Mechanisms

276. Complaints of ill-treatment may be received by the responsible agencies or oversight mechanism such as:

- Office of the Inspectorate (for prisons);
- Ombudsman (conduct of public sector agencies);
- District Inspectors (for Mental Health, Substance Addiction and Intellectual Disability Acts);
- Health and Disability Commissioner;
- Mental Health Review Tribunal;
- Children's Commissioner;
- IPCA.

Prisons

277. Corrections aims to resolve complaints informally. If this is not possible, a tiered process is used:

- At the prison site;
- Through corrections' national complaints response desk;
- Through the office of the inspectorate.

278. Complaints that are not resolved informally are maintained in the Integrated Offender Management System database (except if made to the Inspectorate). There are strict timeframes for progressing complaints and duties to update the complainant.

279. In 2018, Corrections sought an external review of its complaints system. The primary issues found were access to the process and that it was paper-based. An Enhancing Complaints Resolution project is underway to improve the system.

Office of the Inspectorate

280. Inspectors are employed by Corrections but are independent of activities and complaints they investigate.

281. In 2017, the function of the Inspectorate was strengthened and received increased funding. Its role has expanded from focusing on complaints to include regular prison inspections. Since 2017, inspections were carried out at all 18 prisons and inspection reports are published. The Office has created a 'Standards' inspections framework based on the UN International Minimum Standards for Imprisonment ('Mandela Rules').

282. Prisoners are notified through posters and brochures that they can complain to an Inspector, including, in cases of urgency, without going through lower-tier processes, for example:

- Situations concerning the immediate safety of individuals, including complaints about medication;
- Decisions about temporary compassionate release.

283. An Inspector must be given unrestricted access to persons, facilities and records.

Ombudsman

284. Prisoners can complain to the Ombudsman. If the Ombudsman finds a breach or unlawful behaviour, they will report their recommendations to the Government. The Ombudsman deals with hundreds of complaints every year, including many from detainees.

Health facilities

285. Patients who feel that they were unjustly deprived of their liberty, or ill-treated, can complain directly to the relevant District Health Board. The Nationwide Health and Disability Advocacy Service provides free and independent assistance during the complaint process.

286. People who feel they were unjustly deprived of their liberty under mental health legislation or the Intellectual Disability Act may also complain to one of 34 Mental Health District Inspectors. District Inspectors are lawyers appointed by the Minister of Health and are required to report to the Ministry monthly. They handle complaints of rights breaches, inspect facilities, conduct inquiries and investigations, and assist patients to apply for a judge's review.

287. A complaint to an Inspector can be escalated to the Mental Health Review Tribunal. The Tribunal must report breaches and make recommendations to the relevant Director of Area Mental Health Services who must resolve the problem. The Tribunal's reports are published in the annual Mental Health report.

288. If a patient is unhappy with the handling of a complaint, they may also complain to the Ombudsman. For the Health and Disability Commissioner see paras. 0–0.

Oranga Tamariki residences

289. If a child or young person is unhappy with any issue, they can use the internal Oranga Tamariki grievance process. If they are unhappy with the outcome of the investigation, the complaint or grievance can be escalated to a grievance panel, and in turn the Children's Commissioner or Ombudsman.

290. Each residence has an independent grievance panel that young people can complain to if they feel they were treated unreasonably or illegally. They can access independent advocacy from a lawyer or family member and usually also from residence-recruited grievance advocates. The grievance process is explained on entry to a residence. It was redeveloped in 2015 making it more child friendly, less complicated and more accessible. VOYCE, an independent advocacy and connection service for young people, can also provide grievance advocacy. The effectiveness of the grievance process is monitored closely. Analysis shows that since the changes, young people more readily understand the process.

291. If a grievance relates to harm to a young person, a disciplinary process will be initiated. This may include standing the staff member down while an investigation is carried out, warnings and dismissal. Complaints about any form of harm are reviewed by the Police who determine whether a criminal investigation is required.

292. In March 2019, the Government agreed to strengthen oversight of the Oranga Tamariki system and children's issues. The Ministry of Social Development is establishing an independent monitoring function for the Oranga Tamariki system, with the intention to eventually transfer it to the Children's Commissioner.

Royal prerogative of mercy and the Criminal Cases Review Commission

293. A person who believes they have suffered a miscarriage of justice may apply to the Governor-General for the exercise of the Royal prerogative of mercy, to grant a pardon, or refer a case back to the courts for reconsideration. The Governor-General acts on the advice of the Minister of Justice.

294. Parliament is considering a Bill that would establish the Criminal Cases Review Commission. If established, the Commission would replace the Governor-General's referral power. Establishing the Commission could enhance the existing system by having an independent body with dedicated staff focused on identifying and responding to possible miscarriages of justice.

Attorney-General discretion to prosecute

295. We do not consider that restricting the Attorney-General's discretion relating to prosecutorial decisions for crimes of torture is necessary. While s12 of the Crimes of Torture Act requires the Attorney-General's consent to prosecute, in practice, that function is exercised by the Solicitor-General, the highest non-political law officer. The Solicitor-General's responsibility for public prosecutions has been codified in the Criminal Procedure Act.

296. The Prosecution Guidelines emphasise the universally central tenet of a prosecution system under the rule of law in a democracy: the independence of the prosecutor from persons or agencies that are not properly part of the prosecution decision-making process. This independence refers to freedom from undue or improper pressure from any source, political or otherwise.

Reply to paragraph 27 of the list of issues

Investigating 'Operation Burnham'

297. In 2018, the Attorney-General announced a Government inquiry under the Inquiries Act 2013 into allegations relating to Operation Burnham and related matters. Sir Terence Arnold (a former Supreme Court judge) and Rt Hon Sir Geoffrey Palmer (a barrister, legal academic and former Prime Minister) were appointed to lead the Inquiry.

298. The Inquiry seeks to establish the facts in connection with the allegations, examine the treatment by New Zealand Defence Force (NZDF) personnel of reports of civilian casualties following the operation, and assess the conduct of NZDF personnel, including compliance with rules of engagement, international humanitarian law and military and political authorisations. The Inquiry does not have jurisdiction to make determinations about other nations' actions or civil, criminal, or disciplinary liability of individuals. However, it may make findings of fault and recommend further steps to determine liability.

299. NZDF fully cooperates with the Inquiry and has established a Special Inquiry Office to coordinate NZDF participation and provide support to the Inquiry. The Inquiry is due to report to the Government in December 2019.

300. The Inspector-General of Intelligence and Security has recently concluded an inquiry (the CIA Inquiry) into the role or connection of New Zealand intelligence agencies over the period 2001 to 2009 with a partner agency, the CIA, that engaged in detainee torture. No direct connection with the CIA's programme was identified but there was insufficient awareness of risk arising from close partner engagement and receipt of intelligence reports. A further similar inquiry (*the Afghanistan Inquiry*) addresses events in the period 2009 to 2013. Factual matters for the Government Inquiry into Operation Burnham potentially overlap with the latter inquiry.

Article 14

Reply to paragraph 28 of the list of issues

Historic ill-treatment

Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions

301. In 2018, the Government established the Royal Commission (Inquiry). Royal Commissions are reserved for the most serious issues of public importance. Establishing this Inquiry acknowledges that historic abuse has occurred and marks an important step forward for victims/survivors. It also responds to public calls for an independent inquiry, including from the Human Rights Commission and the Committee on the Elimination of Racial Discrimination.

302. Following extensive public consultation, the finalised terms of reference acknowledge and reaffirm New Zealand's international obligations to take appropriate

legislative, administrative, judicial or other measures to protect people from abuse and recognise that abuse warrants prompt and impartial examination.

303. The Inquiry is examining the abuse of children, young persons, and vulnerable adults in state care and in the care of faith-based institutions occurring between 1950 and 1999, with some discretion to look beyond these dates. It will consider physical, emotional and sexual abuse and neglect, as defined domestically and internationally. A key focus for the Inquiry is to examine the differential impacts of abuse, for example, for Māori and Pacific people, LGBTIQI people, and people with disabilities or mental health issues. The Inquiry will examine the nature and extent of abuse, its immediate and long-term impacts on individuals, families and communities, contributing factors, and lessons for the future. It will also examine current settings to prevent and respond to abuse, including existing redress processes.

304. The Inquiry's recommendations may concern legislative, administrative, policy, practice, or procedural change. It will make recommendations on appropriate steps to address the harm caused, including whether the State should issue an apology. Under the Inquiries Act, the Inquiry cannot make findings of civil, criminal or disciplinary liability, but can make findings of fault and recommend steps be taken to determine liability.

Existing avenues for redress

Ministry of Social Development (MSD) Historic Claims Team

305. This team works with people who were abused or neglected in care, custody or guardianship. As at 31 March 2019, MSD had resolved 1,794 of the 3,667 claims received, and made apologies and payments totalling approximately \$27.6 million to 1,450 people. Individual payments range between \$1,150 and \$80,000 with the most common payments sitting in the \$10,000 to \$25,000 range. Another 1,870 claims were waiting to be resolved at the same date.

306. MSD's claims process is resource-intensive and takes considerable time to complete, leading to an increasing backlog of claims. A review was undertaken in 2018, focusing on feedback from those involved in the process about what they need (including consultation with Māori). In November 2018, MSD began implementing a new, streamlined operating model. Central to the assessment process remains the importance of meeting face-to-face with people to hear about their concerns.

Historic Abuse Resolution Service (HARS)

307. In 2012, the Ministry of Health established HARS to support the resolution of historic claims of ill-treatment without the need for court proceedings. HARS considers allegations of abuse in state-run psychiatric facilities prior to 1993 and, in appropriate cases, approves an apology and ex-gratia payment up to \$9,000.

308. Following allegations of abuse, the Government offered apologies and compensation. Between July 2012 and July 2018, 191 claims were settled, and compensation of \$1.145m paid.

309. Since 2014, three new claims were made by former patients of Lake Alice. Two were settled, the other is underway. In addition, two top-up claims were made and settled. The amount of compensation is withheld for privacy reasons.

310. Mr. Zentveld's communication to the Committee relates to Lake Alice hospital. The Royal Commission will also cover events at Lake Alice.

Reply to paragraph 29 of the list of issues

Redress and compensation

Prisoners and Victims Claims (Continuation and Amendment) Act 2013 (PVCA)

311. In the reporting period, there were no steps taken to amend this Act. The requirement that damages may only be awarded after consideration of a range of factors is consistent with the court's approach to awarding damages for rights breaches. Courts can,

and have awarded, compensation or other remedies for breaches of NZBORA, which includes the right not to be subjected to torture or cruel treatment, and to be treated with dignity (para. 0).

Redress and compensation

312. The Royal Commission (issue 28) may make recommendations concerning the current redress and compensation regime.

Prisons

313. There were some instances during the reporting period where Corrections settled claims of alleged ill-treatment. Settlements do not indicate acceptance that ill-treatment occurred. One payment was made for application of restraint. A payment has also been made under the PVCA.

314. In 2017, following Communication No. 672/2015 filed by Mr. Vogel, the Committee against Torture found a violation of Article 16. This case related to an event of prolonged seclusion for disciplinary purposes in 2000. The Committee did not find Article 14 was breached. In 2018, the Government granted an ex-gratia payment of \$10,000 plus contribution to legal cost to Mr. Vogel. This is the first time the Government has given compensation for a breach of a human rights treaty following a treaty body's finding.

Compensation for wrongful conviction and imprisonment

315. Under Cabinet Guidelines, the Government may pay compensation on an ex-gratia basis to persons wrongfully convicted and imprisoned. Claims accepted for consideration are usually referred to a retired judge or an eminent lawyer for independent assessment. They will assess whether the claimant is innocent on the balance of probabilities. If so, they will ordinarily recommend an appropriate amount of compensation.

316. In the reporting period, the Government compensated two claimants under the Guidelines (\$3.5m and \$550,000). The first claimant, Teina Pora, spent almost 20 years in prison and the Government initially awarded compensation of approximately \$2.5m. Following his successful judicial review, the Government awarded an additional \$1m to adjust compensation for inflation.

Oranga Tamariki state care

317. Compensation may be available to persons filing a civil claim against Oranga Tamariki. Alternatively, Oranga Tamariki may decide to make an ex-gratia payment as a mark of goodwill or moral obligation where no legal liability is recognised. If a child were to suffer abuse within Oranga Tamariki care, Oranga Tamariki would also consider providing access to specialist services like counselling.

Health services

318. Comprehensive information on redress and compensation for ill-treatment in health places of detention is not available. For historic ill-treatment in psychiatric facilities see issue 28.

319. Persons who have experienced trauma can access services through the public health system. Services are free or subsidised and increasingly take a 'trauma-informed' approach. People who experience a mental injury, such as trauma resulting from physical injury, may also be eligible for compensation or funding for treatment through the Accident Compensation Corporation, a no-fault public insurance scheme.

320. There is room to improve services. Health workforce centres offer training and resources on trauma informed care to improve responses to trauma. He Ara Oranga: Report of the Government Inquiry into Mental Health and *Addiction* emphasises the importance of a trauma-informed approach.

Victims' Rights

321. The previous periodic report included information on support for victims of crime (para. 224). In 2014, the Victims' Rights Act 2002 was amended to strengthen victims'

rights. This includes better services and more opportunities for involvement in criminal justice processes. In 2015, the role of Chief Victims Adviser, an independent advisor to the Minister of Justice, was established. In 2015, the Victims' Rights Code was approved. It includes detailed information on rights, duties and complaints mechanisms.

Reply to paragraph 30 of the list of issues

Reservation to Article 14

322. New Zealand reserved the right to award compensation to torture victims referred to in Article 14 of the Convention only at the discretion of the Attorney-General. At the time of the reservation, there was no statutory remedy for torture victims. Since then, NZBORA was enacted and courts have held that they can award compensation for breaches of the Act (para. 14).

Article 15

Reply to paragraph 31 of the list of issues

Admissibility of evidence

323. NZBORA affirms the right not to be subjected to torture or ill-treatment. In 2017, the Supreme Court stated that information obtained in circumstances such as torture could not be used by enforcement authorities for any purpose.⁷

324. Section 29 of the Evidence Act 2006 provides that a defendant's statement must be excluded if it was influenced by oppressive, violent, inhuman, or degrading conduct towards or treatment of any person, or threats thereof. This discourages oppressive interrogation. Where this issue is raised, a statement may be admitted only if the Court is satisfied, beyond reasonable doubt, that the statement was not influenced by oppression.

325. Under s28, a statement must be excluded if it is unreliable. Where reliability is in issue, the statement can only be admitted if the Court is satisfied, on the balance of probabilities, that the circumstances surrounding the statement were not likely to have affected its reliability.

326. Section 30 applies where a question is raised as to the propriety of how evidence has been obtained. The Court must consider whether, on the balance of probabilities, evidence was improperly obtained; and if so, whether the evidence be excluded. The Chief Justice has issued guidance on Police questioning that Courts must consider when determining whether Police have improperly obtained a statement.

Case law

327. In 2012, the Supreme Court emphasised in *R v. Hamed*⁸ that s30 must be interpreted in a manner consistent with fundamental human rights.

328. In the 2018 case of *S v. NZ Police*,⁹ the High Court excluded evidence as being obtained improperly. The case concerned an appeal of a conviction for driving with excess blood alcohol content. During the collection of the blood specimen, the Police refused the appellant's request to use the bathroom and the appellant suffered discomfort and embarrassment. The appeals court concluded the sample was obtained in consequence of a breach of the appellant's rights under NZBORA and must be excluded. As there was no longer any evidence to support the conviction, it was set aside.

⁷ *R v. Alford* [2017] 1 NZLR 710.

⁸ *R v. Hamed* [2012] 2 NZLR 305.

⁹ *S v. NZ Police* [2018] NZHC 1582.

Article 16

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Intersex children

329. The Government is unaware of any cases of sex assignment surgery on intersex children during the reporting period. Since 2014, seven children with an intersex condition underwent limited surgery. In each case, surgery was undertaken to resolve a specific functional problem and did not involve sex assignment or re-assignment. Prior to 2007, some children were sent to Australia for treatment funded through a Special Fund.

330. In 2017, the Ministry of Health initiated the establishment of a Child and Youth Intersex Clinical Network to develop best practice guidelines, protocols and care pathways for intersex children up to 18 years. The Network's Clinical Reference Group includes an endocrinologist, psychiatrist, Human Rights Commissioner, parent advocate, psychotherapist, midwife, paediatric surgeon and intersex advocates. The Network is Government-funded for two years.

III. Other issues/general information

Reply to paragraph 33 of the list of issues

Protecting human rights under anti-terrorism legislation

331. New Zealand experienced an unprecedented act of terrorism against our Muslim community in Christchurch on 15 March 2019. The Government has zero tolerance for violence and extremism of any kind and New Zealand condemns all acts of terrorism. In light of these events, the Government is assessing whether current counter-terrorism legislation is adequate.

332. New Zealand has a range of measures to prevent and respond to the threat of terrorism, including specialist law, the general criminal law, and other policy and administrative measures. The Terrorism Suppression Act 2002 provides offences relating to certain terrorist activities, but the general criminal law and other legislative regimes are also important as they provide for the investigation, prosecution and prevention of terrorism-related offending. Further information regarding the Terrorism Suppression Act is in our previous report (para. 82).

333. Key developments in the reporting period include enactment of the Intelligence and Security Act 2017. One purpose of this Act is to ensure the functions of relevant agencies are performed in accordance with New Zealand law and all human rights obligations recognised by New Zealand law.

334. Legislation has been designed to be exercised in a way that is proportionate to a domestic terrorist threat, and consistent with human rights. As with other legislation, legislative proposals to counter terrorism must also be vetted for compliance with the rights and freedoms set out in NZBORA.

335. Where legislation provides for intrusive powers to deal with the threat of terrorism, human rights safeguards are built into the legislation. For example, the purpose of the Search and Surveillance Act 2012 is to facilitate investigation and prosecution in a manner consistent with human rights values. Enforcement officer training references the Crimes of Torture Act 1989, which enshrines Article 4 of the Convention and the Optional Protocol.

336. No one has been convicted of terrorism-specific offending, although a small number have been convicted under objectionable publications legislation for terrorism-related material. The courts are currently considering the first case taken under section 6A of the Terrorism Suppression Act 2002 after the attack on Christchurch mosques on March 15 2019.

337. Legal avenues and remedies are available to persons subjected to anti-terrorism measures. The Government is not aware of any complaints of non-observance of international standards relating to terrorism-linked offending within New Zealand.

338. New Zealand is also investigating options to better ensure international compliance with, and enforcement of, suppression orders. Compliance with suppression laws is important to ensure fair trial rights for all defendants, but particularly in the case of high-profile cases such as alleged terrorism-related offending.

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General information

339. Any other relevant information is covered in the report.
