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Office of the Minister of Corrections

Chair, Cabinet Legislation Committee

Government Response to the Report of the Justice Committee on the Office of the Ombudsman, OPCAT Reports

Proposal

- 1 This paper seeks approval of the Government's response to the Justice Committee recommendation, from its report on four Office of the Ombudsman OPCAT Reports relating to Corrections-managed facilities.

Background

- 2 New Zealand has human rights obligations under the United Nations Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).
- 3 To fulfil these obligations, the Ombudsman is designated as one of New Zealand's National Preventive Mechanisms (NPMs) under the Crimes of Torture Act 1989. Their role is to examine the treatment and conditions of people in places of detention in New Zealand and make any recommendations for improvements.
- 4 On 11 April 2024, the Chief Ombudsman appeared before the Committee to discuss the following reports:
 - Report on an unannounced inspection of Tongariro Prison under the Crimes of Torture Act 1989
 - COVID-19 report on inspections of prisons under the Crimes of Torture Act 1989
 - Final report on an unannounced inspection of Auckland Prison under the Crimes of Torture Act 1989
 - Report on an unannounced inspection of Matawhāiti Residence under the Crimes of Torture Act 1989
- 5 On 30 May 2024, the Committee issued its final report (attached as **Appendix One**), which included a recommendation that "*the Government enquire into the compliance with minimum legal standards of prison facilities*".
- 6 Under Standing Order 256, the Government must present a paper to the House responding to any recommendations of the committee not more than 60 working days after a select committee report has been presented. A response to the recommendation from this report is therefore due no later than 26 August 2024.

The Justice Committee findings

- 7 The Justice Committee (the Committee) found the Department of Corrections (Corrections) appeared to be struggling to make progress with the implementation of accepted recommendations from the Ombudsman. Specific concerns related to culture and practices in maximum-security units at Auckland Prison.
- 8 In general, the Committee noted concern that Corrections had accepted many of the Ombudsman's recommendations over successive years, though appeared to struggle to demonstrate their implementation. They noted their intent to continue to monitor Corrections' progress in implementing recommendations, as part of their regular scrutiny of Corrections.
- 9 The Committee recommended that the Government enquire into the compliance with minimum legal standards of prison facilities.

Government response to the Justice Committee findings and recommendation

- 10 In order to respond to the recommendation, I asked Corrections to provide information on its current compliance with minimum legal entitlements and work underway to improve assurance on the provision of minimum entitlements to people in prison.
- 11 This information has been provided in the *Government Response to the Report of the Justice Committee on the Office of the Ombudsman, OPCAT Reports*. This report is attached as **Appendix Two**.
- 12 The Corrections Act 2004 (the Corrections Act), and Corrections Regulations 2005 provide the legal framework for the operation of New Zealand's prison system. Section 69 of the Corrections Act provides the minimum legal entitlements to be provided to prisoners. These include entitlements related to exercise, bedding, diet, visitors, legal advisers, medical treatment, mail, phone calls, and access to information and education.
- 13 Currently, prisoners are offered at least one hour out of their cell each day. In most cases, prisoners are offered more than one hour. For instance, low security prisoners are generally unlocked for between 8-10 hours per day. All prisons have resumed face-to-face visits in some capacity.
- 14 Under section 69(2) of the Corrections Act 2004, circumstances are provided for in which a prisoner may be denied minimum entitlements. For example, if there is an emergency in the prison, the security of the prison is threatened, or the health or safety of any person is threatened.
- 15 I am advised that given the diverse range of activities covered by minimum entitlements, there is currently no standardised administrative solution to record Corrections' adherence to the provision of these entitlements.
- 16 Auckland Prison has trialled a pilot digital minimum entitlement application, developed in 2021. This minimum entitlement application has provided learnings which can inform an administrative option to be rolled out across the prison system. Corrections is exploring options for a digital solution that would allow them to

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monitor minimum entitlements while ensuring the administrative burden on frontline staff is minimised.

- 17 As part of the response to the Ombudsman’s systemic investigation into Corrections (*Kia Whaitake / Making a Difference*) released in June 2023, the Public Service Commissioner set up the Ara Poutama Aotearoa Oversight Bodies Advisory Board. The Board provides independent advice to Corrections and the Public Service Commissioner regarding Corrections’ progress with the recommendations within Kia Whaitake, including the provision of safe, fair and humane treatment of people in prison.
- 18 The operationally independent Office of the Inspectorate also works to ensure all prisoners are treated in a way that is fair, safe, secure and humane, along with identifying operational issues and best practice, and any emerging risks in relation to prisons.

Timing of the Government Response

- 19 The Government Response must be presented to the House office no later than 5:00pm on 26 August 2024.

Consultation

- 20 Corrections consulted with the Ministry of Justice, Department of the Prime Minister and Cabinet, New Zealand Police and the Public Service Commission. The Ministry of Justice and Department of the Prime Minister and Cabinet provided some minor feedback, requesting some additional detail on oversight bodies.

Proactive Release

- 21 I intend to proactively release this Cabinet paper 30 working days after final Cabinet decisions have been made. Any information that may need to be withheld will be done in line with the provisions of the Official Information Act 1982.

Recommendations

The Minister of Corrections recommends that the Cabinet Legislation Committee:

- 1 **note** that on 30 May 2024 the Justice Committee presented its report to the House entitled “Office of the Ombudsman, OPCAT Reports”;
- 2 **note** that the select committee recommended that “*the Government enquire into the compliance with minimum legal standards of prison facilities*”;
- 3 **note** the Minister of Corrections’ submission and in particular his advice that:
 - Currently, prisoners are offered at least one hour out of their cell each day and all prisons have resumed face-to-face visits in some capacity.
 - Prisoners may be denied minimum entitlements in accordance with section 69(2) of the Corrections Act 2004.

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- Work is being initiated to understand and develop a possible digital solution, to allow the monitoring of minimum entitlements, while minimising administrative burden on front-line staff.
- 4 **note** that the Government Response must be presented to the House by 26 August 2024;
 - 5 **approve** the Government Response, attached to this submission, to the Report of the Justice Committee entitled “Government Response to Report of Justice Committee on the Office of the Ombudsman, OPCAT Reports”;
 - 6 **invite** the Minister of Corrections to present the Government Response to the House in accordance with Standing Order 256.

Authorised for lodgement

Hon Mark Mitchell

Minister of Corrections

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Appendices

Appendix One

Justice Committee Report on the Office of the Ombudsman, OPCAT Reports
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Appendix Two

**Government Response to the Report of the Justice Committee on the Office of the
Ombudsman, OPCAT Reports**