First, Do No Harm

Segregation, restraint, and pepper spray use in women's prisons in New Zealand

Dr Sharon Shalev

NZ Human Rights.
Te Kāhui Tika Tangata
Human Rights Commission

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This report was commissioned by the
New Zealand Human Rights Commission.

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ISSN: 978-0-478-35620-5 (print)

ISSN: 978-0-478-35621-2 (web)

Published November 2021
Auckland, Aotearoa New Zealand

Design: Verso Visual Communications

Whakataukī

Me aro ki te hā o Hine-ahu-one

Pay heed to the mana of women

Acknowlegements

This report has its origins in findings made during the analysis of data for my previous report for the New Zealand Human Rights Commission (HRC), "*Time for a Paradigm Shift*", and my deep concern about what I observed regarding the treatment of women in Aotearoa New Zealand's prisons.

I should like to express my sincere thanks to the Human Rights Commission for enabling me to undertake this in-depth look into restrictive practices in women's prisons. It has meant that I have been able to examine if and how things have changed over the course of the four years since my first report on restrictive practices, and whether promises and policy statements were acted on.

Special thanks are due to John Hancock, Chief Legal Adviser, HRC, for commissioning this report and supporting its progress; to Jaimee Paenga, Legal Adviser, HRC, who worked alongside me on this project from the very start; and to Eleanor Vermunt and Nicky Wynne for excellent briefings and help in bringing the project to completion. Many thanks also to Rachna Nath, Jessica Ngatai, Charm Skinner and Dr Esther Rootham at HRC for their thoughts, comments, and help in ensuring that this report is widely available. Finally, my heartfelt thanks to Chief Human Rights Commissioner Paul Hunt; Disability Rights Commissioner Paula Tesoriero MNZM; Race Relations Commissioner, Meng Foon; and Equal Employment Opportunities Commissioner, Dr Saunoamaali'i Karanina Sumeo for their ongoing support.

My thanks to the Department of Corrections, and to Jeremy Lightfoot, its Chief Executive Officer, for engaging with me as a critical friend. Thanks also to solicitor Amanda Hill for taking the time to comment on the report. My warm thanks to the Office of the Ombudsman for their ongoing work, and for their support and excellent comments on a draft of this report and helping to make it better. Janet Anderson-Bidois, Eric Fairbairn, Patrick, Lucy and Emma have shared thoughts and comments on drafts of this report; Christine McCarthy has proofed it; and Jacinda Torrance of Verso Visual Communications has worked with me on layout and design. My thanks to them all.

Last but not least, I am grateful to the many people who engaged with me during our visit to Auckland Region Women's Corrections Facility – managers, staff, and, in particular, incarcerated women, for sharing their experiences and thoughts with us. It is my sincere hope that this report will serve to help improve their treatment and conditions.

Sharon Shalev
London, October 2021

Foreword

In 2016, the Human Rights Commission invited Dr Sharon Shalev to undertake a review of seclusion and restraint practices in New Zealand's places of detention. Her 2017 report, *Thinking Outside the Box: A Review of Seclusion and Restraint Practices in New Zealand*, contained an extensive suite of recommendations to improve policies and practices in New Zealand. Her 2020 follow-up report, *Time for a Paradigm Shift*, reviewed progress made against her 2017 recommendations.

We welcome Dr Shalev's latest report, *First, Do No Harm: segregation, restraint and pepper spray use in women's prisons in New Zealand*, which turns a spotlight on women's experiences in prison and builds upon the findings in her previous reports. The report underscores the vulnerability of women prisoners, many of whom have experienced high levels of trauma and socio-economic deprivation throughout their lives.

This report is a timely call for compassion and care toward some of our most vulnerable.

Me aro ki te hā o Hine-ahu-one – Pay heed to the mana of women

Women in our prisons have the human right to be treated with respect for their inherent mana and dignity.

All women in prison should enjoy the human rights protections contained in the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights; the Standard Minimum Rules for the Treatment of Prisoners; the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; and the Convention on the Elimination of All Forms of Discrimination against Women. The gender-specific rights of women prisoners are further protected under the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the 'Bangkok Rules').

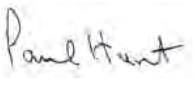
We also highlight the rights of wāhine Māori enshrined in Te Tiriti o Waitangi and reinforced by international human rights standards, including the United Nations Declaration on the Rights of Indigenous Peoples, which affirms Indigenous Peoples' right to tino rangatiratanga, self-determination, dignity, equality and freedom from discrimination.

This important report highlights shortcomings, in policy and practice, where these human rights standards are not being met, and where, as a result, some of our most vulnerable women have been subject to intolerable indignities.

There is an urgent need for government, and all public servants responsible for the care of women in prisons, to ensure that New Zealand prisons meet the human rights standards our country has committed to respect.

On behalf of the Human Rights Commission, we warmly thank Dr Shalev for the important human rights contribution she has made through her reports and recommendations. We acknowledge her knowledge, experience, insights, efforts, and passion in addressing these vital and challenging human rights issues.

Readers should be cautioned that this report addresses self-harm and use of force, and some may find the content very distressing.



Paul Hunt
Chief Commissioner
Te Amokapua

Saunoamaali'i Karanina Sumeo
Equal Employment Opportunities Commissioner
Kaihautū Ōritenga Mahi

Contents

List of figures

Executive summary

This report, *First, Do No Harm: segregation, restraint, and pepper spray use in women's prisons in New Zealand* was written by Dr Sharon Shalev at the invitation of the Human Rights Commission. It follows *Time for a Paradigm Shift: a follow up review of seclusion and restraint practices in New Zealand* (Human Rights Commission, 2020), and the concerns identified in that report regarding the use of solitary confinement and force against women in prison, particularly Māori women. This report is informed by data obtained during the preparation of the *Paradigm Shift* report from the Department of Corrections in the 2019 calendar year, as well as observations by the author during a visit to Auckland Region Women's Corrections Facility (ARWCF) in July 2020.

This report shines a light on harmful practices in women's prisons in New Zealand. It finds that while there have been some encouraging policy developments in recent years, such as the Department of Corrections *Change Lives Shape Futures: Wahine – E rere ana ki te Pae Hou (Women rising above a new horizon): Women's Strategy 2017–2021* and the *Hōkai Rangi: Ara Poutama Aotearoa Strategy: 2019-2024* with its commitment to kaupapa Māori approaches, deep challenges remain. In particular, the report identifies a worrying gap between policy statements and practices on the ground. Despite the recognition of the different and complex needs of women in prison, segregation (solitary confinement) and use of force practices applied in men's prisons are replicated in women's prisons, often in response to minor incidents. The report calls for a unique response that: centres around the particular needs and challenges of women; reflects women's distinctive roles within their families and communities; minimises the harm caused by segregation and use of force against women. By focusing on the detail of practices in these areas and the degree of their compatibility with big-piece statements, this report seeks to help facilitate a transition in attitudes and practices on the ground.

Key findings

- Overall, there is a continued and high use of solitary confinement and other punitive practices towards women. In 2019 women were segregated significantly (73%) more often than men in New Zealand's prisons.
- While the majority of segregations were relatively short, there were 101 occasions in 2019 where women spent 15 days or longer in segregation, a period defined as 'prolonged' and prohibited as a form of torture or cruel, inhuman or degrading treatment or punishment in the UN Nelson Mandela Rules.
- Māori and Pacific women were disproportionately segregated in Management and Separates Units used for control and punishment. At Auckland Region Women's Correctional Facility ('ARWCF'), 78% and 75% of segregations in the Separates and Management Units respectively were of Māori women. As many as 93% of segregations lasting 15 days or longer in the Management Unit were of Māori or Pacific women.
- Conditions, security arrangements and regime at the Management and Separates Units at ARWCF mirrored those in men's prisons and were correspondingly harsh.
- Women's management plans were focused on compliance. Staff attitudes appeared often to be punitive and inflexible and opportunities to de-escalate situations were missed. It was not clear what women had to do to demonstrate good behaviour and there was little evidence of encouragement of pro-social behaviour.
- Intervention and Support Unit ('ISU') cells were not always used for their intended protective purpose, nor were staff always clear about the criteria for placement. Women continued to be locked up in solitary confinement for all or most of the day, with no personal belongings or access to activities, programmes, and with little or no access to interventions.
- There were incidents where women were restrained and forcibly undressed upon admission to an ISU and forced to wear anti-rip gowns even where this was a source of agitation and conflict. Anti-rip gowns and bedding were used to self-harm on a number of occasions.
- 103 self-harm incidents were recorded across the women's estate in 2019, the majority in ISUs. There appeared to be a lack of compassion for women who self-harmed on a number of occasions, evident from further restraints and force used following self-harm attempts and women who were clearly very unwell remained in the prison rather than being transferred to hospital.

- Pepper spray was used 24 times in women's prisons in 2019, 23 of which were in ARWCF, second only to Christchurch Men's Prison in its absolute number of pepper spray uses.
- In several instances pepper spray was used following minor incidents, and some women were sprayed with pepper spray whilst inside their cells, in contravention of international guidance.

Key recommendations

- Strategies for the management of women in prisons identified in the Department of Corrections' policy documents and commissioned studies should be implemented and that implementation properly monitored.
- Stays in segregated housing must not exceed 15 days. If, in absolutely exceptional circumstances, segregations have to last longer than 15 days, reasons for the segregation should be clearly documented and substantively reviewed by an external body.
- An individual management/care plan should be designed for each segregated woman, with a detailed roadmap for reintegration, and subject to regular review. Entry and exit criteria from segregation should be clarified.
- The regime at the Management Unit at Auckland Region Women's Correctional Facility should be reformed to include access to a full programme of daily activities and communal activities as well as ongoing mental health support.
- Intervention and Support Units should be substantively reformed to ensure women are not subjected to solitary-confinement like regimes.
- Strip searches and anti-rip clothing should only be used when there is a specific and immediate need rather than as a blanket policy.
- De-escalation efforts should always be the first recourse and should be properly documented and scrutinised.
- Pepper spray should not be used in women's prisons at all. Data does not support the claim that its use would reduce other use of force.
- Staff working in segregated environments should be specially selected and should receive enhanced training in mental health and trauma informed practice.
- The over-representation of Māori and Pacific women in harsher forms of segregation requires urgent attention as does the development of culturally responsive programmes and unconscious bias training.

1 Introduction: the use of segregation, forms of restraint and pepper spray in women's prisons

1.1 Background

This report sets out to shed light on the treatment of women[1] in prison by examining the detail and chronology of events and practices in the segregated areas of New Zealand's three women's prisons. The report has its origin in findings made in *Time for a Paradigm Shift: a follow up review of seclusion and restraint practices in New Zealand* (Human Rights Commission, 2020), and concern about the apparent high use of segregation (solitary confinement) and force against women, in particular Māori women.

The report focuses on three key areas: segregation (solitary confinement),[2] use of force (including the use of pepper spray), and self-harm. It is based on statistical data and file notes provided to me by the New Zealand Department of Corrections ('Corrections'),[3] and on observations and interviews during a visit to Auckland Regional Women's Correctional Facility ('ARWCF') in July 2020, supplemented by reports and findings of other bodies regarding women in New Zealand's prisons.

The report highlights practices in these hidden corners of women's prisons and assesses how they measure up to the aspirations expressed in government policy documents and declarations, and in international standards. By focusing on the detail of practices in these areas and discussing their compatibility with big-piece statements, this report seeks to help facilitate a transition in attitudes and practices on the ground.

1 The term 'women' is used in this report to encompass people of all genders, sexes and sexualities who are incarcerated in women's prisons.

2 The terms 'segregation' and 'solitary confinement' are used interchangeably in this report to "refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days." (UN Nelson Mandela Rule 44)

3 The information I was provided with included statistical data for 2019 for some of the following: Directed Segregations; Length of segregation; Assaults and incidents; Use of Restraints; Pepper spray (drawing and deployment); Misconduct hearings; Complaints; Self-harm incidents. I was also provided with detailed incident reports (for a period of 6 months) debrief reports, notes from MDT meetings, and Management Plans.

The report starts with a short overview of the women prisoner population in New Zealand. It then examines the overall use of segregation, followed by some of the specifics of prison violence, including the use of force against women, assaults (or rather, incidents recorded as 'assaults') by women, and self-harm incidents.

Readers may find some of the events and practices described in this report distressing.

1.2 Key policy developments affecting women in prison in Aotearoa New Zealand

Women still only make up a small percentage (6.4%) of people in Aotearoa New Zealand's prisons. Thus, although the needs of women in prison are different to those of men, they are incarcerated in prisons primarily designed for men and managed in accordance with rules and regulations devised for men. This applies also to segregation policies and practices, as segregation units are identical in men's and women's prisons.

In recent years, there have been some important policy developments affecting the treatment of prisoners in general, and women in prison in particular.[4]

In August 2017, Corrections launched *Change Lives Shape Futures: Wahine – E rere ana ki te Pae Hou (Women rising above a new horizon): Women's Strategy 2017 – 2021*. According to the report, the strategy focuses on three key areas:

1. providing women with interventions and services that meet their unique risks and needs;
2. managing women in ways that are trauma informed and empowering; and
3. managing women in a way that reflects the importance of relationships to women.

In his foreword to the report, Ray Smith, the then Chief Executive of Corrections, wrote:

> *"While we must never lose sight of the fact that they have committed crimes, we must also understand that for a high proportion of women offenders their complex and entwined histories of severe trauma, mental health issues, substance abuse, unhealthy relationships and poverty have contributed to their offending. We recognise the importance of relationships in women's*

4 And more specifically since the publication of *Thinking Outside the Box? A review of seclusion and restraint practices in New Zealand* in April 2017.

lives, and that their outcomes can be improved by helping women rebuild and maintain relationships, or extricate themselves from violent or dysfunctional relationships."

The recognition by the Corrections of the particular needs and vulnerabilities of the women in its care, and of the need to empower women through trauma informed practices and a focus on relationships, is very positive. It is backed up by the findings of a 2016 study commissioned by Corrections, which identified five key 'lessons' for the management of women in prison:

- Women need a different approach to men which is relational, collaborative and responsive to their unique needs, and which is also sensitive to the diversity of their needs and characteristics;
- Women benefit from collaborative approaches to planning where staff have sufficient contact time for trust and engagement to be built, and meaningful input sought;
- In designing rehabilitation and reintegration pathways that work for women, their lynch-pin need(s) and responsivity factors such as prior exposure to trauma, need to be properly identified and targeted in the right order;
- Women's management should be relational; having good relationships with staff where women felt [sic] informed and valued, and able to address issues with family/whānau helped build their engagement and put them in a better place to address their offending needs;
- Staff need to be properly supported to work with women by receiving specialised training on women's unique risks, needs and responsivity factors, and by having clear bounds around their roles.[5]

These important suggestions are supported by the literature and grounded in professional experience. As these are uncontested, this report takes, as a given, that the particular vulnerabilities and needs of women in prison are known to, and accepted by, Corrections.

5 Beavan, Marianne. (2017) Collaborative, relational and responsive: Principles for the case management of women in prison. *Practice: The New Zealand Corrections Journal* Volume 5 Issue 2, November 2017.

"Commitment at the leadership level and budgets to fund (some of) these ambitious aspirations, however, are not enough in themselves. Policies and practices need to filter through to all areas of the prison system, not least those most hidden from view, namely, segregation units, and to all the individuals housed in them, including and especially those who may be more challenging, and those who are the most vulnerable."

The policy statements and reports discussed above have been accompanied by a significant investment in mental health services and other pathways in prisons,[6] announced by the government in 2018, and by *Hōkai Rangi: Ara Poutama Aotearoa Strategy: 2019-2024* and its commitment to kaupapa Māori approaches, setting out the following key areas for change:

1 Partnership and leadership: shared decision-making and co-design with Māori.

2 Humanising and healing: staff will treat prisoners with respect and uphold their mana.

3 Whānau: whānau involvement in prisoners' journey and reintegration.

4 Whakapapa: create safe environment for Māori to share and learn about their identity.

5 Incorporating a Te Ao Māori worldview: access to culture as a fundamental right, not a privilege.

6 Foundations for participation: support prior to release.

6 Including a commitment of $10 million dollars over four years towards the Wāhine Māori Pathways, announced by government in the Post-Budget Announcement 25 May 2021.

These and other strategies developed by Corrections, and the financial investment attached to them, are much needed. They have the potential to change the fortunes of some of the most vulnerable people in society. They also reflect the government's obligations. The Waitangi Tribunal has pointed out to the government, in relation to addressing the disproportionate reoffending rate of Māori, that the Treaty of Waitangi principle of active protection is heightened in circumstances of inequity between Māori and non-Māori,[7] this is particularly so when the government has "*knowledge of past historical wrongs done by the Crown*".[8]

Commitment at the leadership level and budgets to fund (some of) these ambitious aspirations, however, are not enough in themselves. Policies and practices need to filter through to all areas of the prison system, not least those most hidden from view, namely, segregation units, and to all the individuals housed in them, including and especially those who may be more challenging, and those who are the most vulnerable.[9]

7 Waitangi Tribunal. (2017). *Tū Mai te Rangi! Report on the Crown and Disproportionate Reoffending Rates* (Report no. Wai 2540), at 34, available at https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_121273708/Tu%20Mai%20Te%20Rangi%20W.pdf

8 Waitangi Tribunal (2017) at p. 27. See also United Nations Declaration on the Rights of Indigenous Peoples (2007).

9 *Change Lives Shape Future*s announces that "Recognising a gap in current services, a new programme for high-risk women is also being developed to meet the needs of this small, but challenging group." (p 11) This, in my view, should be prioritised, and I would also note that the key element in Corrections various strategies for managing this group of prisoners has been a regime of 22 hours or more in cell, thus constituting solitary confinement as defined in the Nelson Mandela Rules. I would urge Corrections to ensure that any new programme does not have segregation at its core.

2 Aotearoa New Zealand's prisons for women and the women they house

2.1 Aotearoa New Zealand's prisons for women

Women in prisons managed by the Corrections can be housed in one of three prisons for women: Arohata Women's Prison, in Wellington[10], Auckland Region Women's Correctional Facility (ARWCF) in Manukau, South Auckland[11] and Christchurch Women's Prison, in Christchurch.

The number of women in prisons at the end of 2019, the year which this report analyses, stood at 666 women, of whom 41% were on remand and 59% were sentenced.

This number represents a significant reduction in the total number of women in prison, down from a high of 800 in July 2017. This is a welcome development which presents further opportunities for working with women in prison and achieving the goals outlined in Corrections' policy statements discussed in the previous section.

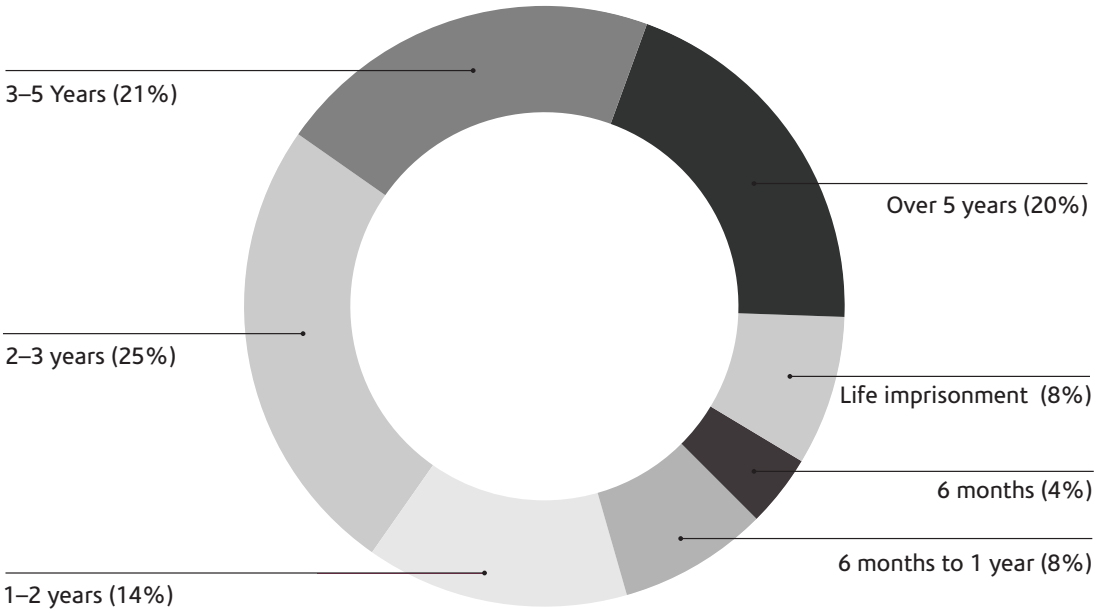
In terms of the length of sentences served by women, as Figure 1 shows, close to half (46%) of the women were serving sentences of two years or longer. 12% were serving sentences of up to a year. Just over 40% were on remand.[12]

10 The name Arohata means 'the bridge' in te reo Māori and reflects the belief that the prison provides a bridge between past offending and a future in the community. Arohata Women's Prison was built in 1944 and was originally a women's borstal. It became a youth prison in 1981 and a women's prison in 1987. It holds about 150 women and employs 73 staff (Corrections Website, accessed April 2021).

11 Auckland Region Women's Correctional Facility was originally built in 2006 to accommodate 287 women and expanded in 2010 to a 456 bed multi-classification prison. According to the architectural firm which designed the prison (http://www.pp-a.com.au/portfolio/2666-auckland-regional-womens-corrections-facility/), 'the underlying design concept integrates operational imperatives with significant local cultural values. ARWCF is sited on a former quarry at the edge of Manukau Harbour. Matukutureia, a remnant volcanic cone, is immediately adjacent and was a culturally significant design generator. Matukutureia is the centre point of an arc extending through the ARWCF site and continuing to the harbour's edge. This 'Spine' is expressed as a series of buildings linked by a continuous wall and roof plane, with courtyards between. Facilities for health, education and vocational training programs, recreation and work are included in the 'Spine'. High security inmates are housed on one side of the 'Spine', low security on the other. Each cohort has equity of access.'

12 The issue of conditions of detention for remand prisoners is beyond the scope of this study, but it should be noted that remandees are a particularly vulnerable group and are often managed in high-security settings.

Figure 1: Length of sentences being served by women.



Auckland Region Women's Correctional Facility (ARWCF) was by far the largest of the three prisons, housing 62% of all women prisoners. It has an operational capacity of 456 beds. At the end of 2019 it housed 411 women, 44% of whom were on remand. Arohata Prison has an operational capacity of 187 beds, and at the end of 2019 housed 143 women. The majority (106) of whom were sentenced, with only 26% of women on remand. Christchurch Women's Prison, with an operational capacity of 134 beds, housed 112 women, 45% of whom were on remand.

2.2 The women in Aotearoa New Zealand's prisons

Women in prison are a vulnerable population with high and complex needs and requirements. Many come from disenfranchised, socioeconomically disadvantaged communities. Many have been at the receiving end of violence and abuse- sexual, physical, and mental- throughout their lives, leading to trauma, high mental health needs, alcohol and drug dependency, as well as gender-specific healthcare needs.

Another common feature of women's imprisonment is the overrepresentation of indigenous women and women of colour.[13] In New Zealand, there is a grossly disproportionate number of Māori women in prisons, making for as many as

13 Shalev, S., 'Solitary confinement is even harder for women: should it stop?' Association for the Prevention of Torture Expert Blog, March 22, 2021 (https://www.apt.ch/en/blog/solitary-confinement-harder-women-should-it-stop)

63% of all women in prison (compared to roughly 16.5% of New Zealand's female population).[14] Pacific women are slightly underrepresented in prisons: they make up 6% of the prison population[15] and 8% of New Zealand's female population.[16]

The women incarcerated in New Zealand's prisons are a vulnerable population, with high levels of deprivation, trauma, and multiple and complex needs.[17] Many are mothers, some with sole responsibility for the entire family. A study of mental health in New Zealand's prisons[18] found that, of the total population of women in prison,

- 81% were victims of violence (family; sexual; generalized);
- 68% have been victims of family violence;
- 53% were exposed to sexual violence (including rape, 40%);
- 61% were exposed to intimate partner violence;
- 52% suffered Post Traumatic Stress Disorder (PTSD) across their lifetime;
- 75% were diagnosed with mental health problems in the last 12 months;
- 46% had a lifetime alcohol dependency;
- 44% had a lifetime drug dependency.

"The women incarcerated in New Zealand's prisons are a vulnerable population, with high levels of deprivation, trauma, and multiple and complex needs. Many are mothers, some with sole responsibility for the entire family."

14 General population data is derived from 2018 census data, see: https://www.stats.govt.nz/tools/2018-census-ethnic-group-summaries/m%C4%81ori

15 2015 data, see: https://www.corrections.govt.nz/__data/assets/pdf_file/0015/13047/Pacific_Offenders_topic_series_report.pdf

16 According to data from the 2018 census: https://www.stats.govt.nz/tools/2018-census-ethnic-group-summaries/pacific-peoples

17 McGlue, H. Trauma hiding in plain view: the case for trauma informed practice in women's prisons Practice: The New Zealand Corrections Journal, Volume 4 Issue 2: December 2016

18 Indig D, Gear C, Wilhelm K. (2016) Comorbid substance use disorders and mental health disorders among New Zealand prisoners. New Zealand Department of Corrections, Wellington.

Other studies note the high prevalence of Adverse Childhood Experiences (ACEs) among prisoners in general, and women prisoners in particular.[19]

Research has also found that a very large number of women reported traumatic brain injury (TBI), associated with a range of adverse health outcomes. One study[20] of the prevalence of TBI amongst New Zealand's incarcerated women reported that as many as 94.7% of study participants had suffered at least one TBI. This is important as,

> *"There is a definable neurological basis for the deficits in emotion regulation, aggression, and impulse control in individuals … A history of TBI among incarcerated [women] is likely to be associated with increased anxiety and a decreased ability to inhibit impulsive behavior and will likely be associated with difficulties with interpersonal relationships. Perhaps more importantly, TBI, even injuries thought to be relatively mild, has been associated with long-term mental health difficulties."*

In other words, some of the behaviours which may be interpreted as violent or disruptive and lead to a woman's placement in segregated settings, may be rooted in an organic (physical) injury, often caused by domestic and other forms of violence that she was previously subjected to.

Professor Tracey McIntosh notes that, in relation to histories of abuse and trauma, *"for incarcerated wāhine Māori this victimisation is likely to have occurred in a range of settings including state settings"*.[21] These histories of trauma and abuse may go back several generations, and the imprisonment of women with histories of trauma who are also mothers continues the cycle of intergenerational trauma for their children too.[22]

19 Jones, M. S., Burge, S. W., Sharp, S. F., & McLeod, D. A. (2020). Childhood adversity, mental health, and the perpetration of physical violence in the adult intimate relationships of women prisoners: A life course approach. *Child abuse & neglect*, 101, 104237.

20 Woolhouse, R., McKinlay, A., & Grace, R. C. (2018). Women in Prison with Traumatic Brain Injury: Prevalence, Mechanism, and Impact on Mental Health. *International Journal of Offender Therapy and Comparative Criminology*, 62(10), 3135–3150. https://doi.org/10.1177/0306624X17726519

21 Professor Tracey McIntosh Brief of Evidence for Contextual Hearing Royal Commission of Inquiry Abuse in Care and Faith Based Institutions. October 2020, at 103.

22 On this and other issues relating to the imprisonment of indigenous women, see also excellent collection of essays in George, L., Norris, A. N., Deckert, A., & Tauri, J. (Eds.). (2020). *Neo-Colonial Injustice and the Mass Imprisonment of Indigenous Women*. Palgrave Macmillan.

It is well documented that the impact of prison on children of imprisoned mothers can be devastating.[23] The imprisonment of Māori mothers, as a formerly imprisoned woman told the *New Zealand Herald*, has an even deeper effect:

> *"Māori women have integral roles that they need to play to ensure that the whakapapa [lineage or ancestry] is pure and the mokopuna [grandchild/ descendant] can stand strong. We're already in pain, you put us in prison and the root of that pain goes deeper."*[24]

In short, this is a cohort of women, many of whom are Māori and Pacific, with high levels of trauma and health needs, particularly vulnerable to the harms of imprisonment and the separation from their family and community.[25]

They arrive at prisons architecturally designed for men, are housed in cells designed for men, managed in accordance with prison rules designed for men,[26] and are subjected to the same policies and practices which are applied in men's prisons, including those regarding the use of solitary confinement (segregation) as punishment, protection, or management of prisoners. These practices are the focus of the remainder of this report.[27]

23 Beresford, Sarah (2018) 'What about me? The impact on children when mothers are involved in the criminal justice system'. *Prison Reform Trust*: London.

24 'The number of Māori women imprisoned without conviction has nearly doubled after law change' *New Zealand Herald*, 29 June, 2020 accessed 4/6/21

25 See United Nations Office of Drugs and Crime, Collaborating Centre for Health and Prisons in the Department of Health, United Kingdom, and World Health Organisation Regional Office for Europe (2009) *Women's health in prison: Correcting gender inequity in prison health.* World Health Organization Regional Office for Europe, Copenhagen.

26 As reiterated in the preamble to the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules): "[We are] Aware of the fact that many existing prison facilities worldwide were designed primarily for male prisoners, whereas the number of female prisoners has significantly increased over the years".

27 United Nations Office on Drugs and Crime (2009) *Handbook for prison managers and policy makers on Women and Imprisonment*. United Nations, New York, at p 27; For Rules and Regulations specific to women prisoners in New Zealand, see Appendix 1.

3 The use of solitary confinement (segregation) in Aotearoa New Zealand's women's prisons

"They should [put in place] something to show progression. They should take risks with us. Reward us and then loosen the reins."
[segregated woman]

3.1 Prison Segregation Units

As noted, Segregation Units in their various forms (see below) in women's prisons were similar in design and material conditions to those in prisons for men, as were administrative routes into segregation and the guidelines for placements in these units, despite the acknowledged gendered differences in needs and challenges.

This is an important point because a very high proportion of women, as noted in the previous section, arrive at prison with histories of trauma and high health needs, rendering them more vulnerable to the pains of imprisonment in general, and the pains of solitary confinement in particular.

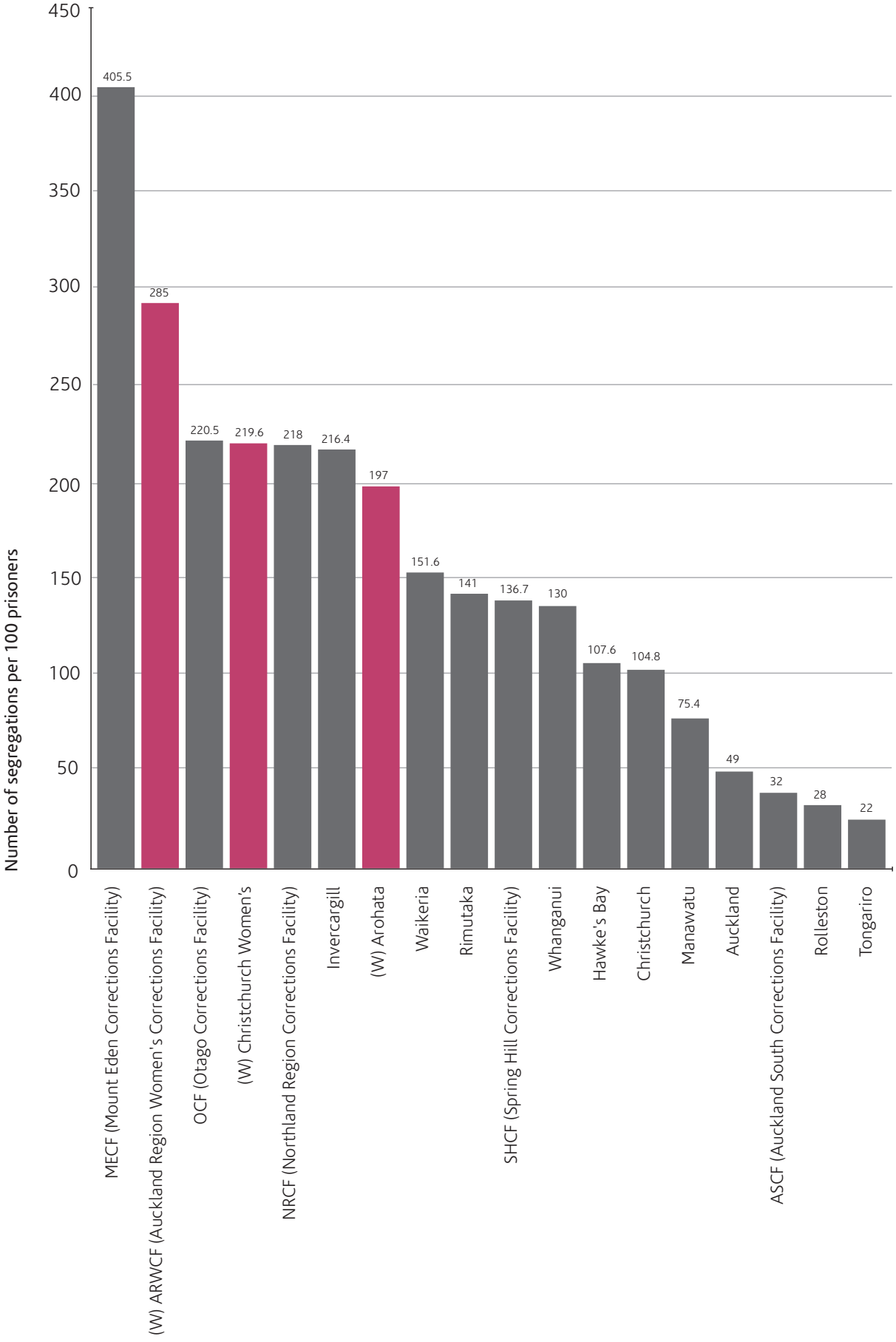
Women in segregation: the data

The data provided to this review indicates that, as was the case in 2017, women were segregated at a far higher rate than men: in 2019 there were 147 segregation placements (some may involve the same person) per 100 men prisoners, compared to 255 segregations for every 100 women prisoners.[28]

The figure below provides a prison-by-prison breakdown of the use of segregation. All three of the women's prisons (marked (W) in the graph) were at the top half in terms of their use of segregation, with ARWCF being second highest of all prisons in its resort to the extreme tool of segregation.

28 This representation of the data compares a cumulative measure with the number of segregation placements in 2019 against a snapshot measure (the number of prisoners in general population at 31 December 2019).

Figure 2: Segregation instances per 100 prisoners



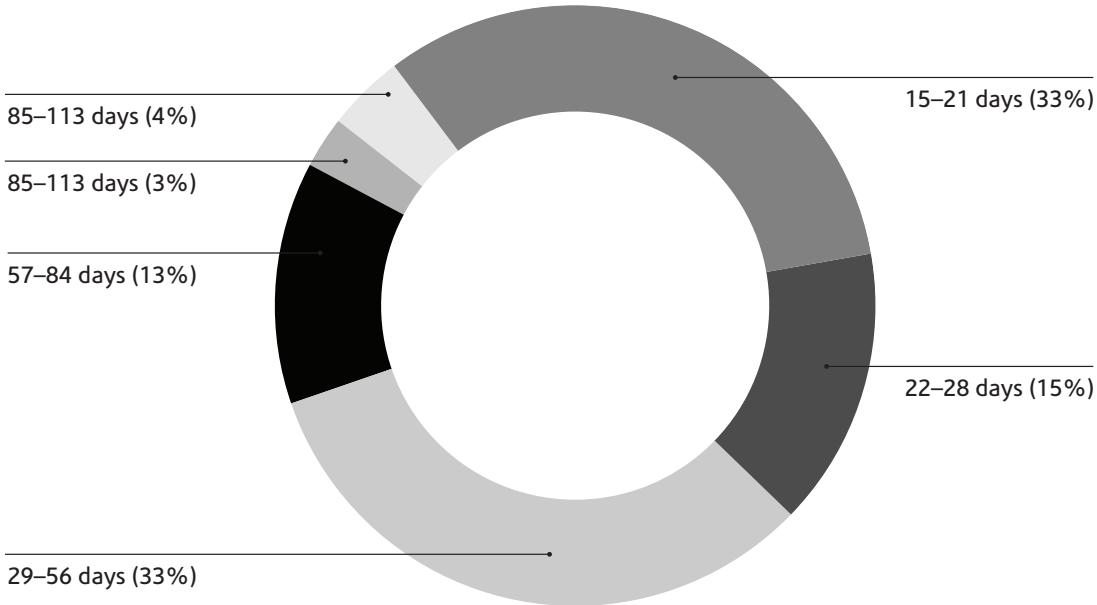
In 2019, the year analysed in this report, women were segregated a total of 1,594 times in either a 'Separates Unit' (for those serving punishment; 20% of all segregation placements); 'Management Unit' (for those considered to be challenging or disruptive; 40% of all segregations), or in an 'Intervention and Support Unit' (for vulnerable women; 40%). Note that some women were segregated more than once.

Auckland women's prison was the only prison with a designated Management Unit, which had 681 placements in 2019.[29]

Segregations lasting longer than 15 days

The majority of segregations (in all 'types' of units) were relatively short, lasting up to a week. On 101 occasions, however, women spent significantly longer periods in segregation, falling into the UN Nelson Mandela Rules' definition of prolonged solitary confinement, prohibited as a form of torture in Nelson Mandela Rule 43.[30]

Figure 3: Occurrences of segregations lasting 15 days or longer in women's prisons.



29 299 (57%) of these placements lasted less than 24 hours (mostly overnight). Note: a degree of overlap in reporting means that numbers do not always fully round-up.

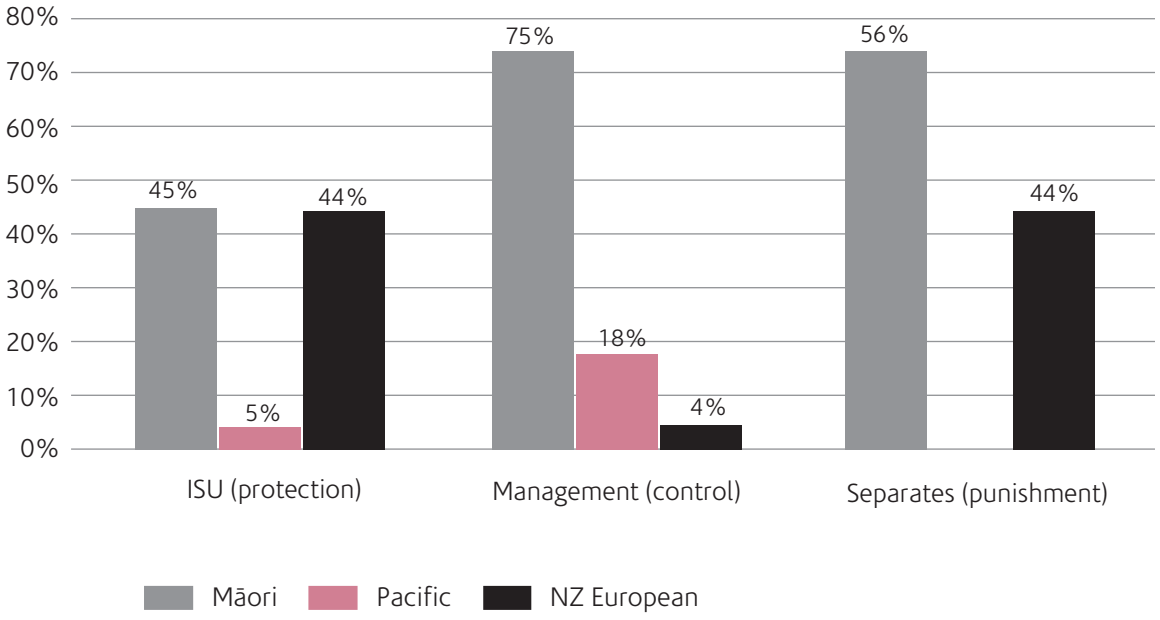
30 Mandela Rule 43(1). In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited:
(a) Indefinite solitary confinement;
(b) Prolonged solitary confinement;
(c) Placement of a prisoner in a dark or constantly lit cell;
(d) Corporal punishment or the reduction of a prisoner's diet or drinking water;
(e) Collective punishment.

> **"Māori women were also disproportionately segregated in the Separates and Management Unit at AWRCF where Māori made up 78% and 75% respectively. Women of European descent made up a mere 4% of women in the Management Unit, with Pacific women making up 18%"**

In addition to being disproportionately imprisoned, (as noted earlier, 63% of all women in prison, compared to 8.3% of New Zealand's population), Māori women were also disproportionately segregated in the Separates and Management Units at AWRCF where Māori made up 78% and 75% respectively.[31] Women of European descent made up a mere 4% of women in the Management Unit, with Pacific women making up 18% (compared to 6% of the prison population).

The picture was somewhat different in Intervention and Support Units across the three women's prisons, where women deemed vulnerable were segregated, and where New Zealand European women made up 33% of all women.

Figure 4: Longer segregations by ethnicity and unit type in women's prisons



31 It should be noted that, although neither Christchurch Women's or Arohata Prison have a designated Management Unit, women can – and are – segregated for very long times in other sites in the prison (mostly the Separates Units) without the levels of oversight necessitated by the design and regulations in an 'official' Management Unit. In fact, the three longest segregations (all three over 110 days) were of women classified as 'Separates' (two women, both Māori) and At Risk (one woman, European).

> **"These women were at 'the intersection of racism and sexism', suffering the prejudices of both."**

This appears to chime with research findings from other jurisdictions that non-white and indigenous women were more likely to be perceived as more dangerous and violent throughout their journey in the criminal justice system – from arrest to conviction and sentencing.[32] These women were at 'the intersection of racism and sexism', suffering the prejudices of both.[33]

Māori women were not only overrepresented in Management and Separates Units, but they were also disproportionately segregated there for longer periods. At the Management Unit at ARWCF, Māori and Pacific women made up as many as 93% of all segregations lasting longer than 15 days.[34] Women of European descent made up only 3% of longer segregations. In contrast, all but one of the longer segregations of women of European descent (36% of all longer segregation) were in an ISU, where women deemed to be vulnerable and at risk of self-harm were segregated.

32 Richie, B. (2012). *Arrested justice: Black women, violence, and America's prison nation*. New York University Press; Norris, A. N. (2019). *Are We Really Colour-blind? The Normalisation of Mass Female Incarceration. Race and Justice*, 9(4), 454–478. Crenshaw, K. (1990). *Mapping the margins: Intersectionality, identity politics, and violence against women of color*. Stanford Law Review, 43, 1241.

33 Crenshaw, K. (1990). *Mapping the margins: Intersectionality, identity politics, and violence against women of color.* Stanford Law Review, 43, 1241.

34 For a discussion of biased perceptions in mental health settings see: Prins, H. A. (1993). *Report of the Committee of Inquiry Into the Death in Broadmoor Hospital of Orville Blackwood, and a Review of the Deaths of Two Other Afro-Caribbean Patients:"Big, Black and Dangerous?"* ND.

3.3 In focus: the Management and Separates Unit at Auckland Region Women's Correctional Facility (ARWCF)

ARWCF houses the only designated Management Unit for women in Corrections' custody. As with Management Units in men's prisons, the unit was especially designed for the longer-term segregation of women from the rest of the prison population and from each other, with one wing a dedicated Management Unit, and one wing a dedicated Separates Unit. Cells in the Separates Unit have their own small yard, meaning that the vast majority of daily activities can be provided to women without the need for them to leave their cells. The regime of long-term solitary confinement makes the units of particular interest to this review, and merits special attention.

> **"... this review shares the sense of outrage at revelations of practices and the humiliations, big and small, that women in the segregated parts of ARWCF prison had, and continue to have, to endure."**

Much has been written about ARWCF in recent times, including detailed coverage of a court proceeding involving conditions at the prison's Management and Separates Units. Reviewing some of the specifics of conditions and practices, including the women's segregation, cell extractions, lack of mental health care, invasion of privacy and degrading rituals, the Court concluded that:[35]

> *"It is difficult to see all of these examples of the ill treatment of prisoners as anything other than a concerted effort to break their spirit, and defeat their resistance".*

Having assessed some of the same documents and data examined by the Court and reported in the media, this review shares the sense of outrage at revelations of practices and the humiliations, big and small, that women in the segregated parts of ARWCF prison had, and continue to have, to endure.

But whilst the particulars of the experiences of the two women at the centre of the proceeding may be especially harrowing, they chime more widely with the overall picture of practices in the segregated units of the prison observed by this review.

35 R v Bassett Manukau CRI-2019-092-012895, 4 February 2021 at [95].

Our visit to ARWCF prison was particularly illuminating. The Management and Separates Unit (C & D Wings respectively) enjoy very little of the innovative design and Māori centred features of the prison. The unit is barren and cold, with few beautifying features. New arrivals to the unit are greeted with a poster warning that the prison operates a 'zero tolerance' policy towards violence and aggression, and a long list of prohibitions and warnings.

Policies and staff attitudes at the unit appeared correspondingly harsh. Communications were poor. Staff appeared to have unwarranted interest in prisoners' initial offences and intimate relationships inside and outside the prison.

The staff area was separate from the women's cell area and had its own kitchen. I observed staff frying nice smelling foodstuffs in the kitchen during lunch time, whilst the women were given a sandwich and a piece of fruit, with the back door open and cooking smells undoubtedly drifting into the women's cells through the back windows. This was something which I have not encountered in any other jurisdiction. A small radio was placed on a chair at the entrance to C Wing, playing loud music to no one in particular, and was not conducive to creating a calm atmosphere.

The design of C Wing meant that it received a fair amount of natural light. However, this did not benefit women in their cells much because cells were covered at the front, from the outside, with black-out curtains which could only be rolled up by staff. Cells were self-contained with a shower / basin, and a narrow window to the back. The outdoor exercise yard contained an open metal cubical with a toilet. The yard was overlooked by a neighbouring building and some of the women in the unit said they felt exposed using the yard and preferred not to use it all.

The Separates Unit (D Wing) was darker and narrower than C Wing. Cells had no power, no TV, and were monitored on CCTV.[36] Cells also had an adjacent 'yard'- a small, concreted area, covered with mesh. The area was separated from the cell with a heavy metal door, and access to it was remotely controlled by staff.

36 The CCTV covered the entire cell area, including the toilet. My initial (2017) review of segregation practices, *Thinking Outside the Box?* and several reports by the Chief Ombudsman noted that this infringes women's right to privacy and recommended installing privacy screens.

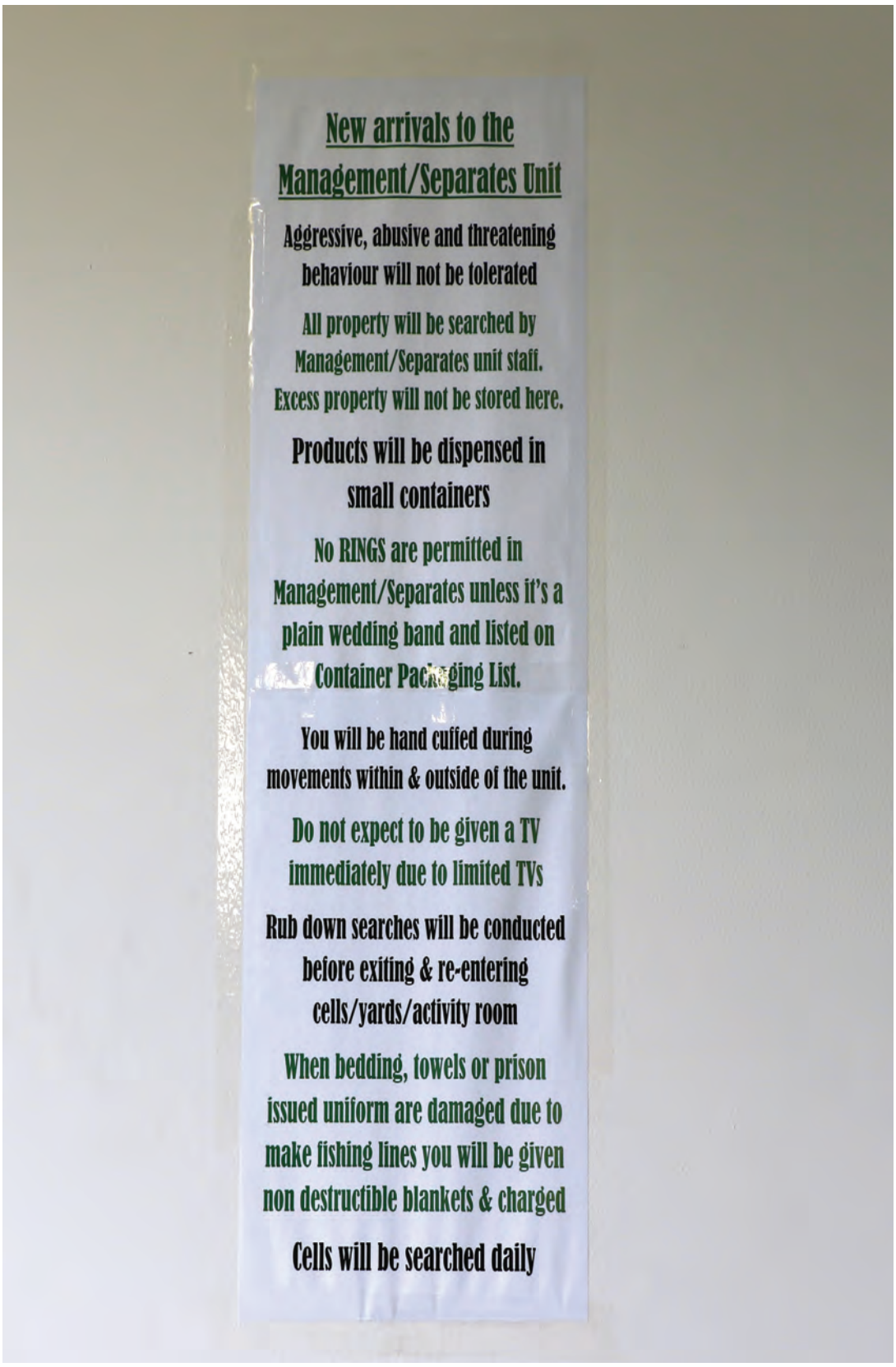


Figure 5: ARWCF Management Separates Unit Rules for new arrivals

Figure 6: ARWCF Management Unit (C Wing) corridor

Figure 7: ARWCF Management Unit cell

Figure 8: ARWCF Management Unit outdoor yard

Figure 9: Yard and back of a cell at the Separates Unit (D Wing) at ARWCF

At the time of the visit, the Management / Separates Unit housed 10 women: one was housed in the Separates Unit (D Wing), and nine women were housed in the Management Unit (C Wing). Seven of these women had children who lived in the community.

One of the women was there for observation, four of the women were segregated for their own protection, and five were classified as Maximum Security.

Daily regime

The daily regime for the women classified as Maximum Security involved:

- 1 hour in the yard;
- 2 x 5-minute telephone calls weekly. No personal calls on weekends;
- 2 x 4-minute showers a day; and
- Meals served through a cell-door hatch (Breakfast at 8:30; Lunch at 11:30; Dinner at 16:00).

A 2020 report of an announced visit to ARWCF by the Department of Corrections' Office of the Inspectorate ('Inspectorate') found that some of the women classified as high security were not receiving a minimum of one hour in the fresh air. [37]

As well as being held in solitary confinement for an average of 22.5-23.5 hours a day, conditions of confinement and security arrangements for women in segregated housing were identical to those for men. This included being handcuffed to the back of the body whenever leaving the cell ('progression' involved being cuffed to the front of the body), and a 3-4 person unlock (four in the Management unit, three in the ISU), meaning that 3-4 staff needed to be present every time cell doors were opened, placing a significant burden on staff and the women alike.

Allowable and prohibited items

The type and number of items women could keep in their cells were also severely limited. The list of property items not allowed in management cells at ARWCF included the following:

- No flasks/ jugs.
- No CDs.
- No pens.

37 Report of an Announced Visit to Auckland Region Women's Corrections Facility by the Office of the Inspectorate, June 2020. Released under the Official Information Act 1982. Online: https://inspectorate.corrections.govt.nz/__data/assets/pdf_file/0004/42538/ARWCF_inspection_report_FINAL.pdf

- No photos or pictures on the walls.
- No stereos (radio/CD player).
- Paper plates and bowls only.
- Prison issued clothing only (to include: 2 jumpers; 2 sweatpants; 2 T shirts; 2 shorts; 1 pair of Jandals ('flip-flops') to be worn within the unit and yard. Shoes allowed outside the unit only, and will be kept by staff.

There were no special provisions to ensure that women have access to things which are likely to be particularly important to them, including the ability to maintain cleanliness and personal hygiene to a degree which was satisfactory to them.

> *"We can't even mop our rooms. There is no room for any kind of normality. We can't even do our washing".*
>
> *"It's very punitive here. We're not allowed property. We're not allowed to use the washing machine. We want more time on the phone".* (Women at ARWCF).

"As well as being held in solitary confinement for an average of 22.5-23.5 hours a day, conditions of confinement and security arrangements for women in segregated housing were identical to those for men. This included being handcuffed to the back of the body whenever leaving the cell ('progression' involved being cuffed to the front of the body), and a 3-4 person unlock..."

Searches and security procedures

Alongside the daily cell searches and a requirement for all women to be handcuffed when outside their cell, the measures discussed above potentially contributed to the heightening of tensions between staff and the women, with no clear security rationale.[38]

Other standard practices included a requirement for women to

> *"kneel facing the back of the cell and place her hands behind her back. Staff will place handcuffs on her before she leaves the cell. She will be moved*

38 On practices in the unit see also Reserved Decision of Judge McNaughton in *R v Bassett* Manukau CRI-2019-092-012895, 4 February 2021.

to the day room where she will be instructed to get on her knees facing inwards to the room for the handcuffs to be removed. She will then be able to use the prison payphone." (Notes from a Management Plan)

These blanket arrangements seemed excessive and unnecessary, as one woman said *'I don't understand why I am treated like that. It's not as if I killed anyone'*.

*"Even men aren't locked up in the same way that we are… the use of force here is f*****. It's just not right."*

This statement rings true when comparing practices at ARWCF to those I have observed in men's prisons. Moreover, women were punished for behaviours that would not even be commented on in men's prisons.

The atmosphere at ARWCF, as the Department of Corrections Chief Inspector observed, was punitive.[39] I also found it confrontational and lacking in compassion.

"The atmosphere at ARWCF ... was punitive. I also found it confrontational and lacking in compassion."

A detailed analysis of data and case notes spanning a period of 12 months revealed occasions where rather than defusing difficult situations, staff sometimes appeared to escalate them, readily resorting to force in reaction to the smallest of incidents. Indeed, some incidents appeared to be spurred on by local policies and practices at the unit which were rigidly applied by staff, regardless of the circumstances of the specific situation or their necessity. The key aim of the unit appeared to be achieving 'compliance' from the women.

I believe that staff inexperience and lack of training were, in part, responsible for their punitive and rigid attitudes. I was told that there was a high degree of turnover of staff in segregated areas, and that they had mixed levels of experience, including some who were new to the prison world. They did not receive any specialist training and were, in my opinion, therefore likely to be ill-equipped to deal with challenging situations and women with complex needs. This may explain, in part, some staff responses to perceived disobedience.

Women's management plans were very much focused on compliance and detailed sets of punitive responses to any deviation from the prescribed

39 Report of an Announced Visit to Auckland Region Women's Corrections Facility by the Office of the Inspectorate, June 2020. Released under the Freedom of Information Act 1982. Online: https://inspectorate.corrections.govt.nz/__data/assets/pdf_file/0004/42538/ARWCF_inspection_report_FINAL.pdf

behaviours – to kneel at the back of the cell while food was placed on the door hatch; be cuffed whilst making telephone or video calls; have visits through separating glass, and so on.

But while the path to further restrictions and prohibitions was clear, it was less clear what the women had to do to demonstrate good behaviour. One Management Plan, for example, stated that *'a TV will not be issued straight away, it depends on your behaviour and until the staff are satisfied with their observations on you'*.

"Women's management plans were very much focused on compliance and detailed sets of punitive responses to any deviation from the prescribed behaviours..."

I saw little evidence in the paperwork, or in practice, of staff support and encouragement of pro-social behaviour, in line with Correction's overarching *Hōkai Rangi* strategy. This was commented on by a number of the women we spoke to.

> *"All I want is a plan forward. If we knew what we have to do…"*

> *"Management plans are used the wrong way. What is on there is what's not allowed… 'no, it's not part of your management plan'. You live by the management plan, but it can't cover everything."*

Day to day staff decision making appeared correspondingly inflexible. Talking about one of the women at the unit, an officer said that the woman *"is in good spirits today, but the cuffs will remain [when she leaves her cell]. That's part of her management plan, and staff safety is paramount"*.

Decisions to, for example, remove items from a woman's cell or to forego a scheduled telephone call were made in an arbitrary manner, often at the cost of further aggravating an already fragile situation. The following description, extracted from Incident and Debrief Reports completed by the five officers involved, provides a good illustration of how quickly things can escalate.

> *A woman was about to be escorted from her cell to a scheduled telephone call with her children. Staff enter her cell to handcuff her ('as per management plan') at which time she rushes out to a neighbouring cell and hurls abuse at its occupier through the door. She is then restrained by staff and immediately apologizes and explains that the other woman had been screaming throughout the last few nights depriving the entire wing from sleep.*

Officers instruct the woman to return to her cell. She demands her telephone call and does not comply with staff instruction to walk to her cell. She is held on the floor, with one officer holding her head, a second officer holding her right arm, a third holding the left arm and a fourth holding her legs. She is moved back to her cell where she discovers that her TV had been taken away by staff. She refuses staff instruction to get down on her knees so that her cuffs could be removed, and another use of force ensues. Officers exit the cell, and the woman is charged with an assault. She does not get to speak to her children at that time.

The paperwork accompanying this incident, as with other incidents, was appropriately completed, signed-off and filed. It is noteworthy however that the main 'lesson learnt' identified in the Debrief Report was a need for a refresher course on applying mechanical restraints, with no further reflection on events following the initial incident. The women's perspective on the incident was not recorded or incorporated into the report.

"Decisions to, for example, remove items from a woman's cell or to forego a scheduled telephone call were made in an arbitrary manner, often at the cost of further aggravating an already fragile situation."

This review's case-by-case analysis found little evidence of efforts at conflict resolution or discussion between the women and staff. As noted above, deviation from the strict, disciplinarian rules, was responded to immediately and harshly. This meant that the women, and perhaps also staff, were more likely to be entrenched in their positions. As one woman said, *"you get pushed into a corner, and you don't know what to do. No sit-downs with staff, just to talk over things, get it out of the system"*.

It is difficult to see how such a confrontational approach is conducive to changing attitudes and behaviours and improving relationships. It is also unclear how withholding family contact or access to means for the women to maintain a clean environment, is necessary or desirable.

Finally, the limited access to programmes has meant that women at the Management and Separates Units could not access "interventions and services that meet their unique risks and needs" in line with Corrections' *Change Lives Shape Futures*, nor could they demonstrate good behaviour which would assist in reducing their security classification.

"The outcome of all this is that conditions in segregated housing units and the treatment of women housed in them, including the strip searches, the use of restraints, and the punitive attitudes, may feed into the cycle of harm which many of the women have had to endure throughout their lives, perpetuating trauma and harm."

Each of the women at the unit were discussed during multi-disciplinary team (MDT) meetings, which were meant to be attended by unit custodial staff, psychology, intelligence, and senior prison staff. I was pleased to observe that notes from MDT meetings significantly improved since early 2019, and I hope that this positive trend continues. But although notes from the meetings were more detailed than before, little changed between meetings in terms of outcomes for the women and work with them. Instead, much of the discussion evolved around the unit's rigid practices and ways to ensure that these are adhered to.

For example, one entry noted that a telephone call between one of the women and her daughter *"lasted 5 minutes and 30 secs before the phone cut off. Officer to follow up with xx again and make sure that the phone is set for 5 minutes"* (in other words, ensuring that only the very minimum is allowed). Another entry noted that women were *"using manipulation to meet with senior staff as a means to negotiate"*. Other notes speculated on relationships between the women and between them and friends and partners on the outside, sharing personal information for no apparent reason.

The outcome of all this is that conditions in segregated housing units and the treatment of women housed in them, including the strip searches, the use of restraints and the punitive attitudes, may feed into the cycle of harm which many of the women have had to endure throughout their lives, perpetuating trauma and harm.

As one of the women in the Management Unit observed, *"we need the most help, but we get nothing"*. Another woman said: *"I have no hope"*.

The expectation of complete and docile compliance with unit procedures and staff orders is, to my mind, gendered and anachronistic.

Importantly, such practices and attitudes may damage women's perception of the legitimacy of the authority exercised by prison staff. This, in turn, can

negatively affect prison order and discipline, thus contributing to the opposite behaviour to that which the unit officially seeks to achieve.

3.4 Intervention and Support Units (ISUs) in women's prisons

All three women's prisons had an ISU. Women in an ISU were not spared the harsh treatment of the Management and Separates Units. The rules and regulations for women in the units, for example a requirement to undergo a strip search on arrival at the unit or a requirement to wear a tear-proof gown, were rigid and caused friction in what was supposed to be a calm, therapeutic environment.

Despite the new name and the significant injection of funding to the ISUs since my original review in 2017, I was unable to detect significant changes in the daily routines and regime of the units previously known as ARUs. Many of the issues raised in 2017 continued to be raised by monitoring and inspection bodies.

Although mental health staff were now part of the ISU team, their input did not appear to take centre stage and the final word remained with custodial staff who lacked appropriate mental health training. *"I wouldn't say there was friction, but there is discussion"* (custodial officer). Notably, at ARWCF, attendance of ISU team members at the all-important monthly High Risk Alert Team (HRAT) meeting, where each of the women should be discussed at length by a multi-disciplinary team (including representatives from Auckland Forensic Services, custodial staff, the ISU team, and a representative from the health team) was patchy, with gaps of several months where no one from neither the ISU team nor Health attended the meetings.

The Inspectorate similarly noted in their 2020 report that *"There was limited engagement between the Intervention and Support team and health staff, who did not attend the multidisciplinary meetings held each morning to discuss the status and management approach for each wāhine in the ISU."*[40] The Inspectorate also noted staff vacancies in the mental health team, leading to long waiting lists to receive mental health care.

Staff, more generally, did not receive any specialist training which meant, in my opinion, that they were ill-equipped to deal with challenging situations. Staff groups were of mixed genders, which was positive, but it was inappropriate for male members of staff to be in the residential areas.

40 Report of an Announced Visit to Auckland Region Women's Corrections Facility by the Office of the Inspectorate, June 2020, at par. 139. Released under the Freedom of Information Act 1982. Online: https://inspectorate.corrections.govt.nz/__data/assets/pdf_file/0004/42538/ARWCF_inspection_report_FINAL.pdf

The ISU at ARWCF had two different types of cells- 'regular' cells, and 'dry' cells. Regular cells were of reasonable size and state of repair, but the toilet was in full view of a CCTV camera. The 'dry' cells were small and claustrophobic, and completely barren other than a plastic mattress placed on a concrete plinth. There has been an attempt to brighten up the ISU, with an activity room painted in bright colours and equipped with an aquarium and a large-size TV. However, at the time of the visit it was not in use, and it was not clear from the records how often women were offered the opportunity to use the room.

Figure 10: Regular ISU cell at ARWCF

Figure 11: 'Dry' ISU cell at ARWCF

Figure 12: ARWCF ISU activity room

I was disappointed to see that the board displaying the names of all the women in the unit was still located in the centre of the unit, as it was in 2017, in clear sight of all visitors to the unit and the women housed in them. This breached their right to privacy and confidentiality. I repeat my recommendation that it is removed out of sight.

ISU cells were not always used for the purposes for which they were intended, and staff were not always clear about the criteria for placement in them. We were told that women could be sent to the ISU because staff were unable to assess them, for example deportees who would *'come here because they can't answer questions [in Reception]'* (Officer); women arriving at the prison with histories of self-harm in the last six months; and other women for whom there was no other place in the prison.[41]

At the time of our visit, by way of illustration, the ISU at ARWCF housed 5 women (out of 12 available cells), including a woman who, as staff put it, was *"overweight and with poor hygiene"* because *"she can't fit anywhere else";* a woman who was *"unpredictable and very unwell"* and a woman who was newly arrived at the prison but *"wasn't engaging with nurses so they assumed self-harm"*.

41 For further analysis of reasons for ISU/ARU placements and their compatibility with international human rights standards see also Shalev, S (2017) *Thinking outside the box? A review of seclusion and restraint practices in New Zealand*. Wellington: New Zealand Human Rights Commission and; Harris A and Stanley E. Exacerbating risks and diminishing rights for 'at-risk' prisoners. *Criminology & Criminal Justice*. 2018;18(5):515-532, at p. 520.

> **"ISU cells were not always used for the purposes for which they were intended, and staff were not always clear about the criteria for placement in them."**

Corrections' Inspectorate made similar findings regarding ISUs (or their previous incarnation, ARUs) in the other women's prisons. In Christchurch Women's Prison, for example, almost half of the women interviewed by the inspection team *"said they had initially been placed in the ARU upon arrival in the prison, for periods ranging from a single night to several weeks"*.[42]

Women housed in an ISU continued to be locked up in solitary confinement in a small cell for all or most of the day, with no personal belongings or access to activities, programmes, and with little or no access to interventions. This was the case in ARWCF, and the Inspectorate made similar observations about Christchurch Women's and Arohata Prisons, where it found that,[43]

> Finding 34: The Intervention and Support Unit does not provide a suitable environment for prisoners who are at risk of self-harm or mentally unwell. The unit is small, has no interview room, has an exercise yard that is only usable on dry days and there is little natural light.
>
> Finding 35: There is limited primary mental health and trauma counselling available for the wāhine.

Considering the specific role that ISUs are intended to fulfil, these are worrying findings. Furthermore, as noted, women placed in an ISU because they were deemed to be at risk of self-harm had to endure anti-rip gowns, even when the process of wearing the demeaning gown proved to be a source of agitation and conflict, as appeared to be the case on several occasions. Worse still, as discussed below, several self-harm and suicide attempts involved torn protective clothing, meaning that it failed to fulfil its key purpose.

This is well illustrated by the following example, involving a woman in the process of being admitted to the ISU, having told an officer earlier that she wanted to kill herself. The woman is taken to the search room and instructed to

42 Department of Corrections, Office of the Inspectorate, Christchurch Women's Prison Inspection Report 2018, par. 123. Online: https://inspectorate.corrections.govt.nz/reports/prison_inspection_reports/christchurch_womens_prison_inspection_report_2018).

43 Department of Corrections, Office of the Inspectorate, Arohata Prison Announced Inspection (September 2020). Online at: https://inspectorate.corrections.govt.nz/__data/assets/pdf_file/0007/43378/Arohata_Prison_2020_Inspection_Report_-_FINAL.pdf

put on an anti-rip gown. She replies that she should not be there at all, as she does not intend to harm herself. One of the four officers who were party to the incident described in an incident report the chain of events as follows:

> *"I instructed the prisoner again to remove her t-shirt and she refused. She continued to talk over me and was not listening to instructions. Staff used non-threatening physical contact to assist her [to change] but then she became physically resistant. Spontaneous use of force was applied to continue changing prisoner xx into a gown. I had the right arm. Officer xx had her left arm, and officer xx had control of the head.*
>
> *Prisoner xx continued to be non-compliant. Prisoner was offered another opportunity to remove her pants, but the prisoner did not reply. Officer xx assisted with the removal of her bottoms and was successful. Prisoner was escorted to her cell and was locked with no further issues."*

It is hard to imagine how four officers restraining and forcibly undressing a distressed woman in order to dress her in a gown 'for her own protection' could possibly be seen to be conducive to the woman's wellbeing or to the development of a healing relationship with staff. And yet, Incident Information Reports analysed by this review indicated that this was not a one-off occurrence. In another incident, involving a woman sent from the Receiving Office to the ISU as she was deemed to be at risk, a similar chain of events unravelled. On arrival at the ISU, the woman was placed in a strip cell and told to remove her clothes. One of the four officers involved described what happened next.

> *"Upon arrival at the ISU she became non-compliant and refused to take her clothes off and change into a gown. She finally removed her top and bra and put on the gown but refused to remove her pants. Staff instructed xx to move from the strip room to her allocated cell. Once in the cell, I instructed xx to remove her pants and underwear. She did so after much abuse towards staff. Her behaviour became worse as she announced she had her period. When officer xx instructed her to remove her hair tie, she stood in front of her and then spat in her face. Spontaneous use of force was used, and the hair tie was removed. I took her right arm, officer xx had her left arm, officer xx took the head and officer xx had her legs as the prisoner was resisting. Staff exited the cell with no further issues."*

This incident again involved four officers, struggling with one woman, in this case for the purpose of removing her hair-tie, aggravating what was clearly an already tense situation.

It is also noteworthy that only one of the four officers who took part in this incident noted in their report that the woman had said that she had her period. We can only imagine how distressing it must be to have to remove your underwear when you have your period in front of four strangers, which seems to me an important factor for explaining the woman's response to the order to undress.

"It is hard to imagine how four officers restraining and forcibly undressing a distressed woman in order to dress her in a gown 'for her own protection' could possibly be seen to be conducive to the woman's wellbeing or to the development of a healing relationship with staff.

The fact that the woman had arrived at the ISU straight from the Reception Office, likely to be disorientated and anxious, must have made the entire experience even more distressing. As ISU cells are on camera, the entire scene would have been watched by staff in the control room, in complete disregard of the woman's dignity and right to privacy.

The Chief Ombudsman, Peter Boshier, also noted the unsuitable conditions in the ISU (which was still known as an ARU at the time), and expressed his ongoing concern about the use of in-cell cameras in unscreened toilet areas:

> *"Rooms had limited natural light and little fresh air. Prisoners were constantly monitored by CCTV, even when using the toilet, which was unscreened. The camera feed was displayed on TV monitors in the ARU office and Master Control. A consequence of Corrections' policy for toilets in ARU cells to be unscreened is that prison staff (and others) have the ability to observe prisoners, either directly or through camera footage, undertaking their ablutions or in various stages of undress. I consider that this amounts to degrading treatment or punishment for the purpose of the Convention Against Torture".*[44]

44 Office of the Ombudsman, Report on an unannounced inspection of Arohata Upper Prison – 21 March 2018, at p 14.

"The searches that women endure on admission to an ISU and the anti-rip gowns they are forced to wear did not appear to prevent self-harm. In fact, as discussed, anti-rip gowns and bedding were frequently used by women to self-harm with."

I concur with the Chief Ombudsman's assessment and repeat my recommendation from 2017 & 2020 for privacy screens to be used where cells are on camera. The assertion that, as was suggested to me at ARWCF, women could "get on the intercom and tell us when they are about to have a shower so we can cover the monitor screen", seemed, especially in the context of staff shortages, unrealistic.

There were numerous incidents of the sort described above, involving the forceable undressing of women whilst she is restrained by four officers, in order to dress her with an anti-rip gown. In this context it is useful to be reminded of the UN Bangkok Rules regarding searches:

> Bangkok Rule 19
>
> Effective measures shall be taken to ensure that women prisoners' dignity and respect are protected during personal searches, which shall only be carried out by women staff who have been properly trained in appropriate searching methods and in accordance with established procedures.
>
> Bangkok Rule 20
>
> Alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches.

The searches that women endure on admission to an ISU and the anti-rip gowns they are forced to wear did not appear to prevent self-harm. In fact, as discussed, anti-rip gowns and bedding were frequently used by women to self-harm with, suggesting that their use was not only a point of friction, but also, ineffective in preventing self-harm.

4 Self-harm

In 2019, some 103 self-harm incidents were recorded across the women's prison estate. Six self-harm incidents were recorded in Arohata Prison. Auckland Women's recorded 56 incidents, 11 of which were committed by one woman. Christchurch Women's Prison recorded 41 incidents, 14 by one woman.

Self-harm incidents varied from superficial cuts to head-banging and life-threatening attempts, and many were by self-strangulation. Several self-harm incidents occurred following force being used on the woman.

A large number of self-harm incidents occurred whilst women were housed at an ISU (31 in Auckland and 25 at Christchurch Women's Prison) some involving items such as staples and, in one case, a razor, which should not have been available to them in the ISU. A number of self-harm incidents involved the woman using their 'anti-rip' gown or bedding to self-harm with, raising questions as to their effectiveness and hence necessity.

Women who self-harmed could be forcibly restrained, and misconduct charges brought against them. In one incident, for example, a woman who attempted suicide by hanging in her cell, once revived, was told by staff who cut the ligature off her neck that she would be removed to the prison's ISU.

> *"As the prisoner was getting moved out of her cell for relocation, she became non-compliant and insisted she wanted to see prisoner XX. This resulted in staff drawing their ICP (pepper spray) and cautioned [sic] prisoner to be compliant. Prisoner was placed in handcuffs and moved to ISU. … In ISU she became non-compliant again and refused to change into stitch gown and continued to abuse and threaten staff which resulted in spontaneous use of force".*

There was no suggestion, as far as I could see, of taking the woman to a hospital following her attempt on her life, or indeed providing her with pastoral care or just a cup of tea. Instead, six officers entered her small cell, physically restraining her when she refused to wear an anti-rip gown.

A Use of Force Review notes that *"the situation may have been heightened by the number of staff that were outside the prisoner's cell"*. I second this view and would further note that segregation cells are small and claustrophobic. Crowding distressed women is unlikely to diffuse difficult situations. In yet another incident, a woman refusing to strip and wear a gown was handcuffed and held on the ground until she stated that she couldn't breathe, at which stage *"staff loosened their holds allowing her to sit back on her knees to open her chest and catch her breath"*.

"There was no suggestion, as far as I could see, of taking the woman to a hospital following her attempt on her life, or indeed providing her with pastoral care or just a cup of tea. Instead, six officers entered her small cell, physically restraining her when she refused to wear an anti-rip gown."

One woman was recorded as self-harming 23 times, 20 of which involved her tying something around her neck *"until her face became purple"*. Sixteen of her attempts on her life took place at the prison's ISU. Another woman was routinely placed in waist restraints to prevent her from picking at her wounds. Other women banged their head against the cell wall, attempted to hang themselves, and scratched and cut themselves. Women who were clearly very unwell remained in the prison rather than being transferred to hospital.

The records I reviewed did not reveal a culture of care and compassion towards women who self-harmed. Rather, further restraints and force often followed such attempts, further aggravating an already delicate situation.

5 Recorded incidents and pepper spray use

5.1 Recorded incidents

The records from the three prisons revealed disciplinarian attitudes towards the women, particularly in ARWCF, and not just in the Management and Separates Units, but in Intervention and Support Units (ISU) too.

According to data provided to this review, in 2019 a total of 281 incidents in the three women's prisons were classified as 'assaults'. Only one incident, which took place in Christchurch Women's Prison, was classified as serious in the list of 'serious incidents' provided to me by Corrections.

Arohata Prison and Christchurch Women's Prison recorded 60 assaults each, ARWCF recorded 161 incidents classified as assaults. Of all recorded incidents recorded as 'assaults', 58% were by a woman on another woman, the majority of which involved fights between the women with use of force by staff ensuing. The remaining incidents involved a prisoner and a member of staff. The majority of these incidents were fairly minor, and some could only be described as 'nuisance'.

A case-by-case analysis of some of the incident reports which were available to me found that the slightest acts of perceived disobedience were often responded to harshly. Minor events were recorded as assaults and charged as such, including, for example,

> *"Threw a hat at staff and attempted to grab at their hair"; "Refused her medication and threw the container which contained her medication back at the nurse. It missed the nurse"; "She proceeded to peel her orange and throw at staff"; "Threw jacket at nurse"* (and was then charged and moved to the Management Unit)*; "Threw a spoon at staff which landed at officer's stab-proof vest"; "Threw a carton of rotten milk at staff which landed on the front of one of their trousers. The prisoner claimed that the milk slipped."*

Other events were recorded as incidents and noted as such in the woman's file for no fault of their own. For example, the following incident report describes events at the ISU at 4:50 in the morning, when an officer was conducting welfare checks on a woman who appeared to be asleep:

> *"I switched the main white light on as she was undercover for a long time. I didn't see any movements under her cover so I kicked the door numerous times and banged on the window, no response. I even went outside and banged her window with the bundle of keys and still didn't see any movement or response.*
>
> *I was concerned and informed [on call manager] who granted approval to open her cell door. Officer xx, officer xx and myself unlocked the cell door to check on the prisoner. She hasn't replied until I pulled the blanket off her and she just woke up and said she was ok. On questioning her why she didn't reply she said she was in a deep sleep. The cell door was closed at 05:17 hours with nil issues."*

Whilst the officer's concern for the woman's welfare is to be applauded, one must wonder if banging on the cell door and windows with a bunch of keys in the middle of the night was conducive to the health and wellbeing of the woman involved and other women in the unit. It also seems curious that an incident report noting the woman whose only misdemeanour was to sleep deeply as the 'perpetrator' was then filed, feeding into inflated reports of 'incidents' and likely following the woman for the rest of her time in custody.

With few exceptions, incident reports revealed little evidence of attempts to communicate with the women involved either before or after the event. Good communication and assessing the reasons for difficult and challenging behaviours are key to the success of both *Hōkai Rangi* and *Change Lives Shape Futures*, and their apparent absence raises questions about the translation of strategies to practice on the ground.

"A case-by-case analysis of some of the incident reports which were available to me found that the slightest acts of perceived disobedience were often responded to harshly. Minor events were recorded as assaults and charged as such..."

5.2 The use of restraints and pepper spray

Pepper spray was not in wide use when I conducted my original review of restraint practices in 2017. During 2019, according to the data provided to me, pepper spray was used 118 times, 23 of which took place at ARWCF, and one in Arohata Prison.[45] In fact, ARWCF's was second only to Christchurch Men's Prison in its absolute number of pepper spray uses.[46]

Pepper spray and other chemical irritant solutions are known to cause a range of health problems including respiratory illness; ocular effects; skin burns; cardiovascular and gastrointestinal effects.[47] According to the United Nations Office of the High Commissioner for Human Rights,

> *"The use of chemical irritants can temporarily cause breathing difficulties, nausea, vomiting, irritation of the respiratory tract, tear ducts and eyes, spasms, chest pains, dermatitis or allergies. In large doses, it can cause necrosis of the tissue in the respiratory tract and the digestive system, pulmonary oedema and internal bleeding. There is also the possibility of burns or other injury resulting directly from the solvents if they have not evaporated before contact with skin".*[48]

People with certain health conditions, including asthma, chronic pulmonary obstructive disease, high blood pressure (hypertension) and heart disease, may be more susceptible to adverse health effects.[49] Recent studies suggest that chemical irritants may also have gender-specific effects, including a possible link between exposure to CS gas and disruptions to the menstrual cycle. [50]

45 Data subsequently provided to me by Corrections on 13/10/21indicates that the number of incidents involving the deployment of pepper spray was actually even higher, with 32 deployments.

46 By way of comparison, in England and Wales the use of PAVA (another type of chemical irritant) was approved for use in four prisons as pilot sites in April 2020. In the year to April 2021, PAVA was used 81 times in these four prisons (with a total population of 3,813 people). There are currently no plans to roll out its use in women's prisons. See Prison Reform Trust dedicated webpage at: http://www.prisonreformtrust.org.uk/WhatWeDo/Projectsresearch/PAVA (Accessed 21/721)

47 Rothenberg, C., Achanta, S., Svendsen, E. R., & Jordt, S. E. (2016). Tear gas: an epidemiological and mechanistic reassessment. *Annals of the New York Academy of Sciences*, 1378(1), 96–107. https://doi.org/10.1111/nyas.13141

48 Office of the United Nations High Commissioner for Human Rights (OHCHR) (2020) *Guidance on less- lethal weapons in law enforcement*, United Nations, Geneva. At section 7.2.5.

49 Centre for Applied Science and Technology (CAST), UK Home Office (2014) *Comparison report on CS and PAVA Sprays*, Publication Number: 24/14.

50 Mahfud, Y., Samuel, A., Çelebi, E. and Adam-Troian, J. (2020) *The link between CS gas exposure and menstrual cycle issues among female Yellow Vest protesters in France* medRxiv 2020.

The use of pepper gas and other irritants should satisfy the following tests:[51]

- Last resort (were other measures, for example closing the cell door, tried?);
- Safe (unsafe use includes deployment in confined spaces and use at point blank range);
- Appropriate justification (to prevent serious harm, rather than to enforce orders or prevent self-harm); and
- Least force necessary.

A case-by-case analysis of the documentation provided to this review has not reassured me that these tests were met in the majority of uses. Of the 24 recorded uses of pepper spray in women's prisons in 2019, it was used:

- 14 times to stop a fight;
- 3 times in response to a woman activating the sprinkler in her cell;
- 3 times with women who refused to relocate to another cell;
- 3 times for refusing an order or 'non-compliance'; and
- 2 times in response to abusive or threatening behaviour (one incident was fairly serious).

It is of note that some of these uses are specifically listed by the United Nations Office of the Commissioners for Human Rights as potentially unlawful:

> *"Chemical irritants should not be used in situations of purely passive resistance. In accordance with the principle of necessity, once a person is already under the control of a law enforcement official, no further use of a chemical irritant will be lawful. Chemical irritants should not be used in closed environments without adequate ventilation or where there is no viable exit, owing to the risk of death or serious injury from asphyxiation".*[52]

51 See *Prison Reform Trust* as above and Nelson Mandela Rule 82: "Prison staff shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Prison staff who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the prison director. Prison staff shall be given special physical training to enable them to restrain aggressive prisoners." See also Mandela Rule 76 which stipulates that staff training shall include, as a minimum, training on: "c) Security and safety, including the concept of dynamic security, the use of force and instruments of restraint, and the management of violent offenders, with due consideration of preventive and defusing techniques, such as negotiation and mediation."

52 Office of the United Nations High Commissioner for Human Rights (OHCHR) (2020) *Guidance on less- lethal weapons in law enforcement*, United Nations, Geneva. At section 7.2.7.

"In many of these cases the use of force or irritants would not pass the tests of being last resort, necessary, least force necessary, safe, or justifiable."

Of the 24 incidents, 23 took place in ARWCF. Several incidents took place when women were inside their cell, some aided by a 'cell buster', a device which helps to disperse the pepper gas inside the cell. The U.S. based manufacturer of the device, 'Sabre', boasts in their catalogue that their products 'make grown up men cry since 1975'.[53] The Cell Buster, according to the catalogue, will:

> *"Reduce the need for "Hard Entries"! Cell Buster's High Pressure Fog Delivery does not require direct facial contact to incapacitate. Specifically designed to permit passive entries into cells, rooms, attics, storage areas, and buildings, Cell Buster will deploy OC underneath doors or through windows, food slots and vents".*[54]

One woman, who was sprayed inside her cell with pepper gas dispersed using a 'cell buster', described the experience:

> *"They spray into your room like it's a shower. You don't know what's going on. It just keeps coming."*

An asthma sufferer, she added: "*Your main thing is to try and breathe, until you start spewing, pleading with them to decontaminate".*

One woman noted that prior to the introduction of pepper gas spray,

> *"They used to try and de-escalate situations before restraining you. They let you mellow out, leave you. Now they are trigger happy with their pepper spray, that's how they roll here".*

This description is backed by staff-recorded incident reports, for example:

> *"After hours incident in the Separates unit. Prisoner xx activates her sprinkler. Staff attend to re-divert the water flow and clean up. Security PCO attends the area to assess the situation. PCO speaks to the prisoner to discuss relocation.* ***The prisoner's demeanour is verbally aggressive and also showing signs of physical aggressive stance.*** *Approval is gained for an organised C&R [Control & Restraint) take out. The On Call Manager attends the site. At about 23.00 hours or there abouts the team deploy the MK9 (Cell*

53 https://www.sabrered.com/tactical-pepper-spray

54 https://copsproducts.com/wp-content/uploads/2020/04/2019-SABRE-Law-Enforcement-Catalog.pdf

buster). The prisoner is subdued and the C&R team enter the cell for the extraction. Mechanical restraints are applied and the prisoner is escorted from the cell. Prisoner xx reacts to the situation and gives hard physical resistance and kicks on of [sic] the staff. Tactical options are applied to restrain the prisoner. She is relocated to the empty cell and locked."

The incident described above exemplifies some of the key issues around the manner in which events escalate. Having reviewed and analysed a large number of recorded incident reports (on use of force and pepper spray deployment), a number of themes/issues recur:

- Distressed women reacting, often mildly, to restrictions, and are responded to with force, including women refusing to be body searched and women refusing to strip or to wear anti-rip gowns at an ISU;
- Seemingly arbitrary staff decisions to withhold entitlements – e.g. use of phone- to gain compliance spark off conflict and use of force;
- Pepper spray used to break scuffles between women;
- Women not given their medication following an incident (two cases);
- Mentally unwell women being restrained / behaviour interpreted as aggressive; and
- Women who were victims of an assault / another incident placed in an ISU (sometimes at their request).

In many of these cases the use of force or irritants would not pass the tests of being last resort, necessary, least force necessary, safe, or justifiable.

Finally, a common thread of these examples is that, in at least some cases, unit policies and practices, and staff actions, are confrontational and may contribute to, rather than quell, conflict and violence.

I believe that Corrections would benefit from serious reflection and consideration of the role of its policies and practices in igniting volatile situations.

6 Discussion, Conclusions and Recommendations

6.1 Discussion and conclusions

This report reveals a continued and troubling picture of high use of segregation and arbitrary and punitive practices towards the women in segregation. Women were often seen as troublesome or dangerous rather than vulnerable and were managed as such.

Solitary confinement is a known risk factor for self-harm[55] especially for women.[56] A literature review of peer-reviewed studies found that there was consistent evidence of an association between lower time out of cell and time in purposeful activity and worse mental health and higher suicide risk.[57]

Yet this review has found that women in segregated housing were subjected to strict and prolonged solitary confinement in harsh, highly restrictive, conditions. They hardly spent any time outside their small cell, their contact with friends and family was reduced to short telephone conversations twice weekly. They were routinely disciplined, violently restrained, forcibly stripped of their clothing, and searched. Some were sprayed with pepper-gas whilst inside their cells- their home- without convincing reason or credible efforts to de-escalate situations first.

Women had to follow detailed, punitive and at times arbitrary, rules, and were punished for any deviation from these rules. On the other hand, it was not clear what the women needed to do in order to be returned to the general prison population and a normal prison regime. These women were set to fall foul of the unreasonable behavioural expectations of them.

55 Kaba, F, Lewis, A, Glowa-Kollisch, S. (2014) Solitary confinement and risk of self-harm among jail inmates. *American Journal of Public Health* 104(3): 442–447.

56 Favril L, Yu R, Hawton K, Fazel S. Risk factors for self-harm in prison: a systematic review and meta-analysis. *Lancet Psychiatry*. 2020 Aug;7(8):682-691. doi: 10.1016/S2215-0366(20)30190-5.

57 Stephenson T, Leaman J, O'Moore É, Tran A, Plugge E. Time out of cell and time in purposeful activity and adverse mental health outcomes amongst people in prison: a literature review. *International Journal of Prison Health*. 2021 Jan 6;17(1):54-68.

For many of the women in segregated units, this antagonising and disaffecting treatment perpetuated their life experience outside prison and made it worse.

In this sense, rather than working to assist their recovery and reintegration back into society, prison further harmed them.

Examples of further harm may include forcibly stripping a woman who may have been sexually abused, physically restraining a woman who may have been the victim of domestic violence, responding with violence to aggressive behaviours – none of these actions could be said to constitute the 'trauma informed and empowering' treatment which the Department of Corrections committed to in the Women's Strategy, *Change Lives Shape Futures*, and which are supported by international human rights standards and good practice recommendations.

If the aspirations of Corrections' flagship policies regarding women are to be genuinely and properly realised, the fortunes of women who end up in the deepest end of Corrections' custody need to be improved for them to leave prison in a better place than they were when entering it. At the very least, they must not be made worse.

"Rather than limiting women's access to family and friends through telephone calls and visits, women should be encouraged and supported in maintaining these, and in particular contact with children."

Rather than focusing on restraints and situational controls (reducing opportunities) such as segregation for managing self-harming or disruptive behaviours, Corrections could invest in working with women to understand the roots of their behaviours and develop alternative tools and life-skills. Rather than limiting women's access to family and friends through telephone calls and visits, women should be encouraged and supported in maintaining these, and in particular contact with children.[58] Rather than limiting women's ability to maintain a clean environment and take pride in their appearance, women should be encouraged to do both. Rather than punishing women involved in conflict, alternative methods of conflict resolution should be employed.[59]

58 For specific recommendations and standards see: Council of Europe Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents (Adopted by the Committee of Ministers on 4 April 2018 at the 1312th meeting of the Ministers' Deputies). Online at: https://rm.coe.int/CoERMPublicCommonSearchServices DisplayDCTMContent?documentId=09000016807b3175

59 As Māori are disproportionately imprisoned and segregated, it would be particularly beneficial to consult and make use of kaupapa Māori, as provided for in *Hōkai Rangi: Ara Poutama Aotearoa Strategy.*

"If the aspirations of Corrections' flagship policies regarding women are to be genuinely and properly realised, the fortunes of women who end up in the deepest end of Corrections' custody need to be improved for them to leave prison in a better place than they were when entering it. At the very least, they must not be made worse."

As leading trauma expert, Babette Rothschild, put it, one of the key foundations of safe trauma therapy is to:

> *"View the trauma system as a pressure cooker. Always work to reduce- never to increase- the pressure. … Every trauma client, whether frozen, dissociated, or hypervigilant, is suffering with a nervous system that is in overdrive, already provoked to the highest level. Reducing pressure by removing provocation will relieve the nervous system and make mobility, calmness and clear thinking more possible."*[60]

Adhering to this principle requires a complete change in the way in which women in the deep end of prisons are managed. Rather than segregating, restraining and depriving women perceived to be 'challenging' or 'at risk', and confining them to sparsely furnished cells with few, or no, personal belongings, these women need to be supported and instilled with hope and something to look forward to. And it is exactly those women with the highest and most complex needs and challenges, that one finds in segregated housing, who require the greatest attention, input, and care.

"Rather than segregating, restraining and depriving women perceived to be 'challenging' or 'at risk', and confining them to sparsely furnished cells with few, or no, personal belongings, these women need to be supported and instilled with hope and something to look forward to."

60 Rothschild, B (2011) *Trauma Essentials: the go to guide*. W.W. Norton & Company, New York, at p 15.

For this to be realised, the use of prolonged segregation has to stop, and there needs to be a sea-change in the way in which behaviours are interpreted and responded to by staff, and the way in which women perceived to be 'risky', to themselves or to others, are treated.

Violations of women's physical integrity including unnecessary strip searches, the application of restraints, and the demand for degrading 'protective' clothing, must stop. These practices are divisive and humiliating, and rather than protecting, they distress and can aggravate an already difficult situation.

The continued marginalisation of women, in particular women of colour and indigenous women, is also made possible by:

> *"The presence of certain legitimizing beliefs, many of which pertain to the presumed dysfunction of women in need of discipline. The structural and discursive abandonment of women of color – the normalization of their socioeconomic marginality alongside the renewed fantasies of gender normativity – are key elements sustaining the beliefs that "people with problems are problems."*[61]

Such attitudes and beliefs need to be challenged and changed. Women who self-harm or are deemed to be at risk of suicide should not be segregated, but placed in a supportive, therapeutic environment, with access to group orientated activities, mental health support and therapies.

The harsh conditions of prolonged solitary confinement in Separates and Management Units are similarly inappropriate, and grossly disproportionate to the risk posed by the women incarcerated in them.

I believe that the unit at ARWCF should not continue to operate in its current form. Instead, it could be transformed into a trauma-informed, therapeutic community, where women could access communal programmes and tools to address any individual issues and needs.

Corrections need to have a close and unflinching look at the way in which Māori and Pacific women in particular are managed in prison. The laudable aspirations expressed in the various policy statements need to be backed by practical, specific, radical policy and practice changes on the ground.

Concluding her written statement to the Royal Commission on Abuse in Care, Professor Tracey McIntosh observed that:

> *"In listening to and understanding the voice of survivors and their whānau*

61 Crenshaw, K. W. (2011). From private violence to mass incarceration: Thinking intersectionally about women, race, and social control. *UCLA Law Review,* 59, 1418. (Citations omitted).

there must be a development of strategies and implementation that safeguards the rights and mana of the child; that recognises how valuable they are; that cherishes and upholds the concept of mokopunatanga; that ensures that connections to whakapapa are revealed and nurtured; that understands whānau in hapū settings and works towards collective security and flourishing of all whanau".[62]

The same applies to women caught up in the deep end of the criminal justice system. They need to be nourished and helped to flourish. This report demonstrates that much work remains to be done.

"The harsh conditions of prolonged solitary confinement in Separates and Management Units are similarly inappropriate, and grossly disproportionate to the risk posed by the women incarcerated in them."

6.2 Key recommendations

Some of the recommendations below repeat recommendations made in my 2017 and 2020 reports. Others are new and reflect the specific needs of women.

1 Strategies for the management of women in prisons, as identified in Corrections' policy documents and commissioned studies, should be implemented, and implementation should be regularly and substantively reviewed.

2 The overrepresentation of Māori and Pacific women in harsher forms of segregated housing requires urgent attention and the development of culturally responsive programmes and unconscious bias training.

3 Plans to develop a new programme for women identified as high-risk announced in the *Women's Strategy, Change Lives Shape Futures* should be prioritised. The new programme, once developed, should not have segregation at its core.

4 Entry and exit criteria from segregated housing should be clarified and tightened.

62 Professor Tracey McIntosh Brief of Evidence for Contextual Hearing Royal Commission of Inquiry Abuse in Care and Faith Based Institutions. October 2020, at 107.

5 Stays in segregated housing should be significantly shorter, and must not exceed 15 days, as prescribed in the Mandela Rules.

6 If, in absolutely exceptional circumstances, segregations have to last longer than 15 days, reasons for the segregation should be clearly stated and documented, and substantially reviewed by a body external to the prison.

7 An individual management/care plan should be designed for each segregated woman, detailing triggers, and coping mechanisms, as well a clear road map for the woman's reintegration. Plans should include specific targets to be reached, steps to be taken, and a timetable for each step. Plans should be constantly reviewed and adjusted as warranted by the woman's needs and challenges at that time.

8 The regime at the Management Unit at ARWCF should be reformed and include access to daily programmes and communal activities as well as ongoing mental health support and reintegration programmes.

9 Provisions and procedures at the ISUs should be reformed to ensure that vulnerable women are not subjected to solitary-confinement like regimes, and that they receive the ongoing support they need in a timely manner.

10 De-escalation efforts should always be the first recourse and properly documented and scrutinised.

11 Individualised, ongoing risk assessment should dictate the level of restrictions necessary at any given time (i.e. not as standard practice).

12 Strip searches should only be carried out on the basis of a specific reason/ to protect life and limb, not as routine practice for all.

13 Women who are acutely unwell should be transferred to a hospital.

14 Anti-rip clothing should only be used when there is a specific and immediate need rather than as blanket policy. Where this is a source of grievance and distress, staff should reconsider the immediate necessity of enforcing the wearing of an anti-rip gown.

15 Pepper spray should not be used in women's prisons at all. My review of the records demonstrates inappropriate use which escalates matters. Data does not support the claim that its use would reduce other use of force.

16 Corrections should introduce of some form of peer-support for women in segregated housing, including ISUs.

17 Minimum Entitlements for women should be modified so as to reflect the specific needs of women, in particular regarding family contact and relationships.

18 Minimum Entitlements must always be provided, unless there is an immediate, specific and time-limited reason to delay their provision.

19 Family contact should be encouraged and facilitated in the segregated units; Family contact must never be used as a lever to ensure compliance.

20 An ability to maintain ongoing personal and cell cleanliness should be expanded and facilitated where requested.

21 Mealtimes should resemble more closely those in wider society.[63]

22 Privacy screens should be installed in all cells which are covered by CCTV.

23 Staff working in segregated environments should be especially selected for work there, with experience and interpersonal skills as key requirements for the job.

24 Staff working in segregated environments should receive enhanced training in mental health and trauma informed practice (including de-escalation techniques).

25 Prison management should visit segregated housing units daily and speak to the women housed there.

26 Housing unit and prison managers should closely monitor key protected characteristics (ethnicity, age, health) of women in segregated housing and draw plans to address any imbalances found.

63 Corrections announced that shift patterns will be changed so that meals could be served in more appropriate times. At the time of my visit to AWRCF, however, meals were still served at the times reported here.

Appendix 1: International human rights standards relating to solitary confinement (segregation) and restraint use, with a focus on women

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Article 12

1 States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2 Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

The United Nations Rules for the Treatment of Women Prisoners and Noncustodial Measures for Women Offenders (the "Bangkok rules").

The Rules[64] were adopted by the UN General Assembly in December 2010. They were developed to supplement and complement, as appropriate the Standard Minimum Rules for the Treatment of Prisoners (SMR) and the United Nations Standard Minimum Rules for Non-Custodial Measures (the "Tokyo rules") in relation to the treatment of women prisoners and alternatives to prison for women offenders. The Rules address the gender specific requirements of women prisoners, including those arising from pregnancy and childcare. Key Rules relevant to issues discussed in this report are listed below.

64 For a full text of the Bangkok Rules, see: http://www.ohchr.org/Documents/ProfessionalInterest/BangkokRules.pdf

Bangkok Rules: select list[65]

Personal hygiene

[Supplements rules 15 and 16 of the UN SMR]

Rule 5: The accommodation of women prisoners shall have facilities and materials required to meet women's specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating.

Health-care services

[Supplements rules 22-26 of the UN SMR]

Rule 6: Medical screening on entry

The health screening of women prisoners shall include comprehensive screening to determine primary healthcare needs, and also shall determine:

(a) The presence of sexually transmitted diseases or blood-borne diseases; and, depending on risk factors, women prisoners may also be offered testing for HIV, with pre- and post-test counselling.

(b) Mental health-care needs, including post-traumatic stress disorder and risk of suicide and self-harm.

Suicide and self-harm prevention

Rule 16: Developing and implementing strategies, in consultation with mental health-care and social welfare services, to prevent suicide and self-harm among women prisoners and providing appropriate, gender-specific and specialized support to those at risk shall be part of a comprehensive policy of mental health care in women's prisons

Discipline and punishment

[Supplements rules 27 to 32 of the UN SMR]

Rule 22: Punishment by close confinement or disciplinary segregation shall not be applied to pregnant women, women with infants and breastfeeding mothers in prison.

Rule 23: Disciplinary sanctions for women prisoners shall not include a prohibition of family contact, especially with children.

65 A fuller discussion on international human rights law provisions relating to solitary confinement and restraint can be found in Appendix 2 of Time for a Paradigm Shift report, available online at: https://www.solitaryconfinement.org/solitary-confinement-in-new-zealand

Searches

Rule 19: Effective measures shall be taken to ensure that women prisoners' dignity and respect are protected during personal searches, which shall only be carried out by women staff who have been properly trained in appropriate searching methods and in accordance with established procedures.

Rule 20: Alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches.

Rule 21: Prison staff shall demonstrate competence, professionalism and sensitivity and shall preserve respect and dignity when searching both children in prison with their mother and children visiting prisoners.

Contact with the outside world

[Supplements rules 37 to 39 of the UN SMR]

Rule 26: Women prisoners' contact with their families, including their children, and their children's guardians and legal representatives shall be encouraged and facilitated by all reasonable means. Where possible, measures shall be taken to counterbalance disadvantages faced by women detained in institutions located far from their homes.

Rule 28: Visits involving children shall take place in an environment that is conducive to a positive visiting experience, including with regard to staff attitudes, and shall allow open contact between mother and child. Visits involving extended contact with children should be encouraged, where possible.

Classification and individualization

Rule 41: The gender-sensitive risk assessment and classification of prisoners shall:

(a) Take into account the generally lower risk posed by women prisoners to others, as well as the particularly harmful effects that high-security measures and increased levels of isolation can have on women prisoners;

(b) Enable essential information about women's backgrounds, such as violence they may have experienced, history of mental disability and substance abuse, as well as parental and other caretaking responsibilities, to be taken into account in the allocation and sentence planning process;

(c) Ensure that women's sentence plans include rehabilitative programmes and services that match their gender-specific needs;

(d) Ensure that those with mental health-care needs are housed in

accommodation which is not restrictive, and at the lowest possible security level, and receive appropriate treatment, rather than being placed in higher security level facilities solely due to their mental health problems.

Prison regime

[Supplements rules 65, 66 and 70 to 81 of the UN SMR]

Rule 42

1 Women prisoners shall have access to a balanced and comprehensive programme of activities which take account of gender-appropriate needs.

2 The regime of the prison shall be flexible enough to respond to the needs of pregnant women, nursing mothers and women with children. Childcare facilities or arrangements shall be provided in prisons in order to enable women prisoners to participate in prison activities.

3 Particular efforts shall be made to provide appropriate programmes for pregnant women, nursing mothers and women with children in prison.

4 Particular efforts shall be made to provide appropriate services for women prisoners who have psychosocial support needs, especially those who have been subjected to physical, mental or sexual abuse.

UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) regarding solitary confinement and instruments of restraint

The Rules were first adopted in 1957. In 2015 the Rules were revised and adopted unanimously by the United Nations General Assembly as the Nelson Mandela Rules.

Solitary confinement

Mandela Rule 43

1 In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited:(a) Indefinite solitary confinement;(b) Prolonged solitary confinement;(c) Placement of a prisoner in a dark or constantly lit cell;(d) Corporal punishment or the reduction of a prisoner's diet or drinking water; (e) Collective punishment.

2 Instruments of restraint shall never be applied as a sanction for disciplinary offences.

3 Disciplinary sanctions or restrictive measures shall not include the

prohibition of family contact. The means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order.

Mandela Rule 44

For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.

Mandela Rule 45

1 Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. It shall not be imposed by virtue of a prisoner's sentence.

2 The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures. The prohibition of the use of solitary confinement and similar measures in cases involving women and children, as referred to in other United Nations standards and norms in crime prevention and criminal justice, continues to apply.

Instruments of restraint

Mandela Rule 47

1 The use of chains, irons or other instruments of restraint which are inherently degrading or painful shall be prohibited.

2 Other instruments of restraint shall only be used when authorized by law and in the following circumstances: (a) As a precaution against escape during a transfer, provided that they are removed when the prisoner appears before a judicial or administrative authority; (b) By order of the prison director, if other methods of control fail, in order to prevent a prisoner from injuring himself or herself or others or from damaging property; in such instances, the director shall immediately alert the physician or other qualified healthcare professionals and report to the higher administrative authority.

Mandela Rule 48.1

When the imposition of instruments of restraint is authorized in accordance with paragraph 2 of rule 47, the following principles shall apply: (a) Instruments of restraint are to be imposed only when no lesser form of control would be

effective to address the risks posed by unrestricted movement; (b) The method of restraint shall be the least intrusive method that is necessary and reasonably available to control the prisoner's movement, based on the level and nature of the risks posed; (c) Instruments of restraint shall be imposed only for the time period required, and they are to be removed as soon as possible after the risks posed by unrestricted movement are no longer present.

Mandela Rule 48.2

Instruments of restraint shall never be used on women during labour, during childbirth and immediately after childbirth.

Mandela Rule 49

The prison administration should seek access to, and provide training in the use of, control techniques that would obviate the need for the imposition of instruments of restraint or reduce their intrusiveness.

Mandela Rule 42

General living conditions addressed in these rules, including those related to light, ventilation, temperature, sanitation, nutrition, drinking water, access to open air and physical exercise, personal hygiene, health care and adequate personal space, shall apply to all prisoners without exception.

61/295. United Nations Declaration on the Rights of Indigenous Peoples Resolution adopted by the General Assembly on 13 September 2007

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 7

Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

Article 21

1 Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2 States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1 Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2 States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 24

1 Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

2 Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Appendix 2: The legal and administrative framework for the use of segregation and restraint in New Zealand

(Compiled by New Zealand Human Rights Commission staff)

Provisions that apply to all forms of detention

New Zealand Bill of Rights Act 1990

Long title: "An Act to affirm, protect, and promote human rights and fundamental freedoms in New Zealand, and to affirm New Zealand's commitment to the International Covenant on Civil and Political Rights."

- **Section 9:** "Everyone has the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment."
- **Section 23(5):** "Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the person."

Crimes of Torture Act 1989

- **Section 2** defines an "act of torture" as "any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person – (a) for such purposes as – (i) obtaining from that person or some other person information or a confession; or (ii) punishing that person for any act or omission for which that person or some other person is responsible or is suspected of being responsible; or (iii) intimidating or coercing that person or some other person; or (b) for any reason based on discrimination of any kind; – but does not include any act or omission arising only from, or inherent in, or incidental to, any lawful sanctions that are not inconsistent with the Articles of the International Covenant on Civil and Political Rights."
- **Section 3** makes it a criminal offence for "any person who is a public official or who is acting in an official capacity" to commit, abet or incite an act of torture, or to incite, counsel, or procure any person to commit any act of torture. The Act also applies to attempt, conspiracy or accessory to an act

of torture. ˚ Law enforcement officers and corrections officers are included within the statutory definition of a "public official" for the purposes of the Act.

Crimes Act 1961

- **Section 151:** "Every one who has actual care or charge of a person who is a vulnerable adult and who is unable to provide himself or herself with necessaries is under a legal duty – (a) to provide that person with necessaries; and (b) to take reasonable steps to protect that person from injury."
- **Section 2** defines a "vulnerable person" "a person unable, by reason of detention, age, sickness, mental impairment, or any other cause, to withdraw himself or herself from the care or charge of another person."

Corrections Act 2004

Segregation

- **Section 57:** Segregation is defined as an event where "[t]he opportunity of a prisoner to associate with other prisoners may be restricted or denied in accordance with sections 58 to 60."
- **The Corrections Act** provides for the segregation of prisoners for the purpose of security, good order or safety (s 58), protective custody (s 59) or medical oversight (s 60). Security, good order, or safety.
- **Section 58(1):** A prisoner may be placed in segregation if the prison manager is of the opinion that "the security or good order of the prison would otherwise be endangered or prejudiced", or "the safety of another prisoner or another person would otherwise be endangered."
- **Section 58(2):** If a prisoner is segregated in this way, they must be given the reasons for their segregation in writing and the chief executive of the Department of Corrections must be promptly informed of the direction and the reasons for it.
- **Section 58(3):** The decision to segregate someone may be revoked at any time by the chief executive or a Visiting Justice (and it must be revoked by the prison manager if there ceases to be any justification for continuing to restrict or deny the opportunity of the prisoner to associate with other prisoners),
- **Sections 58(3)(c), 58(3)(d)(i):** A decision to segregate expires after 14 days unless the chief executive directs for it to continue, in which case the decision must be reviewed by the chief executive at least every month.
- **Sections 58(3)(d)(ii), 58(3)(e):** It then expires after three months unless renewed by a Visiting Justice, who must then review it in intervals of not more than three months.

Protective custody

- **Section 59(1):** The prison manager may direct that the opportunity of a prisoner to associate with other prisoners be restricted or denied if a prisoner requests this and the manager considers that it is in the best interests of the prisoner, or if the prison manager is satisfied that the safety of the prisoner has been put at risk by another person, and there is no reasonable way to ensure the safety of the prisoner other than by giving that direction.
- **Section 59(2)(a):** A prisoner asking to be segregated must give consent in writing and can withdraw consent at any time.
- **Section 59(3):** If the prison manager has decided that the prisoner is at risk, the segregation may continue and the decision must be given promptly in writing to the prisoner, and the chief executive informed.
- **Section 59(4)(a):** The direction to segregate must be revoked by the prison manager if there ceases to be any justification for continuing to restrict or deny the opportunity of the prisoner to associate with other prisoners.
- **Section 59(4)(b)-(d):** It may also be revoked, at any time, by the chief executive, and expires after 14 days unless, before it expires, the chief executive directs that it continue in force, in which case the decision must be reviewed by them at intervals of not more than 3 months.

Medical oversight

- **Section 60(1):** Segregation may also be ordered if the health centre manager of the prison recommends it to assess or ensure the prisoner's health (both physical and mental health, including the risk of self-harm).
- **Section 60(2):** This decision must be given promptly in writing and the chief executive must be informed.
- **Section 60(3):** This segregation continues until revoked by the prison manager or chief executive.
- **Section 60(4):** The prison manager may not revoke the segregation unless advised to do so by the health centre manager.
- **Section 60(5):** The health centre manager must ensure a registered health professional visits the prisoner at least once a day, or twice a day if the prisoner is at risk of self-harm.

Offences by prisoners

- **Section 133(3):** If, at any hearing under this section, a hearing adjudicator finds the offence proved, he or she may impose 1 or more of the following penalties: (a) forfeiture or postponement of all or any privileges for any period not exceeding 28 days: (b) forfeiture of earnings for any period not exceeding 7 days: (c) confinement in a cell for any period not exceeding 7 days.
- **Section 137(3):** If, at any hearing under this section, the Visiting Justice finds the offence proved, he or she may impose 1 or more of the following penalties: (a) forfeiture or postponement of all or any privileges for any period not exceeding 3 months: (b) forfeiture of earnings for any period not exceeding 3 months: (c) confinement in a cell for any period not exceeding 15 days.

Women-specific provisions

Subpart 3, sections 81A – 81C of the Corrections Act 2004

- **Sections 81A- 81C** relate to the provision of accommodation for mothers in prison of a child less than 24 months old.

Subpart 7, section 203 of the Corrections Act 2004

- **Section 203:** "regulations made under section 200(1)(d) may include (without limitation provisions" – (c) prescribing conditions relating to the care of children of female prisoners who are allowed to remain with or visit their mothers in prison.

Use of Force/Restraint

Subpart 4, sections 83 – 88 of the Corrections Act 2004

- **Section 83(1):** "No officer or staff member may use physical force in dealing with any prisoner unless the officer or staff member has reasonable grounds for believing that the use of physical force is reasonably necessary – (a) in self-defence, in the defence of another person, or to protect the prisoner from injury; or (b) in the case of an escape or attempted escape (including the recapture of any person who is fleeing after escape); or (c) in the case of an officer, – (i) to prevent the prisoner from damaging any property; or (ii) in the case of active or passive resistance to a lawful order."
- **Section 83(2):** If physical force is used in the circumstances referred to in s 83(1) it may not be more than is "reasonably necessary in the circumstances".
- **Section 87(4):** "A mechanical restraint – (a) must not be used for any disciplinary purpose" and "must be used in a manner that minimises harm and discomfort to the prisoner."

- **Section 87(5):** "A mechanical restraint must not be used on a prisoner for more than 24 hours at a time unless the use of the restraint for more than 24 hours – (a) is authorised by the prison manager and is, in the opinion of a medical officer, necessary to protect the prisoner from self-harm; or (b) is, in the case of a prisoner who has been temporarily removed to a hospital outside the prison for treatment, necessary to prevent the escape of the prisoner or to maintain public safety."
- **Section 87(5A):** "An authorisation must be in writing, specify the type of restraint to be used, specify the time which the prisoner is to be kept under restraint; and include a record of the medical officer's opinion that the restraint is necessary to protect the prisoner from self-harm."
- **Section 87(6):** "Chains or irons must not be fitted or attached to a prisoner in any circumstances." But does not include handcuffs (s 87(7)).

Corrections Regulations 2005

Segregation

- **Part 6:** Regulations 53-64 sets out the regulations on the segregation of prisoners including prescribed segregation and at-risk facilities and additional segregation and at-risk facilities.

Cell confinement

- **Part 11:** Discipline and order, Regulations 154-157 sets out the regulations in relation to prisoners on whom a penalty of cell confinement is imposed.

Use of Force/Restraint

- **Part 9:** Use of force, non-lethal weapons, and mechanical restraints, regulations 118 – 129 sets out when force can be used, the use of non-lethal weapons, mechanical restraints and reporting on their use.
- **Schedule 5:** Mechanical restraints: section 3 sets out the types of restraints that can be used by a staff member and include hand-cuffs, waist restraints used in conjunction with handcuffs, torso restraints, head protectors, and spit hoods.
- As of December 2019, tie-down beds and wrist bed restraints can no longer be used.

Women-specific provisions

- **Part 13** Special categories of prisoners: regulation 175 sets out the process for approval of daily visits from children less than 24 months old of women in prison.

Prison Operations Manual

Women specific provisions

Instruction M.03.02 Wāhine/women and pregnant prisoners:

- Wāhine / women prisoners are accommodated in secure facilities separate from male prisoners and are managed independently of male prisoners.
- Decisions made about imprisoned wāhine / women must consider their unique needs and acknowledge their family / whānau circumstances as well as their cultural and personal histories.
- Wāhine / women in prison who are pregnant and/or in labour require special consideration when arranging temporary removal or when transferring to give birth. This includes consideration of the type of vehicle.
- The health and wellbeing of the pēpi / baby must also be taken into consideration when planning temporary removals.
- Pregnant wāhine / women have the right to apply to the New Zealand Parole Board for early release on compassionate grounds (see M.03.02.Form.08 Early Release on compassionate grounds giving birth).
- Mechanical restraints will not to be used on wāhine / women who are 30+ weeks pregnant, are in labour, or remain in hospital with their pēpi / baby after giving birth.

NZ Human Rights.

Te Kāhui Tika Tangata
Human Rights Commission