

## Ombudsman New Zealand

### Key themes for the Committee's consideration

In the period between the Committee against Torture's last review of New Zealand in 2015 and the present, I have conducted over 500 visits to places of detention. While I have observed some examples of good practice in many facilities, I remain concerned that limited progress has been made in other areas the Committee previously commented on. My submission outlines the **deep and multifaceted concerns I have raised about conditions and treatment** for people in places of detention, which, in some cases, may contravene the Convention. To assist the Committee, I have identified the following key themes:

#### Treaty of Waitangi | Te Tiriti o Waitangi obligations and lack of cultural capability

Te Tiriti o Waitangi is considered New Zealand's founding document. It is an agreement between Māori, New Zealand's indigenous people, and the British Crown. Te Tiriti o Waitangi and human rights of Māori are yet to be fully realised as set out by the United Nations Declaration on the Rights of Indigenous People, particularly the right of self-determination. The government must immediately address the inequities experienced by Māori across all places of detention. In particular, I am deeply concerned by the lack of appropriate cultural provision for Māori in prison, despite Māori being disproportionately overrepresented in New Zealand prisons. Cultural capability should also be expanded to encompass the needs of other ethnic groups, including Pacific people.

#### Substandard environmental and material conditions

Despite making repeated recommendations related to substandard material conditions of many prisons and health and disability places of detention, I remain extremely concerned that people across New Zealand are deprived of their liberty in facilities that are neither fit for purpose nor conducive to their wellbeing. The design of many prisons does not support custodial staff to ensure the provision of minimum standards. Moreover, a number of health and disability places of detention are rundown and adversely impact wellbeing and recovery. I would encourage the Committee to scrutinise the environmental and material conditions of places of detention in New Zealand.

#### Excessive use of force and restrictive practices

I am particularly concerned about use of force that is not consistent with international human rights standards but is authorised by domestic policies and practice guidelines, including in the use of pepper spray, spit hoods and mechanical restraints. I have observed instances where force has been used on people in custody and mental health facilities, which did not appear to be necessary or proportionate. I have also raised concerns about the high number of staff without current appropriate training to prevent, deescalate and safely use restraint. I remain extremely concerned about practices which may amount to solitary confinement. In health and disability places of detention, I have raised concerns that a lack of appropriate safeguards has meant that people who are not detained by law experience restrictions which may amount to deprivation of liberty.

#### Incompatibility of domestic law with CAT

While some work is underway to review and reform several pieces of legislation relevant to the treatment of people deprived of their liberty in New Zealand, there is no systematic programme of work to ensure that

non-complaint legislation is identified and progressively brought into alignment with contemporary human rights principles. There is also discordance in New Zealand between current legislation that permits compulsory treatment and assessment. For instance, repealing and replacing the Mental Health (Compulsory Assessment and Treatment) Act can be seen as a positive step forward but this needs to be balanced with the fact that New Zealand introduced new legislation in 2017 that allows compulsory assessment and treatment for substance addiction. New Zealand's current legal framework (particularly legislation pertaining to health and disability) is also based on substituted decision-making rather than a supported decision-making approach. The government needs to ensure compatibility of domestic law with the CAT and I encourage you to make enquiries in this regard.

## Shortcomings in disability rights and mental healthcare

In September 2022, the UN Committee on the Rights of Persons with Disabilities recommended that New Zealand repeal any laws/policies and end practices/customs that deny or diminish disabled people's recognition before the law, and the Disability Convention itself notes that there should be no laws permitting detention or forced treatment on the basis of disability. Unfortunately, people with psychosocial, cognitive, and learning/intellectual disabilities continue to be subject to detention in institutional settings, to treatment without consent, and to a lack of independent support and advocacy. It is well known that disabled people are overrepresented in places of detention. When deprived of liberty there is often inadequate disability and mental health support. For example, I have frequently commented on the shortcomings of mental healthcare in prisons, particularly for those experiencing acute distress. I have also raised specific concerns regarding the lack of targeted clinical training on intellectual disability for staff working in health and disability places of detention in New Zealand, and questioned whether the rights of disabled people in custody are respected and protected.

## Workforce, staffing and occupancy concerns

Current acute staffing shortages in many New Zealand prisons and across health and disability places of detention, including mental health services, intellectual disability services and in privately-run aged care facilities are having a significant impact on the wellbeing of people deprived of liberty. While staffing shortages have been amplified by the COVID-19 pandemic, I had drawn attention to the impact of ongoing staff shortages prior to early-2020. These workforce issues have been used to justify the infringement of human rights, often for prolonged periods or in ways which may lead to ill-treatment. I encourage the Committee to consider New Zealand's obligations to maintain sufficient levels of trained staff, in the necessary roles, in all places of detention, in order to comply with human rights obligations. High occupancy levels and complex operational environments in places of detention can exacerbate workforce issues. I have repeatedly raised serious concerns regarding the over-occupancy on inpatient mental health services. I consider that this issue creates a significant risk that service users are subjected to conditions that may amount to ill treatment.

## Lack of safeguards for those detained in aged care

Since New Zealand's last review, my inspections programme has been extended to include people detained in privately-run aged residential care facilities. I am concerned about the lack of legal and procedural safeguards for those detained in these facilities and have also observed variable practice in the application of New Zealand's current legal framework. I welcome any comments the Committee wishes to make on the existence and effectiveness of current safeguards in aged residential care settings to ensure that any deprivation of liberty is lawful and subject to effective regulation and oversight. These facilities are largely privately run. I welcome any guidance from the Committee regarding how best to achieve the preventive objective with this group.