

Corrections' key areas of concern with the factual accuracy and representation of information within the 'First, do no harm: Segregation, Restraint and Pepper Spray use in women's prisons in New Zealand' report.

Consent

On 6 October 2021, Corrections' Ministerial Services Manager Robert Jones and Chief Inspector Janis Adair took part in a meeting with yourself and representatives from the Human Rights Commission. Concerns were raised about the safety and wellbeing of the women and staff discussed in the report and consent processes. [REDACTED] name is in the footnotes of the report which raises privacy concerns. The meeting concluded with the HRC's Chief Legal Advisor, [REDACTED], undertaking contact with lawyer [REDACTED] who is representing the women subject to the Chief Inspector's investigation and ARWCF.

Absence of methodological discussion

The report does not provide methodological discussion which undermines the conclusions reached in the report. For example, the report does not document how many observations were conducted over what period. What number of incidents were reviewed over what period? Is this a census or a sample? If the latter, what was the sampling criteria used? As this information is not provided it presents difficulties in putting the research in to context.

Generalisation of all women's prisons in New Zealand

As noted in your report, the data presented was obtained during the preparation of the Paradigm Shift report in 2019, and observations made by yourself during a visit to Auckland Region Women's Corrections Facility (ARWCF), in July 2020. The report however draws conclusions about practices in all women's prison sites across New Zealand when only one prison site was visited. This point should be clarified throughout the report to refrain from generalisations being made based on a visit to one prison.

Overall, the language used throughout the report is emotive and the content presented is often subjective and based on opinion. This raises concerns about the lack of evidence or facts to support many of the claims and accusations made. Examples are referenced in the attached table of comments below.

Use of the term solitary confinement

The United Nations Standard Minimum Rules for the Treatment of Prisoners define solitary confinement as the confinement of prisoners for 22 hours or more a day without meaningful human contact. Segregation directions do not require that a prisoner be prevented from having 'meaningful human contact'. It is therefore

incorrect and misleading to equate the use of a segregation direction with solitary confinement.

The report should clarify that legislatively segregation does not equate to solitary confinement.

There is a failure to distinguish between the different types of segregation used in New Zealand prisons - directed and voluntary segregation. Many women request voluntary protective segregation whereby they request to be segregated from the general prison population for reasons such as fearing for their safety.

Conflating different segregation and management regimes

The report combines periods spent in the Management Unit, Intervention and Support Unit (ISU) and segregation. There is a failure to acknowledge and explain the distinct difference between these units. The purpose of an ISU is to safely observe and manage at-risk and vulnerable people in a therapeutic way. This is not comparable to a person being placed on directed segregation for security, good order or safety. It is also important to note that the regime for managing at-risk prisoners is distinct from the segregation regimes in the Corrections Act 2004.

It is important that the report clarifies the difference between the different types of segregation and management practices used by Corrections.

Discussions of over-representation of Māori and Pacific people are inaccurate

The references made in the report about the over-representation of Māori and Pacific women is formed on incorrect baselines. An accurate baseline should be the population of each ethnic group in prison, or more accurately of those with incidents noted. There is no evidence to support references to bias decision making by Corrections staff when approving segregation of women in prison. This is a substantial accusation to make with no factual basis to support it. The over-representation of Māori and Pacific women may be a result of the general over-representations of these population groups in women's prison in New Zealand. Referencing this data to population levels in the general population overstates the extent of over-representation. Please refer to our response to the 'Paradigm Shift' report for further detail on our concerns about the how over-representation of Māori and Pacific in different forms of segregation has been presented.

Inaccurate representation of data

The data used inaccurately represents the use of segregation, pepper-spray, and restraint in women's prisons, due to the data for different and incongruent management practices being combined, as detailed above. Further, there is limited reference to the extremely low numbers of incidents where pepper spray was actually deployed in women's prisons.

Further specific concerns are outlined in the table below:

Page number	Reference in report	Corrections' comment on content
6	<i>Overall, there is a continued and high use of segregation and other punitive practices towards women. In 2019 women were segregated significantly (73%) more often than men in New Zealand's prisons</i>	<p>Women's offending that leads to imprisonment is different to men.</p> <p>Normalising for offending history to compare with like has not been undertaken so to compare overall rates fails to acknowledge different populations.</p> <p>Appears to be incorrect - in 2019 women accounted for 6.6% of all periods in directed segregation and 6% of the population.</p>
6	<i>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 prohibited as a form of torture UN Nelson Mandela Rules' definition of prolonged solitary confinement</i>	<p>Periods in segregation are not directly comparable to periods in solitary confinement as laid out in the Mandela rules. This is detailed above.</p> <p>ISU, Management Units and Segregation are incorrectly categorised as the same throughout the report.</p>
6	<i>Māori and Pacific women were disproportionately segregated, in particular 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.</i>	<p>Over-representation. Māori women represent 64% of the prison population of women, and 70% of those sentenced for violent offending, including murder, assaults and robbery – all offence types associated with behaviour that can result in periods in segregation.</p>

7	<p><i>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.</i></p>	<p>Pepper spray was deployed 36 times in Women's prisons in 2019, 32 at ARWCF, 3 times at Arohata and once at CMP. ARWCF has a higher density of complex prisoners than any other prison, excluding Auckland Men's Prison. Review of the incident text suggests that it is inappropriate to categorise the incidents as minor, and people can still be a risk to themselves and others whilst inside their cell.</p>
7	<p><i>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</i></p>	<p>The fact a person is subject to a segregation direction does not mean they are subject to solitary confinement. A person subject to a segregation direction may continue to have meaningful human contact with others. Note that different forms of segregation and at-risk management should not be conflated.</p>
7	<p><i>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.</i></p>	<p>As noted above, further investigation is required to determine if over-representation is statistically significant.</p>
8	<p><i>Practices in hidden corners of women's prisons...</i></p>	<p>Corrections' management and ISU units are often characterised as 'hidden', which could imply that practices are deliberately concealed. We do not agree with this characterisation and request that it be changed. Corrections' management and ISU units are subject to significant monitoring and oversight from bodies such of the Office of the Inspectorate and the Office of the Ombudsman. In the interests of openness and transparency, Corrections links to the Ombudsman OPCAT reports on our website. The Inspectorate also publishes prison inspection reports on their website.</p>

8-9	<p><i>Women still only make for a small percentage (6.4%) of people in Aotearoa's prisons. Thus, although the needs of women in prison are different to those of men, they are incarcerated in prisons designed for men and managed primarily in accordance with rules and regulations devised for men. This applies also to segregation policies and practices.</i></p>	<p>ARWCF was designed with the needs of women in mind and Arohata has been re-built over the years to better suit the needs of women.</p> <p>As noted, CWP is one of our Māori Pathway sites focusing on co-designing an end-to-end Kaupapa Māori pathway for women and their whānau. Te Mana wahine is looking to transform how the prison operates over the next four years and inform transformation at the other two women's prison sites.</p>
13	<p><i>Another common feature of women's imprisonment is the overrepresentation of indigenous women and women of colour. In New Zealand, there is a grossly disproportionate number of Māori women in prisons, making for as many as 63% of all women in prison (and only 16.7% of New Zealand's population) Pacific women are also overrepresented in prisons, but the gap is smaller: they make for 6% of the prison population, but only 4% of the general population.</i></p>	<p>6% and 4% are incorrect and are not the same type of calculation as the 63% and 16.7%. Pacific women currently represent 6.9% of the prison population of women and 8% of the general population of women and are therefore under-represented.</p>
15	<p><i>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.</i></p>	<p>This is also the case for men in prison and is acknowledged in the way segregated people are managed. Those who exhibit violent or disruptive behaviours are removed from the general population for their own safety, and the safety of others.</p>
18	<p><i>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.</i></p>	<p>The report only reports on the percentage of European women in ISUs (33%), and yet this is a minority. This suggests that other groups make up a much greater proportion. The selective presentation of data in this way is problematic and misleading.</p>

18/19	Data used regarding women in segregation	<p>The data used counts the number of starts in a designated unit of type “ISU (At risk)”, “separates” or “management” in 2019, as provided. Attaching a label of segregation to an ISU stay is inaccurate.</p> <p>This is conflating different segregation and management regimes.</p>
19	<i>Non-white and indigenous women were more likely to be perceived as more dangerous and violent</i>	<p>There is no New Zealand evidence to support this claim in the report, but the presentation of this statement gives the impression that this is equally relevant in New Zealand. These generalisations are not evidence based. The use of international research findings is highly selective and over-relied upon throughout the report. The international literature lacks specific details about the method and reliability of finding.</p>
19	Line graph - longer segregations by ethnicity and unity type (women’s prisons).	<p>Incorrect use of line graphs to chart non-continuous data.</p>
21	<i>Staff attitudes at the unit appeared correspondingly harsh.</i>	<p>The statement is based on opinion rather than fact. The use of “I feel” and “there appear to be” statements are used throughout the report with no evidence to support the statements.</p>
37	<i>Women who were clearly unwell remained in the prison rather than being transferred to hospital</i>	<p>The report notes that some women with significant behavioural or mental health needs should be placed in mental health facilities, with reference to one example at CWP. There is no commentary on the number of women who are under care of Forensic Mental Health Services in prison or those who are unable to be transferred to hospital due to lack of beds. This is relevant to the concern about the number of very unwell women we are trying to care for.</p>

38	<p><i>Suggestion that some incidents should not be considered as “assaults”</i></p> <p><i>The author suggests that some incidents should not be considered “assaults” against staff due to their minor nature. It is not clarified what a threshold for a legitimate “assault” should be.</i></p>	<p>There is no clarification on what the author considers the threshold for a legitimate “assault” should be.</p>
39	<p><i>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 Auckland Women’s prison, and 1 in Arohata prison. In fact, Auckland Women’s was second only to Christchurch Men’s prison in its absolute number of pepper spray uses</i></p>	<p>In the 2019 calendar year there were 277 occasions on which pepper spray was deployed, and 32 of those were at ARWCF. ARWCF does rank second in terms of deployment of pepper spray, but 7th equal with Otago Corrections Facility and Manawatu Prison in terms of pepper spray being deployed OR drawn and not deployed.</p>
40	<p><i>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:</i></p>	<p>The numbers reported are incorrect. In 2019 there were 32 incidents of pepper spray use, 18 were to break up fights.</p> <p>The report has attributed the use of pepper spray to activating sprinklers, non-compliance and refusing relocations when it was in response to the individuals arming themselves, making threats, taking a threatening stance, and abusing officers</p>
41	<p><i>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 assaults), a number of themes/issues recur:</i></p>	<p>There were 56 pepper spray incidents over 39 months, and there in no clear defining line in the report between the discussion of pepper spray and use of force when the two are distinct issues.</p>

43	<i>Some were sprayed with pepper-gas whilst inside their cells- their home-often without convincing reason or credible efforts to de-escalate situations first</i>	There are 56 actual deployments of pepper spray. In that context, nothing was done 'often' and the majority of incident reports detail attempts to de-escalate and warnings prior to deployment. The full text of incidents where pepper spray was deployed proves this statement to be false.
46	<i>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.</i>	Māori and pacific women are overrepresented in the prison population as a whole.
48	<i>Pepper spray should not be used in women's prisons at all. My review of the records demonstrates time and time again inappropriate use which escalates 48 matters. Data does not support the claim that its use would reduce other use of force</i>	<p>In 2019 pepper spray was drawn on 20 occasions in women's prisons where it was not subsequently deployed and was successful as a de-escalation measure. That is 36% of incidents where pepper spray was involved.</p> <p>The analysis of pepper spray incidents documented is not consistent with Corrections' analysis.</p>
51	<i>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.</i>	If this involves protecting women from unwanted sexual harassment or violence from other incarcerated women how can this be juxtaposed against the recommendation to reduce segregation?