

Chair
CABINET BUSINESS COMMITTEE

MAKING THE PRISON NETWORK MORE SAFE, HUMANE AND EFFECTIVE – PAPER ONE: AVOIDING SEVERE PRISON CAPACITY SHORTAGES

Purpose

- 1 This is the first of two papers on prison capacity. Paper Two focusses on the Waikeria Corrections and Treatment Facility. This paper informs Cabinet of the serious capacity problems facing our prisons.

Executive Summary

The prison capacity crisis

- 2 We have inherited a prison network capacity gap (currently 1,706, rising to 3,199 in 2021 and 4,503 by 2027) that has been independently validated. As the gap grows, there are risks of significant increases in prison violence. Corrections ability to respond to further unforecast growth or large scale events like riots or earthquakes is non-existent.

The negative impact of prison overcrowding on rehabilitation

- 3 Prison overcrowding and high amounts of double-bunking impacts rehabilitation. Temporary rapid builds without extra rehabilitation facilities impacts rehabilitation. Existing substandard accommodation impacts rehabilitation. Corrections is managing a problem not of its making, and the one tool at its disposal – rehabilitation – is being blunted due to overcrowding.

Addressing the capacity gap

- 4 To manage the prison capacity crisis, Corrections need additional capacity totalling 1,022 beds by the end of 2019, including 422 temporary beds into existing cells (i.e. double bunking) and 600 temporary rapid build beds.

Next steps

- 5 Officials will report back later this month and in March 2018 with a longer term programme to transform the criminal justice system and reduce the prisoner population. Final approval and funding decisions on the 600 temporary rapid build beds can also be made in March 2018, based on best available information.

- 6 Broadly, the rising prisoner population is mainly due to factors outside of Corrections' control including:
- mental health;
 - poverty;
 - unemployment;
 - lack of housing;
 - addiction; and
 - family and sexual violence.
- 7 The two areas under Corrections' control are rehabilitation and reintegration. To firstly arrest the increase in the prisoner population and secondly, reduce prisoner numbers, Corrections needs the facilities to perform its role. This paper outlines my plans to enable Corrections to do this and help other agencies do their part to reduce the numbers arriving at the prison gates in the first place.

Assurance

- 8 I have commissioned an independent review of the capacity situation at Corrections.
- 9 In the week of 27 November, professional services firm EY physically counted available beds in 68 percent of the total network. They compared the results to the capacity database that Corrections uses in all its capacity reporting and analysis.
- 10 EY found that the Corrections data was accurate and reliable.
- 11 By applying Corrections' policies, planned capacity movements, and the 2017 Justice Sector Projection (JSP), EY calculated the capacity gap between the projection, and the safe and resilient maximum capacity of the prison network.¹ This gap is currently 1,706, rises to 3,199 in 2021 and is at 4,503 by 2027 (as shown in Table 1).

Table 1 – Capacity gap

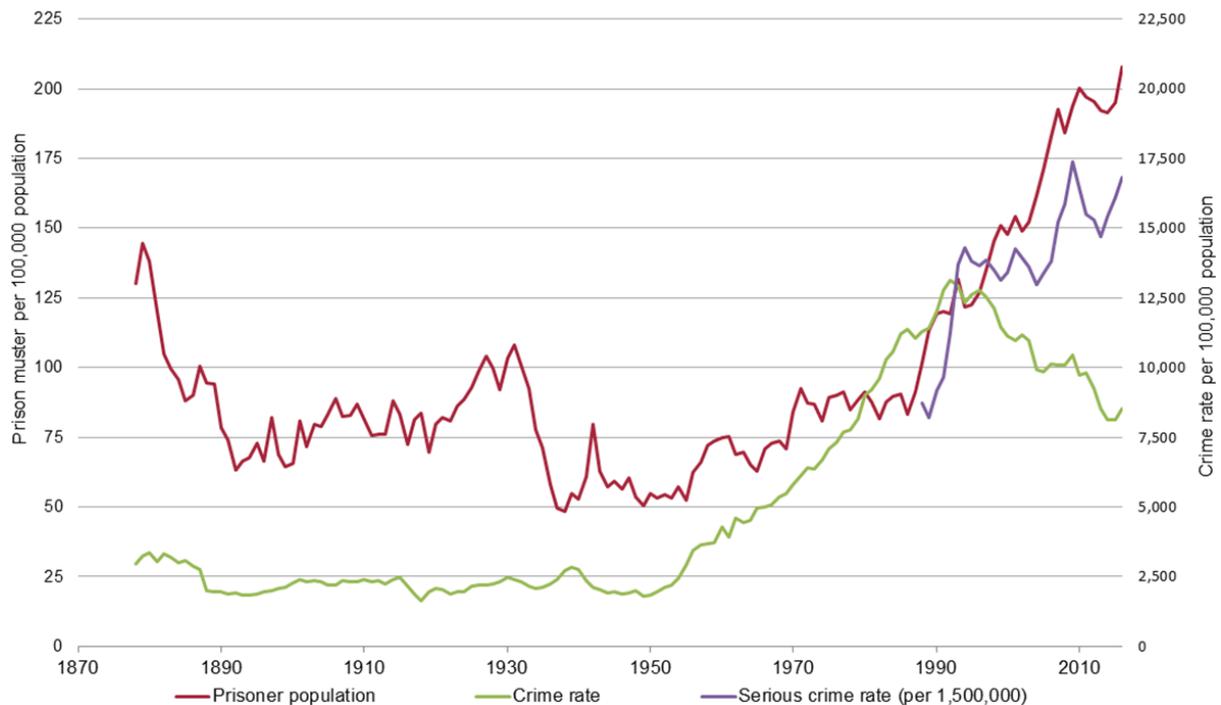
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Safe Max Cap	9161	9254	9661	9896	9896	9896	9896	9896	9896	9896	9896
2017 JSP	10867	11600	12224	12734	13095	13489	13781	13893	14040	14140	14399
Gap	1706	2346	2563	2838	3199	3593	3885	3997	4144	4244	4503

¹ The methodology and process was used to generate the 2017 Justice Sector projection was independently reviewed by Dr John Small (an economic consultant). The Projection assumes no changes to current justice sector settings. The capacity accounts are based on current confirmed capacity approvals (therefore excluding 422 temporary beds, 600 temporary rapid build beds and the Waikeria Corrections and Treatment Facility). The policies that Corrections adopt for safe and resilient management of the prison network can be found at Appendix A.

Background

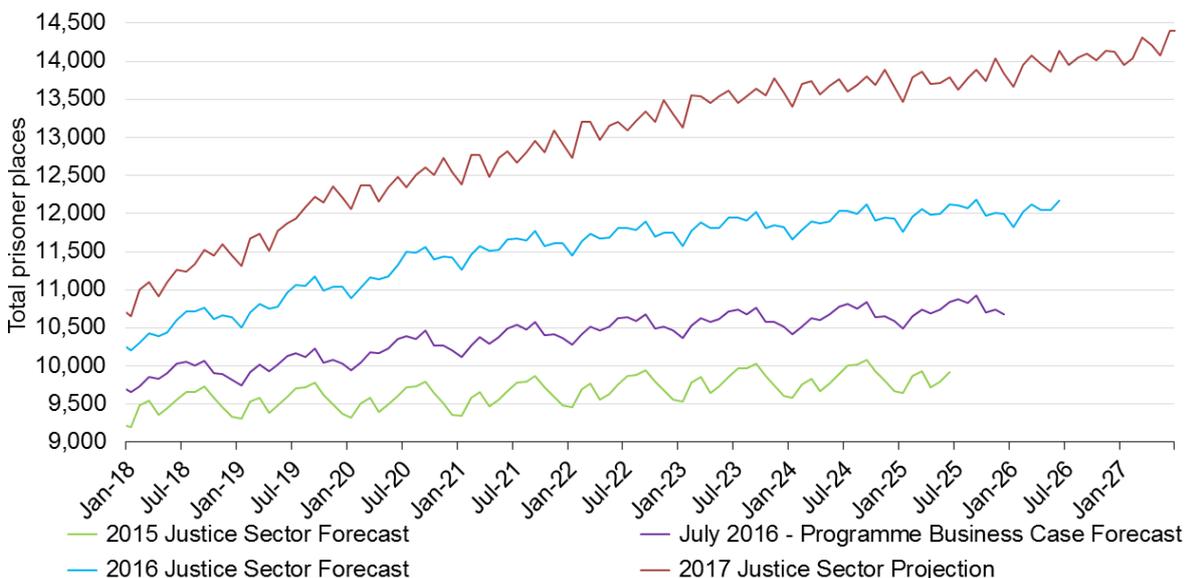
- 12 While total crime is falling, serious crime is rising (Figure 1 below). The justice sector's response to this type of crime is one cause of the increase in prisoner numbers. Without transformative change this will continue.

Figure 1 - Crime rates and prisoner population



- 13 Figure 2 shows forecasts from the past three years. Over the past two years, prison capacity decisions have been based on the lower of the three forecasts shown
- 14 The 2017 JSP (the top line) shows a prisoner population that grows by 3,000 prisoners more than the forecast used when the Waikeria Corrections and Treatment Facility was approved in November 2016.

Figure 2 - Recent relevant forecasts



- 15 I am committed to reduce the prisoner population by 30 percent over 15 years. This means over time the prison network will shrink and become more effective.
- 16 However, we have inherited a prison capacity crisis. The prisoner population has grown so much that we are running out of beds. The most recent projection shows this situation getting worse – without immediate action, we will have more prisoners than beds by February 2018.
- 17 I anticipate four phases for prisoner population reduction:
- stop the sharp rise;
 - see the population plateau;
 - start to fall; and
 - a sustainable decline.
- 18 The strategies that will enable this change are:
- improved rehabilitation and reintegration;
 - better facilities;
 - improved remand and parole processes; and
 - a whole of government approach, including a long term criminal justice reform programme.

Risks of the capacity gap

- 19 At the current point capacity pressures have meant that order and security have had to prevail over rehabilitation and reintegration. Rehabilitation outcomes can be expected to get significantly worse over time if this is not addressed.
- 20 Due to the prison capacity crisis, risks that would normally be manageable have become unmanageable. This means that:
- Continued growth in demand will create extreme overcrowding. The risks of this are violence and disorder;²
 - a significant event (for example, a riot or natural disaster) that forced the closure of one facility could require seeking assistance from the army; and

² Generally, prison overcrowding increases this risk of:

- more prisoner on prisoner violence, as more prisoners are packed into their units, and forced to spend more of their time in cells;
- increased risks to staff, as prisoners get frustrated at the lack of programmes, classroom space and amenities;
- vulnerability to unplanned events (such as an earthquake) or unplanned demand growth; and
- overall, a less safe prison network with a high chance of riots and other extreme outcomes (for example, increased suicide rates.)

- overcrowding and safety concerns have led unions to express concerns for the health and safety of their members.

Managing the immediate crisis

- 21 Additional beds are needed immediately. Corrections is in the process of planning the addition of 422 temporary beds by February 2018.³ Most of these beds will be created by double bunking cells that Corrections previously considered were inappropriate to have two occupants.⁴ Corrections are seeking extra funding to operate these beds, however, they could also be funded through reprioritisation of Corrections' baseline costs (which would result in significant decreases to rehabilitation and reintegration services).
- 22 Corrections also needs an additional 600 temporary rapid build beds to be ready for prisoners by the end of 2019. Temporary rapid build beds are not the highest quality capacity – but are safe and humane, and relatively fast to deploy. These units will be able to be dismantled when prisoner population reductions are achieved.
- 23 Over a quarter of the 1,022 additional beds will be for the female prisoner population, helping address growth in that population.
- 24 Even with the addition of 1,022 beds there will be a 1,963 capacity gap by the end of 2019, as calculated by EY, with regard to the 2017 JSP.⁵

Options to address the capacity gap

- 25 In order to achieve our goal of reducing the prison population by 30 percent in 15 years we need a whole of government approach. Over the short, medium and long term, I expect Corrections, alongside its justice sector partners, to improve outcomes in our criminal justice system.
- 26 Leading this work will be Corrections who will focus on rehabilitation and reintegration, and Corrections and Justice who will lead the work on the cross agency approach to reduce the prison population.

Current work to reduce the prisoner population

- 27 Corrections has an existing programme to reduce the prisoner population in the short term. This programme is working to:
 - increase police prosecutors so that court cases can progress faster for defendants remanded in custody;

³ These beds are a significant but necessary compromise in the quality of accommodation, which will allow Corrections to accommodate projected prisoner numbers in the short term but not support rehabilitation.

⁴ Corrections can double bunk at certain levels, however past a certain point, there are material increases in safety risks and a considerable degradation in Corrections' ability to deliver humane accommodation.

⁵ Under Corrections capacity management policy, the 600 temporary rapid build beds contribute towards the safe and resilient maximum capacity of the prison network, but the low quality nature of the 422 temporary beds means they do not.

- increase the number of defendants entering applications for Electronically Monitored Bail;
- increase the number of offenders applying for home detention; and
- getting prisoners prepared for parole as early as possible

28 Corrections is exploring how it can expand these initiatives. However, it is extremely unlikely that this work could safely prevent the need for the 600 rapid build beds. If there is further unplanned growth Corrections may have to exercise even less desirable options to house prisoners (for example, double bunking very small cells) or further rapid build beds may be needed. This work will help avoid this situation.

9(2)(f)(iv)

29 [Redacted]

- [Redacted]
- [Redacted]
- [Redacted]

30 These options will form part of a long term reform programme I intend to lead. This programme will be aimed at reducing the prisoner population by 30 percent over 15 years and reducing the over-representation of Māori in New Zealand’s criminal justice system.

Financial Implications

Costs associated with the increased prisoner population

31 In Budget 2017, Corrections requested funding for direct offender costs for an average prisoner population of 10,375. However in 2017/18 the prisoner population has been consistently over 10,500. As part of the scenario planning for Budget 2017, Corrections highlighted that a likely scenario was the prisoner population rising to approximately 10,800 in 2017/18 (which is consistent with the latest Justice Sector Projection), with a cost impact of \$6.7 million per annum. In addition, Corrections has incurred cost pressures of \$5.0 million (financial year to date) due to staff overtime arising from managing the higher prisoner population.

32 In addition, while Corrections does not require additional capital funding for the implementation of the 422 additional beds, operating these beds will cost an additional \$13.6 million in 2017/18, \$28.3 million in 2018/19 and \$22.6 million per annum thereafter.

33 Additional operating costs of \$4.7 million per annum have also being incurred in order to maintain a safe and secure estate, as additional staff were required at Auckland Prison to maintain staffing levels that unions agreed are acceptable for that site.

- 34 Corrections has limited ability to reprioritise its operating baseline to meet the operating costs of increased capacity and prisoner numbers. Over 90 percent of Corrections' baseline relates to personnel costs, direct offender costs (such as prisoner food and clothing), contracted payments for Auckland South Corrections Facility and asset related costs (such as capital charge, depreciation and facility maintenance).
- 35 Funding of \$30.0 million for 2017/18 in respect of the costs described in paragraphs [31] to [33] is sought as part of this paper. Outyear funding implications will be considered as part of the Budget 2018 process. Alternatively (but not recommended), this could be funded through reprioritisation of Corrections' baseline funding. This would require cessation of Corrections' mental health and housing initiatives, slowing down the recruitment of frontline staff and a fundamental reduction in the external delivery of rehabilitative programmes for offenders.

Temporary rapid build capacity

- 36 The estimated capital cost for the 600 beds is **9(2)(i)**. This reflects a cost estimate of **9(2)(i)** for each unit (there are five rapid build units) plus an allowance of **9(2)(i)** for site specific costs for each rapid build unit.⁶
- 37 Site feasibility work (at a cost of **9(2)(i)**) is currently underway to determine the best sites for the installation of the temporary rapid build units, and refinement of the site specific costs.
- 38 Corrections has accumulated reserves (from depreciation of existing assets) which would be sufficient to contribute up to **s9(2)(i)** towards the estimated total capital cost. Utilisation of these reserves will, however, result in additional capital being sought in future years when the replacement or renewal of the current assets occurs.
- 39 The operating costs associated with running this additional capacity (staffing, training, recruitment and basic rehabilitation activity) is approximately **s9(2)(i)** in 2018/19, **s9(2)(i)** in 2019/20 and **s9(2)(i)** per annum thereafter.
- 40 Funding decisions in respect of the site feasibility work in paragraph [37] above is sought as part of this paper. The capital and operating costs described in paragraph [36] and [39] will form part of a report back in March.

Baseline operating pressures

- 41 In Budget 2017 Corrections received additional funding for cost pressures associated with managing the wider prison network, including the impact of wage increases through its collective employment agreements.
- 42 Corrections faces similar cost pressures on an annual basis, and is signalling a cost pressure of \$35.5 million in 2018/19, \$40.4 million in 2019/20, \$41.8 million in 2020/21 and \$38.6 million in 2021/22 and outyears. These cost pressures will form part of the Budget 2018 process.

Human Rights Implications

- 43 A large proportion of capacity now in-service contains buildings that were originally retired by Corrections in part because there was a risk they could be criticised as falling short of the expected standards for modern prisoner accommodation. If Corrections are not able to add more beds, this situation will get worse.

Legislative Implications and Regulatory Impact Analysis

- 44 This paper discusses potential legislative changes. However, this paper itself does not seek agreement on any of these changes.

Gender Implications and Disability Perspective

- 45 Female prisoners are being held at Arohata Upper Jail unit, which was originally designed for male prisoners and sits at a predominantly male facility (Rimutaka Prison). The use of Arohata Upper Jail for female prisoners will intensify as part of the 422 temporary beds proposed to be added. As female prisoners have different needs, that are better met at facilities that are purposefully designed for females, this represents a significant but necessary compromise in how this group of prisoners are managed.

Communications

- 46 No pro-active communications are proposed in respect of the responses to capacity pressures outlined in the paper. Corrections has commenced planning for the implementation of the additional 422 beds and is in discussions with unions about adding these beds.
- 47 Corrections will shortly commence site feasibility investigations for the 600 temporary rapid build beds. As these activities will be observable to the construction market, it is possible that these activities may receive media comment.

Consultation

- 48 The Treasury, Ministry of Justice, Police and State Services Commission have been consulted on this paper. The Department of Prime Minister and Cabinet has been informed of the development of this paper.

Recommendations

- 49 It is recommended that the Cabinet Business Committee:

Reducing the prisoner population

- 1 **Note** that, based on the latest projections, there will be insufficient beds to hold prisoners by February 2018;
- 2 **Note** that the Ministry of Justice will work with the Department of Corrections to return to Cabinet this month with a paper to consider a programme to reduce the prisoner population and create a more humane and effective criminal justice system;

- 3 **Note** that the paper discussed in recommendation [2] will be followed up with a further paper in March 2018 on options to reduce the need for investment in prisons, and a longer term programme to achieve larger more sustained reductions of the prisoner population and create a more humane and effective criminal justice system;

Response to immediate capacity pressures

- 4 **Agree** to the Department of Corrections adding an additional 422 beds of short term emergency capacity to respond to immediate pressures;

Temporary rapid build beds

- 5 **Note** that the current Justice Sector Projections requires the Department of Corrections to begin planning for additional capacity of 600 beds to be operational by the end of 2019;
- 6 **Approve** the Department of Corrections commencing site feasibility investigations and procurement processes for the implementation of the additional capacity in recommendation 5;

Financial Implications

Response to immediate capacity pressures

- 7 **Note** that the Department of Corrections requires additional operating funding of \$30.0 million in 2017/18, \$39.7 million in 2018/19 and \$34.0 million in 2019/20 and outyears to respond to immediate capacity pressures, including the costs associated with the additional capacity in recommendation [4];
- 8 **Approve** the following changes to appropriations to enable the Department of Corrections to respond to immediate capacity pressures, with a corresponding impact on the operating balance and debt:

	\$m – increase/(decrease)				
	2017/18	2018/19	2019/20	2020/21	2021/22 & Outyears
Vote Corrections					
Minister of Corrections					
Multi-Category Expenses and Capital Expenditure:					
Public Safety is Improved MCA					
Departmental Output Expense:					
Prison-based Custodial Services (funded by revenue Crown)	30.000	-	-	-	-
Total Operating	30.000	-	-	-	-
Total Capital	-	-	-	-	-

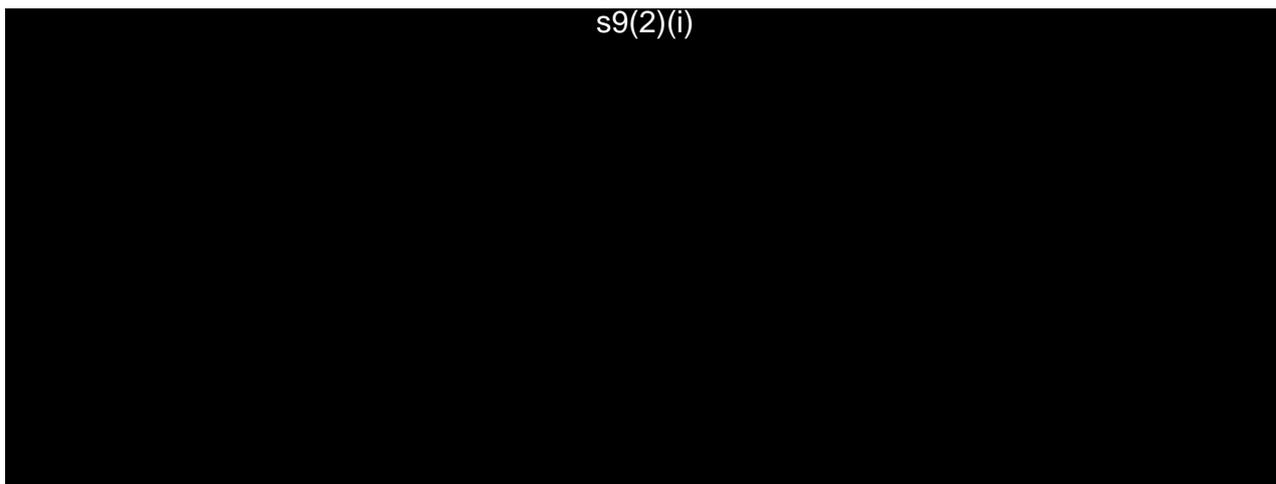
- 9 **Note** that the funding implications in recommendation [8] for 2018/19 and outyears will be considered as part of Budget 2018.

Baseline operating pressures

- 10 **Note** that the Department of Corrections has baseline operating cost pressures in respect of managing the existing prison network and has signalled a cost pressure of \$35.5 million in 2018/19, \$40.4 million in 2019/20, \$41.8 million in 2020/21 and \$38.6 million in 2021/22 and outyears that will require consideration as part of Budget 2018;

Temporary rapid build beds

- 11 **Approve** the following changes to appropriations to give effect to the decision in recommendation [6], with a corresponding impact on the operating balance:



- 12 **Agree** that the proposed changes to appropriations for 2017/18 in recommendation [8] and recommendation [11] be included in the 2017/18 Supplementary Estimates and that, in the interim, the increases be met from Imprest Supply;
- 13 **Agree** that the expenses incurred under recommendations [8] and [11] be charges against the between-Budget operating contingency, established as part of Budget 2017;
- 14 **Note** that the proposed additional capacity in recommendation [5] has the following cost implications:
- up to **s9(2)(i)** capital, with the Department of Corrections funding up to **s9(2)(i)** from capital reserves; and
 - operating costs of **s9(2)(i)** in 2018/19, **s9(2)(i)** in 2019/20 and **s9(2)(i)** in 2020/21 and outyears;
- 15 **Note** that the Department of Corrections will report back to Cabinet in March 2018 seeking:
- appropriation decisions in respect of the proposed additional capacity in recommendation [5]; and
 - approval to enter into the associated construction contracts.

Hon Kelvin Davis
Minister of Corrections
Date signed:
/ /

Appendix A: Corrections capacity planning framework

Corrections' capacity management policy includes:

- a requirement to invest in base capacity to provide sufficient prisoner places for the forecast prisoner population, for effective network management and to mitigate the risk of unforecast demand; and
- an amount of supplementary capacity required to maintain resilience to large scale disasters or events.

Accordingly, Corrections' capacity requirements are set by the following parameters:

- The optimum utilisation of prison capacity is 96 percent. The remaining four percent, (the **operating reserve**) is required to enable muster and asset management.
- 450 prisoner places are reserved for short term demand uncertainty (the **demand uncertainty reserve**) to manage the risks of short term forecasting variances. These places need to exist in the prison network as base capacity and be available for use.
- Another 450 prisoner places for medium term demand uncertainty should be planned and ready for rapid delivery. While the capacity does not need to be built, designated earthworks platforms need to exist to support pre-planned rapid construction of new base capacity in the event that demand materially exceeds expectation for a sustained period.
- 900 supplementary capacity prisoner places should be reserved for disaster recovery purposes (the **disaster recovery reserve**). This capacity has been created at minimal capital cost via the double bunking of all high security cells.

The capacity reserves outlined above are the risk settings adopted by Corrections and endorsed by Cabinet after comprehensive analysis of its capacity planning environment:

- The reservation of capacity for demand uncertainty was determined by statistical analysis of the accuracy of historical forecasts. The approach adopted by the Department provides a demand uncertainty reserve with a prudent security of supply standard where shortage risk can be expected one year in twenty.
- Disaster recovery requirements were set based on the maximum credible risks to the network include a major earthquake in a seismically active region such as Wellington or Christchurch that requires the closure and decant of Rimutaka Prison or Christchurch Men's Prison (both over 900 prisoner places), and also includes a major disorder event that forces the temporary closure and decant of some or all of any large prison in the network. Both these types of risks have occurred and impacted the prison network in the last six years.