

# Corrections

# Amendment Bill 264-1

Written submission to the Justice Committee from  
Mana Mokopuna | Children and Young People's Commission  
23 August 2023

## Mihi

*Tuia te rangi e tū iho nei  
Tuia te papa e takoto ake nei  
Tuia ngā kōrero  
Tuia ngā wānanga  
Kia mau, kia ita, kia kuru pounamu te rongo  
mō te oranga o ngā mokopuna  
Haumi e, hui e! Tāiki e!*

Kei aku kaitakitaki, kei aku kākākura, e mihi ana ki a koutou i ārahi i a mātou e rongo ai te kāwanatanga i ō koromāungaunga ka mutu ngā kōraruraru o te pire nei. Tēnā koutou katoa e ngā mokopuna, koutou kua mauherengia e te ture i roto i ngā tau. E mihi ana ki a koutou kua kōrero mai ki a mātou, kua whakapono ki a mātou hei reo whakapāoho. Ka kore aku mihi e mutu.

E ngā kaimahi e tiaki ana i ā tātou mokopuna, ka rewa te pōtae ki a koutou. E mārāma ana ahau ki te mahi i mua i a tātou ki te whakatika i ngā hē me ngā ngoikoretanga i roto i te pūnaha ture. Mō te aha? Mō te oranga o ngā mokopuna te take. E kore e āriarika te mihi ki a koutou katoa.

Nāku iti nei,



Kaikōmihana Matua mō ngā tamariki  
Mana Mokopuna  
Kaiwhakawā Frances Eivers

## Acknowledgments

*Weave together the sky  
Weave together the earth  
Weave together the thoughts  
Weave together the knowledge  
Hold firm, be committed and steadfast so that  
all children can live their best lives  
Be united, draw together! Affirm!*

Mana Mokopuna would like to thank our esteemed leaders, thank you for collectively guiding us in everything we do to ensure the government hears your concerns, particularly in this bill. We acknowledge the children and young people trapped within the grasp of the justice system over the years. Our thanks to all of you who spoke to us, trusted us with your accounts and considered us as an advocate. Our deepest thanks to you all.

To those who take care of our children and young people, we salute you. We understand there is a lot of work ahead of us all to address the wrongs and failures of the justice system. What for? For our children and young people's wellbeing. To each and every one of you, our gratitude knows no end.

Yours humbly,



Chief Children's Commissioner  
Children and Young People's Commission  
Judge Frances Eivers

# Kupu taunaki | Recommendations

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Hanga mai he pūnaha hei tiaki i a tātou mokopuna katoa. E kore e taea ki te kore te Tiriti e arohia, e hāpaingia

Create a system that protects all our children and young people. This cannot be achieved without taking heed of and upholding Te Tiriti o Waitangi

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## Adopt the amendment to s 6 of the Corrections Act 2006, inserting five new principles to guide Ara Poutama in its operation of the corrections system

1. Mana Mokopuna submits to proposed amendment under cl 6 of the Bill to insert new principles (j)-(n) to s 6 of the Corrections Act 2004 will strengthen the principles guiding Ara Poutama in managing the corrections system. The principles impose specific and targeted efforts to achieve equitable outcomes for Māori in consultation with hapū, whānau and iwi in the context of care, safety, management of people within prisons and their access to appropriate programmes and services.

## Adopt the insertion of s 6A into the Corrections Act 2006, to give effect to express Te Tiriti and Treaty obligations owed by Ara Poutama

2. Mana Mokopuna submits the proposed amendments under cl 7 of the Bill is a **positive** step towards explicitly incorporating Te Tiriti and Treaty obligations and considerations in the decision-making of Ara Poutama.
3. The amendments are aimed at providing equitable rehabilitation and reintegration outcomes for Māori, promoting Māori wellbeing and providing access to mātauranga Māori as a taonga and relevant body of knowledge. The promotion of Māori well-being also relates to the guarantee to te ritenga Māori.<sup>1</sup>

## Do not adopt the amendment to s 202 of the Corrections Act 2006, which aims to improve access to rehabilitation programmes at the cost of breaching the right to separate remand accused and convicted prisoners

4. Mana mokopuna submits the proposed amendment to the regulations to permit mixing of remand accused and convicted prisoners in limited circumstances is **not a justifiable limitation** on the right enshrined under Article 10(2) of the ICCPR.<sup>2</sup>

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<sup>1</sup> Ara Poutama | Department of Corrections 2023. [Disclosure statement](#), at page 6.

<sup>2</sup> New Zealand Bill of Rights Act 1990, s 4.

5. Instead, Ara Poutama have an obligation to facilitate access to rehabilitation and reintegration programmes to all people it manages and cares for within the prison system. These access (or lack of) issues raises the question of whether Ara Poutama in fact requires a stronger legislative lever to ensure people on remand are more consistently able to access constructive activity programmes which does not breach the rights of remand accused to be separated from convicted prisoners on the basis of their presumed innocence.

### **Consult with care- and custody-experienced young people 18-25**

6. Mana Mokopuna submits that there must be consultation with care- and custody-experienced young people aged 18-25 to inform specific plans, strategies, targets, and budgets for improving outcomes for prisoners, particularly for Māori given their projected overrepresentation for decades to come.
7. Adopting a Te Tiriti-centric approach is essential to improve the rights, interests and wellbeing of all mokopuna, including care- and custody-experienced young people aged 18-25, within the context of their whānau, hapū, iwi and communities. A Te Tiriti-centric approach is working alongside Māori to achieve improved experiences and outcomes.

## Kupu whakataki | Introduction

8. Mana Mokopuna | Children and Young People's Commission thank the Justice Committee (the Committee) for considering, and granting, the request for an extension to make a submission on the Corrections Amendment Bill 264-1 (the Bill). Mana Mokopuna has the statutory responsibility to advocate for the rights, interests, participation and well-being of all children and young people (mokopuna)<sup>3</sup> in Aotearoa New Zealand, including young persons aged 18-25 years if they are, or have been, in care or custody.<sup>4</sup>
9. Mana Mokopuna has a clear mandate and legislative functions under the Children and Young People's Commission Act 2022. This includes developing and making submissions on issues through a child- and young person-centred lens and advancing and monitoring the application of the United Nations Convention on the Rights of the Child (the Children's Convention) by departments of State and other Crown instruments.<sup>5</sup>
10. Additionally there are imposed duties on the governing Board, including having a strong focus on the rights, interests, and well-being of mokopuna Māori within the context of their whānau, hapū, and iwi to give effect to Te Tiriti o Waitangi (Te Tiriti) and the Treaty of Waitangi (Treaty).<sup>6</sup> While these duties rest with the Board, they directly impact on the operational functioning of Mana Mokopuna to give effect to obligations and rights under Te Tiriti and the Treaty in pursuit of improved outcomes for Māori, including mokopuna Māori.
11. In making this submission Mana Mokopuna acknowledges and endorses the Crown's efforts to support improved rehabilitation and reintegration outcomes for Māori under the management of Ara Poutama | Department of Corrections, within the context of the aforementioned functions and duties. This submission will primarily address:
  - 11.1. the proposed amendments to the Corrections Act 2004 (the Act) under cls 6-7 and cl 45 of the Bill:
  - 11.2. the need to align improved rehabilitation and reintegration outcomes for mokopuna, particularly mokopuna Māori, who are charged in the adult criminal jurisdiction, but managed under Oranga Tamariki:
  - 11.3. the need to consult with care- and custody-experienced young people aged 18-25 in the drafting of the Bill as a cohort of young people that Mana Mokopuna advocate on behalf of.

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<sup>3</sup> Drawing from the wisdom of Te Ao Māori, we have adopted the term mokopuna to describe all children and young people aged under 18 years of age. This acknowledges the special status held by mokopuna in their whānau, hapū and iwi and reflects that in all we do. Referring to the people we advocate for as mokopuna draws them closer to us and reminds us that who they are, and where they come from matters, at every stage of their life.

<sup>4</sup> Children and Young People's Commission Act 2022, s 7(b).

<sup>5</sup> Children and Young People's Commission Act 2022, s 20(a) and s 21.

<sup>6</sup> Children and Young People's Commission Act 2022, s 17(1)(a)(i).

## Mokopuna and the criminal justice system

12. Recognising the importance of mokopuna voice and participation in decisions that impact them is central to realising all children's rights, in all circumstances, including within the criminal justice system.
13. Individuals who have experienced periods in state residential care demonstrate a significant correlation with a heightened probability of imprisonment. Care-experienced are generally **five to nine times** more prone to incarceration in comparison to those without such experience. Furthermore, Māori individuals who have a history of state care during their childhood exhibit an approximately **four to sevenfold increase** in the likelihood of receiving a custodial sentence compared to their counterparts in a matched cohort. Similarly, non-Māori individuals with a background in state care tend to face even steeper odds, with an elevated likelihood—around **15 to 24 times greater**—of receiving a custodial sentence than their counterparts in the matched cohort.<sup>7</sup>
14. These above concerns are exacerbated by the correlation between known pipeline to justice issues and the increased likelihood of imprisonment for mokopuna that have been in care.<sup>8</sup> Prisoners under the age of 25 represent 9.3% of the total prison population.<sup>9</sup> Although this figure has steadily decreased since 1980, there remains large inequities for rangatahi Māori in the justice system (and also the care and protection system). For example, the 2022 Royal Commission Report highlighted that Māori who had been in State care were usually around **four to seven times** more likely to receive a custodial sentence than their matched cohort.<sup>10</sup>
15. Additionally, while the general Aotearoa population is aging, Māori will have a younger age profile through to 2050 and these differences in age structures across population groups may contribute to disparities in the makeup of prison.<sup>11</sup>
16. Mana Mokopuna urges the Committee to ensure justice-impacted mokopuna are consulted with, and participate in, matters that affect them. This must extend to being involved with decision-making that affects those matters, including legislative

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<sup>7</sup> Royal Commission of Inquiry - Abuse in Care, 2022. *Care to Custody - Incarceration Rates*. Retrieved from: <https://www.abuseincare.org.nz/our-progress/library/v/500/care-to-custody-incarceration-rates-research-report>.

<sup>8</sup> Ibid.

<sup>9</sup> Ara Poutama – Department of Corrections, Prison Facts and Statistics – June 2023 (Prison population by age group). Retrieved from: [https://www.corrections.govt.nz/resources/statistics/quarterly\\_prison\\_statistics/prison\\_stats\\_june\\_2023](https://www.corrections.govt.nz/resources/statistics/quarterly_prison_statistics/prison_stats_june_2023).

<sup>10</sup> Royal Commission of Inquiry, Abuse in Care, 2022. *Care to Custody - Incarceration Rates*. Retrieved from: <https://www.abuseincare.org.nz/our-progress/library/v/500/care-to-custody-incarceration-rates-research-report>.

*A cohort of people in the IDI whose age, sex/ gender, and ethnicity matched those who had been in State residential care was created and their corresponding incarceration rates calculated.*

<sup>11</sup> Ministry of Justice, 2022. Imprisonment in Aotearoa, Long Term Insights Briefing (Extended Version) at page 107. Retrieved from: <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/justice-sector-long-term-insights-briefing/>.

amendments. This submission is therefore framed with a view to advocating for young people aged 18-25 that are, or have been, in care or custody and will be impacted by the amendments proposed by the Bill.

17. Within prison, the accused have the right to be presumed innocent until proved guilty by law and the right to be separated from convicted prisoners to protect the presumption of innocence for accused people.<sup>12</sup> Young people also have the right not to be mixed with adults in detention facilities, unless it is in their best interests to do so.<sup>13</sup> Ara Poutama, as a Crown agent, has an obligation to ensure young people have these rights, and all rights, upheld while in the custody of prisons.

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<sup>12</sup> New Zealand Bill of Rights Act 1990, s 25(c); and International Covenant on Civil and Political Rights, Article 10(2). See also United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), r 42(2)-(3) and rr 64-65; United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), r 11(d); and United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), r 17 and r 29.

<sup>13</sup> United Nations Convention on the Rights of the Child, Article 37(c).

## Express Te Tiriti o Waitangi obligations

“... a Treaty-consistent position is one that prioritises a strategic and targeted commitment to reducing Māori reoffending rates”.<sup>14</sup>

### Te Tiriti o Waitangi and the Treaty of Waitangi

18. Te Tiriti and the Treaty provide the historical and constitutional context and lens through which all Aotearoa government legislation and policy should be viewed. Upholding a child- and young person-centred rights approach in Aotearoa requires the simultaneous realisation of tangata whenua rights as embodied and affirmed in Te Tiriti and the Treaty.
19. Te Tiriti-based rights must be realised in the context of the justice system, particularly with regard to Ara Poutama’s management of young offenders. Giving effect to Te Tiriti and the Treaty also accords with the United Nations Declaration on the Indigenous Rights of Peoples. Please refer to **Appendix 1** for a full Te Tiriti and Treaty analysis.
20. While there has been an aim to decrease Māori reoffending, this has lacked specific plans, strategies, targets, and budgets. Certain systems have been found to disregard its Te Tiriti and Treaty responsibilities of safeguarding Māori interests and equitable treatment. While Ara Poutama demonstrates good faith engagement with iwi and hapū, the Crown has been urged to fulfill its commitment to strengthening these partnerships. The Waitangi Tribunal has suggested that Ara Poutama collaborate with Māori partners to devise a dedicated strategic framework, establish a specific Māori reoffending reduction target, and ensure transparent progress reporting.<sup>15</sup>

### Clause 6 of the Corrections Amendment Bill 264-1

Clause 6: Amends s 6 to insert new principles to guide the corrections system

After s 6(1)(i), insert:

(j)	equitable rehabilitation and reintegration outcomes for Māori offenders must be provided for so far as is reasonable and practicable:
(k)	Māori must, so far as is reasonable and practicable, be engaged with on matters relating to rehabilitation and reintegration outcomes for Māori offenders, including

<sup>14</sup> Waitangi Tribunal, 2017. At para 5.1.2. [Tū Mai te Rangī! Report on the Crown and Disproportionate Reoffending Rates \(justice.govt.nz\)](#).

<sup>15</sup> Ibid.

	engagement on a national, regional, and site level on the design, delivery, and monitoring of programmes and services:
(l)	the views of an offender’s family and of the hapū and iwi of a Māori offender may, where appropriate and so far as is reasonable and practicable, be taken into account in the decision about which prison the offender is detained in:
(m)	the well-being of Māori persons, and all other persons, under control and supervision in the corrections system must be promoted, including by providing access to mātauranga Māori:
(n)	approaches to health care for prisoners in a prison must be guided by the health sector principles set out in section 7 of the Pae Ora (Healthy Futures) Act 2022 as far as is reasonable and practicable

21. The insertion of the new principles (j)-(n) will strengthen the principles guiding Ara Poutama in managing the corrections system. The principles impose specific and targeted efforts to achieve equitable outcomes for Māori in consultation with hapū, whānau and iwi in the context of care, safety, management of people within prisons and their access to appropriate programmes and services.

22. These principles contribute to the Bill’s overall aims to improve rehabilitation, reintegration and safety outcomes for the people Ara Poutama manages in prisons, with a targeted and specific consideration of improving outcomes for Māori as an overrepresented priority population.<sup>16</sup> This is a positive development in response to the 2017 conclusion drawn by the Waitangi Tribunal that Ara Poutama, as a Crown agent, bears the obligation to actively protect Māori interests and to act fairly to reduce inequities between Māori and non-Māori.<sup>17</sup>

## Clause 7 of the Corrections Amendment Bill 264-1

Clause 7: New s 6A inserted	
After s 6, insert:	
6A	<b>Te Tiriti o Waitangi/Treaty of Waitangi</b>  In order to provide for the Crown’s intention to give effect to the principles of Te Tiriti o Waitangi/the Treaty of Waitangi,—
(a)	<b>section 6(1)(j) to (n)</b> provides principles that guide the operation of the corrections system and support rehabilitation and reintegration of Māori offenders:

<sup>16</sup> Corrections Amendment Bill 264-1, Explanatory note.

<sup>17</sup> Waitangi Tribunal, 2017. At para 4.3. [Tū Mai te Rangi! Report on the Crown and Disproportionate Reoffending Rates \(justice.govt.nz\)](https://www.justice.govt.nz/maori-justice/tribunal-reports/2017-tu-mai-te-rangi-report-on-the-crown-and-disproportionate-reoffending-rates).

(b)	<b>section 8(1)(ka)</b> provides for the chief executive's function of ensuring the development, maintenance, and implementation of a strategy that is focused on improving outcomes for Māori in the corrections system:
(c)	<b>section 78(1)(d)</b> provides for access by prisoners to mātauranga Māori:
(d)	<b>section 78(1)(d)</b> provides for access by prisoners to mātauranga Māori:
(e)	<b>section 80(2)</b> provides for access by Māori prisoners and other prisoners to cultural activities.

23. The insertion of a new s 6A expressly outlines the provisions of the Act to explicitly provide for the Crown's intention to give effect to the principles of Te Tiriti and the Treaty. There is a clear linkage in intended parallel operation between the new s 6(1)(j)-(n) principles and the new s 6A (and the other sections it refers to).
24. Notwithstanding these positive amendments, Mana Mokopuna notes the considerable passage of time since the Waitangi Tribunal's express recommendation to amend the Act to state the Crown's relevant Treaty obligations to Māori as addressed in its *Tū Mai te Rangi!* report.<sup>18</sup> It has taken a total of six years between the publication of the report and the first attempt at amending the principal legislation to introduce Treaty obligations.

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“... the Crown, through the Department [Ara Poutama], must appropriately balance its kāwanatanga responsibility with the ability of Māori to exercise their rangatiratanga”.<sup>19</sup>

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25. This is a reflection of too-little-too-late efforts from within the kāwanatanga sphere. There has been an identified need for urgent response to the needs of Māori within the criminal justice system. Māori are overrepresented at every stage of the criminal justice process, including in disparities in outcome whereby Māori have not benefitted to the same degree as non-Māori.<sup>20</sup> In the *Tū Mai te Rangi!* report, the Waitangi Tribunal provided a statistical breakdown of Māori in the prison population:<sup>21</sup>

As of June 2016, Māori made up 50.8 per cent of all sentenced prisoners in New Zealand's corrections system, despite comprising just 15.4 per cent of New Zealand's population. Of all sentenced male prisoners in New Zealand, 50.4 per cent are Māori

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<sup>18</sup> Ibid. At para 5.4.6.

<sup>19</sup> Ibid. At para 5.1.1.

<sup>20</sup> [14.02.2023-LTIB Report extended final v5 Web.pdf \(justice.govt.nz\)](#) at 53.

<sup>21</sup> Waitangi Tribunal, 2017. At para 2.3. [Tū Mai te Rangi! Report on the Crown and Disproportionate Reoffending Rates \(justice.govt.nz\)](#).

men. Māori women make up 56.9 per cent of all sentenced female prisoners. Young Māori figure prominently. Some 65 per cent of youth (under 20 years) in prison are Māori, up from 56 per cent a decade ago. Recent estimates of the total prison population indicate that approximately 5,000 Māori men and women will be imprisoned in 2017.

26. As of June 2022, Māori made up 53.4% of the total prison population.<sup>22</sup> Comprising that total prison population, Māori make up 53% of all male prisoners and 67% of all female prisoners, despite comprising just 16.5% of the total population.<sup>23</sup> Separate, but related, to these figures are the increased likelihoods of imprisonment that Māori men and women face. Māori men are over six times more likely to be imprisoned than non-Māori men, while Māori women are almost 11 times more likely to be imprisoned than non-Māori women.<sup>24</sup>
27. The overrepresentation of Māori in prison is a stark and persisting reality, which is predicted to continue over the coming decades. This highlights the urgent need to address the inequities within the system as a whole that continues to fail Māori at every stage of the criminal justice process.
28. The amendment under cl 7 of the Bill is similar to Te Tiriti obligations that feature elsewhere, for example s 7AA of the Oranga Tamariki Act 1989. While the amendments are positive, Mana Mokopuna is of the view the amendments to the principal legislation should have already been made as a matter of urgency. A six-year-delay is a long time in the life of a mokopuna, with regard to the age, sense of time and level of understanding for children and young people.
29. Despite these amendments strengthening Te Tiriti provisions in the Act, it is unlikely this will amount to the radical transformation the prison system requires. The research and evidence are clear that transformative change in the justice system to reduce prison population rates requires early intervention. This is more effective than reactive efforts to rehabilitate and reintegrate Māori offenders once they have already entered detention under the management of Ara Poutama.
30. While express legislative obligations in the Act are a step in the right direction, the reality is that the colonial institution of prison within the paradigm of a Western-established penal system is **incompatible with** the provisions of **tino rangatiratanga** and **ritenga**

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<sup>22</sup> Ara Poutama – Department of Corrections, Prison Facts and Statistics – June 2022 (Prison population by ethnicity). Retrieved from: [https://www.corrections.govt.nz/resources/statistics/quarterly\\_prison\\_statistics/prison\\_stats\\_june\\_2022](https://www.corrections.govt.nz/resources/statistics/quarterly_prison_statistics/prison_stats_june_2022)

<sup>23</sup> Imprisonment in Aotearoa, Long Term Insights Briefing, Ministry of Justice, 2022, Retrieved from: [long-term-insights-briefing-consulation-document-1.pdf \(justice.govt.nz\)](https://www.justice.govt.nz/long-term-insights-briefing-consulation-document-1.pdf); and Stats NZ, 2018. 2018 Census ethnic group summaries, Māori, Population counts, over time.. Retrieved from: <https://www.stats.govt.nz/tools/2018-census-ethnic-group-summaries/m%C4%81ori>.

<sup>24</sup> Ministry of Justice, 2022. Imprisonment in Aotearoa, Long Term Insights Briefing (Extended Version) at page.107. Retrieved from: <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/justice-sector-long-term-insights-briefing/>

**Māori.** This incompatibility is illustrated by the persistent over-representation of Māori in the justice system, spanning across successive generations which manifests in intergenerational consequences. For justice-impacted mokopuna, these consequences include instability, financial hardship, emotional distress, long-term negative health and education outcomes and a high risk of intergenerational offending.<sup>25</sup>

31. Mana Mokopuna acknowledges that Ara Poutama have made headway with the implementation of a national strategy, *Hōkai Rangī*, aimed to improve outcomes for Māori who are significantly over-represented in the corrections system. This addresses Māori-specific targets aimed to lower the proportion of Māori under the care of Ara Poutama.
32. Overall, Mana Mokopuna submits the affirmation of the right to Māori customs and self-determination of Māori to adhere to Māori models of justice cannot be fully realised and effective within the current system, and particularly with the continued disproportionate imprisonment rates of Māori.

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<sup>25</sup> Superu, August 2022. "Improving outcomes for children with a parent in prison" (June 2015) Pillars at 1; and Parliament of Victoria Legislative Council Legal and Social Issues Committee *Inquiry into children affected by parental incarceration* Victoria, Australia.

## Rehabilitation and reintegration

“The Crown, through the Department, has a clearly defined role in maintaining and ensuring public safety through the appropriate management and care of offenders under its supervision, and legal responsibility for their fair treatment”.<sup>26</sup>

### Clause 45 of the Corrections Amendment Bill 264-1

Clause 45: Amends s 202 in respect of regulations that regulate the mixing of accused and convicted persons in specified circumstances and the mixing of young persons and adult prisoners if it is in the best interests of the young persons

After s 202(a), insert:

(aa)	despite any international obligations, regulating the mixing of prisoners in any of the following circumstances:
(i)	mixing of accused and convicted persons for non-offence-based programmes (such as therapeutic, education, kaupapa Māori, or religious-based programmes) if it is not practicable or therapeutic to provide the programmes separately:
(ii)	mixing of accused and convicted persons who are allowed to keep their children with them in prison if it is not practicable or therapeutic to keep the persons separate:
(iii)	mixing of young persons (within the meaning given in the Oranga Tamariki Act 1989) and adult prisoners if it is in the best interests of the young persons:

33. The policy reasoning behind the proposed amendment to s 202 is to enable regulations to be made to permit mixing of remand accused and convicted prisoners in certain circumstances, despite New Zealand’s international obligations not to do so, and to permit age-mixing of young persons and adult prisoners if it is in the best interests of the young persons.

34. Upon closer examination, the Corrections Regulations 2005 already permits age-mixing of young people (under 18) and adults when it is considered to be in their best interests (per the approval of the Chief Executive).<sup>27</sup> Remand accused and convicted female prisoners are also already able to keep their children in Mothers with Babies units.<sup>28</sup>

<sup>26</sup> Waitangi Tribunal, 2017. At para 4.2.3. [Tū Mai te Rangiri! Report on the Crown and Disproportionate Reoffending Rates \(justice.govt.nz\)](https://www.justice.govt.nz/justice-reforms/reports-waitangi-tribunal/2017/4.2.3-tu-mai-te-rangiri-report-on-the-crown-and-disproportionate-reoffending-rates)

<sup>27</sup> Corrections Regulations 2005, reg 180.

<sup>28</sup> Corrections Regulations 2005, reg 186(6).

35. The proposed amendment to incorporate a best interests exception to permit the mixing of remand accused and convicted prisoners is therefore redundant. The amendment will achieve no practical change; it will simply align the matters for which regulations can be made under s 200(c), as prescribed under s 202 of the primary legislation.
36. The Children’s Convention has repeatedly called for the removal of New Zealand’s reservation to Article 37(c) concerning age-mixing.<sup>29</sup> Recognising that age-mixing should only be permitted when it is in the best interests of the child will bring Aotearoa close to fulfilling its international obligations for the rights of mokopuna.

## Domestic and international obligations

37. Under the International Covenant on Civil and Political Rights (ICCPR), the separation of accused and convicted people in prison is required to protect the presumption of innocence for accused people.<sup>30</sup> This relates to everyone’s right to be presumed innocent until proven guilty by law.<sup>31</sup>
38. Ara Poutama concedes the amendment presents a risk to the State’s international reputation. It believes however that the preferred option of mixing remand accused and convicted prisoners in limited circumstances aligns with international obligations (mitigated by separate accommodation and mealtimes).<sup>32</sup> Ara Poutama also refer to the mixing of accused and convicted prisoners as a practice in smaller territories, in other words in countries with smaller populations.<sup>33</sup>
39. In its advice to the Right Honourable Attorney-General, the Office of Legal Counsel observed that this amendment to the regulations may limit the presumption of innocence.<sup>34</sup>

## The needs of prisoners

40. Ara Poutama have identified that the regulations “do not allow for limited mixing to occur where parallel programmes are not practical to implement or for therapeutic purposes”.<sup>35</sup>

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<sup>29</sup> CRC/C/NZL/CO/6, at paragraph 6.

<sup>30</sup> International Covenant on Civil and Political Rights, Article 10(2).

<sup>31</sup> New Zealand Bill of Rights Act 1990, s 25(c).

<sup>32</sup> Ara Poutama – Department of Corrections, 2023. Regulatory Impact Statement: Improving rehabilitation, reintegration, and safety outcomes in the corrections system. Retrieved from: [https://www.corrections.govt.nz/\\_data/assets/pdf\\_file/0006/49551/RIS\\_Improving\\_rehabilitation\\_reintegration\\_and\\_safety\\_outcomes\\_in\\_the\\_Corrections\\_system.PDF](https://www.corrections.govt.nz/_data/assets/pdf_file/0006/49551/RIS_Improving_rehabilitation_reintegration_and_safety_outcomes_in_the_Corrections_system.PDF)

<sup>33</sup> Ibid. At para 472.

<sup>34</sup> Ministry of Justice, 2023. Consistency with the New Zealand Bill of Rights Act 1990: Corrections Amendment Bill (Legal Advice) at para 40. Retrieved from: <https://www.justice.govt.nz/assets/Documents/Publications/20230621-Corrections-Amendment-Bill.pdf>

<sup>35</sup> Ara Poutama – Department of Corrections, 2023. At para 473. Regulatory Impact Statement: Improving rehabilitation, reintegration, and safety outcomes in the corrections system. Retrieved from: [https://www.corrections.govt.nz/\\_data/assets/pdf\\_file/0006/49551/RIS\\_Improving\\_rehabilitation\\_reintegration\\_and\\_safety\\_outcomes\\_in\\_the\\_Corrections\\_system.PDF](https://www.corrections.govt.nz/_data/assets/pdf_file/0006/49551/RIS_Improving_rehabilitation_reintegration_and_safety_outcomes_in_the_Corrections_system.PDF)

In other words, this scenario does not meet the exceptional circumstances threshold available to the Chief Executive to approve limited mixing for rehabilitative purposes.

41. Ara Poutama identified this problem when working with mana whenua to develop new innovative services to achieve improved outcomes for prisoners. It has been identified that mixing in limited circumstances is beneficial to enable access to services that operate with a therapeutic model of care and respond to the needs of prisoners.<sup>36</sup>
42. The difficulty with this line of reasoning as a justification to erode international obligations and standards not to permit the mixing of remand accused and convicted prisoners is that there is nothing in the Act to preclude the availability of services and programmes to remand prisoners.<sup>37</sup> It rather appears that a lack of programme planning and servicing, complicated by budgetary constraints,<sup>38</sup> are the limitations upon Ara Poutama's ability to effectively manage and serve the rehabilitation and societal reintegration needs to both cohorts of remand accused and convicted prisoners which does not require each group to mix. Ombudsmen have found some good evidence of good or improved provision of programmes for some people on remand – clearly it is possible.<sup>39</sup>

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<sup>36</sup> Ibid. At para 478-479.

<sup>37</sup> Office of the Ombudsman, 2023. Whitake at paras 314-315. Retrieved from: [Making a Difference.pdf \(ombudsman.parliament.nz\)](#)

<sup>38</sup> Corrections Act 2004, ss 51-52.

<sup>39</sup> Office of the Ombudsman, 2023. Whitake at paras 316. Retrieved from: [Making a Difference.pdf \(ombudsman.parliament.nz\)](#)

## Care- and custody-experienced young people

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“... a Treaty-consistent position is one that prioritises a strategic and targeted commitment to reducing Māori reoffending rates”.<sup>40</sup>

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### Care- and custody-experienced young people 18-25

43. There appears to be no express consideration given to care- and custody-experienced young people aged 18-25, as a particularly vulnerable cohort that make up the prison population. While Ara Poutama have considered the general number of young prisoners has been falling since 1980, there is no disaggregation of figures to distinguish what proportion of “young prisoners” are serving as remand accused or convicted.<sup>41</sup>
44. The lack of overall consideration to the 18-25 cohort is concerning, particularly for rangatahi Māori as an overrepresented minority population in the justice system. These concerns are addressed in several reports and research, including:
  - 44.1. Department of Social Welfare (1988) Pū-ao-te-ata-tu.
  - 44.2. Waitangi Tribunal (2017) Tū mai te Rangi! Report on the Crown and Disproportionate Reoffending Rates (WAI 2540).
  - 44.3. Royal Commission (2022) Care to Custody Incarceration Rates.
  - 44.4. UN Committee on the Rights of Persons with Disabilities (CRPD): Concluding Observations on the combined second and third periodic reports of New Zealand (CO/2-3). See also the United Nations Guidelines for the Alternative Care of Children.
45. There is a need to consult with care- and custody-experienced young people aged 18-25 in the drafting of the Bill to ensure mokopuna voice and participation in decision-making that can take into account their lived experience and work towards systemic change for other mokopuna.
46. The need to ensure consultation occurs with this particular cohort of young people is captured by the reasoning given under the heading ‘Mokopuna and the criminal justice system’ at the outset of this submission.

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<sup>40</sup> Waitangi Tribunal, 2017. At para 5.1.2. [Tū Mai te Rangi! Report on the Crown and Disproportionate Reoffending Rates \(justice.govt.nz\)](#)

<sup>41</sup> [RIS Improving rehabilitation, reintegration and safety outcomes in the Corrections system](#) at para 24: By June 2022, prisoners under 20 years’ old formed only 1.2% of the prison population.

# Appendices

## Appendix 1: Te Tiriti Analysis

Te Tiriti Article	Analysis
Article 1	The provision of kāwanatanga under article 1 of Te Tiriti translates to a Crown obligation to uphold good governance, including in the sphere of governing and appropriately managing prisoners under the care of Ara Poutama. This governance must be considered alongside the guarantee to Māori of the exercise of tino rangatiratanga. <sup>42</sup>
Article 2	The provision of tino rangatiratanga under article 2 of Te Tiriti affirms and guarantees Māori self-determination and agency over their taonga (material and non-material). Article 2 of the Treaty establishes the provision of Crown protection of this Māori self-determination. Tino rangatiratanga demands Māori participation, involvement and leadership in matters affecting them — for example, the rehabilitation and reintegration of whānau Māori back into their communities. <sup>43</sup> It is therefore crucial to align the provisions of kāwanatanga and tino rangatiratanga to achieve effective strategies and outcomes to this end.
Article 3	The provision of ngā tikanga katoa rite tahi under article 3 of Te Tiriti affirms the equal enjoyment of all rights and privileges for all peoples. This provision is often referred to as a principle of active protection. This principle is heightened in circumstances of inequity between Māori and non-Māori, such as grossly unequal reoffending rates and reimprisonment rates of Māori as a disproportionately impacted minority population within the justice system. <sup>44</sup> This provision is expressed through the values of participation, access, options, equality, and equity.
Article 4	The provision of te ritenga Māori under article 4 of Te Tiriti affirms and upholds the right of all individuals to practice Māori spiritual customs and religious beliefs without hindrance. It is essential that Crown systems acknowledge and respect this freedom of spiritual expression, including within the justice system, ensuring that Māori spiritual customs and beliefs are valued, respected and protected for all to enjoy.

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<sup>42</sup> Waitangi Tribunal, 2017. At para 4.2.3. [Tū Mai te Rangiri! Report on the Crown and Disproportionate Reoffending Rates \(justice.govt.nz\)](#)

<sup>43</sup> Ibid. At para 4.2.3.

<sup>44</sup> Ibid. At para 4.3.1.

