



09 June 2026

Hon. Andrew Bayly
Chairperson
Justice Committee

Tēnā koe Mr Bayly

Corrections (Management of Prisoners, and Prisoners' Property) Amendment Bill

1. Thank you for the opportunity to comment on the Corrections (Management of Prisoners, and Prisoners' Property) Amendment Bill (the Bill).
2. As the Committee will be aware, the Ombudsman is an independent Officer of Parliament who forms part of the system of checks and balances on the exercise of public power within New Zealand's constitutional system.
3. My role includes:
 - a. overseeing complaints about the administrative actions and decisions of the Department of Corrections (the Department) under the Ombudsmen Act 1975 (OA); and
 - b. as a National Preventive Mechanism (NPM) under the [Optional Protocol to the Convention Against Torture](#) (OPCAT) and the Crimes of Torture Act 1989 (COTA), monitoring the conditions and treatment experienced by individuals detained in New Zealand in prisons and otherwise in the custody of Corrections.¹
4. Pursuant to the role as NPM, my predecessor, Sir Peter Boshier, undertook an examination of the Prisoners of Extreme Risk Unit (the PERU) in 2023 and 2024 leading to the publication of the OPCAT Report on the Prisoners of Extreme Risk Unit² ([the PERU report](#)) in December 2024. My understanding is that this Bill, in part, attempts to address the PERU report's recommendations and findings.
5. Since becoming Chief Ombudsman I have visited the PERU and other prisons and spoken with some of those in custody as well as with staff.

Executive summary

6. We acknowledge the challenges faced by the Department in managing prisoners deemed to pose 'extreme risk' and are not opposed to legislative change to achieve a humane and rights-based risk management framework. We appreciate that the measures in this Bill are

¹ [Gazette Notice](#), 2025-go4014

² OPCAT Report: *Report on an examination of the Prisoners of Extreme Risk Unit under the Crimes of Torture Act 1989*, December 2024

an attempt to address a key recommendation of the PERU report; that any specialist regime within the Corrections system guarantee the *safe, humane, transparent, and fair management of people in custody, in compliance with international obligations and domestic legislation*.³

7. However, we are concerned that the broad changes introduced in this Bill not only legitimise the PERU operating model, they will embed overly restrictive practices across a much wider and poorly defined cohort of prisoners and will result in a cumulative lowering of standards that fall short of international guidance and best practice. Our primary concerns are:
 - a. The Bill significantly widens the Department's ability to segregate prisoners by introducing new grounds relating to a prisoner's likelihood to commit an offence, to radicalise others, or to recruit to an ideology causing harm or an organised criminal group. These new grounds are ill-defined and relatively vague and will be applicable to the entire prison population. There is a risk that segregation decisions in respect of the new grounds will be based on subjective assessments by prison staff. There is no explicit right of review outlined in this Bill or in current legislation.
 - b. People subject to long periods of segregation are at risk of prolonged solitary confinement which can result in permanent negative impacts on physical and mental wellbeing.⁴ Measures in the Bill aimed at mitigating the harms of prolonged solitary confinement,⁵ such as a minimum hours requirement for meaningful human contact, fall well below international standards of treatment and set a low bar for the level of human contact prisoners are entitled to. In our view, this approach risks embedding solitary confinement as a tool of prison management.
 - c. The Bill introduces a 'designated management prisoner' regime that allows vaguely defined 'restrictive management' based on a subjective and broad assessment of risk and does not appear to require a close connection between the type of risk posed and the restrictive conditions imposed. The decision-making processes for subjecting prisoners to restrictive management measures are not sufficiently robust in terms of natural justice considerations. The lack of explicit reference to rehabilitation pathways and exit criteria are a significant concern, particularly as this is a key criticism of the PERU model.
 - d. The Bill fails to address, and to safeguard against, the potential impact on Māori and fails to ensure appropriate cultural support and provision for cultural needs.
 - e. The Bill lacks appropriate safeguards against the harmful impacts of restrictive measures on disabled people and those experiencing mental distress.
8. As outlined in the Explanatory note, the Bill aims to address issues raised by monitoring agencies in respect of the management of prisoners deemed to pose extreme risk. Our concerns in respect of the conditions and treatment experienced by this cohort are outlined

³ The PERU report, page 73

⁴ As acknowledged in the Explanatory note

⁵ As stated on page 4 of the Explanatory note

in the PERU report. Following the publication of this report, our direct input into the development of this Bill has been limited to our feedback on the Department's early options paper, *Consultation on options for a more transparent management of extreme threat prisoners: Discussion document 2025* (appended). Our comments in this submission are based on our reading of how the measures in the Bill respond to our concerns about the treatment of prisoners deemed to pose extreme risk, as well as how the Bill may impact the wider prison population. We have not had the opportunity to engage with the Department on the measures contained in this Bill or how they will be operationalised – our view is that this engagement is essential given the risks we highlight in our submission.

9. We encourage the Committee, in its scrutiny of this Bill, to assess whether the Bill contains sufficient legislative safeguards and protections to ensure that prisoners are treated fairly, proportionately, and consistently with applicable human rights standards. This includes the standards outlined in the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), as expressly referenced in section 5(1)(a) of the Corrections Act 2004.⁶

Segregation provisions

New segregation grounds

10. The Bill introduces new grounds for directing the segregation of a prisoner – and therefore restricting or denying their ability to associate with other prisoners. These new grounds are applicable to the general prison population as well as to those subject to designated management.
11. The three new grounds for directing the segregation of a prisoner are based entirely on the view of the prison manager as to whether:
 - a. offences (other than offences against discipline) would otherwise be committed,
 - b. a prisoner or another person would otherwise be radicalised or recruited to an ideology and that would likely result in harm to that radicalised or recruited other person or others,
 - c. a prisoner or another person would otherwise be recruited into an 'organised criminal group'.
12. Currently the grounds for directed segregation include protective custody, security/good order of the prison, safety of others, and medical oversight. The proposed new provisions are a notable shift from these essential, basic protective measures. In our view these new grounds involve a subjective assessment of ill-defined and nebulous concepts that a prison manager may not be well placed to assess without wider input and expert advice.
13. A process for assessing individuals against these new grounds is not outlined in the Bill. For example, it is unclear how '*offences (other than offences against discipline) would otherwise be committed*' is to be interpreted. We see a significant risk of procedural unfairness and

⁶ *Taylor v Attorney-General* [2022] NZHC 3170 discusses s5(1)(b) of the Act expressly providing that a core purpose of the corrections system is to provide for prisons to be operated in accordance with the Mandela Rules

potential overreach in a prison manager making informal adjudications as to how likely it is that an individual would otherwise commit an offence. We query how prison staff will assess the likelihood of an offence being committed, what kind of evidence they will assess, and whether it is appropriate for prison staff to be making quasi-judicial assessments and determinations of this nature.

14. Likewise, it is unclear what kind of evidence is required to determine whether a prisoner is likely to radicalise or recruit others to an ideology that would likely result in harm to others. Our concern is that without clear guidelines and process, including expert or specialist input and advice, there is a risk of decisions on this segregation ground being made through a subjective lens with a possibility of bias. This may lead to an inconsistent application of these grounds across the prison network, based on the views of individual prison managers.
15. We are also concerned at how widely these new grounds may be applied in practice and wish to emphasise the importance of the new requirement that any denial or restriction of association with other prisoners must not be more restrictive than is reasonably necessary to ensure that maintenance of the law and the safety of the public, staff and persons under control or supervision.⁷
16. Segregation is not just an operational tool; it is a highly restrictive measure that can result in harmful effects for the individuals subject to it. Its use should be highly restricted. Our expectation is that prisoners are only confined to their cell, segregated, or otherwise limited in their opportunities to associate with others, as a last resort. These measures must be proportionate, for the shortest time necessary and must never amount to solitary confinement.⁸ Accordingly, segregation grounds must be carefully defined and contained. If these new provisions are to be carried forward, we recommend that the legislation build in guidance and processes for how these new segregation grounds are to be applied in practice.

Variations in association status (denied to restricted)

17. We acknowledge that the proposed change to allow prisoners to be moved from denied association to restricted association⁹ without the need to revoke and replace the order for a new order is likely to create efficiencies in the management of prisoners. However, in our view this flexibility should not apply to prisoners moving from restricted association to denied association. All moves to a higher level of restriction should be evidence-based, subject to appropriate oversight, with the prisoner afforded a right of review.
18. Further, it is our view that improved safeguards against arbitrary denial of association are necessary at the commencement of a direction, as well as when moving between restricted and denied status. Our OPCAT inspectors have frequently seen association being denied

⁷ Proposed section 57(2)

⁸ Ombudsman's *OPCAT Expectations for conditions and treatment of people in custody in prisons and otherwise in the custody of the Department of Corrections, and residents in residences established under section 114 of the Public Safety (Public Protection Orders) Act 2014*, June 2023 ([OPCAT Expectations](#)), see Expectation 2

⁹ At proposed section 58(2A)

without adequate consideration of whether denial of association is necessary, or without appropriate consideration of who prisoners may be able to associate with.

Opportunities for review

19. We note that the new segregation provisions do not introduce any process for prisoners to request review of segregation decisions, with the Bill essentially replicating the Act's existing provisions. We encourage the Committee to consider how the rights and protections of prisoners segregated under the Act can be strengthened. We see this Bill as presenting an opportunity to include a clear legislative process for prisoners to seek a review of segregation decisions. We have expressed our view to the Department in the past that, while the processes for seeking review of segregation decisions are implied in the legislation,¹⁰ and are outlined in the Prisons Operations Manual, it is preferential for this to be an explicit right within legislation.
20. We also suggest that prisoners be afforded the right to be heard and respond to any considerations taken into account by the decision-maker as part of that review. Under current process, as outlined in the Prison Operations Manual, a Visiting Justice may request to speak with the prisoner, but the prisoner has no specific right to be heard.

Prolonged solitary confinement and meaningful human contact

21. One of our key concerns with this Bill is that, if enacted, it risks legitimising solitary confinement as a tool of prison management, rather than as a measure of last resort.¹¹ The proposed provisions empower the Department to detain people in circumstances that are contrary to the Mandela Rules guidance on solitary confinement and risk breaching the Mandela Rules prohibition on prolonged solitary confinement, as well as other forms of solitary confinement (see paragraph 32).
22. The Mandela Rules define solitary confinement as 'confinement of prisoners for 22 hours or more a day without meaningful human contact'.¹² Prolonged solitary confinement is defined as 'solitary confinement for a time period in excess of 15 consecutive days' and is prohibited under Rule 43.1.¹³¹⁴
23. In contrast, and in an attempt to avoid subjecting people to prolonged solitary confinement, the Bill introduces a new minimum entitlement¹⁵ that a prisoner must be given the opportunity to receive at least 10 hours of meaningful human contact in each 14-day period. As well as being at odds with the Mandela Rules, we consider there to be a high risk that a bare-minimum compliance approach will be taken to implementing this requirement

¹⁰ see *Mitchell v Attorney General* [2015] NZHC 329 at [18] 'It needs to be stressed that it is a statutory right to have the administrative segregation reviewed by a Visiting Justice if the prisoner requests. That is the only sensible inference one can draw from s 58(3)(b) of the Act'.

¹¹ Mandela Rule 45

¹² Mandela Rule 44

¹³ See rule 43 Mandela Rules, prolonged solitary confinement is listed as an example of treatment considered to be torture or ill-treatment.

¹⁴ See also Ombudsman's [OPCAT Expectations](#), Expectation 2

¹⁵ At proposed section 69A

with little engagement with the actual rationale and aim of facilitating meaningful human contact.

24. While we see the intention of prohibiting prolonged solitary confinement as a positive development, we wish to draw the Committee's attention to the risks of legitimising standards and a definition that do not align with international standards as well as with the Act's own purpose.¹⁶ In our view, this approach will not mitigate the risks of harm and actual impacts on those confined to their cells for extended periods. We are unsure of the rationale for introducing a standard that is inconsistent with the Mandela Rules but assume that this is based on operational and resourcing constraints. If this is the case it is essential to address those constraints rather than embedding this lower standard.

Meaningful Human Contact

25. Solitary confinement can have severe and long-lasting negative outcomes for the health and wellbeing of an individual, and, in some circumstances, prolonged solitary confinement can amount to torture or other cruel, inhuman, or degrading treatment or punishment.¹⁷ Negative outcomes include anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia, psychosis, self-harm and suicide. The combination of these symptoms is considered 'isolation syndrome' and can have severe impacts on a person's personality.¹⁸ Our OPCAT inspectors have seen the harmful effects of solitary confinement on people in a range of detention environments, including impacts that are well documented in the PERU report. These include a prisoner's comment that his confinement '*makes me feel like I am dead*' and accounts of prisoners struggling with human contact after periods of confinement.¹⁹
26. Ensuring that prisoners have sufficient access to meaningful human contact is a key mitigation against the harmful effects of segregation and any other form of confinement. 'Meaningful human contact' is undefined in the Mandela Rules. The inherent difficulties in defining a term that will have different meanings for different individuals are outlined in the Regulatory Impact Statement: Framework for the management of extreme threat

¹⁶ As outlined at section 5(1)(b)

¹⁷ PERU report, page 23, see also Penal Reform International's Solitary confinement webpage (2021) at <https://www.penalreform.org/issues/prison-conditions/key-facts/solitary-confinement/>. Accessed online on 1 June 2026.

¹⁸ Penal Reform International and the Essex Human Rights Centre. (2017). *Essex paper 3: Initial guidance on the interpretation and implementation of the UN Nelson Mandela Rules*, page 86 referencing Grassian S, 'Psychiatric effects of solitary confinement', *Journal of Law and Policy*, Vol. 22, 2006, pp. 325-383; Craig Haney, 'Mental health issues in long-term solitary and "supermax" confinement', *Crime & Delinquency*, Vol. 49, No. 1, 2003, pp. 124-156; Sharon Shalev, *A sourcebook on solitary confinement*, Mannheim Centre for Criminology, London School of Economics, 2008; UN General Assembly, 66th Session, *Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment*, 5 August 2011, A/66/268

¹⁹ See pages 25 and 26 for example

prisoners.²⁰ Some individuals may value in-person contact with other prisoners and visits, while others may prioritise phone conversations with friends and whānau.²¹

27. In *Taylor v Attorney-General* [2022] NZHC 3170, the High Court described the term ‘meaningful human contact’ as importing:²²

... a contextual and fact-specific inquiry into the degree, nature, duration, and quality of the human contact. The fact-specific analysis is relevant to both whether the conditions of detention amount to unlawful solitary confinement, and, if so, whether that treatment also amounts to a breach of s 23(5) [of NZBORA].

28. Further, the Court said the concept of meaningful human contact does not readily lend itself to hard and fast rules or concrete definition.²³ Accordingly, as outlined below, we have some reservations with the introduction of a prescriptive definition that gives insufficient weight to prisoner needs and views in terms of the types of contact that are meaningful to them.

The ‘prohibition’ on prolonged solitary confinement

29. In our view the Bill does not include an explicit prohibition on prolonged solitary confinement. A ‘prohibition’ is referred to in a heading²⁴ within the new section 69A but this section then introduces a minimum entitlement that could still allow for long periods of confinement and isolation with minimal or no meaningful human contact and is contrary to the purpose and spirit of the Mandela Rules, i.e. to prevent the harmful effects of such treatment.
30. The 10-hour minimum requirement for meaningful human contact equates to approximately 43 minutes per day. This could also be applied to allow a person to receive three hours of ‘contact’ one day, and then none for the following three or more days (as an example). The new section also notes that 14 hours within a seven-day period is ‘desirable’ but is not an entitlement. In our view, 14 hours of meaningful human contact per seven days should be viewed as the minimum in terms of international best practice, rather than just considered ‘desirable’. We are concerned at the creation of a legal framework where highly isolating conditions are deemed acceptable provided a bare minimum contact threshold is met.
31. Section 69A also includes a high-level definition of ‘meaningful human contact’ but then includes a prescriptive list of what kind of contact is to be offered and creates broad exceptions to meeting the duty. While it is positive to see that the prisoner’s preference is to be ‘taken into account’, we recommend this should be given higher priority and more

²⁰ Regulatory Impact Statement: Framework for the management of extreme threat prisoners, June 2025, page 12

²¹ See Deborah Russo ‘*There Is No Such Thing – Meaningful Human Contact in Prison Under International Law*’ (Howard Journal of Crime and Justice, 2025

²² At [123].

²³ *Taylor* at [127]

²⁴ Noting that in legislation a heading is an interpretative guide but does not override the meaning of a statute’s provisions

weight, as this is the most appropriate way of determining the nature of human contact needed by each individual.

32. Further, in its focus on prolonged solitary confinement the Bill fails to engage with other important Mandela Rules considerations in respect of solitary confinement. We ask that the Committee consider how to better incorporate the protections outlined in the Mandela Rules including the:
- a. prohibition on indefinite solitary confinement.²⁵
 - b. requirement that solitary confinement is to be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review.²⁶
 - c. prohibition on imposing solitary confinement in the case of disabled prisoners when their conditions would be exacerbated by such measures.²⁷
33. In our view, the [Ministry of Justice Bill BORA analysis](#)²⁸ overlooked the risk that operationalisation of these provisions may engage section 9 of the Bill of Rights Act 1989, the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment. The Mandela Rules identify prolonged solitary confinement and solitary confinement that exacerbates mental distress or disability, as examples of torture or ill-treatment²⁹ and this Bill lacks sufficient safeguards to mitigate these against these forms of solitary confinement.
34. We affirm that, in our OPCAT monitoring of people detained in the custody of the Department, we will continue to assess solitary confinement and access to meaningful human contact in accordance with the standards outlined in the Mandela Rules and by looking at the actual impacts on individuals of the conditions and treatment they experience while in custody.

Designated Management Prisoners

35. The PERU report identified a lack of process, transparency, accountability and external scrutiny in respect of how decisions were made to place people in the PERU.
36. The Bill seeks to address these concerns through the new 'designated management prisoner' (DMP) regime, by introducing measures to allow prisoners deemed to pose an extreme risk to be managed in a more restrictive manner. It appears that the new DMP designation will effectively override the existing security classification framework and create a new security classification based on much less clearly defined and speculative criteria. Similar to our comments on the new segregation grounds, we have particular concerns in

²⁵ Mandela Rule 43(1)(a)

²⁶ Mandela Rule 45(1)

²⁷ Mandela Rule 45(2)

²⁸ <https://justice.govt.nz/assets/Documents/Publications/20260123-NZBORA-advice-Corrections-Management-of-Prisoners-and-Prisoners-Property-Amendment-Bill-for-publication.pdf>

²⁹ Mandela Rule 43

respect of how an 'extreme risk' of certain conduct, such as 'radicalising or recruiting another person likely to result in harm' will be assessed.

37. We are also concerned that the Bill does not explicitly require any consideration of prisoner wellbeing or the impacts of restrictive management on the individual involved. In our view considerations such as disability, mental well-being, and cultural needs ought to be taken into account when making decisions as to the nature of the restrictive measure to be applied.
38. We view the inability of the Chief Executive to delegate decision-making on DMPs as positive in terms of accountability but have many questions about how the new DMP model will work in practice.

Restrictive management

39. 'Restrictive management' is undefined, with the Bill merely providing examples³⁰ of measures that may constitute restrictive management. Providing a non-exhaustive list of examples in this manner appears to allow a broad discretion that may risk both breaches of human rights standards and the imposition of arbitrary or excessively restrictive measures.
40. It is unclear who is to be responsible for determining the restrictive management measures to be applied in each individual case and how they are to be applied. We suggest the Committee ask the Department how they see this model working in practice. For example:
 - a. Will DMPs be managed via a segregation direction and a management plan? Or is there another measure entirely that may be applied?
 - b. How will the risk management measure address the identified risk? Is a clear connection required? Will there be a process for ensuring that the measure is justified and proportionate to the risk identified?
 - c. The wording of proposed sections 52B and 52C implies that remand prisoners, young people, and immigration detainees³¹ could be designated as DMPs. If this an intended outcome, how will these cohorts be managed and will there be any differences in their treatment and conditions?

Advisory Panel

41. There is a lack of detail as to how the advisory panel is to be appointed and what experience, qualifications and skills they may require. It is not clear whether all appointments are to be independent, from within the Department, or a mix of both. Given the nature of the advice the panel will be expected to provide, our expectation is that the panel members will have in-depth understanding of considerations such as:

³⁰ See proposed section 52L

³¹ Those detained in Corrections custody pursuant to a warrant of commitment under the Immigration Act 2009

- a. te ao Māori, tikanga and the Treaty of Waitangi| te Tiriti o Waitangi,³² with an appreciation of the risk that Māori may be disproportionately affected by DMP decisions.
- b. disability needs and reasonable accommodations
- c. mental distress and other mental wellbeing considerations
- d. cultural awareness relevant to the individuals being assessed for DMP designation
- e. the dynamics of radicalisation, extremism and ideological recruitment
- f. human rights specific to people in custody

Natural Justice Considerations

42. We suggest the Committee also review the DMP decision-making process from a natural justice perspective. In our view there are key points in the process where natural justice considerations should be strengthened, including:
- a. A legislative requirement that the advisory panel provide reasons for their recommendations to the Chief Executive, and that these reasons are made available to the prisoner being considered for DMP status.
 - b. A legislative requirement that the proposed DMP be afforded the opportunity to comment on the advisory panel's reasons and recommendation before it is finalised.
 - c. Incorporation of rights of review of all DMP designation decisions, including clear processes for participation in these reviews. Clear information on how to request, and participate in, a review should be provided when a prisoner is informed of interim and final designation decisions. On current drafting it appears that the only right of review accessible to DMPs is in situations where the Chief Executive is satisfied that new information has become available or a change in circumstances has occurred. Further, that right of review is referenced in vague terms at section 52K(3), we suggest that this could be made more explicit.
 - d. An ability of the DMP to access, and respond to, the information considered by the Chief Executive when undertaking a review of DMP status. This could be information considered by the panel as well as any other information the Chief Executive considers relevant to their decision.³³

Rehabilitation pathways

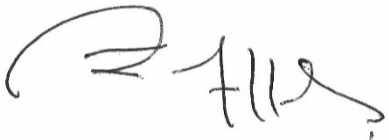
43. The Bill does not include specific reference to rehabilitation opportunities for DMPs, measures to assess rehabilitation progress, and opportunities or criteria for exiting DMP status. The Bill could be strengthened in this regard by requiring each DMP to have an individual management plan with access to appropriate rehabilitation programmes and

³² We acknowledge that these two texts have different meanings

³³ Proposed section 54K(4)

mandatory periodic reviews of the plan and progress against benchmarks outlined in the plan. Culturally appropriate support ought also to be included.

44. Finally, we note the length of a final DMP designation, up to 2 years, far exceeds standard security classifications which last for 6 months. We suggest that more regular reviews ought to be built into the legislation due to the potential harmful impacts of imposing restrictive management measures for such extended periods of time.

A handwritten signature in black ink, appearing to read 'John Allen', is written over a light blue rectangular background.

John Allen
Chief Ombudsman