

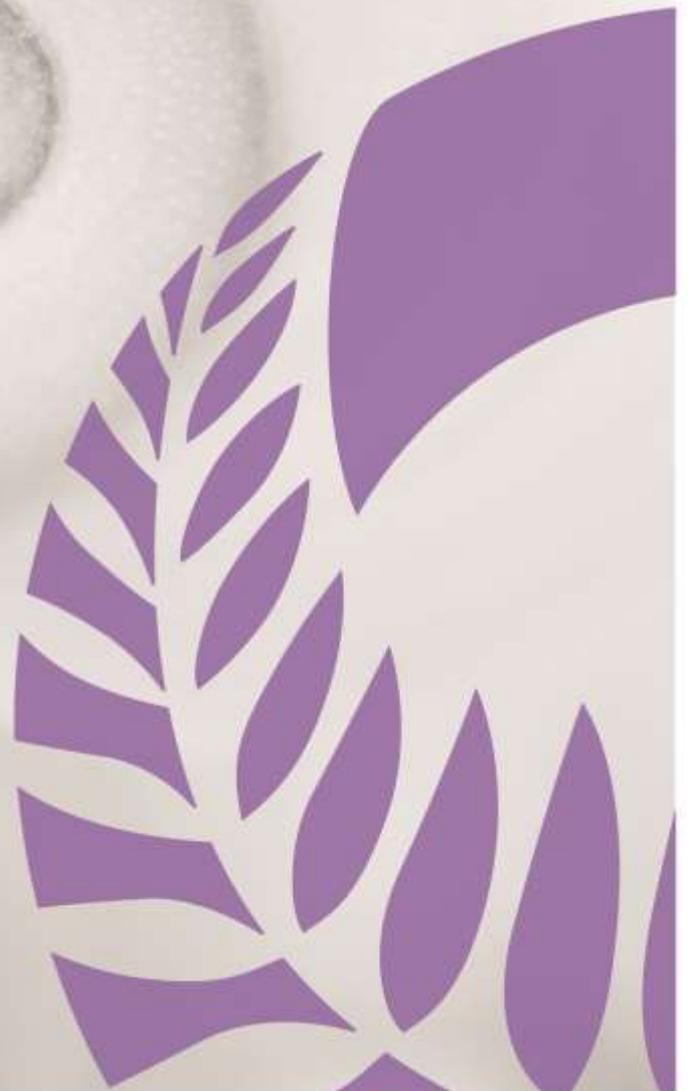
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OPCAT Report

Report on an unannounced follow up
inspection of
Hawke's Bay Regional Prison
under the Crimes of Torture Act 1989

April 2019
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Peter Boshier
Chief Ombudsman
National Preventive Mechanism

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Office of the Ombudsman
Tari o te Kaitiaki Mana Tangata



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Executive Summary

Background

In 2007, the Ombudsmen were designated one of the National Preventive Mechanisms (NPMs) under the Crimes of Torture Act (COTA), with responsibility for examining and monitoring the general conditions and treatment of detainees in New Zealand prisons.

From 5 to 8 November 2018 my Inspectors (to whom I have authorised to carry out visits of places of detention under COTA) visited Hawkes Bay Regional Prison (the Prison) to follow up on recommendations made in a previous OPCAT report (July 2017). There were 727 prisoners in the Prison on the first day of inspection.

Since my last full OPCAT inspection in December 2016, three prisoners have died in the Prison. The Department of Corrections has provided my office with one internal investigation report into the death of one of the prisoners (date of death – 22 January 2018). The Office of the Inspectorate reports on the two other deaths in custody (date of deaths -17 March 2017 and 18 March 2018), have yet to be provided. I will continue to monitor this situation. I understand that both of these deaths are the subject of a coronial inquiry.

Methodology

During the follow up inspection from 5 to 8 November 2018, my Inspectors visited all units and spoke with a selection of managers and staff across the site.

The team looked for progress in implementing the recommendations made in 2016, and identified any additional issues that need addressing.

Prison managers received verbal feedback from my Inspectors on 8 November 2018, outlining initial observations. A provisional report was sent to the Acting Prison Director and Corrections Services National Office for comment.

Findings

Thirty-seven recommendations were made following the full OPCAT inspection in December 2016. Our follow up inspection found of these 37 recommendations, ten had been achieved, ten partially achieved and 15 not achieved. (The team were unable to assess the status of two recommendations due to time constraints). Twenty-three repeat recommendations have been made as a consequence of the November 2018 follow up inspection. (See Appendix 1).

Of the 37 recommendations I made in 2016, the Department of Corrections rejected 11. I am pleased to note that despite this original response, the Department has successfully implemented changes in four of these areas. However, I continue to remain concerned about:

- inadequate ventilation in hut units;
- meals not being provided at standard hours;

- the care and management of at risk prisoners in the Intervention and Support Unit (ISU) - specifically restrictions on access to fresh air, inappropriately placing at risk prisoners in dry rooms, and the ability of staff and others to observe prisoners on camera when they are naked, partially naked or undertaking their ablutions;
- a lack of regime opportunities for remand accused prisoners; and
- the blanket approach to strip searching prisoners after visits.

I have made repeat recommendations on each of these matters.

However, my Inspectors were encouraged to note a generally positive atmosphere at the Prison, with marked improvement in the High Security Units (known locally as HM units).

Improvements were noted in record-keeping systems and information management and analysis, but further progress was required in other areas such as Use of Force processes.

Staff engagement in the Prison Director's vision for systemic improvement was apparent. Work remained to be done in some areas however, most notably in HM A, which operated a number of different regimes for prisoners transitioning from the ISU as well as managing prisoners on directed segregation. Some staff attitudes were inconsistent with the Prison Director's vision.

The range of activities for prisoners had improved and may have contributed to a reduction in tension¹ and the early signs of the development of a more positive environment. The re-opening of the external Self-Care Unit promoted prisoner responsibility and presented prisoners with a clear progression pathway for release.

Improvements had also been made to the Prison environment: hygiene standards had improved and a painting programme had commenced to address graffiti in the Units.

The ISU was attempting to provide a more therapeutic environment for prisoners. Mental health clinicians now regularly visited the ISU and multi-disciplinary meetings were more comprehensive. However, I still have concerns regarding the ISU. In particular, the inappropriate use of dry cells that house at-risk prisoners, the continued use of CCTV in ISU cells and the lack of assurance around prisoners' daily access to fresh air.

Overall, I consider that progress was being achieved. I suggest that 'distance travelled' should be tracked and communicated to both staff and prisoners to encourage further progress.

The Department of Corrections' comments on my findings and recommendations in 2018 are set out in Appendix 2.

¹ As evidenced in recent Prison Tension Assessments Tool (PTAT).

1. Lawful and transparent custody

2016 Recommendations – lawful and transparent custody

- a. Arrangements for prisoners to access personal property be improved.
Partially achieved.

Findings 2018

Staff vacancies in the Property Office, originally identified in my 2016 Inspection, had been filled and, initially, this had improved prisoners' access to their property. This was reflected in the marked reduction in property claims following the staff recruitment. However, in the intervening period the Prison population had risen by 15 percent (666 to 776)² and this had compounded property processing problems as there had not been an increase in resources to match the increase in prison population.

Staff noted that property issues relating to lost and damaged property remained the most frequent topic of complaint for prisoners and processes were becoming increasingly complex and burdensome as additional checks and procedures were incorporated, which did little to address the underlying inefficiency of the processes.

- b. First night in custody (FNIC) arrangements, as previously offered by the Gateway Unit, be reintroduced, and an assurance process developed to assess and improve the effectiveness of the induction process in meeting prisoners' needs and entitlements. **Partially achieved.**

Findings 2018

The Department had accepted this recommendation but the Prison reported that population pressures became such that a designated First Night in Custody (FNIC) Unit had not been established. Instead, four staff had been designated to carry out unit inductions in the High Security Units. However, only two of these vacancies had been filled and these staff continued to be required to undertake their routine duties. Prisoners were generally given their induction briefing within 48 hours of admission and their telephone numbers were approved within a similar timescale.

My Inspectors observed greater consistency in the quality of information provided to prisoners on admission to the Prison since the 2016 inspection. The revised process had been introduced on 31 August 2017 and 920 prisoners had been through the process since its implementation.³

² 727 prisoners on the first day of the inspection.

³ As at 7 November 2018.

2. Decency, dignity and respect

2016 Recommendations – decency, dignity and respect

- a. An Equality and Diversity Policy that ensures all prisoners' rights are recognised and respected be implemented as a matter of urgency. **Not achieved.**

Findings 2018

My Inspectors were informed that an Equality and Diversity Working Group had been established by the Department and a representative from the Prison was participating in the working group. Despite assurances to my Office that a national Equality and Diversity Policy would be completed by April 2017, my Inspectors learnt that such a policy had yet to be finalised.

- b. Worn and damaged mattresses and prisoner clothing are replaced and improvements made to ensure all prisoners have appropriate access to sufficient clean clothing and bedding. **Partially achieved.**

Findings 2018

The worn and damaged mattresses, identified in my 2016 inspection, had been replaced across the Prison.

Prison managers reported that additional prisoner clothing had been procured since 2016, yet stocks in the clothing storeroom were low. It appeared to my Inspectors that prisoner clothing was being unnecessarily retained in the low security units and not returned to the central store as required. Clothing allocation processes continue to require improvement.

- c. Effective processes are implemented to ensure housekeeping, hygiene and cleanliness standards are improved and performance monitored. **Achieved.**

Findings 2018

Washing machines had been purchased and installed on the high security units following my 2016 inspection. Consequently, prisoners in the high security wings were no longer washing their clothing in buckets. My Inspectors conducted random checks in both the high and low security units and noted that hygiene and cleanliness standards across the Prison were acceptable. However, some high security cells had been vandalised and required painting.

- d. Arrangements to improve ventilation in hut units are implemented and monitored to ensure appropriate standards are consistently achieved.
Not achieved.

Findings 2018

In 2016, this recommendation was rejected by the Department.

My Inspectors undertook cell temperature readings and were particularly concerned about high temperatures in the low security 'hut' units and the youth unit 'huts'. Temperatures in cells ranged from 27 degrees Celsius to 30 degrees Celsius.⁴ Several senior staff members as well as prisoners informed my Inspectors that these temperatures were not reflective of how hot the cells could get in summer months, particularly in the afternoons.

The Prison provided Inspectors with copies of their heat management plan. The plan did not detail arrangements to improve ventilation in the hut units.

- e. Serving times of meals are standardised to normal hours, particularly on units that are not running an 8am to 5pm regime. This would involve lunch being served any time between midday and 1.30pm, and dinner to be served any time between 5pm and 7pm. **Not achieved.**

Findings 2018

In 2016, this recommendation was rejected by the Department.

Mealtimes had not been standardised to normal hours. Inspectors observed dinners being served to prisoners at 3.30pm in the high security units on each day of the inspection, and at 3.15pm to the prisoner serving three days cell confinement⁵ in the separates area.

Inspectors were informed the Department is undertaking a review of shift patterns, which will include a review of prisoner meal times.

I consider that the serving of evening meals at 3.30pm contravenes Rule 22 of the Nelson Mandela Rules: *Every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.*

⁴ On 7 November 2018.

⁵ Cell Confinement (CCs) can be issued as a form of punishment as a response to an upheld internal charge.

- f. Prisoners have access to hot water after lock up to make themselves a hot drink. All Prisoners are provided with cups. **Partially achieved.**

Findings 2018

In 2016, this recommendation was rejected by the Department.

Prisoners had access to disposable cups. However, prisoners in high security units did not have access to hot water after lock up.

- g. Arrangements for the prisoner's canteen (P119) be reviewed. As a standard, prices should be comparable with prices in the community. **Achieved.**

Findings 2018

The prisoners' canteen (P119) had been reviewed and updated. A new national canteen supplies system was operational at the Prison. The updated prisoner's canteen contained more healthy food items. There had been a fluctuation in the costs of items, with some decreasing in price and others increasing. Prices were generally comparable to those in the community.

- h. All prisoners are able to spend at least one hour each day in the fresh air. **Not achieved.**

Findings 2018

In 2016, my Inspectors identified *'clear evidence that when the At Risk Unit was full, not all prisoners received their minimum entitlement to one hour exercise in the open air'*.

On one occasion, during the follow-up inspection, the ISU⁶ was operating at full capacity. My Inspectors could not be assured that all prisoners in the ISU had been offered their minimum entitlement to one hour exercise in the open air. The ISU did not have an established system for recording that prisoners had been offered daily access to fresh air.

An hour of exercise in the open air, weather permitting, is a minimum legal entitlement under sections 69(1) (a) and 70 of the Corrections Act 2004 (the Act). There is no provision under the Act for this legal entitlement to be withdrawn for operational reasons for any prisoner.

⁶ Intervention Support Unit (ISU) was previously known as the At Risk Unit (ARU).

3. Personal safety

2016 Recommendations – personal safety

- a. The Prison develop and implement an anti-bullying strategy and gang management strategy that sits alongside the Prison’s violence reduction strategy; this is to include identifying where prisoners feel least safe, and addressing the findings in an arena that includes prisoner representation. **Achieved.**

Findings 2018

The Prison Director provided my Inspectors with a copy of their gang management/ anti-bullying strategy.

The Prison held monthly Safer Custody meetings to review performance and identify trends. It was encouraging to note that violent incidents as a percentage of all incidents showed a downward trend. With the exception of a ‘spike’ of 233 in August 2018,⁷ the total number of incidents had reduced from 193 to 138 (average 178/month) during the period 1 November 2017 and 1 November 2018.

During this same period, there were 29 reported instances of prisoners threatening other prisoners and 100 instances of prisoners physically assaulting other prisoners. There had been 240 instances where staff were abused or threatened by prisoners and 42 instances of prisoners assaulting staff, including four sexual assaults.

The Prison still had the highest percentage of prisoners with active gang connections in New Zealand (49 percent).

- b. There be greater consistency and frequency of staff interactions with prisoners to improve dynamic security and ensure an appropriately controlled environment. **Partially achieved.**

Findings 2018

My Inspectors noted both a greater consistency and frequency of staff interactions with prisoners. The general atmosphere in the Prison had improved since the last inspection. This was particularly noticeable in the high security units where staff were generally more actively engaged with prisoners.

⁷ It is noted that the Prison population has risen from 676 at the time of the first inspection to 727 on the first day of the follow up inspection.

The former gymnasium had been converted to high security accommodation and a corresponding high security exercise yard had also been built. Supervision of prisoners in the exercise yard was conducted from the Unit using CCTV.

Inspectors observed footage of a prisoner being assaulted by two prisoners in the yard⁸. Staff entered the yard to remove the victim approximately four minutes later. Although CCTV coverage was comprehensive, access to emergency call points within the yard was limited and the victim was unable to call for assistance.

The Department's Chief Inspector's Phase Two Report of June 2016 into the circumstances surrounding organised prisoner-on-prisoner fighting and assaults at Mount Eden Corrections Facility raised concerns about reliance on CCTV to supervise prisoners in the exercise yards.⁹

The monitoring of the high security yards at the Prison through camera observation limited the opportunity to embed a dynamic and responsive security approach and ensure a properly controlled environment.

- c. The practice of routinely placing at risk prisoners in dry rooms cease immediately.
Not achieved.

Findings 2018

Three prisoners were held in the dry rooms¹⁰ over the course of the inspection without applicable detaining paperwork.¹¹ Staff reported this was due to the ISU being at full capacity and that dry rooms were used as an emergency measure to house vulnerable prisoners.

- d. Measures should be undertaken to better protect the privacy of prisoners in the At Risk Unit when they are naked, partially naked, or undertaking their ablutions.
Not achieved.

Findings 2018

Inspectors could observe prisoners in the ISU¹² via camera when they were naked, partially naked, or undertaking their ablutions. No specific measures had been implemented since my 2016 inspection to address these privacy issues.

⁸ The assault had taken place a day prior to the commencement of the inspection.

⁹ *Chief Inspector's Report into Circumstances surrounding organised prisoner on prisoner fighting*, 2016, www.corrections.govt.nz

¹⁰ A dry room is a cell without toilet or water source.

¹¹ Directed Segregation Paperwork - S58-60.

¹² Intervention Support Unit (ISU) was previously known as the At Risk Unit (ARU).

I continue to be of the opinion that the ability to observe, either directly or through camera footage, prisoners undertaking their ablutions or in various stages of undress is degrading treatment or punishment and a breach of Article 16 of the Convention Against Torture.

I continue to engage with the Department of Corrections on this issue.

- e. The process for management of prisoners at risk of self-harm reflects international best practice. **Partially achieved.**

Findings 2018

Some improvements had been made in the management of prisoners at risk of self-harm: mental health clinicians visited the ISU regularly; multi-disciplinary meetings were more comprehensive; and staff were developing constructive activities for ISU prisoners. It was acknowledged by staff that improvements to the ISU continued to be 'a work in progress'.

I am encouraged by these developments in the ISU. However, I continue to be concerned about aspects of the management of the Unit, in particular: the inappropriate use of dry cells to house at-risk prisoners; the continued use of CCTV in ISU cells; and the lack of assurance around prisoner's daily access to fresh air.

- f. Prisoners who are not at risk of self-harm or suicide not be held in the ARU. **Achieved.**

Findings 2018

The stated purpose of an ARU¹³ is to enable the observation and safe management of prisoners at risk of harming themselves. During the 2016 inspection, my Inspectors identified that prisoners requiring a period of segregation for management purposes were being placed in the ARU. The Unit was no longer being used as a default management unit.

4. Health and wellbeing

2016 Recommendations – health and wellbeing

- a. An annual health needs analysis be carried out to inform the health development plan. **Partially achieved.**

¹³ Intervention Support Unit (ISU) was previously known as the At Risk Unit (ARU).

Findings 2018

I was pleased to note that the Prison had undertaken an annual health needs analysis. However, there was still work to be done on the draft 2017 Health Needs Assessment, and my Inspectors were unsure how the Health Needs Assessment informed service delivery and addressed the Prison population's changing needs.

- b. There be a separate health complaints process to ensure patient confidentiality. **Not achieved.**

Findings 2018

In 2016, this recommendation was rejected by the Department.

A separate health complaints system had not been established. Health staff told my Inspectors of the measures they were taking to provide better confidentiality regarding prisoners' health complaints.

Inspectors reviewed a number of health complaints on the Integrated Offender Management System (IOMS) and noted responses were not confidential.

Furthermore, during the inspection, my Inspectors found a PCO1 (complaint form) filled in by a prisoner detailing a health complaint on a desk in one of the high security offices. The prisoner's confidentiality had been compromised. I continue to have concerns regarding the management of the health complaints process.

- c. Processes for dispensing controlled medication be reviewed to comply with Corrections' Health Services Medication Standards. **Unable to assess.**

Findings 2018

Inspectors were provided with an up-to-date copy of the Department's *Medicines Management Policy* (updated April 2018). However, Inspectors did not get the opportunity to observe the dispensing of controlled medication at the time of the inspection.

- d. Arrangements for prisoners to attend clinics be improved. **Achieved.**

Findings 2018

Arrangements for prisoners to attend clinics had improved with the addition of two extra health care escorting officers.

- e. Medication rounds be revised to meet policy standards, particularly in areas of unsafe practice, compromised patient confidentiality and identified inefficiencies. **Not achieved.**

Findings 2018

Inspectors observed a number of unsafe practices including: nursing staff issuing medication to prisoners in doorways and communal areas; nursing staff not always confirming a patient's identity before issuing medication; and a prisoner gaining access to the medication cupboard before being challenged by staff.

- f. The policy for in-possession medication be reviewed to provide a greater degree of consistency with other sites. **Unable to assess.**

Findings 2018

Inspectors were unable to follow up on this recommendation.

- g. Dental provision be reviewed to address lengthy waiting lists. **Not achieved.**

Findings 2018

At the time of inspection, 111 prisoners were on the dental waiting list. The Prison provided records showing that the backlog identified in the 2016 inspection had been addressed but it had since increased.

- h. The provision of mental health services be formalised. **Not achieved.**

Findings 2018

Inspectors requested an up-to-date copy of the Service Level Agreement (SLA) with the Regional Forensic Service. At the time of writing this report, the SLA had not been provided to my Inspectors.

5. Effective and humane exercise of authority

2016 Recommendations – effective and human exercise of authority

- a. The adjudication process be simplified to ensure that prisoners understand and can engage fully in the process. **Achieved.**

Findings 2018

My Inspectors found that adjudication record keeping was of a high standard. Improvements had been incorporated to the part of the process before charges are heard to check a prisoner's understanding of the process.

- b. Supervision of searching practices be improved. **Partially achieved.**

Findings 2018

Searches of prisoners conducted in the wings and communal areas were observed by Inspectors to be generally satisfactory. The standard of rub down searches was more variable and, in many instances, my Inspectors considered it unlikely to detect contraband.

Staff told my Inspectors that they had found a number of homemade tattoo guns during these searches. Managers should explore the suggestions of staff of ways to reduce prisoner access to the constituent parts of the tattoo guns.

- c. The Prison be equipped with a purpose-built Management Unit. In the interim, current arrangements be reviewed to incorporate improved record keeping, supervision and surveillance, and engagement with segregated prisoners.
Not achieved

Findings 2018

My Inspectors found that the Prison still did not have a purpose built Management Unit.

They also found that, at the time of their inspection, one prisoner was held in the 'Top Jail Separates' on three days cellular confinement (CC).¹⁴ The procedures for supervision and engagement of prisoners on CC, which were written in the front of the Separate Cells Log, had not been complied with and there was no engagement with the prisoner other than to issue his meals.

¹⁴ Cellular Confinement (CC) can be issued as a form of punishment as a response to an upheld internal charge.

Prisoners on directed segregation were usually held in HM A, which operated a number of different regimes that presented a variety of challenges for staff to manage.

- d. Processes for the use of force be reviewed and improvements made, particularly in areas of medical examination, record keeping and follow up. **Partially achieved.**

Findings 2018

There had been 51 instances of Use of Force (UoF) against prisoners in the 12 months prior to my follow up inspection. Pepper spray was used on nine occasions. Despite greater attention being paid to improve record keeping, Inspectors noted inconsistencies in the promptness of the review process. In addition, discrepancies between the UoF Register and the database undermined my confidence in the Prison's statistical records and management control processes.

Learning from the reviews were promulgated and remedial actions implemented.

In March 2017, a death in custody occurred following a Use of Force incident. The Office of the Inspectorate has yet to provide me with a finalised report on this incident. I understand this death is the subject of a coronial inquiry.

Given the length of time that has elapsed since this death, this is a matter of concern to me, and I have raised the issue directly with the Department's Chief Executive.

6. Autonomy and protection against mistreatment

2016 Recommendations – autonomy and protection against mistreatment

- a. Arrangements for maintaining privacy and security of information be improved. **Partially achieved.**

Findings 2018

I consider the establishment of interview/meeting rooms in high security units a welcome development in terms of designated space for prisoners' meetings, interviews and private conversations. However, I continue to have some concerns regarding maintaining privacy and security of information as evidenced in the findings for 2016 recommendation regarding confidential health complaints.

7. Purposeful activity and family contact

2016 Recommendations – purposeful activity and family contact

- a. Arrangements to ensure that the range of regime activities and resources, including self-care, are fully reviewed to ensure equality of opportunity.

Achieved.

Findings 2018

In 2016, this recommendation was rejected by the Department, however, I am pleased that the external self-care units had re-opened since my 2016 inspection and the Prison was operating a clearer progression pathway for prisoners providing improved equality of opportunity.

- b. There be greater clarity around identified needs and access to interventions and purposeful activity. **Achieved.**

Findings 2018

In 2016, this recommendation was rejected by the Department. Despite this, my Inspectors observed that the Prison had improved access to, and provision of, purposeful activity for the sentenced prison population.

- c. The regime opportunities for remand accused prisoners be significantly improved to reflect their legal status. **Not achieved.**

Findings 2018

In 2016, this recommendation was rejected by the Department.

Regime opportunities for remand accused prisoners continued to be limited. However, it was pleasing that additional meeting rooms had been established in the high security units to facilitate activities for remand and high security prisoners. My Inspectors observed a small group of remand prisoners attending literacy and numeracy classes. However, the majority of remand accused prisoners were still not provided with sufficient levels of constructive activity.

In 2013, *the United Nations Subcommittee for the Prevention of Torture* visited several New Zealand prisons, including Hawke's Bay Regional Prison, and stated that limited time out of cell and the limited range and provision of constructive activities were issues for remand prisoners that should be addressed.

I am concerned that five years later, in 2018, the Prison has not made sufficient progress in relation to the Subcommittee's recommendation.

- d. The requirements that all Prisoners wear orange overalls at visits irrespective of classification be reviewed. **Not achieved.**

Findings 2018

In 2016, the Department rejected this recommendation. My Inspectors saw prisoners wearing orange overalls at visits irrespective of their classification.

- e. The policy of strip searching every prisoner after every visit be reviewed. **Not achieved.**

Findings 2018

My Inspectors observed visits on two occasions during the 2018 inspection.

On one occasion, three staff supervised three prisoners, each being visited by a single visitor. On the second occasion, three staff supervised two prisoners, each being visited by a single visitor. Despite the high level of supervision and no Intelligence to indicate that the prisoners or their visitors had been involved in attempts to introduce contraband into the Prison, all prisoners were strip searched following their visits.

Section 98 of the Corrections Act allows an officer to conduct a strip search of a prisoner if the officer has '*reasonable grounds*' for believing that the prisoner has in his or her possession an unauthorised item and has the manager's approval to do so.

I do not consider there were reasonable grounds for conducting strip searching of prisoners in the instances observed by my Inspectors. I have previously raised the issue of a blanket approach to strip-searching prisoners before and after visits and received assurances from the Department that a blanket approach would cease.¹⁵

8. Youth Unit

2016 Recommendations – Youth Unit

- a. Greater access to education, rehabilitation programmes and constructive activities be provided. **Achieved.**

¹⁵ Hawke's Bay Inspection 2016 and Christchurch Men's Prison 2017.

Findings 2018

In 2016, this recommendation was rejected by the Department. However, since my previous inspection, the Youth Unit now had a dedicated activities coordinator.

Youth in the Unit had been involved in the Hawke's Bay Young Enterprise Scheme. Youth were also being taught barista skills, and a music area had been installed allowing for music lessons. Horticulture and agriculture instruction had been introduced to the unit. Gym facilities had also been established since the last inspection. Members of the New Zealand rugby team had visited the Unit and engaged in gym activities with the youth.

Youth continued to access education and rehabilitation programmes in the Unit. The range of out of cell activities had improved since my last inspection.

- b. Facility standards in the Youth Unit, particularly the high security area, be improved. **Partially achieved.**

Findings 2018

A programme of improvements to the facilities was underway in the Youth Unit. New windows and vents had been fitted to the huts and painting of the interior and exterior of the huts, kitchen and visits area had been completed. The recreation room had been painted and windows replaced, however these windows were once again etched with graffiti.

However, following my 2016 inspection, the Youth Unit's main cells had not been painted nor had the graffiti removed. Staff explained that this was being looked into as these areas required a different approach due to having showers in the cells and significant vandalism to the cell walls. This area still looked in poor condition and untidy.

The external area of the Youth Unit was well maintained.

- c. The Prison acquires the necessary authorisations to allow the different categories of youth to mix. **Not achieved.**

Findings 2018

My Inspectors were provided with the excerpt from the Prison Operations Manual detailing how the 'exemption to mix' categories work.

However, the excerpt was not sufficient to assure me that the Prison has the necessary authorisations to allow the different categories of youth to mix. It is my expectation that there should be either: *an application* to the National Commissioner for written approval (regulation 186 (3) of the Corrections Regulations 2005), *or an approval* under sub clause (3) which must be written, and may relate to a prisoner, a class of prisoners, or to all prisoners.

2018 follow up recommendations

Lawful and transparent custody

I recommend that:

- a. Arrangements for prisoners' access to personal property continue to be improved.

Decency, dignity and respect

- b. An Equality and Diversity Policy that ensures all prisoners' rights are recognised and respected is implemented as a matter of urgency.
This is a repeat recommendation.
- c. All prisoners have appropriate access to sufficient clean clothing.
This is a repeat recommendation.
- d. Arrangements to improve ventilation in hut units are implemented and monitored to ensure appropriate standards are consistently achieved.
This is a repeat recommendation.
- e. Serving times of meals are standardised to normal hours, particularly on units that are not running an 8am to 5pm regime. This would involve lunch being served any time between midday and 1.30pm, and dinner to be served any time between 5pm and 7pm.
This is a repeat recommendation.
- f. Prisoners have access to hot water after lock up to make themselves a hot drink.
This is a repeat recommendation.
- g. All prisoners are able to spend at least one hour each day in the fresh air.
This is a repeat recommendation.

Personal safety

- h. Review procedures to ensure that the supervision of prisoners in exercise yards is not dependent solely on the use of CCTV.
- i. The practice of routinely placing at risk prisoners in dry rooms cease immediately.
This is a repeat recommendation.
- j. Measures be undertaken to better protect the privacy of prisoners in the ISU when they are naked, partially naked, or undertaking their ablutions.
This is a repeat recommendation.

- k. The process for management of prisoners at risk of self-harm reflects international best practice.
This is a repeat recommendation.

Health and wellbeing

- l. There be a separate health complaints process to ensure patient confidentiality.
This is a repeat recommendation.
- m. Medication rounds be revised to meet policy standards, particularly in areas of unsafe practice, compromised patient confidentiality and identified inefficiencies.
This is a repeat recommendation.
- n. Dental provision be reviewed to address lengthy waiting lists.
This is a repeat recommendation.
- o. The provision of mental health services be formalised.
This is a repeat recommendation.

Effective and humane exercise of authority

- p. Supervision of searching practices be improved.
This is a repeat recommendation.
- q. The Prison be equipped with a purpose-built Management Unit. In the interim, current arrangements be reviewed to incorporate improved record keeping, supervision and surveillance, and engagement with segregated prisoners.
This is a repeat recommendation.
- r. Processes for the use of force be reviewed and improvements continue to be made to record keeping.

Autonomy and protection against mistreatment

- s. Arrangements for maintaining privacy and security of information be improved.
This is a repeat recommendation.

Purposeful activity and family contact

- t. The regime opportunities for remand accused prisoners be significantly improved to reflect their legal status.
This is a repeat recommendation.
- u. The requirement that all Prisoners wear orange overalls at visits irrespective of classification be reviewed.
This is a repeat recommendation.

- v. The policy of strip searching every prisoner after every visit be reviewed.
This is a repeat recommendation.

Youth Unit

- w. The Prison acquires the necessary authorisations to allow the different categories of youth to mix.
This is a repeat recommendation.

Acknowledgements

I appreciate the full co-operation extended by the managers and staff to the Inspectors during their visit to the Prison. I also acknowledge the work that would have been involved in collating the information sought by the Inspectors.

Consultation

A provisional report was forwarded to the Acting Prison Director and Corrections Services National Office for comment as to fact, finding or omission prior to finalisation and distribution.

Publication

Under Section 27 and 36 of the Crimes of Torture Act 1989, the Chief Ombudsman will present a copy of this report to Parliament before publication on the Ombudsman website.



Peter Boshier
Chief Ombudsman
National Preventive Mechanism

Appendix 1. Summary of 2016 recommendations and 2018 follow up findings

2016 recommendations	Prison response	Follow up finding 2018
1a. Arrangements for prisoners to access personal property be improved.	Accepted	Partially achieved
1b. First night in custody arrangements, as previously offered by the Gateway Unit, be reintroduced, and an assurance process developed to assess and improve the effectiveness of the induction process in meeting prisoners' needs and entitlements.	Accepted	Partially achieved
2a. An Equality and Diversity Policy that ensures all prisoners' rights are recognised and respected be implemented as a matter of urgency.	Partially Accepted	Not achieved
2b. Worn and damaged mattresses and prisoner clothing are replaced and improvements made to ensure all prisoners have appropriate access to sufficient clean clothing and bedding.	Accepted	Achieved
2c. Effective processes are implemented to ensure housekeeping, hygiene and cleanliness standards are improved and monitored.	Accepted	Achieved
2d. Arrangements to improve ventilation in Hut units are implemented and monitored to ensure appropriate standards are consistently achieved.	Rejected	Not achieved
2e. Serving times of meals are standardised to normal hours, particularly on units that are not running an 8am to 5pm regime. This would involve lunch being served any time between midday and 1.30pm, and dinner to be served any time between 5pm and 7pm.	Rejected	Not achieved
2f. Prisoners have access to hot water after lock up to make themselves a hot drink. All prisoners are provided with cups.	Rejected	Partially achieved
2g. Arrangements for the prisoners' canteen be reviewed. As a standard, prices should be comparable with prices in the community.	Accepted	Achieved
2h. All prisoners are able to spend at least one hour each day in the fresh air.	Rejected	Not achieved

2016 recommendations	Prison response	Follow up finding 2018
3a. The Prison develop and implement an anti-bullying strategy and gang management strategy that sits alongside the Prison's violence reduction strategy; this is to include identifying where prisoners feel least safe, and addressing the findings in an arena that includes greater prisoner representation.	Accepted	Achieved
3b. There be a greater consistency and frequency of staff interactions with prisoners to improve dynamic security and ensure an appropriately controlled environment	Accepted	Partially achieved
3c. The practice of routinely placing at-risk prisoners in dry rooms cease immediately.	Accepted	Not achieved
3d. Measures should be undertaken to better protect the privacy of prisoners in the ARU when they are naked, partially naked, or undertaking their ablutions.	Rejected	Not achieved
3e. The process for management of prisoners at risk of self-harm reflects international best practice.	Accepted	Partially achieved
3f. Prisoners who are not at risk of self-harm or suicide not be held in the ARU.	No specific response	Achieved
4a. An annual health needs analysis be carried out to inform the health development plan.	Accepted	Partially achieved
4b. There be a separate health complaints process to ensure patient confidentiality.	Rejected	Not achieved
4c. Processes for dispensing controlled medication be reviewed to comply with Corrections' Health Services Medication Standards.	Accepted	Unable to assess
4d. Arrangements for prisoners to attend clinics be improved.	Accepted	Achieved
4e. Medication rounds be revised to meet policy standards, particularly in areas of unsafe practice, compromised patient confidentiality and identified inefficiencies.	Accepted	Not achieved
4f. The policy for in-possession medication be reviewed to provide a greater degree of consistency with other sites.	Accepted	Unable to assess
4g. Dental provision be reviewed to address lengthy waiting lists.	Accepted	Not achieved
4h. The provision of mental health services be formalised.	Accepted	Not achieved
5a. The adjudication process be simplified to ensure that prisoners understand and can engage fully in the process.	Accepted	Achieved

2016 recommendations	Prison response	Follow up finding 2018
5b. Supervision of searching practices be improved.	Accepted	Partially achieved
5c. The Prison be equipped with a purpose-built Management Unit. In the interim, current arrangements be reviewed to incorporate improved record keeping, supervision and surveillance, and engagement with segregated prisoners.	Partially Accepted	Not achieved
5d. Processes for the use of force be reviewed and improvements made, particularly in areas of medical examination, record keeping and follow up.	Accepted	Partially achieved
6a. Arrangements for maintaining privacy and security of information be improved.	Accepted	Partially achieved
7a. Arrangements to ensure that the range of regime activities and resources, including self-care, are fully reviewed to ensure equality of opportunity.	Rejected	Achieved
7b. There be greater clarity around identified needs and access to interventions and purposeful activities.	Rejected	Achieved
7c. The regime opportunities for remand accused prisoners be significantly improved to reflect their legal status.	Rejected	Not achieved
7d. The requirement that all Prisoners wear orange overalls at visits irrespective of classification be reviewed.	Rejected	Not achieved
7e. The policy of strip searching every prisoner after every visit be reviewed.	Accepted	Not achieved
8a. Greater access to education, rehabilitation programmes and constructive activities be provided. (Youth Unit)	Rejected	Achieved
8b. Facility standards in the Youth Unit, particularly the high security area, be improved. (Youth Unit)	Accepted	Partially achieved
8c. The Prison acquires the necessary authorisations to allow the different categories of youth to mix. (Youth Unit)	Accepted	Not achieved

Appendix 2. Department of Corrections' response to 2018 follow-up findings and recommendations

Follow-up recommendations

a. **Arrangements for prisoners' access to personal property continue to be improved.**

The Department of Corrections accepted this recommendation, and commented:

Hawkes Bay Regional Prison has identified opportunities to increase the efficiency of the property processes operating on site in order to improve access and reduce delays in prisoners getting their property in a timely manner. An issue that significantly contributes to delays in access is that property request forms are frequently not completed properly and need to be returned to the units for additional information, approvals, etc. To address this, the site has undertaken a programme of work to educate unit staff about the correct completion of forms, which has been reinforced at Principal Corrections Officer meetings. All units have an example of a well-completed form to check against. Hawkes Bay Regional Prison has also assigned a number of staff to the property office and this has resulted in a marked improvement in performance.

b. **An Equality and Diversity Policy that ensures all prisoners' rights are recognised and respected is implemented as a matter of urgency.**

The Department of Corrections partially accepted this recommendation, and commented:

Corrections already has a number of relevant policies, however it is working on enhancing guidance and training for staff:

- *Provisions for equality and diversity are included throughout other policies. Equality for prisoners is provided for in the Prison Operations Manual (POM). Section F.01.01 advises that Prisoners must be provided with, as far as practical in the circumstances, food and drink that makes allowance for the various religious and cultural needs.*
- *Under the POM, prisons are also expected to manage and develop site specific educational and recreational resources in a culturally appropriate environment, (see section F.04 Prison library services policy).*
- *There are also requirements regarding special religious services and spiritual development to ensure that all prisoners' activities are consistent with their religious practices (see section F.11 Special religious services).*
- *All staff who provide health and disability services are subject to the Code of Health and Disability Services Consumers' Rights.*

Nevertheless, Corrections will explore further options to provide staff with additional awareness and support to manage prisoners with minority cultural,

religious or gender identity needs, and welcomes the opportunity to make improvements in this area.

We would also like to note the development of a Corrections Inclusion and Diversity Council in late 2018. Council members have had two workshops since they were chosen in August 2018 with one of these based on 'unconscious knowledge and how it impacts judgements and decision making'. Being an organisation where people feel safe, valued and included is important. Championing, promoting and embracing diversity is critical to our overall success.

- c. All prisoners have appropriate access to sufficient clean clothing. This is a repeat recommendation.**

The Department of Corrections accepted this recommendation, and commented:

Corrections agree that all prisoners should have adequate clean clothing. Hawkes Bay Regional Prison has made a concerted effort to keep stocks on site at the appropriate level. Additional clothing was purchased for prisoners in February 2019. HBRP operates a system whereby stock is routinely replaced on a quarterly basis. This prevents large amounts of items being held in storage and maximises what is available in the units for use by the prisoners.

Hawkes Bay Regional Prison accepts, however, that there are opportunities where it can improve the efficiency of the processes in the High Security facility by ensuring that units conduct their daily cell checks and return excessive clothing and by ensuring the people who transfer from High Security to lower security units are moved in overalls so that the High Security clothing remains in the High Security facility. This enhancement will be communicated to staff in relevant units by 31 March 2019.

- d. Arrangements to improve ventilation in Hut units are implemented and monitored to ensure appropriate standards are consistently achieved. This is a repeat recommendation.**

The Department of Corrections accepted this recommendation, and commented:

We are currently working through options to address this recommendation and hope to have progress in the near future. In the interim, Hawkes Bay Regional Prison will continue to implement and monitor Hazard Control Plans, as required.

- e. Serving times of meals are standardised to normal hours, particularly on units that are not running an 8am to 5p m regime. This would involve lunch being served any time between midday and 1.30pm, and dinner to be served any time between 5pm and 7pm. This is a repeat recommendation.**

The Department of Corrections accepted this recommendation, and commented:

The importance of aligning meal times to standardised hours is currently being addressed as part of our ongoing 'Making Shifts Work' project. Corrections have acknowledged that there are certain limitations to the current eight hour shift

structure in issuing meals to prisoners, conducting muster checks and the lock up times. The 'Making Shifts Work' project team intends to redesign the current roster patterns for custodial staff and to adapt the operational effects of the new schedules. This programme requires comprehensive consultation with multiple stakeholder groups, thorough analysis and coordination with sites nationwide, and a considerable technology upgrade. One of the primary design considerations is the normalisation of prisoner meal times, including the reduction of time between dinner and breakfast.

As your office is aware, the Healthy Products Canteen Review was completed in 2018. The aim of this review was to offer healthier and more substantial choices to prisoners through a review of the options sold at the P119 store. Given the completion of this review and the provision of a sufficient quantity of nutritional food, alongside the ability for prisoners to purchase additional food items, we consider this mitigates immediate concerns

- f. Prisoners have access to hot water after lock up to make themselves a hot drink. This is a repeat recommendation.**

The Department of Corrections rejected this recommendation, and commented:

Hawkes Bay Regional Prison does not want to restrict individuals having reasonable access to hot water after lock up. However, concerns regarding the safety of prisoners and staff must be considered in relation to this recommendation. Due to these safety and security concerns, prisoners are not permitted kettles in their cells in high security but unit staff ensure the men are able to fill containers with hot water from the unit jug prior to being locked. This practice will continue and will be monitored.

- g. All prisoners are able to spend at least one hour each day in the fresh air. This is a repeat recommendation.**

The Department of Corrections rejected this recommendation, and commented:

Whilst we acknowledge the importance of prisoners receiving daily fresh air and strive to always meet minimum entitlements for each prisoner, it is not always feasible or appropriate to provide prisoners in the ISUs with an hour daily in the fresh air. Where it is not possible to facilitate this on a daily basis, accurate record keeping and decision making as to why external exercise was not offered must be kept. In this regard, Hawkes Bay Regional Prison have introduced a robust system relating to staff recording prisoners who have accepted time in the open air, those who have been offered this time, but have chosen to decline it and those who have not been offered this time and the rationale why.

You note on page 15 of your draft report, concerns about prisoners in ISUs accessing daily fresh air. We consider that through our new therapeutic approach to managing prisoners in ISUs, we are providing individuals with best practice, multi-disciplinary support. Through the Supported Decision Making Framework

(SDF), staff make and review decisions about prisoners exercise options, unlock hours and mixing with other prisoners whilst in the ISU. The SDF prioritises safety of the individual and staff whilst balancing humane treatment. It focuses on including input from the prisoners themselves to contribute to their management plans and best address their needs. A main focus of the SDF is to support decision making that provides the least restrictive environment possible for prisoners in ISUs, whilst providing rationales if restrictions are put in place. This therapeutic approach for at-risk prisoners is a priority for Corrections.

In response to the Department of Corrections' comments, I emphasise that an hour of exercise, in the open air weather permitting, is a *minimum legal entitlement* under sections 69(1)(a) and 70 of the Corrections Act. There is no provision under the Act for this to be derogated from for operational reasons. Neither at risk prisoners nor other prisoners may be deprived of this right.

- h. Review procedures to ensure that the supervision of prisoners in exercise yards is not dependent solely on the use of CCTV.**

The Department of Corrections accepted this recommendation, and commented:

Hawkes Bay Regional Prison acknowledges that, ideally, there would be a physical presence of staff in or at all of the yards; however, this is within the constraints of staffing numbers.

Hawkes Bay Regional Prison has taken steps, however, to move the CCTV monitors in High Medium exercise yards to allow the control room officer to have greater direct visibility of the yards. Control room officers have also undertaken an exercise to prioritise which cameras and screens receive more of their attention.

Master Control now also has the ability to monitor screens which has had the benefit of allowing staff to more frequently physically view yards as part of their rounds. This has now been incorporated into the normal routine and is monitored by Principal Corrections Officers to ensure it is taking place. The Prison Director issued a reminder to all staff on 22 February 2019, that physically checking yards is an expectation.

- i. The practice of routinely placing at risk prisoners in dry rooms cease immediately. This is a repeat recommendation.**

The Department of Corrections accepted this recommendation, and commented:

Detailed practice considerations were issued by the Manager Custodial Practice to frontline staff on 25 January 2019. This practice guidance reinforces the appropriate placement of prisoners in dry cells. The use of dry cells at Hawkes Bay Regional Prison operates in accordance with this practice. Where these cells have been used for other purposes the prisoners accommodated in them have had access to a toilet and water.

- j. **Measures should be undertaken to better protect the privacy of prisoners in the ISU when they are naked, partially naked, or undertaking their ablutions. This is a repeat recommendation.**

The Department of Corrections partially accepted this recommendation, and commented:

Corrections acknowledge that balancing the dignity and privacy of prisoners in ISUs with the preservation of life presents a unique challenge. As acknowledged by your office a piece of work is being led by the Chief Custodial Officer. This work looks at research and international practices to support future actions. Work is underway in this area and includes consideration of international practices, legislative instruments and identifying potential options for enhancing privacy for prisoners in ISUs.

- k. **The process for management of prisoners at risk of self-harm reflects international best practice. This is a repeat recommendation.**

The Department of Corrections accepted this recommendation, and commented:

As mentioned in response to recommendation 2g, in mid 2018, a Supported Decision Making Framework (SDF) was rolled out to prison staff to support the development of management plans for individuals in Intervention and Support Units (ISUs). Specifically, when reviewing decisions about exercise, unlock hours, communal eating, property, meals and mixing with other prisoners. The SDF prioritises safety of the individual and staff whilst balancing humane treatment. It focuses on including input from custodial staff, health services and the individual to develop the management plan. A main focus of the SDF is to support decision making that provides the least restrictive environment possible whilst providing rationales if restrictions are put in place.

The Multi-Disciplinary Practice (MDP) guidelines support improved care planning and prompt staff to consider the full range of therapeutic options available in managing prisoners at risk of self-harm. The guidelines also increase continuity of care for individuals both in ISUs and the mainstream prison and improved communication and safety as clear lines of responsibility are developed. MDP meetings include representatives from custodial staff, nurses and mental health professionals, psychologists, intel officers and the individual and their whanau.

Hawkes Bay Regional Prison have taken steps to introduce numerous improvements in the ISU, including the embedding of the Multi-Disciplinary team, the SDF, the mixing of residents, 'softening' of the physical environment and furnishings, colour, art work and a garden. Engagement with the prisoners has dramatically increased and they have been involved in the ongoing improvement of the unit. The site has also implemented a "step up / step down" unit whereby prisoners who need additional support can be accommodated in a unit that shares the philosophy of the ISU without having to be placed in an ISU (thus leaving ISU beds available for those who are in more need) and those moving out of the ISU have an interim placement

that better supports their transition back to mainstream. We will continue to monitor work in this area through monthly reporting.

- l. There be a separate health complaints process to ensure patient confidentiality. This is a repeat recommendation.**

The Department of Corrections accepted this recommendation, and commented:

The process for PCO1 complaints relating to health complaints has been altered to prompt prisoners to not include medical information on their PC.01 form and to remind staff not to enter this into IOMS. This is to provide for greater privacy for the individual and their medical information. This change was communicated in October 2018.

- m. Medication rounds be revised to meet policy standards, particularly in areas of unsafe practice, compromised patient confidentiality and identified inefficiencies. This is a repeat recommendation.**

The Department of Corrections accepted this recommendation, and commented:

Hawkes Bay Regional Prison is not aware of the instance cited in the report where it is advised that someone has been able to access the medication cart. The practice is that medication is administered at the cell door when the unit is locked and at the unit control room when the unit is unlocked. Alternative methods within safe staff resourcing have been canvassed and it has been determined that this is the safest and most effective approach. This is exclusively a medication round and no other medical matters (except true emergencies) are discussed in order for nurses to be able to maintain their focus on this important function.

A reminder to all nurses has been issued that they are to check the medication container, name and date of birth every time they administer medication. The Prison Director issued a reminder to all staff on 22 February 2019, that they are required to use the muster board when escorting nurses on medication rounds.

- n. Dental provision be reviewed to address lengthy waiting lists. This is a repeat recommendation**

The Department of Corrections accepted this recommendation, and commented:

At the time of the inspection, the dental chair had been out of operation for repairs for four weeks which had resulted in a large waitlist. The site ran extra clinics and cleared the backlog. This practice will continue at any time the waitlist grows. There is currently a whole day booked to clear the non-urgent waitlist. The dental hours on site have also been increased from 8 hours to 9 hours.

- o. The provision of mental health services be formalised. This is a repeat recommendation.**

The Department of Corrections accepted this recommendation, and commented:

Corrections Health Services have a Service Level Agreement (SLA) with Te Korowai-Whariki Regional Forensic Psychiatric Service formalised in 2017. This SLA remains active while the relevant schedules to the Relationship Agreement between Corrections and the Ministry of Health is finalised. Once finalised, a new SLA structure/template will be drafted to provide consistency across the prison network, considering the different District Health Boards. Hawkes Bay Regional Prison have a copy of the current SLA on site which is attached as Appendix One with this response.

p. Supervision of searching practices be improved. This is a repeat recommendation.

The Department of Corrections accepted this recommendation, and commented:

Hawkes Bay Regional Prison accepts that this is an area of practice that requires ongoing improvement. Staff were reminded at the Safer Custody Panel on 26 February 2019 to observe rub down searches and update the Health and Safety Tracker as required.

In addition, other steps taken by Hawkes Bay Regional Prison include developing and rolling out micro-learning on searching practices and reminders at morning briefings. The Prison Director has sent a reminder to Principal Corrections Officers to monitor practice in this area. Rubdown searching in particular will be given a specific focus in the coming months.

q. The Prison be equipped with a purpose-built Management Unit. In the interim, current arrangements be reviewed to incorporate improved record keeping, supervision and surveillance, and engagement with segregated prisoners. This is a repeat recommendation.

The Department of Corrections partially accepted this recommendation, and commented:

We wish to note that we reject the recommendation that the prison be equipped with a purpose built management unit. Any potential upgrades to the Management Unit at Hawkes Bay Regional Prison will be identified as part of the annual capital planning cycle, and will be subject to government funding.

However, we accept that Hawkes Bay Regional Prison, will review how best to improve record keeping, supervision and surveillance and engagement with segregated prisoners. Currently, prisoners on directed segregation are given more time out of their cells than the minimum entitlement and the site is proactive about revoking directed segregation orders at the first opportunity. In terms of engagement, Principal Corrections Officers meet with every individual daily and staff engage with prisoners while they are taking them to the yards, making phone calls, and while going to visits or programmes.

r. Processes for the use of force be reviewed and improvements continue to be made to record keeping.

The Department of Corrections accepted this recommendation, and commented:

Unfortunately, the individual who normally manages Use of Force record keeping was not on site at the time of the inspection. As such, some documentation was not available to the inspectors which would have contributed to better demonstrating the Hawkes Bay Regional Prison's compliance with recording requirements. This has highlighted a risk to the site and more staff are currently being included and upskilled in the management and oversight of Use of Force procedures.

- s. **Arrangements for maintaining privacy and security of information be improved. This is a repeat recommendation.**

The Department of Corrections accepted this recommendation, and commented:

In relation to your concerns on page 22 regarding the storage of confidential health complaints, Hawkes Bay Regional Prison will issue a reminder to all staff that, even if the person has included confidential health information on the PC.01 that they fill in themselves, staff are not to record health-related details verbatim into IOMS.

- t. **The regime opportunities for remand accused prisoners be significantly improved to reflect their legal status. This is a repeat recommendation.**

The Department of Corrections accepted this recommendation, and commented:

Current activities for remand accused individuals include:

- *Howard League Literacy programme*
- *Increased Intensive Literacy and Numeracy programmes*
- *Driver licensing*
- *Increased fitness and wellbeing activities led by Activity Officers*
- *Monthly participation in site wide Te Werowhakataetae challenges*
- *Secure Online Learning*
- *Self directed learning*

Remand accused prisoners have also been involved in focus groups led by the Manaaki Tairawhiti Systems Improvement Hub 2018/19. This system improvement hub allowed prisoners to provide input to Manaaki Tairawhiti on their aim to improve social outcomes by consolidating social services, iwi and government agencies under a single governance entity.

- u. **The requirement that all Prisoners wear orange overalls at visits irrespective of classification be reviewed. This is a repeat recommendation.**

The Department of Corrections rejected this recommendation, and commented:

The requirement to wear orange overalls during visits is a national requirement and not site specific. Corrections consider that due to safety and security reasons of

prison operations, it is imperative that prisoners wear readily identifiable clothing during visit sessions, particularly if there is an incident.

- v. **The policy of strip searching every prisoner after every visit be reviewed. This is a repeat recommendation.**

The Department of Corrections accepted this recommendation, and commented:

Corrections acknowledge your inspectors findings in relation to this recommendation. At a national level we are currently in the process of reconciling our searching policy and operational instruction to ascertain areas that we can strengthen or further develop guidance and instruction. One of these areas is the clarification that a risk based approach must be taken to the type of search performed after visits.

At a site level, the Acting Deputy Prison Director sent a practice reminder to all staff at Hawkes Bay Regional Prison on 22 November 2018. This has since been further reinforced by Residential Managers to their Principal Corrections Officers to monitor practice.

Since this time, high security visits have been monitored and practices observed and the practice appears to have improved. Hawkes Bay Regional Prison is applying the correct policy, with a strip search of a prisoner only occurring when there is reasonable cause. This will be a focus for the site going forward.

- w. **The Prison acquires the necessary authorisations to allow the different categories of youth to mix. This is a repeat recommendation.**

The Department of Corrections accepted this recommendation, and commented:

Corrections accept that there is no formal exemption in place for youth at Hawkes Bay Regional Prison. There is operational instruction in the Prison Operating Manual (POM) which supports the sites practice.

Hawkes Bay Regional Prison has completed the request for exemption and this is being considered.

Appendix 3. Legislative framework

In 2007, the New Zealand Government ratified the United Nations Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

The objective of OPCAT is to establish a system of regular inspections undertaken by an independent national body to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

The Crimes of Torture Act 1989 (COTA) was amended by the Crimes of Torture Amendment Act 2006 to enable New Zealand to meet its international obligations under OPCAT.

Places of detention

Section 16 of COTA identifies a '*place of detention*' as:

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

(a) a prison ...

(c) a court cell.

Pursuant to section 26 of COTA, an Ombudsman holding office under the Ombudsmen Act 1975 (Ombudsmen Act) was designated a National Preventive Mechanism (NPM) for certain places of detention, including prisons and court cells.

Carrying out the NPM's functions

Under section 27 of COTA, an NPM's functions, in respect of places of detention, include:

- to examine, at regular intervals and at any other times the NPM may decide, the conditions of detention applying to detainees and the treatment of detainees; and
 - to make any recommendations it considers appropriate to the person in charge of a place of detention;
 - for improving the conditions of detention applying to detainees;
 - for improving the treatment of detainees;
 - for preventing torture and other cruel, inhuman or degrading treatment or punishment in places of detention.

Under COTA, NPMs are entitled to:

- access all information regarding the number of detainees, the treatment of detainees and the conditions of detention;
- unrestricted access to any place of detention for which they are designated, and unrestricted access to any person in that place;

- interview any person, without witnesses, either personally or through an interpreter; and
- choose the places they want to visit and the persons they want to interview.

Section 34 of the COTA, confers the same powers on NPMs that NPMs have under any other legislation when carrying out their function as an NPM. These powers include those given by the Ombudsmen Act to:

- require the production of any information, documents, papers or things that, in the Ombudsmen's opinion, relates to the matter that is being investigated, even where there may be a statutory obligation of secrecy or non-disclosure (refer sections 19(1), 19(3) and 19(4) of the Ombudsmen Act); and
- at any time enter and inspect any premises occupied by any departments or organisation listed in Schedule 1 of the Ombudsmen Act (refer section 27(1) of the Ombudsmen Act).

To facilitate the exercise of the NPM function, the Chief Ombudsman has authorised inspectors to exercise the powers given to him as an NPM under COTA, which includes those powers in the Ombudsmen Act for the purpose of carrying out the NPM function.

More information

Find out more about the Chief Ombudsman's NPM function, inspector powers, and read his reports online: www.ombudsman.govt.nz under What we do > Protecting your rights > Monitoring places of detention.