ORDER PROHIBITING PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF THE PLAINTIFFS.

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE

CIV-2023-485-788
[2025] NZHC 4028

UNDER	the New Zealand Bill of Rights Act 1990 and the Judicial Review Procedure Act 2016
BETWEEN	D & ORS Plaintiffs
AND	THE ATTORNEY-GENERAL First Defendant
AND	CHIEF EXECUTIVE OF THE DEPARTMENT OF CORRECTIONS Second Defendant

Hearing: 10 October and 12 November 2025

Appearances: V Casey KC, A L Hill and F Brailsford for Plaintiffs
D J Perkins, D Harris and A Ghandour for Defendant

Judgment: 16 December 2025

JUDGMENT OF McHERRON J

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What is this case about?

[1] This case is about prisoners' entitlement to take physical exercise, and how they can enforce that entitlement in Court when it is being denied.

[2] Prisoners' minimum entitlement to physical exercise for an hour daily is enshrined in s 70 of the Corrections Act 2004 (Act). That section also provides that they may take their physical exercise in the open air if the weather permits.[1]

[3] This minimum entitlement to physical exercise is of considerable importance to prisoners, who may otherwise be confined for 22 or 23 hours per day in a cell.[2] Yet, not all prisoners are consistently receiving their minimum exercise entitlement.

[4] The plaintiffs are 69 sentenced or remand prisoners who are or were held in Units 12 and/or 13 at Auckland Prison, New Zealand's sole maximum security prison. In December 2023, they filed a wide-ranging claim against the Attorney-General regarding the denial of their minimum entitlements between 1 June 2022 to 4 December 2023. The matter is progressing to trial; it is set down for a 12-week hearing commencing in May 2027. The parties are currently working through discovery and inspection of relevant records.

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1 Corrections Act 2004 [Act], s 70(2).

2 In *Attorney-General v Taunoa* [2006] 2 NZLR 457 (CA) at [108] the Court of Appeal said the importance of the entitlement to physical exercise should not be underestimated.

[5] The present application alleges more recent denial of the minimum entitlement to physical exercise, between August and November 2025. It is not in dispute that a significant number of prisoners in Units 12 and 13 were denied the ability to take physical exercise in that period. The only issues in dispute are the lawfulness of that denial and what the Court should do if unlawfulness is established.

[6] The first question in this judgment is whether the second defendant has lawfully invoked the power in s 69(2) of the Act to deny prisoners at Auckland Prison their minimum entitlement to exercise, on the basis of a threat to prison security, and/or a threat to the health and safety of any person.

[7] Based on the answer to that question, I then consider whether to make an order in the nature of mandamus against the Chief Executive of the Department of Corrections that, subject only to s 69(2) and (4)(aa), he is required to comply with s 70 of the Corrections Act 2004 in the administration of the conditions of detention in Units 12 and 13 of Auckland Prison.[3]

[8] The Court heard the plaintiffs' application for the above order on two hearing dates, separately from the remainder of the proceeding. The hearing was adjourned on 10 October 2025 to allow for:

(a) regularisation of the procedural aspects of the application; and

(b) the defendants to file further evidence.

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[3] The order originally sought was not limited to Units 12 and 13 at Auckland Prison. However, in a joint memorandum filed on 14 November 2025, counsel for the plaintiffs confirmed that the original order sought was broader than intended. By consent, the parties agreed to add, in respect of the relief sought, the reference to Units 12 and 13 at Auckland Prison. The narrowed focus of the relief does not imply that the applicable legal standard in respect of Units 12 and 13 differs from that applicable to other Corrections prisons.

The legislative framework

Corrections Act 2004

[9] I start with the purposes and principles set out in ss 5 and 6 of the Act. The purposes and principles most directly relevant to the issues arising in the present case are:

> **5 Purpose of corrections system**
>
> (1) The purpose of the corrections system is to improve public safety and contribute to the maintenance of a just society by—
>
> (a) ensuring that the community-based sentences, sentences of home detention, and custodial sentences and related orders that are imposed by the courts and the New Zealand Parole Board are administered in a safe, secure, humane, and effective manner; and
>
> (b) providing for corrections facilities to be operated in accordance with rules set out in this Act and regulations made under this Act that are based, amongst other matters, on the United Nations Standard Minimum Rules for the Treatment of Prisoners; and
>
> …
>
> **6 Principles guiding corrections system**
>
> (1) The principles that guide the operation of the corrections system are that—
>
> (a) the maintenance of public safety is the paramount consideration in decisions about the management of persons under control or supervision:
>
> (b) …
>
> (g) sentences and orders must not be administered more restrictively than is reasonably necessary to ensure the maintenance of the law and the safety of the public, corrections staff, and persons under control or supervision:
>
> …

[10] Section 69 of the Act summarises the minimum entitlements that apply to every prisoner. These minimum entitlements are then separately provided for in ss 70–78. The entitlements apply to *every* prisoner — regardless of security classification. The Act does not create different minimum entitlements for more dangerous or

behaviourally challenging prisoners,[4] or for prisons lacking adequate infrastructure to provide prisoners with their statutory minimum entitlements.

[11] Prisoners' minimum entitlements may be denied in the circumstances outlined in s 69(2)–(4):

> **69 Minimum entitlements**
>
> …
>
> (2) A prisoner may be denied, for a period of time that is reasonable in the circumstances, 1 or more of the minimum entitlements set out in subsection (1) if—
>
> (a) there is an emergency in the prison; or
>
> (b) the security of the prison is threatened; or
>
> (c) the health or safety of any person is threatened.
>
> (3) A prisoner detained in a Police jail may be denied 1 or more of the minimum entitlements set out in subsection (1) (other than the entitlements referred to in subsection (1)(b), (c), (f), and (g), and the entitlement under subsection (1)(e) of access to statutory visitors) if, in the opinion of the prison manager or other person in charge, it is not practicable to provide those entitlements, having regard to the facilities available at the Police jail and the resources available.
>
> (4) A prisoner—
>
> (aa) may be denied, for not more than 2 consecutive days at a time, the minimum entitlement referred to in subsection (1)(a) if—
>
> (i) the prisoner has been temporarily released from custody or temporarily removed from prison under section 62 or removed for judicial purposes under section 65; and
>
> (ii) in the opinion of the prison manager, it is not practicable to provide the entitlement during the times the prisoner is in the prison:
>
> (b) may be denied the minimum entitlements referred to in subsection (1)(d), (i), (j), and (k) if the prisoner is undergoing a penalty of cell confinement imposed under subpart 5 of Part 2:
>
> (c) may be denied the minimum entitlement referred to in subsection (1)(k) if a direction under section 58 or 59 is in force and the prison manager considers that the prisoner is likely to damage prison property.

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4 See *Toia v Prison Manager, Auckland Prison* [2014] NZHC 867.

[12] For the purposes of argument of the present application, only s 69(2) is applicable. In *Mitchell v Attorney-General*, I made the following observations about the application of s 69(2):[5]

> [142] In the present case, the respondent relies primarily on s 69(2)(c) ("health and safety of any person is threatened"), in respect of which the respondent says the Act gives no express guidance as to its meaning. The respondent acknowledges that any decisions under s 69(2)(c) must be made in accordance with the purposes and principles of the corrections system as set out in ss 5 and 6, in particular s 6(1)(a) ("the maintenance of public safety is the paramount consideration in decisions about the management of persons under control or supervision") and s 5(1)(a) and (b).
>
> [143] The respondent accepts that it is unlikely to be consistent with s 69(2) for minimum entitlements to be denied because of resource limitations alone.
>
> …
>
> [152] I accept that the application of s 69(2) must occur in a way that gives effect to the purposes and principles of the corrections system as defined in ss 5 and 6 and that this will involve a fact-specific exercise of judgement. It will generally be necessary for Corrections to show that the decision to deny a minimum entitlement was reasonably necessary because the health of any person is threatened by a significant emergent threat that could not be reasonably anticipated and addressed without minimum entitlements being curtailed.
>
> [153] I accept that it will only rarely be consistent with s 69(2) for minimum entitlements to be denied because of resource limitations alone. I respectfully agree with the comments Cooke J made in *Wallace v Attorney-General* that:[6]
>
> (a) resource limitations do not justify failure to comply with a statutory duty;
>
> (b) a limitation of a fundamental right in the Bill of Rights Act by resource constraints could not be justified if the constraints were of the Crown's own making.
>
> …
>
> [159] However, what may be a rational decision made in the interests of protecting the health and safety of prison occupants may nevertheless involve a trade-off. Protecting the health and safety of prison occupants may come at the expense of an actionable breach of their minimum entitlements. As the excerpt from the explanatory note from the 2009 Amendment [acknowledges], breach of minimum entitlements under the Act may give rise to liability for the Crown even if the breach is considered reasonably necessary or unavoidable.[7]

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5 *Mitchell v Attorney-General* [2025] NZHC 172.

6 *Wallace v Chief Executive, Department of Corrections* [2023] NZHC 2248 at [106].

7 Corrections Amendment Bill 2009 (No 2) (165–1) (explanatory note).

[13] Supplementing the exception in s 69(2)(a) ("there is an emergency in the prison") are emergency management provisions in ss 179C, 179D and 179E.[8] Section 179D obliges the Chief Executive to notify the Minister of an emergency in or affecting a prison. Section 179E operates to exclude liability for failures to comply with the Act during an emergency when it is impossible or unreasonable in the circumstances to comply or comply fully. There is a specific process for invoking these emergency provisions by way of the Chief Executive notifying the Minister after determining the existence of an emergency. That process and these provisions were not invoked in the circumstances leading to the present application.

[14] I summarised the minimum entitlement to exercise at the beginning of this judgment. The exact wording of s 70 is as follows:

> **70 Exercise**
>
> (1) Every prisoner (other than a prisoner who is engaged in outdoor work) may, on a daily basis, take at least 1 hour of physical exercise.
>
> (2) The physical exercise referred to in subsection (1) may be taken by the prisoner in the open air if the weather permits.

[15] In *Mitchell v Attorney-General*, I confirmed that the minimum entitlement to physical exercise "on a daily basis" should be understood as referring to each calendar day, as opposed to each 24 hour period.[9] That allows more flexibility to give prisoners their minimum exercise entitlements at different times of the day, to suit the operational needs of the prison and, if possible, the preference of the prisoner.

[16] This Court has emphasised in recent cases that prisoners' "unlock time", the time they are unlocked for various reasons from their cells, should not be equated or conflated with their statutory minimum entitlement to physical exercise.[10] Isac J noted in *Taylor v Attorney-General* that, apart from the minimum entitlements prescribed in the Act, prisoners do not have a specific statutorily recognised expectation to a set amount of time out of their cells.[11] However, Isac J also noted that routinely confining a person in a cell for upwards of 20 hours a day may begin to approach the threshold

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8 These provisions are set out in Appendix 1, below.
9 *Mitchell v Attorney-General*, above n 5, at [72]–[80].
10 See *Wallace v Chief Executive of the Department of Corrections* [2023] NZHC 592 at [12].
11 *Taylor v Attorney-General (No 3)* [2022] NZHC 3170 at [280] and [345].

for establishing breach of the right of those deprived of liberty to be treated with humanity and dignity in s 23(5) of the New Zealand Bill of Rights Act 1990.[12]

[17] "Unlock time" and the minimum entitlement to exercise are distinct concepts. The period for which a prisoner is unlocked from their cell should not be broadly equated with open air exercise time even though, according to New Zealand prison design, it is invariably necessary to unlock a prisoner from their cell to allow them to take exercise in the open air.

[18] Prisoners need time unlocked from their cells for a variety of activities apart from exercise, such as to keep in touch with whānau, for social contact within the prison, to engage in learning and rehabilitation programmes and to arrange and participate in health, legal advice and court appointments.[13] There is no statutory minimum entitlement to a specified amount of time to carry out each of these activities.

[19] However, physical exercise is distinctly recognised under the Act as requiring dedicated minimum time, because of its importance in maintaining the physical and mental welfare of prisoners. I emphasise this distinction at this point, because in the remainder of this judgment I will return to the importance of *not* conflating open air exercise time and "unlock time". The important point is that, time for open air physical exercise must be treated and recorded as being given separately. If it is conflated with "unlock time", the Court may find the minimum entitlement to physical exercise has been denied.

New Zealand Bill of Rights Act 1990

[20] Also relevant are ss 5, 6 and 23(5) of the New Zealand Bill of Rights Act, which provide:

> **5 Justified limitations**
>
> Subject to section 4, the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

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12 At [345].

13 The evidence was that, in Units 12 and 13 at Auckland Prison, the prisoners take their meals in their cells.

> **6 Interpretation consistent with Bill of Rights to be preferred**
>
> Wherever an enactment can be given a meaning that is consistent with the rights and freedoms contained in this Bill of Rights, that meaning shall be preferred to any other meaning.
>
> **23 Rights of persons arrested or detained**
>
> …
>
> (5) Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the person.

Other reports on non-provision of exercise entitlements

[21] Oversight entities, namely the Ombudsman and the Office of the Inspectorate,[14] have repeatedly raised concerns about failures in various prisons to meet the minimum daily entitlement of one hour of open air physical exercise.[15] I summarise the relevant conclusions from a range of oversight agency reports in the table in Appendix 2 below.

The evidence as to provision of the s 70 minimum entitlement

[22] A current prisoner, Mr T, gave an affidavit dated 2 October 2025. Mr T resides in Unit 13 at Auckland Prison. He deposes that he has not always received his minimum entitlement of one hour of physical exercise in 2022 and 2023. Often, Mr T says, he was allowed one hour of exercise outside his cell only every second or third day. In addition, he deposes:

> Recently, Auckland Prison started denying unlock time every second day in my unit again. In the last two weeks, I was not unlocked from my cell at all on 14, 17, 20 and 23 September 2025.

[23] Mr T annexed to his affidavit a prisoner complaint form containing his complaint dated 23 September 2025 that he was not unlocked from his cell on four days in that month, together with the following response from prison staff dated 26 September 2025:

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[14] See ss 28–29 and subpt 6 of pt 2 of the Act for the powers and functions of inspectors of corrections and the system for complaints, investigations and inspections.

[15] Peter Boshier *Making a difference: Investigation into Department of Corrections* (June 2023) at [213].

> Due to lack of staff and the safety and security of the prison being put at risk, under s 69, Corrections Act 2004 (2)(b) — you were denied minimum entitlement for these days.

[24] At the 10 October 2025 hearing, the defendants accepted that on some days in recent months, Corrections officials denied the minimum entitlement to physical exercise to some prisoners in Units 12 and 13.

[25] At the hearing on 12 November 2025, the defendants provided evidence of the frequency with which Corrections has denied the minimum entitlement under s 70 to a "significant number" of prisoners in Units 12 and 13:[16]

Unit 12 (up to and including Friday 7 November 2025)

Date	**Frequency of denial of "minimum entitlement"**	**Notes**
August 2025	38% (9 days out of 24)	Reasons not recorded
September 2025	38% (10 days out of 26)	4 days staff shortages 3 days reasons not recorded 1 day staff assault 1 day search operation
October 2025	17% (5 days out of 29)	4 days staff shortages 1 day serious incident
November 2025	17% (1 day out of 6)	1 day staff shortages

Unit 13 (up to and including Friday 7 November 2025)

Date	**Frequency of denial of "minimum entitlement"**	**Notes**
August 2025	16% (4 days out of 25)	Reasons not recorded
September 2025	26% (7 days out of 27)	4 days reasons not recorded 3 days staff shortages

[16] These tables exclude prisoners who chose not to take their minimum entitlement to physical exercise on that particular day and denial of entitlements to an individual prisoner based on security, health and/or safety reasons specific to that individual.

October 2025	10% (3 days out of 29)	2 days staff shortages 1 day prisoners fighting
November 2025	0% (0 days out of 6)	

My observations

[26] The defendants' evidence is non-specific on what exactly is the "minimum entitlement" that they accept is being denied, as represented in the tables extracted above. Before the 12 November 2025 hearing, I had assumed the "minimum entitlement" was exactly as s 70 provides — an entitlement for prisoners (not involved in outdoor work) to, on a daily basis, take at least one hour of physical exercise, in the open air if the weather permits.[17]

[27] But when I queried this point with Mr Perkins, senior counsel for the defendants, he submitted that the defendants understood the basis of the plaintiffs' application in the nature of mandamus to be non-specific as to the venue for exercise (whether indoors or in the open air), but rather that it was focused on a prisoner's entitlement to be unlocked from their cell.

[28] Mr Perkins then explained that of the 13 spaces available in each of Units 12 and 13 for allowing prisoners their minimum exercise entitlements, six of them are enclosed dayrooms with no access to the open air. Mr Perkins accepted, in answer to my question, that allowing a prisoner to exercise in a dayroom, when the weather permits exercise in the open air, falls short of meeting the s 70 entitlement. It follows that the actual frequency of denial of s 70 minimum entitlements is likely to be significantly understated in the above tables, if exercise in the open air is precluded for prisoners who are only given access to a dayroom.

[29] Ms Casey KC, senior counsel for the plaintiffs, confirmed that the plaintiffs' application for an order in the nature of mandamus specifically relates to the entitlement under s 70, rather than "unlock time". She also submitted that, as a matter of logic, given the current design of New Zealand prisons, if prisoners are locked in

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[17] The respondent accepted in *Mitchell*, above n 5, at [57] that Corrections must provide the opportunity for daily exercise outside if the weather permits, and that the use of the word "may" indicates the individual prisoner's own election as to open air or indoors.

their cells for more than 23 hours a day then they are axiomatically being denied their minimum entitlement under s 70.

[30] Additionally, as mentioned, Mr T is a prisoner in Unit 13, where prisoners were denied their minimum entitlement to physical exercise for seven days in September 2025. Mr T's evidence is that he was denied his entitlement to exercise on four of those seven days. Assuming that the denial is fairly distributed across the prisoners in that unit, this suggests that a "significant number" means at least 50 per cent of prisoners were denied their minimum entitlement to physical exercise on any one of the days identified. But I cannot be sure on this point on the evidence before me, as it has not been presented in a sufficiently granular form.

Plaintiffs' submissions

[31] Section 5(1)(b) of the Act expressly provides that a purpose of the corrections system is to improve public safety and contribute to the maintenance of a just society, by providing for prisons to be operated in accordance with rules based on the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules).[18] Rule 23, on which s 70 is partly based, provides:

> **Exercise and sport**
>
> *Rule 23*
>
> 1. Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.
>
> 2. Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end, space, installations and equipment should be provided.

[32] The plaintiffs also refer to rule 44 of the Mandela Rules, which provides that anything more than 22 hours per day of confinement without meaningful human contact amounts to solitary confinement. Conflating unlock time with the one hour minimum entitlement to physical exercise further risks contravention of r 44 as well.

[33] The plaintiffs submit:

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[18] United Nations Standard Minimum Rules for the Treatment of Prisoners GA res 70/175 (2015) (the Mandela Rules), r 44.

(a) Prisoner minimum entitlements are not discretionary. Rather, they are the absolute minimum that Parliament has laid down. They must be met for all prisoners at all times, unless the tightly confined exceptions in the Act apply.

(b) Failure to comply with minimum entitlements is not an operational option available to deal with chronic under-resourcing and lack of sufficient staff.

(c) The Chief Executive's reasons do not justify his breach of the Act.

(d) It is not open to the Court to excuse the Chief Executive's failure to comply with the mandatory requirements of the legislation. That would be to override Parliament.

(e) The Court has no basis to exercise any discretion to decline to make an order requiring the Chief Executive to comply with the law. To do so would be to license the ongoing breach of the Act. The issue is binary; the Chief Executive either complies with s 70 or he does not. How he does so is up to him.

Defendants' opposition to an order for mandamus

Notice of opposition

[34] The defendants filed a notice of opposition on 17 October 2025. They oppose the making of an order for mandamus on grounds that:

(a) The Court may not make an order for specific performance in proceedings against the Crown. It may instead make an order declaratory of the rights of the parties.[19] Neither should the Court make an order in the nature of mandamus against the second defendant as agent of the Crown.

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19 Crown Proceedings Act 1950, s 17(1)(a).

(b) It is inappropriate for the application to be determined under urgency and separately from the substantive proceedings.

(c) The minimum entitlement under s 70 of the Act is not absolute, but is qualified by reference to s 69(2). There would be no utility in the Court declaring that the Chief Executive ought to comply with the law, namely that the second defendant is required to comply with s 70, subject only to s 69(2) and (4)(aa). Judgement calls are required in making the relevant decision in respect of whether grounds for denying entitlements are made out in the course of day-to-day prison management. The circumstances in which minimum entitlements might lawfully be denied, and the reasonableness of the period of time for which they may be denied, are dynamic and cannot be foreseen in advance. It would be inappropriate for the Court to make an order prospectively constraining a prison manager's ability to respond to circumstances as they arise.

(d) There is insufficient evidence to support the allegation that prisoners in Units 12 and 13 at Auckland Prison are "currently being locked in their cells for more than 23 hours in a day" without lawful justification. Any unlawful non-provision of minimum entitlements is capable of remedy in the substantive proceeding.

Defendants' submissions

[35] Turning to the particular statutory context, the defendants submit that the minimum entitlement to daily exercise outdoors under s 70 must be read in its broader statutory context. In particular, under s 69(2)(b) and (c), minimum entitlements, including the minimum entitlement to physical exercise, may be denied for a reasonable period if the security of the prison, or the health and safety of any person, is threatened.

[36] In respect of the four days in which there is evidence that Mr T was not given his entitlements under s 70, that was due to threats to prison security and/or the health or safety of prisoners, staff or visitors. That is, according to the defendants, Mr T's

minimum entitlement to daily time out of his cell for exercise was denied because Corrections officials decided that both or one of s 69(2)(b) and/or (c) applied.

[37] The defendants acknowledge that mandamus is an available remedy in judicial review proceedings both under the Judicial Review Procedure Act 2016 and the Court's inherent supervisory jurisdiction. However, the defendants submit that mandamus is unavailable in the present case. The preferable route is to issue a declaration which would then trigger the constitutional convention that the Crown complies with the law as declared by the Court.

Defendants' evidence regarding health, safety and security at Auckland Prison

[38] I have taken into account the confidential information in the affidavits provided by staff at Auckland Prison, but I have endeavoured to avoid including it in this judgment. Some details are redacted in the public version of this judgment at [47] below.

— Mr Dickenson's affidavit affirmed on 7 October 2025

[39] An affidavit from the Deputy General Manager at Auckland Prison, Paul Dickenson, confirms that on 14, 17, 20 and 23 September 2025, Mr T did not receive his minimum entitlement to one hour of physical exercise in the open air, due to:

(a) staff shortages on 14, 20 and 23 September 2025; and

(b) a full site union meeting causing a two hour shutdown on 17 September 2025.

[40] Unit 13 houses 80–90 prisoners, mostly sentenced, but some on remand. The prisoners are in single cells. Most are mainstream (i.e. not segregated), with a few prisoners voluntarily segregated.

[41] Safe unlocking of all prisoners in Unit 13 requires two senior corrections officers and 10 corrections officers, plus two control room staff. Mr Dickenson states

that prisoners are moved individually for their exercise, in handcuffs, due to assessed safety risks.

[42] For the purposes of the physical exercise itself, Mr Dickenson deposes that prisoners are grouped into "mixes" of 2–6 individuals based on dynamic safety assessments. He describes the challenges in determining the appropriate mix permutations, which include the high number of maximum security prisoners in both Units 12 and 13 (approximately 140, which is higher than usual). In addition there are approximately 45 prisoners under the age of 25 who are vulnerable to gang-entrenched older prisoners. According to Mr Dickenson, there are infrastructure limitations concerning the availability of suitable spaces for mixing inmates. Further, there are staffing pressures, including relating to the:

(a) high physical demands of the work;

(b) frequent unplanned absences due to the physical and mental strain of the work; and

(c) additional staff demands when prisoners are in hospital, as staff must be made available to guard them while in prison.

[43] Mr Dickenson's evidence is that these operational, staffing and safety constraints can prevent consistent daily unlocks for exercise in maximum security units such as Units 12 and 13. These constraints are systemic. According to Mr Dickenson, denial of physical exercise entitlement is as a result of Corrections prioritising prisoner and Corrections staff safety, rather than neglect or deliberate mistreatment.

[44] Mr Dickenson describes the daily operational practice for determining exercise unlock times as involving:

(a) daily site briefings to assess staffing and safety risks;

(b) decisions made, based on staffing sufficiency, on whether unlocks need to be limited to maintain safety; and

(c) facilitating as a priority individual unlocks for essential appointments (for example court, health and legal appointments).

— Mr Parr's first affidavit sworn on 29 October 2025

[45] Mr Stephen Parr is the General Manager (Prison Manager) at Auckland Prison and has been in that role since April 2022. In his first affidavit, sworn on 29 October 2025, Mr Parr confirms that, as at 23 October 2025, 173 prisoners were accommodated in Units 12 and 13. This is close to the maximum capacity of 180. There is no double bunking. Of these prisoners, approximately:

(a) 115 were sentenced prisoners with maximum security classifications;

(b) 30 were sentenced prisoners with high security classifications;

(c) 25 were remand prisoners (either accused or convicted but not yet sentenced) who did not have security classifications. However, they had been assessed as requiring a maximum security environment and regime in order to be safely managed during their remand.

[46] Mr Parr describes a situation of increasing complexity and risk within Units 12 and 13. He says prisoner dynamics have evolved due to the number of deported "501 returnees" from Australia, the emergence of more violent internationally connected gangs (such as the Comancheros), and the influence of trans-national organised crime. Mr Parr says there has been an increase in violence and gang-related activities in the prison. Further, he says that prisoners have exploited physical vulnerabilities in the prison to create weapons and hide contraband.

[47] Mr Parr refers to 519 incidents in Units 12 and 13 since July 2025, 134 of which occurred during prisoner movements. He also referred to specific violent incidents including that:

(a) [Redacted]

(b) [Redacted]

(c) [Redacted]

[48] Mr Parr deposes that 95 out of the total 173 prisoners need to be handcuffed during movement. Mr Parr also referred to the "mixes" of prisoners when unlocked from their cells and says that staff must carefully manage prisoner groupings to prevent violence. Mr Parr deposed that Units 12 and 13 require six staff to be on the floor to operate safely, with four, five or six staff being required to facilitate prisoner movements, depending on their assessed threat or risk.

[49] Mr Parr says that there have been problems with staff shortages at Auckland Prison due to unplanned absences or injuries. Further, recruitment challenges have required reliance on inexperienced staff. Depending on surge staffing from other prisons has been of limited success, due to the lack of experience of such staff and the high demands placed on them in the unique maximum security environment.

[50] Mr Parr concludes that the current operations of Units 12 and 13 exceed the available staffing capacity. He recognises that Units 12 and 13 are no longer able to operate in the way they were designed to operate. To address the issues faced by these Units, work is underway within Corrections to ensure the management of the maximum security prisoners becomes "safer and more sustainable".

— Mr Parr's second affidavit sworn on 12 November 2025

[51] Mr Parr's second affidavit was provided for the second hearing on 12 November 2025. In that affidavit, Mr Parr shifts focus from the problems he described in his first affidavit as the reasons for curtailment and denial of the minimum entitlement to physical exercise to an "interim solution". This interim solution involves changes to the operation of Units 12 and 13 at Auckland Prison that officials at Auckland Prison and Corrections' National Office have been considering. Mr Parr says that this work was given particular impetus by provisional observations I made at the first hearing of the plaintiffs' application on 10 October 2025.

[52] On 30 October 2025, Corrections' Finance and Investment Committee considered proposals that had been developed by officials at a meeting Mr Parr attended. The Committee decided to progress work on two tracks:

(a) An interim solution that will improve Corrections' ability to more consistently provide the minimum entitlement to physical exercise and reduce the frequency with which that minimum entitlement is denied. This interim solution will address immediate security and health and safety concerns in Units 12 and 13, by providing additional staff and reviewing occupancy of the Units.

(b) Further work to develop a package of "sustainable improvements" to Units 12 and 13.

[53] Mr Parr deposes:

(a) The improvements in train will ensure there is sufficient staffing to consistently move two prisoners simultaneously on each side of each unit (allowing four simultaneous movements per unit). This greater number of movements will increase Corrections' ability to safety unlock all prisoners within the time available during core hours (8 am–6 pm).

(b) Corrections has already begun implementing these improvements. This has involved reshuffling existing staff numbers in the units. Moreover, consideration is being given to redeploying experienced and suitable staff.

(c) The staff required for these improvements is up to 18–20 additional full time equivalents. A staffing increase of that magnitude requires investment of up to $2 million per annum which, according to Mr Parr, can be met within Corrections' existing baselines. In other words, no additional fiscal approvals are required within Corrections or externally (i.e., by the Minister), to allow staffing to be increased in this way.

(d) Corrections will review the number of prisoners housed in Units 12 and 13. Corrections will consider moving suitable prisoners with security classifications below maximum security to other units in the prison, as

and when it is safe to do so. This proposal will reduce the pressure on staff managing unlocks.

[54] As at 12 November 2025, when he swore his second affidavit, Mr Parr expected work to progress these prisoner movements to be underway soon, if assessed as safe to proceed. The sustainability of such reductions would necessarily depend on further inflows of prisoners with maximum security classifications into the system. However, all things being equal, Mr Parr expects to be able to achieve reductions of pressure on staff managing unlocks. Mr Parr says that work was already underway to implement the "interim solution" he described. However, the recruitment and necessary training of staff would take further time. In particular, the Corrections Officer Development Pathway Training for new recruits takes three months to complete. This affects the availability of less experienced staff to back-fill positions that could be vacated by more experienced staff, who in turn could be redeployed to Units 12 and 13.

[55] Corrections will double the frequency of recruitment centres to hire more staff. However, Mr Parr points out that there will be delays before newly employed staff can commence their training and further time will be taken up by the training itself.

[56] In the meantime, Corrections will take immediate steps to redeploy staff from within Auckland Prison, as far as is feasible, until the full additional complement becomes available. Mr Parr expects the "interim solution" described above to take until about mid-May 2026 to be fully effective. Corrections is willing to update the Court on its progress implementing the "interim solution" as and when required.

[57] However, Mr Parr says Corrections may still need to invoke s 69(2) of the Act from time to time, for example:

(a) if there is an emergency in the prison (for example, where s 179D is invoked);

(b) if the security of the prison is threatened (for example, if there is a riot in the prison or serious prisoner violence in Unit 12 or 13); or

(c) if the health or safety of any person is threatened (for example, there is an outbreak of infectious disease).

— Mr Parr's third affidavit sworn on 12 November 2025

[58] In his third affidavit, Mr Parr provides information on the frequency with which Corrections has denied the minimum entitlements under s 70 to a "significant number" of prisoners in Units 12 and 13, due to threats to the security of the prison, or the health and safety of any person. This information is set out in the tables above at [25].

My assessment

[59] I am grateful to counsel for the helpful way in which they have crystallised the relevant issues and provided the material upon which the Court can reach its conclusion with these relatively brief reasons.

[60] The evidence on behalf of the plaintiffs is that minimum exercise entitlements were denied on four days in September 2025. However, the evidence put forward on behalf of the defendants has confirmed there is a much greater systemic issue regarding provision of the minimum entitlement to physical exercise as set out in s 70 in Units 12 and 13 at Auckland Prison.

[61] The reason the defendants advance for denial of minimum entitlements is, in general terms, the lack of available staffing resources to enable such entitlements to be safely provided and, in some cases, inadequate facilities (for example, lack of suitable open air yards). The context for that, in terms of the dangers attending staff and vulnerable prisoners in Units 12 and 13, have been explained in Mr Dickenson's and Mr Parr's respective affidavits.

[62] The primary question arising on the facts as presented in the present case is whether inadequate resourcing is a lawful basis for denial of the s 70 minimum entitlement to physical exercise, under s 69(2)(b) and/or (c).

[63] My clear answer to that question is no. Taking a highly literal approach to these provisions, prison understaffing may lead to safety and security concerns in the prison when prisoners are given their physical exercise entitlements. But in my view, understaffing is not the kind of threat to the security to the prison envisaged by s 69(2)(b) and (c). The Act requires a commitment by the Chief Executive to prisoner welfare, as is clear from its purpose provisions, in particular:

(a) the need to ensure sentences are administered in a humane manner (s 5(1)(a));

(b) the focus on ensuring corrections facilities are operated in accordance with rules set out in the Act that are based on the Mandela Rules (s 5(1)(b));

(c) the principle that sentences and orders must not be administered more restrictively than is *reasonably* necessary to ensure the maintenance of the law and the safety of the public, corrections staff, and persons under control or supervision (s 6(1)(g)).

[64] In addition, s 23(5) of the New Zealand Bill of Rights Act, which provides that everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the person, is directly implicated by the issues raised in the plaintiffs' application. The rights and freedoms in the Bill of Rights Act can only be subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.[20] Wherever an enactment can be given a meaning that is consistent with the rights and freedoms contained in this Bill of Rights, that meaning shall be preferred to any other meaning.[21]

[65] As Ms Casey submits, s 69 of the Act provides its own contextual indications that are relevant to this interpretation question. Section 69(3) permits denial of minimum entitlements (apart from bedding, food and drink, medical treatment and access to legal advisers) to prisoners detained in a police jail "if, in the opinion of the

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20 New Zealand Bill of Rights Act, s 5.
21 Section 6.

prison manager or other person in charge, it is not practicable to provide those entitlements, having regard to the facilities available at the Police jail and the resources available."

[66] However, inadequate facilities or resource limitations are not grounds for denial of minimum entitlements under s 69(2). Section 69(2) applies to both Corrections prisons *and* police jails, from which I infer that singling out these grounds in s 69(3) in relation to police jails confirms that Parliament did not intend inadequate facilities and lack of resources would justify denial of minimum entitlements in Corrections prisons.

[67] It follows that I do not accept the defendants' submission that resource limitations from inadequate infrastructure or prison understaffing permits denial to prisoners in Corrections prisons of the s 70 minimum entitlement to physical exercise, under s 69(2)(b) and/or (c).

[68] Further, I note that, according to the tables above at [25], no reasons were recorded just over half the time (20 out of 39 days) when the minimum entitlement to physical exercise was denied in Units 12 and 13 from August 2025 to 7 November 2025. This is not only a regrettable failure of record-keeping. It also supports an inference that denial of entitlements was regarded by Corrections officials at Auckland Prison as "business as usual"; that is, so routine as not to be worthy of documentation. It also undermines the defendants' submission that Corrections officials made a considered decision that both or one of s 69(2)(b) and/or (c) applied.

[69] Thus, based on the evidence provided, I am satisfied that the Chief Executive has been in repeated breach of s 70 of the Act in Units 12 and 13 at Auckland Prison.

[70] I accept Ms Casey's submission that the defendants have not provided adequate explanation of or justification for their denial to prisoners of their minimum entitlements to physical exercise. It is understandable and consistent with the purpose of the Corrections system that the Chief Executive strives to administer custodial sentences within Auckland Prison in a manner that is safe in regard to other prisoners and the prison staff. However, promoting this purpose, to the detriment of the

corresponding purpose that sentences must be administered humanely and in accordance with the rules for the treatment of prisoners set out in the Act, is unlawful.

[71] Moreover, while maintenance of public safety is the paramount consideration under s 6(1)(a), in my view that provision has little relevance in the present context to prisoners' minimum entitlement to physical exercise. Public safety in this context primarily concerns the safety of the public outside the prison walls, having regard to the fact that the corrections system, and the Act, includes administering sentences other than prison sentences. Rather, I consider that the most relevant principle is that in s 6(1)(g) which provides that sentences must not be administered more restrictively than is reasonably necessary to ensure the maintenance of the law and the safety of the public, corrections staff and persons under control or supervision.

[72] The Chief Executive is required to comply with the obligation to provide minimum physical exercise entitlements. Lack of staff is not a lawful reason for not doing so. As Ms Casey submitted at the first hearing on 10 October 2025, the Chief Executive has two options, to:

(a) seek additional resources to ensure compliance; or

(b) seek to promote legislative amendments further reducing prisoner entitlements.

[73] By the time of the second hearing on 12 November, and with the benefit of Mr Parr's second affidavit, it has become clear that application of increased resources, which can be achieved by the Chief Executive within existing baselines, is an available option to ensure compliance with his responsibility to ensure prisoners receive their minimum entitlement to physical exercise.

What remedy is appropriate?

[74] It is encouraging that the Chief Executive has authorised improvements to the resourcing and management of Auckland Prison that will allow it to provide minimum entitlements to physical exercise as required under the Act.

[75] However, there remain three inter-related concerns:

(a) First, Corrections' reluctance to accept the Court's (and the Ombudsman's) interpretation of s 69(2), particularly s 69(2)(b) and (c) — that these provisions do not allow denial of minimum entitlements in the circumstances outlined in the affidavits of Mr Dickenson and Mr Parr (first affidavit), namely staffing or other resource limitations. Rather, the circumstances justifying curtailment of entitlements under s 69(2) must be unforeseen. In *Mitchell*, I described this as a "significant emergent threat".[22] There is no magic in that particular phrase. However, in using it I was endeavouring to convey the unforeseen feature of the circumstance taking it outside, as Ms Casey would put it, business as usual. This qualification, in my view is inherent in the use of the word "threatened" in s 69(2)(b) and (c). Ms Casey described those paragraphs, together with (a) (emergency in the prison) as "graduated" in terms of the scale of severity of the adverse external event. However the common thread is that the relevant threats justifying denying of entitlements must be unpredictable. By contrast, the Chief Executive's own foreseeable and avoidable failures to ensure sufficient resourcing, including staffing, for the prison cannot be the cause of the threat justifying denial of entitlements. Ms Casey said that invoking s 69(2) should be rare. The tenor of Mr Parr's later evidence appears to accept that qualification, in the way he describes the proposed improvements being implemented to reduce Corrections' need to reach for the exception provision. Without deciding the point, the instances Mr Parr outlines where, even after implementation of his "interim solution", he envisages Corrections still needing to rely on s 69(2) (summarised above at [57]) are likely to be consistent with what I have in mind as a "significant emergent threat".

(b) My second concern is that non-provision of minimum entitlements has been recognised as a problem for some time now, as reflected in

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22 *Mitchell v Attorney-General*, above n 5.

successive judgments of this Court, and other reports of the Prison Inspectorate and the Ombudsman. In respect of the Prison Inspectorate, Ms Casey took me to a letter from Corrections in 2023 promising implementation of the Inspectorate's recommendations in order to comply with the provisions of s 70 entitlements. I set out that letter in full in Appendix 3. However, as has become clear in relation to Auckland Prison, the Chief Executive is still some way off from complying with his responsibilities in relation to the provision of the minimum entitlement to physical exercise under s 70 of the Act. This suggests a declaration will be insufficient as a remedy.

(c) My third concern is that counsel for the Chief Executive submit that the appropriate way of supervising his compliance with his obligations is to allow the current litigation to follow its course towards the scheduled 12 week trial in 2027. However, that trial has a very different focus — to consider the extent to which the plaintiffs' minimum entitlements have been historically breached and whether they are eligible for public law compensation payable to them for breach of their rights. As Ms Casey puts it, the present application is focused on enforcement of prisoners' minimum entitlements to exercise under s 70 going forward.

Jurisdiction to make an order in the nature of mandamus

[76] The prerogative writ of mandamus is an order from the Court, based on royal authority, to perform a public duty.[23] Disobedience to a mandatory order can amount to a contempt of court, punishable by fine or imprisonment.[24]

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23 Sir William Wade and others, *Wade & Forsyth's Administrative Law* (12th ed, Oxford University Press, 2022) at 493.

24 At 496; Contempt of Court Act 2019, s 16. I note that under the emergency management provisions in ss 179C, 179D and 179E, there is no cause of action to recover damages for harm or loss due directly or indirectly to failure to comply with the Act during an emergency.

[77] The Crown Proceedings Act 1950 (CPA) and earlier New Zealand statutes went some way toward placing the State in as close as possible a position to private individuals for the purposes of suit.[25] However, just as the writ of mandamus does not lie against the Crown at common law,[26] that immunity from mandamus and other mandatory orders is not disturbed under the CPA.

[78] The defendants argue that mandamus is a form of mandatory injunction, and/or an order for specific performance by the Crown of a statutory duty. By virtue of s 17(1)(a) of the CPA, the defendants submit mandamus is unavailable in civil proceedings against the Crown.[27]

> **17 Nature of relief**
>
> (1) In any civil proceedings under this Act by or against the Crown or to which the Crown is a party or third party the court shall, subject to the provisions of this Act and any other Act, have power to make all such orders as it has power to make in proceedings between subjects, and otherwise to give such appropriate relief as the case may require:
>
> provided that—
>
> (a) where in any proceedings against the Crown any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the court shall not grant an injunction or make an order for specific performance, but may instead make an order declaratory of the rights of the parties; and
>
> (b) in any proceedings against the Crown for the recovery of land or other property, the court shall not make an order for the recovery of the land or the delivery of the property, but may instead make an order declaring that any person is entitled as against the Crown to the land or property or to the possession thereof.
>
> (2) The court shall not in any civil proceedings grant any injunction or make any order against an officer of the Crown if the effect of granting the injunction or making the order would be to give any relief against the Crown which could not have been obtained in proceedings against the Crown.

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25 Philip A Joseph *Joseph on Constitutional and Administrative Law* (5th ed, Thomson Reuters, 2021) at 690; New Zealand Law Commission "The Crown In Court – A Review of the Crown Proceedings Act and National Security Information in Proceedings" at [2.4]; Crown Liabilities Redress Act 1871; Crown Redress Act 1877; Crown Suits Act 1881; Crown Suits Act 1908; Crown Suits Act 1910. For an informative discussion of the history of these provisions, see Stuart Anderson "'Grave injustice', 'despotic privilege': the insecure foundations of crown liability for torts in New Zealand" (2009) Otago Law Review 1 at 5, cited in *Attorney-General v Strathboss Kiwifruit Ltd* [2020] NZCA 98, [2020] 3 NZLR 247 at [83].

26 Patrick Monahan and others, *Hogg's Liability of the Crown* (5th edition, Thomson Reuters Canada, 2024) at 61.

27 Citing *Police v Deliu* [2022] NZCA 328 at [66].

[79] The plaintiffs respond that s 17 only applies to "civil proceedings". That term is defined in s 2 of the CPA as follows:

> **civil proceedings** means any proceedings in any court other than criminal proceedings; *but does not include proceedings in relation to* habeas corpus, *mandamus*, prohibition, or certiorari or proceedings by way of an application for review under the Judicial Review Procedure Act 2016 to the extent that any relief sought in the application is in the nature of mandamus, prohibition, or certiorari
>
> (*Emphasis added*.)

[80] It follows from this definition, that proceedings in relation to mandamus are excluded from s 17 — they are not civil proceedings for the purpose of that provision. The plaintiffs submit therefore that nothing in the CPA prevents the Court from making an order for mandamus against the Chief Executive in the present application.

[81] That submission does not address the fact that the exclusion of proceedings in relation to mandamus from the definition of "civil proceedings" in effect means that proceedings seeking mandamus against the Crown remain unavailable and are not enabled under the CPA.

[82] However, the CPA expressly does not prevent the Court from granting relief by way of mandamus where that relief is otherwise available.[28] For example, if a statute imposing a public duty designates a particular servant who is to perform the duty, then it has long been recognised that mandamus, or another mandatory order such as an injunction, will lie against that designated person, as distinct from the Crown.[29] The designated person against whom the mandatory order lies may include a Minister,[30] or other official.[31]

[83] As the plaintiffs submit, recognising the Court's jurisdiction to make an order of mandamus against the Chief Executive is consistent with the policy underlying s 17 of the CPA, which is directed towards insulating the Crown as monarch from mandatory orders by the Court rather than setting up impunity for the executive branch

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28 Crown Proceedings Act, s 35(5).
29 *Hogg's Liability of the* Crown, above n 26, at 62.
30 As in *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997 (HL).
31 As in *Nireaha Tamaki v Baker* [1901] AC 561 (PCNZ) (interlocutory injunction available against the Commissioner for Crown Lands).

of Government. In this regard, the plaintiffs invoke the well-known comments of Lord Templeman in *M v Home Office*:[32]

> The judiciary enforce the law against individuals, against institutions and against the executive. The judges cannot enforce the law against the Crown as monarch because the Crown as monarch can do no wrong but judges enforce the law against the Crown as executive and against the individuals who from time to time represent the Crown. …

[84] Professor Joseph KC explains that this distinction collapses the Crown's immunity from mandatory orders so as to protect the Sovereign (or his representative, the Governor-General), but not the executive branch of Government (the Crown as executive).[33] Joseph also reminds us in this context of the need to give effect to s 27(3) of the New Zealand Bill of Rights Act, which provides that:[34]

> (3) Every person has the right to bring civil proceedings against, and to defend civil proceedings brought by, the Crown, and to have those proceedings heard, according to law, in the same way as civil proceedings between individuals.

[85] Section 27(3) gives constitutional status to the principle that the individual should be able to bring legal proceedings against the Government, and engage in civil litigation with it, without the Government enjoying procedural or jurisdictional privileges.[35] That principle is of course central to the rule of law. It also supports the conclusion that the plaintiffs' right to seek mandamus to enforce the Chief Executive's responsibilities under the Act in relation to provision of prisoners' minimum entitlement to physical exercise exists independently of the confines of the CPA.

[86] In the present context, the Chief Executive is the designated official who is ultimately responsible for ensuring the safe custody and welfare of prisoners.[36] It follows, in my view, that the Chief Executive is responsible for ensuring prisoners are given their minimum entitlements under the Act. Failing to allow the plaintiffs to

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32 *M v Home Office* [1993] UKHL 5; [1994] 1 AC 377. See also Woolf J at pages 28–31 discussing the equivalent provisions to ss 15 and 16 of the Judicial Review Procedure Act, and confirming that s 16 (equivalent) should be read on its terms, as allowing injunctions against Ministers and other officers of the Crown. The approach in *M v Home Office* was referred to with obiter approval by Clifford J in *Paul v Attorney-General* [2009] NZAR 405 at [25].

33 *Joseph on Constitutional and Administrative Law*, above n 25, at 695.

34 At 1242.

35 Geoffrey Palmer "A Bill of Rights for New Zealand: A White Paper" [1984–1985] I AJHR A6 at [10.176].

36 Section 8(1)(b) of the Act.

bring an action for mandamus against the Chief Executive would confer an unintended immunity upon the executive Government.[37] Therefore, I agree that the Court has jurisdiction to make an order of mandamus against the Chief Executive to be used as a means to enforce his responsibility to ensure compliance within Auckland Prison with the minimum physical exercise entitlement in s 70 of the Act. Nothing in the CPA removes this jurisdiction from the Court in respect of an order for mandamus against the Chief Executive.[38] The order for mandamus can be to act according to law, with or without further details and instructions which the Court may add.

It is in the interests of justice to grant the remedy the plaintiffs seek

[87] Mandamus is a discretionary remedy.[39] The defendants submit that — as Corrections has articulated through Mr Parr's interim solution a credible path to reducing the frequency with which it needs to deny the minimum entitlement to any prisoner — the Court ought to exercise its discretion against making a mandatory order, or adjourn the application for three months to allow orderly achievement of compliance, along the path outlined by the Chief Executive.

[88] For five reasons, I do not accept the defendants' submission that it is not in the interests of justice to grant the remedy the plaintiffs seek:[40]

(a) First, as mentioned the defendants have made it clear that they do not accept the Court's interpretation of s 69, as set out in the present judgment and previously in *Mitchell*, *Taylor* and *Wallace*. Rather, their steps towards voluntary compliance are taken without prejudice to the defendants' primary argument that s 69(2)(b) and/or (c) permit the denial of prisoners' minimum entitlement to physical exercise in Corrections prisons in circumstances where the underlying reason for the denial is insufficient staffing or inadequate prison infrastructure. In these circumstances, I accept the plaintiffs' submission that it is

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37 *Joseph on Constitutional and Administrative* Law, above n 34, at 1243, citing Law Commission *Mandatory Orders Against the Crown and Tidying Judicial Review* (NZLC SP10, 2001).

38 For the same reason, I do not consider the immunity from liability in civil proceedings for chief executives and employees in s 104 of the Public Service Act 2020 to apply in respect of a proceeding seeking mandamus — as it is not a civil proceeding.

39 *Wade & Forsyth's Administrative Law*, above n 23, at 495.

40 I acknowledge there is some overlap with the three concerns I identified above at [75].

necessary to make an order to ensure compliance with the Act in accordance with the Court's interpretation of its meaning.

(b) Second, apart from the interpretation of 69(2) advanced by the defendants, which I have determined is incorrect, I have held that their interpretation of s 70 is also wrong. Allowing prisoners an hour of exercise, but requiring them to take that exercise in a dayroom, does not satisfy s 70's requirement that prisoners be allowed to take their exercise *in the open air* if the weather permits. That further error in interpretation, which only came to light after I interrogated the looseness of expression in the defendants' evidence and submissions, makes me concerned that, unless the Court makes provision for enforcement and close monitoring of compliance with the Chief Executive's obligations, this ungenerous, narrow and, as I have determined, incorrect application of the Act will continue.

(c) Third, the defendants' ongoing conflation of prisoners being unlocked from their cells and their minimum entitlement to physical exercise under s 70 further indicates a need to makes provision for enforcement and close monitoring of compliance with the Chief Executive's obligations. Prisoners have many other things they need to do in the time they have unlocked from their cells, such as contacting whānau, social contact within the prison, and arranging and participating in health, legal advice and court appointments. Requiring prisoners to carry out these activities during their s 70 minimum physical exercise time is likely to amount to a further denial of that entitlement.

(d) Fourth, as discussed, the defendants have been on notice for some time now that their denial of the minimum entitlement to exercise is unlawful. The Chief Executive has made various promises to comply, as summarised and recorded in Appendices 2 and 3. Yet, as is clear from the present application, and the defendants' evidence in response, significant non-compliance continues, at least in Units 12 and 13 at

Auckland Prison. That suggests to me that the enforcement focus to the remedy the plaintiffs seek is warranted now.

(e) Fifth, the minimum entitlement to exercise is a statutorily protected right, reflecting the Mandela Rules, which Parliament has enacted as part of fulfilling its obligation to treat those deprived of liberty with humanity and with respect for their inherent dignity. Treated as a bare minimum entitlement, s 70 is ungenerous. Therefore, the courts need to be vigilant in enforcing the minimum compliance with that provision.

[89] Ultimately, I am persuaded that there needs to be a way of holding the Chief Executive accountable to the provision of minimum exercise entitlements at Auckland Prison that does not take several years and a lengthy trial to enforce, merely through the mechanism of damages for a breach occurring several years earlier. Neither would a declaration suffice, given the Chief Executive's ongoing non-compliance despite Ombudsman recommendations and Court decisions.

Result

[90] I make an order in the nature of mandamus against the second defendant that, subject only to s 69(2) and (4)(aa), the Chief Executive of the Department of Corrections is required to comply with s 70 of the Corrections Act 2004 in the administration of the conditions of detention in Units 12 and 13 of Auckland Prison.

Costs

[91] My provisional view is that, having succeeded, the plaintiffs are entitled to 2B costs, with allowance for second counsel. I direct the parties to attempt to resolve matters of costs between themselves in the first instance. If the parties cannot agree on costs, they may file memoranda (of no more than three pages) according to the following timetable:

(a) Plaintiffs by **30 January 2026**;

(b) Defendants by **9 February 2026.**

McHerron J

Solicitors:
Crown Law for Defendant

Appendix 1: emergency provisions from Corrections Act 2004

179C Interpretation

In this section and sections 179D and 179E, unless the context otherwise requires,—

act or omission means any act or omission described in section 179E(1)(a)

…

prison emergency means an emergency—

(a) affecting the safety or health of the prisoners or any class or group of prisoners, or the security of the prison; and

(b) in respect of which the chief executive reasonably believes that the corrections system is no longer able to fulfil its purpose in section 5(1)(a) in relation to the prison or prisoners affected

regulations means regulations made under section 200

state of emergency affecting a prison or prisoners means a state of emergency—

(a) within the meaning of section 4 of the Civil Defence Emergency Management Act 2002; and

(b) in respect of which the chief executive reasonably believes that the corrections system is no longer able to fulfil its purpose in section 5(1)(a) in relation to the prison or prisoners affected.

179D Notification of emergency

(1) The chief executive must notify the Minister within 7 days of determining the existence of—

(a) an epidemic emergency affecting a prison or prisoners; or

(b) a prison emergency; or

(c) a state of emergency affecting a prison or prisoners.

(2) A notice under subsection (1) must—

(a) be in writing and signed by the chief executive; and

(b) state the date on which it is signed; and

(c) state the nature of the emergency that exists; and

(d) specify the actions taken to date in respect of the emergency; and

(e) specify any action proposed to be taken to enable the corrections system to fulfil its purpose in section 5(1)(a).

(3) The chief executive must notify the Minister within 7 days of determining that the emergency no longer exists.

(4) A notice under subsection (3) must—

(a) be in writing and signed by the chief executive; and

(b) state the date on which it is signed; and

(c) specify the actions taken in respect of the emergency.

179E Exclusion of liability while epidemic notice in force or during emergency

(1) There is no cause of action against the Crown, a Minister of the Crown, an officer or employee of a Minister of the Crown, the chief executive, an employee of the department, a contractor, or an independent contractor, to recover damages for any harm or loss that is due directly or indirectly to—

(a) any act or omission by any person that occurs while carrying out his or her functions or duties or exercising his or her powers under a provision of this Act or the regulations that has been modified by Order in Council under the Epidemic Preparedness Act 2006 while an epidemic notice is in force; or

(b) any failure by any person to comply (or comply fully) with any provision of this Act or the regulations if—

(i) the failure occurs during an epidemic emergency affecting a prison or prisoners, a prison emergency, or a state of emergency affecting a prison or prisoners; and

(ii) it is impossible or unreasonable in the circumstances to comply (or comply fully) with this Act or the regulations.

(2) A person is not exempt from liability under subsection (1) if the act or omission, or failure, constitutes bad faith or gross negligence on the part of that person.

(3) A person may apply to the High Court for leave to bring proceedings against any person referred to in subsection (1) on the ground that the act or omission, or failure, constitutes bad faith or gross negligence on the part of that person.

…

Appendix 2 (a sample of the reports tendered to the Chief Executive on the provision of the minimum entitlement to physical exercise)

Report	Finding	Recommendation	Corrections' response to recommendation
Optional Protocol to the Convention against Torture (OPCAT) Report on unannounced inspection of Hawkes Bay Regional Prison (July 2017).	Exercise entitlements were provided in respect of low security units. However, in the high security units, or at-risk units, Corrections found it difficult to guarantee the minimum entitlement and prisoners were not always allowed an hour in the fresh air, due to operational challenges.	The Ombudsman recommended all prisoners be able to spend at least one hour each day in the fresh air (Recommendation 2H).	Corrections did not accept this recommendation, stating it was not always feasible. The Ombudsman replied to Corrections' response, emphasising it "is a *minimum legal entitlement*" and "there is no provision under the Act for this to be derogated from for operational reasons".
Unannounced follow-up inspection of Arohata prison (December 2017).	High workloads for prisoners working in the kitchens sometimes reduced lunch breaks, meaning some prisoners did not receive their one hour fresh air entitlement. Occasionally, kitchen workers used the receiving office vehicle entrance, but this was not considered appropriate for exercise. More often in practice, kitchen workers took breaks on the steps of the kitchen or in the receiving dock area, which inspectors deemed unsuitable for exercise.	All prisoners should be given the opportunity for at least one hour's exercise in the fresh hour daily.	Corrections maintained that the receiving dock area provided adequate fresh air and committed to reviewing compliance with working hours and employing more kitchen staff to allow adequate breaks.

Report	Finding	Recommendation	Corrections' response to recommendation
OPCAT follow-up report on Hawkes Bay Regional Prison (April 2019).	Not all prisoners in the intervention and support unit (ISU) were offered their minimum entitlement to one hour of exercise in the open air. The ISU lacked a system for recording if prisoners had been offered or received fresh air. When the ISU was full some prisoners did not receive their entitlement.	The Ombudsman repeated his recommendation that all prisoners are able to spend at least one hour each day in the fresh air. He emphasised there is "no provision under the Act for this legal entitlement to be withdrawn for operational reasons for any prisoner".	Corrections rejected this recommendation, stating it is not always feasible or appropriate for ISU prisoners. Corrections introduced a "robust system" to record when fresh air was offered or declined and cited a therapeutic approach for at-risk prisoners.
OPCAT follow-up report on Invercargill Prison (July 2019).	Prisoners were being re-locked earlier than necessary.	The locking of prisoners should commence at 4.45 pm, as per the stated 8 to 5 regime. In response, the Ombudsman clarified that 'time outside of their cell' is not equivalent to 'open air' which is a requirement [under the Act and the Mandela Rules].	Corrections partially accepted this recommendation, noting it endeavours to ensure that prisoners subject to the 8 to 5 regimes receive higher than the one hour minimum requirement for time outside of their cell.
OPCAT follow-up report on Christchurch Men's Prison (June 2021).	One prisoner had been denied his entitlement to one hour of physical exercise in the open air on five days in February 2020. The denial was justified by staff on grounds of safety and security, but documentation did not adequately evidence this justification. Incident reports indicated that access to exercise	All prisoners must be able to access at least one hour of exercise in the open air daily and any denial "must be well-evidenced, robustly recorded and regularly reviewed". Minimum entitlements must not be used as leverage for compliance.	Corrections accepted this recommendation and said that work in this area is ongoing.

Report	Finding	Recommendation	Corrections' response to recommendation
	yards was withheld until "compliance is shown and proven". Staff shortages were given as a reason for failing to facilitate exercise for prisoners on a "four to one unlock" regime.		
Office of the Inspectorate's Special Investigation Report on Auckland Prison Units 11–13 (November 2023).	107 prisoners were denied daily exercise for over 100 days and 113 prisoners experienced solitary confinement (as defined by the Mandela Rules, r 44) for more than 15 days. Staff shortages were cited for the main reason. Up until 17 July 2023, the minimum entitlement to an hour daily of physical exercise was not being met in Units 11, 12 and 13. The documentation supporting the regime was inadequate and there appeared to be no plan to return to meeting minimum entitlements.	Section 69(2) of the Act is intended for short term emergencies, not prolonged operational issues. Where Corrections denies minimum entitlements, it must put in place a National Response Plan to support the site to address the underlying causative factors, with the aim of ensuring the site moves quickly to restoring an operating regime of at least, delivering minimum entitlements at the earliest possible opportunity. Any decision to deny minimum entitlements must be documented in writing by the decision-maker at the time the decision is taken, setting out the rationale for the decision. The National Response Plan must be robustly documented, with actions and action owners identified and	The full response is reproduced below as Appendix 3. Corrections accepted this recommendation. The National Coordination Centre (NCC) was established to support prison sites experiencing reduced staffing with short, medium, and long term options. An assurance mechanism regarding the provision of a minimum entitlements database has been initiated and a process regarding declarations of prison emergencies has been created to assist with future planning should another similar event occur.

Report	Finding	Recommendation	Corrections' response to recommendation
		timeframes for delivery established from the outset. The Plan must also be subject to ongoing scrutiny by an internal assurance mechanism, to ensure that progress on actions is both timely and appropriate. The decision to continue to deny minimum entitlements must also be reviewed daily by the prison director or delegate and a record made of the decision together with the rationale for that decision.	

Appendix 3

DEPARTMENT OF CORRECTIONS
ARA POUTAMA AOTEAROA

14 November 2023

Janis Adair
Chief Inspector
Department of Corrections

By email: [redacted]

Tēnā koe Janis

Re: Inspectorate Special Investigation - Auckland Prison Units 11, 12 & 13 (1 October 2022- 30 April 2023)

On behalf of Corrections, thank you for the opportunity to respond to the draft report regarding Auckland Prison Units 11-13.

We want to acknowledge the ongoing engagement and contribution of your office. The ongoing monitoring of our prisons play a key role in building a culture of continuous improvement for Corrections. This investigation identified issues which allows us to understand where challenges exist and to ensure long-term resolution of the issues.

We are pleased to note a large of volume of work has already been implemented since your review was undertaken. As you will be aware and as part of this action, Auckland Prison initiated a site plan wherein a number of the key issues raised by your office following the visit (and subsequently the Ombudsman) were grouped into areas and actions written up around how they would address these areas.

Twice weekly assurance meetings have been established which offers an opportunity for updates to be provided on how the site are tracking against the plan. While some meetings are for prison management only, others include union delegates, regional leadership, and health stakeholders. We are aware these site plans are updated following these meetings, your office is provided a copy, and the Monitoring Agency Relationships (MAR) team updates the Ombudsman on anything that related to their feedback.

You made three overarching recommendations within your report, which Corrections accepts in full. We have addressed each of these below:

1. *Corrections must take a 'lessons learned' approach to the decisions and actions taken at the site, region and national level in response to the*

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decision to deny minimum entitlements and the regime that was operating in units 11,12 and 13 of Auckland Prison during the review period.

This recommendation is accepted. While some of the identified issues within your report were events specific to Auckland Prison, we acknowledge the lessons that may be learnt and shared across the network regarding the approach and decisions made. The Chief Custodial Officer will lead work in this area to identify key areas where lessons are learned and how they can be addressed in future planning.

It is important to note that in this instance a number of factors, including reduced staffing levels caused through the effects of COVID-19 and recruitment and retention levels, impacted the level of services that were delivered at Auckland Prison. However, we acknowledge staffing levels need to be maintained for the safety of staff and people in prison, and therefore a consequence was the reduced ability to provide minimum entitlements.

It is worth noting staff recruitment to frontline positions has increased since this review period, and it is hoped that with a continued focus in this area as well as retention, this will assist in easing operational pressures across the wider network. We continue to work through the resourcing of staff at our prisons to mitigate such situations happening in the future.

We do believe it is important to note changes to the operating model of prisons especially when a site does not have the required capability in areas such as staffing, both in numbers of and experience levels, and buildings/design are also contributing factors. This is also highlighted where managing a large remand population in a prison that is not equipped to deal with this population, and the complexity of managing people in prison with different mixing categories and limited yard space, which provides limited opportunities.

2. *Corrections must review this report, and its conclusion, and consider how to respond to the prolonged denial of minimum entitlements for prisoners accommodated in units 11,12 and 13 during the review period. This should carefully consider the individual circumstances of each prisoner and, where they remain in units 11, 12 and 13, their progression pathway.*

This recommendation is accepted. The Department acknowledges the report and its conclusion regarding the provision of minimum entitlements for affected people in custody at Auckland Prison during the review period. The Department is actively considering all options available to provide redress for those affected people. We will also assess on a case-by-case basis any complaints that are submitted regarding individual circumstances that have arisen during this review period at Auckland Prison.

3. *In any future occurrence when Corrections denies minimum entitlements (particularly as it did in this case for a prolonged period, involving many prisoners) it must put in place a national response plan to support the site to address the underlying causative factors, with the aim of ensuring the*

site moves quickly to restoring an operating regime of, at least, delivering minimum entitlements at the earliest possible opportunity.

i. *Any decision to deny minimum entitlements must be documented in writing by the decision maker at the time the decision is taken, setting out the rationale for the decision. The national response plan must be robustly documented, with actions and action owners identified and timeframes for delivery established from the outset.*

ii. *The plan must also be subject to ongoing scrutiny by an internal assurance mechanism, to ensure that progress on actions is both timely and appropriate.*

iii. *The decision to continue to deny minimum entitlements must also be reviewed daily by the Prison Director or delegate, and a record made of the decision together with the rationale for that decision.*

This recommendation is accepted. The National Coordination Centre (NCC) was established to support prison sites experiencing reduced staffing with short, medium, and long term options to ensure the safety of staff and people in prison and security at these sites. It also coordinated the immediate response activity to alleviate pressures on staff and sites. This work is continuing.

An assurance mechanism regarding the provision of a minimum entitlements database has been initiated since this review, and a process regarding declarations of prison emergencies such as the ability to offer minimum entitlements, has been created to assist with future planning should another similar event occur.

It should be noted that as part of the NCC function, Prison Directors were reminded of decision making obligations including record management in weekly meetings.

In progressing this work, specific attention will also be given to address similar recommendations outlined in other reviews.

We trust you are satisfied with our response to the draft report. Please advise if you have any concerns or questions about the information provided.

Ngā mihi nui

[redacted]

Leigh Marsh
National Commissioner

[redacted]

Dr Juanita Ryan
Deputy Chief Executive Health