



Paying the Price – A report into issues prisoners face around access to banking

A Victoria University Te Herenga Waka/
FinCap Research Project

November 2022-March 2023

The Report

Authors: Victoria Stace and John Sibanda



The background of the entire page is a warm, orange-toned photograph. It shows the silhouette of a person standing with their back to the camera, looking out over a body of water towards a bright sunset or sunrise. The horizon line is visible in the lower third of the image.

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Introduction

In mid-2022, FinCap asked Victoria University of Wellington Te Herenga Waka (Victoria University) to conduct research on the issues around prisoners having access to bank accounts.² FinCap was aware there were issues, as financial mentors had reported that clients who were prisoners had problems accessing and maintaining banking services. If a person had an account upon entering prison it might be closed. If they wanted to open an account while in prison to enable receipt of money, this was difficult. And prisoners who came out of prison had problems opening an account. This is the Report of that research, which was conducted over the period November 2022 to March 2023. The research revealed that there are often significant adverse financial consequences of incarceration that are broader than access to banking. Suggestions are made in this Report that could more generally assist with management of a prisoner's financial affairs, from the start of their time in prison right through to release.

The researchers spoke to financial mentors, several major banks, Department of Corrections Ara Poutama Aotearoa (Corrections), services involved with rehabilitation and others who work with prisoners and persons that come out of prison. A full list of the persons we interviewed or obtained information by email from is contained in **Appendix 1**. Through these discussions, the researchers were able to build up a picture of the issues faced by prisoners, and persons coming out of prison, in particular around having access to a bank account. A point that quickly became

obvious to the researchers was that having a bank account makes it easier for a person who has come out of prison to access a benefit, accommodation and a job. Having a bank account appears to be an important component of successful reintegration into society.

A key research finding is that if it was possible to ensure, at a minimum, that all prisoners come out of prison with the identification required to set up a bank account (commonly this consists of a birth certificate plus photo ID, which could be a driver's licence, passport or Kiwi Access card), that would go a long way towards assisting with that person's reintegration into the community. Having those identification documents would remove some of the major obstacles in the way of getting a bank account. With these documents, the prisoner could apply for a bank account, assuming they can provide proof of address. For those prisoners that don't already have the birth certificate and photo ID, these documents would be obtained *while the person is in prison*. This is one of the recommendations made in this Report. This is not the first time this recommendation has been made – the Salvation Army did a report in 2016 on the problems that people coming out of prison face, with a view to making suggestions that would help reduce New Zealand's high rates of re incarceration. One of the recommendations made in that report was that Corrections should make it standard practice that every prisoner leaving prison has or is supported to apply for a form of ID accepted by most major banks. The Salvation Army report is discussed further in **Section 4**.

² FinCap is a non-government organisation which supports (primarily through training and advocacy) the more than 200 independent organisations around New Zealand that provide free and confidential financial mentoring support. FinCap works with these services to build the capability and professionalism of financial mentors and to reduce the causes of financial hardship.

In addition to obtaining ID documents, we recommend in this Report that every prisoner is given the opportunity to set up a bank account *before* release. In other words, complete the application process and obtain the bank account number while still in prison. This would require that the identification documents (namely birth certificate and photo ID, which most commonly is a Kiwi Access card) be obtained while the person is in prison and before the application is made to the bank, *and* that the bank application process is completed *before release*. The costs of obtaining these documents would be met by Corrections. In addition, Corrections staff would provide all necessary assistance (such as form filling) for the ID documents and the bank application. The prisoner would be given access to the account on release. There would be several advantages to having the account set up before release, including (but not limited to) meeting the proof of address requirement imposed by banks. A major benefit would be that the person could receive their social security benefit (and thereby have an income) upon release (once any standdown period imposed by MSD had lapsed). Providing every prisoner with the opportunity to set up an account before release is the system that operates in the United Kingdom under a programme called 'UNLOCKing Banking'. The UK programme is discussed in **Section 9** of this Report.

Implementation of those recommendations will require commitment by and likely resourcing of Corrections, the entity which operates almost all prisons in New Zealand.³ Current staffing issues within Corrections

appears to be one of the reasons why there has been little engagement with the existing opportunities to get prisoners set up with a bank account (or even getting the ID documents) prior to release. It will also require commitment by at least one bank and preferably more to take this group of consumers on as customers (subject to meeting application criteria). There is currently one bank that is willing to be proactive in this space – Westpac.


This Report does not delve into the debate about the most effective or appropriate approach to reintegration of persons coming out of prison. In terms of prisoners who are on the way out of prison or have been released, it focuses only on the specific issue of the importance of having a bank account or at least providing assistance to prisoners who want or need to have a bank account. It is recognised that there are other important components of successful reintegration and having a bank account is only one small (but important) aspect.⁴

The researchers thank Victoria University for the funding provided to enable this research project. They also wish to thank Victoria University for its ongoing support in the form of further funding to enable a Stage Two of the research, which will take place over 2023–2024.

We recommend in this Report that every prisoner is given the opportunity to set up a bank account before release.

³ One prison is operated by a private company, under a contractual arrangement. Corrections is still ultimately responsible for the prisoners in this prison. See further, **Section 2**.

⁴ This Report also does not discuss the situation of persons on home detention. By analogy however it would seem sensible if the probation officers could provide assistance and information to such persons to enable them to set up a bank account if they do not already have one.



Having a bank account
appears to be an
important component of
successful reintegration
into society.

Key recommendations

High level recommendations:

- There should be official recognition by the Government of the importance of facilitating access by all prisoners to a bank account on release.
- There should be commitment by the Government to such resourcing as is necessary to enable Corrections to deliver the services necessary to ensure that every prisoner, other than prisoners serving a sentence of 6 months or less ('short term') or on remand, is provided with ID documents prior to release, and given all assistance necessary to ensure that they have access to a bank account immediately on release, with all costs associated with the process met by Corrections.


Key recommendations relating to processes on entry into prison:

- In order to minimise deterioration in financial affairs during the period of incarceration, case managers should have, and must go through with each prisoner shortly after entry into prison, a checklist of financial matters relating to that prisoner. This applies to all prisoners, whether on remand or having been sentenced.

Key recommendations relating to facilitating provision of bank accounts:

- Sentenced prisoners not due for release (excluding short term prisoners) that require a bank account for receipt of money should be assisted by their case manager to get an account, including obtaining of requisite ID and all form-filling and certification requirements (all costs to be met by Corrections).
- Sentenced prisoners due for release (excluding short term prisoners) should be assisted by their case manager to take all steps necessary to get an account set up prior to release, including getting the requisite ID documents and all form filling and certification requirements, and this process should be started at least six months before prisoner is due for release (all costs to be met by Corrections).
- Prisoners that are coming up for parole should be assisted by their case manager to take all steps necessary to get an account set up, including getting the requisite ID and all form-filling and certification requirements, and this process should be started at least six months before prisoner is due to appear before the Parole Board (all costs to be met by Corrections).
- Prisoners on remand or serving short-term sentences should be referred to, or made aware of an agency or budget advice service that can support them to navigate the process of applying for ID and a bank account.

A full list of recommendations is set out in **Section 10**.

A person is shown from the back, in silhouette, looking out of a window at night. The window is framed by curtains with a repeating hexagonal pattern. The scene is dimly lit, with light coming from the window and a small light source visible through the glass. The overall mood is contemplative and somber.

Coming out of prison
with a mountain of
debt compounds
other problems that
person faces around
reintegration.

SECTION 1 – The problems

The research undertaken by Victoria University over the period November 2022 to February 2023 revealed that the following issues arise for prisoners in relation to accessing banking services.

On entry into prison

When a person is sentenced to a period of incarceration, there does not seem to be any formalised process for letting the person's bank or creditors know that this person will not be operating their account, making any payments or having any income, for a period.

The common situation appears to be that a person goes into prison on remand (for a period before sentencing) or is directly sentenced and then goes into a prison, and that there is little time in this process for the person to sort out their financial affairs. They may have a bank account. There may be direct debits going out of the account, for example for a loan, hire purchase or child support payments.⁵ The person's benefit (if they are on a benefit) will cease, as there is a process whereby Ministry of Social Development (MSD) is automatically informed of the fact of incarceration, resulting in the benefit ceasing. Financial mentors told us that Ministry of Justice (MOJ) passes on this information to MSD, and MSD and Corrections confirmed to us that this happens.

Financial mentors also told us that people who go to court don't really have the occasion, or the 'mind space' – while facing proceedings – to think about the practical repercussions of going to jail, such as the impacts on their banking and personal finances, meaning they are unlikely to sort out their financial affairs before

incarceration in the limited time available. With no income coming into the account and no arrangements made to suspend direct debits, the account will commonly go into unauthorised overdraft and often will then be eventually closed by the bank.⁶

Sometimes a person will have time to set up an authority whereby a trusted other (eg family member or friend) operates the account while the person is in prison. This can also lead to problems, for example if the trusted other misuses the account. Sometimes the bank will be notified that the person has gone into prison by, for example, a family member. For the bank to allow a third party to operate the prisoner's account however, a formal authorisation must have been set up with the bank by the prisoner. Some banks require a formal power of attorney, while others have a form to fill in that gives the other person authority.

We heard one story where one prisoner's mum opened his mail and saw the bank's demands for payments on a bank loan but she couldn't pay them as she had no signing authority. With help from a financial mentor and because there was a good relationship with Corrections, the mentor was able to organise for the signing authority (in favour of the mum) to be executed by the prisoner in prison. The result was that the prisoner's debt was not written off and a 'bad debt' was avoided.

⁵ Several mentors told us that child support payments are the biggest issue for the prisoners they work with (which is currently only a small subset of all prisoners) and that they endeavour to work with Inland Revenue to stop these payments for the period of incarceration.

⁶ Every bank we spoke to told us that an account would not be closed solely because a person was in prison. However, the bank will commonly be unaware of the fact of incarceration.

SECTION 1 — The problems CONT

Some banks told us that they stop debiting bank fees in relation to accounts of persons in prison. But if they don't know the person is in prison, bank fees will continue to be payable. If the person has a bank account in relation to which bank fees are payable (and we were told that many banks offer fee-free accounts), accumulation of bank fees alone can cause the bank to eventually close the account due to going into an unauthorised overdraft. KiwiBank told us that if they are notified that a customer has gone into prison, their account remains open but with some protections put in place to protect the customer from financial abuse, such as cancelling their bank card and stopping internet banking. Deposits and withdrawals can still be made. To reinstate stopped services, the customer will have to visit a branch after release.

It is not uncommon for the prisoner to find that after a period of incarceration, they are heavily in debt and their bank account has been closed. Some financial mentors told us that they recommend that a person in this situation enter an insolvency procedure (while in prison) to clear the debt. This could be a no-assets procedure or bankruptcy.⁷ A debt repayment order procedure would be unlikely given the person probably has no income.

Having large unpaid debts or going into an insolvency procedure is likely to result in the prisoner coming out of prison with a poor credit rating, making it harder to find stable accommodation and get a job. Coming out of prison with a mountain of debt compounds other problems that person faces around reintegration.

It seems that there is a need for a more formalised process of communication, at the point when a person goes into prison, between Corrections (or MOJ), and the banks (at a minimum) and preferably major creditors (for

debt) and Inland Revenue (for child support payments).⁸ The purpose of this communication would be to let the bank know, so that (at a minimum) bank fees can cease, and creditors can effectively suspend debt and other financial obligations while a person is in prison. KiwiBank told us that it would be helpful to have MOJ send the bank a report of newly incarcerated prisoners that bank with KiwiBank so the bank could proactively put protections in place around the person's account. We were told that similar reports are received about persons that have gone into an insolvency procedure.

We note that one particular type of debt that could be suspended without any formal communication in addition to what already happens, would be debt owed to MSD (where that is being deducted from a benefit). MSD will know that the person has been incarcerated and that benefit has ceased, and could suspend debt owed to MSD (so that payments are suspended and no interest accrues on the debt while the person is in prison). We were not aware of any process that currently operates to suspend MSD debt in this way but suggest it could be implemented.

There are privacy issues that become relevant here. We were told by one bank that Corrections cannot volunteer information about someone's incarceration to any bank because of privacy issues.

One other issue is that financial mentors who work with prisoners have told us that even if a prisoner was to see a mentor to try to sort out their financial affairs, there are particular issues around communications (by mentors) with banks that make this harder than it needs to be. A privacy waiver is required by the bank in order to release any information about a customer. Mentors reported finding the process frustrating and complex. In order to assist financial mentors to communicate

7 *LAGLAW: Your Rights Inside Prison and on Release* (Wellington: Community Law Wellington and Hutt Valley, 2021), at p 38, notes that it is important that the right choices be made for the prisoner around insolvency procedures as different procedures have different effects – for example, some debts like child support are not cancelled under some procedures.

8 One mentor told us that the first thing he sorts out for clients he sees that are prisoners is stopping the child support payments. There is a form (IR105) that a person in prison can use to apply to the IRD for an exemption from child support payments. This mentor said that the case worker might on occasion have already sorted this out but that case workers, in the mentor's experience, were overworked and thinly spread and most often will not have had time to sort this out for the prisoner.

with banks about clients' financial affairs, systems and processes around privacy waivers could be simplified.⁹

There are also issues around communications between banks and Corrections, mentioned to us by banks. We were told that it would assist banks if Corrections would prioritise email communications over post and send all letters as attachments to emails.

Research done in Australia confirms that these sorts of problems are also common for prisoners in Australia. In 2016, a study was done by Financial Counselling Australia looking at the serious financial issues people in prison face as a result of their incarceration.¹⁰ The report was entitled Double Punishment, referring to the notion that people in prison are both punished for their offence and also punished financially because of the difficult financial issues caused by going into prison. The report gives information on the sorts of problems that prisoners face and proposes a range of solutions.

The sorts of difficulties commonly identified in that report on going into prison included difficulties contacting creditors (to stop debts mounting up), and finding that the person outside entrusted with managing financial affairs had not done so. Child support debt was identified in particular as an issue because it affects many prisoners and if the government authority is not immediately notified, the debt continues to grow.

Possible solutions to the problems noted in this section are discussed in the 'Recommendations' section, **Section 10**.

While a person is in prison

The VUW research revealed that the following sorts of problems can arise while a person is in prison, in relation to accessing banking services. There are problems relating to communication with the bank, and problems around receiving money while incarcerated.

A person may have a bank account and wish to contact the bank to let the bank know they are in prison and possibly to arrange for someone else to have authority to operate the account or to stop direct debits. Prisoners are not allowed cell phones and have no internet access. The only way to contact the bank is by using the communal pay phone or by sending the bank a letter. There are problems with using the communal phone, as there is no privacy around conversations and wait times (at the bank's end) to get connected to a real person at the bank can make using a communal phone impractical.

Mentors told us about particular problems around using the communal phone, for example that talking aloud into a telephone receiver about finances can be overheard by other inmates, which can create the risk of prisoners being subjected to 'stand-over' tactics by other inmates. In addition, mentors told us that no one realistically remembers their bank account numbers, access numbers, and their passwords, which are needed to talk to the bank over the phone.

Prisoners are also only allowed to call 'nominated persons' and certain pre-approved 0800 numbers, so if the bank is not on the list, no phone call to the bank is permitted. That leaves communication by post. Postal communication is possible to and from prisoners, but is slow. There can be particular problems if a prisoner is shifted around within a prison or between prisons, meaning it can take a long time for mail to reach the prisoner.

⁹ One mentor told us that trying to get information from banks about clients that are in prison can be frustrating in particular because of the different requirements each bank has around privacy waivers. One bank might require photo ID before information is released. All banks require completion of a particular privacy waiver form which has been developed by FinCap in association with the NZ Banking Association. Some banks also require their own privacy waiver.

¹⁰ Financial Counselling Australia, "Double Punishment – How People in Prison Pay Twice," Financial Counselling Australia, May, 2018. See <https://www.financialcounsellingaustralia.org.au/docs/double-punishment-how-people-in-prison-pay-twice-2018>.

SECTION 1 — The problems CONT

One bank told us that there were problems from the bank's end around not knowing if the customer (in prison) was acting of their own free will, when giving instructions to the bank. This applied to both phone calls and letter instructions.

A significant problem that can arise at this stage is that a person may become entitled to a lump sum of money while in prison, and the prisoner has no way of receiving the payment. Prisoners are allowed to operate a 'trust account' while in prison but the maximum allowed in this account is \$200.¹¹ We did hear that there is some flexibility around the trust account limit of \$200 but it depends on the willingness of the prison concerned. Corrections suggested that there are good reasons for keeping the limit on the trust account at \$200, in particular because there can be tensions between prisoners over money. In particular, holding large amounts in a trust account can lead to a person becoming subject to harassment, intimidation and violence by other prisoners.

The sorts of payments that a person may become entitled to while in prison include compensation payments for poor treatment in prison, a KiwiSaver hardship payment, an inheritance, and a compensation payment relating to abuse in care (specifically State care or care in a faith-based institution).

The last type of payment is a significant issue for prisoners. As of March 2019, the Ministry of Social Development had paid out about \$27.6 million to 1450 survivors of abuse in care, averaging just over \$19,000 each, with a top payment of \$80,000.¹² There is a strong link between a person having spent a period in care and

later serving time in a prison.¹³ There is research that suggests that between one in five (20%) and one in three (33%) (and in some years higher than one in three) of people placed in residential care in New Zealand by the State went on to serve a prison sentence later in life.¹⁴ The research showed Māori children in care were even more likely to end up in prison, with 42 per cent of those born between 1980 and 1984 serving a custodial sentence as an adult.¹⁵ This shows a significant disparity between those in residential care and the general population, for whom less than one in ten ended up in prison.¹⁶

For a person in prison with no bank account, there is no way to receive this payment unless either the prison concerned allows the limit on the trust account to be increased, or the prisoner was to authorise payment to a trusted other (outside of prison) to be held on behalf of the prisoner. We heard of stories where this latter method of payment resulted in the prisoner's money disappearing or other unfortunate consequences, for example using the payment as a means of exerting control over the prisoner. A counter consideration is that if the compensation payment goes into a bank account, the prisoner is not able to access it in prison, as they cannot easily use their bank account money while in prison. So it seems there are arguments that for the prisoner to reap the benefit of such payments while in prison, it needs to at least in part go into the trust account. But putting all of the money, which could be several thousand dollars, into the trust account does not appear to be the ideal solution even if permitted by the prison concerned. A possible solution would be to facilitate the setting up by the prisoner of a bank account into which the compensation payment could be paid, and enabling transfers into the prison trust account from that account, possibly on a regular pre-arranged basis. This would enable the prisoner to have some money in the trust account and the ability to top

11 See the Prison Operations Manual, available from the Corrections website (https://www.corrections.govt.nz/resources/policy_and_legislation/Prison-Operations-Manual).

The \$200 maximum can be lifted at the discretion of the "residential manager" (see F.05.01 of the Prison Operations Manual). We heard that some prisons will allow a greater amount to be held in a trust account.

12 Michael Neilson, "Abuse in Care Royal Commission of Inquiry: Payouts far less than other countries," *New Zealand Herald*, October 2, 2020, <https://www.nzherald.co.nz/nz/abuse-in-care-royal-commission-of-inquiry-payouts-far-less-than-other-countries/OWLRMMM5SBVC4K7CO6OYGEKZ44>.

13 The Abuse in Care: Royal Commission of Inquiry Research Report: *Care to Custody: Incarceration Rates*, August 2022, provides authority for this proposition. Find at: <https://www.abuseincare.org.nz/our-progress/library/v/500/care-to-custody-incarceration-rates-research-report>.

14 Ibid, p 8.

15 Ibid, p 9.

16 Ibid, p 8.

up the trust account balance, while keeping the bulk of the payment secure in a bank account.

Another situation that may arise is that the prisoner could be earning wages while in prison and needs a bank account to hold those payments (where they exceed the \$200 trust account limit).

We were told of a specific case where a financial mentor was asked by the Prison Director to set up a bank account for a person who was never likely to gain release. The account was needed to enable the person to receive a compensation payment. The prison director knew that the only accounts the prisoner could nominate for the compensation payment to be redirected into were his criminal associates' accounts and he would never see it. There was no resolution to this. It does not seem this person was able to get an account with a bank.

Our research suggested that there is currently only one bank operating in New Zealand that will consider an application for a bank account from a person in prison (who is not due for release in the near future – this latter category of person is discussed below). Westpac operates a programme called New Start that is aimed primarily at prisoners due for release but Westpac will also consider applications from prisoners not due for release, on a case-by-case basis. The application will be assessed by a specialist team at Westpac. As at the end of 2022, a very small number of accounts had been opened for persons in this situation by Westpac since the commencement of the New Start programme in 2019.¹⁷

An applicant under the New Start programme will have to have the requisite ID (birth certificate and photo ID, which might be a driver's licence or Kiwi Access card), plus proof of address. The ID documents would have to be certified as correct. In this situation Westpac has been prepared to accept the prison as the person's address.

Westpac has discretion to refuse any application.

Grounds on which an application may be denied include, for example, that the person has been trespassed from a Westpac bank in the past or has been involved in a crime involving fraud or other financial crime.

In a media statement about the New Start programme, Westpac said:¹⁸

A small number of prisoners will have their applications declined for these reasons, but we're taking a really open mind when we look at applications, as where possible, we're keen to drive greater inclusion in the banking system.

Our investigations revealed that there is very little awareness amongst prisoners, and mentors that work with prisoners, of the opportunity to apply to Westpac to open an account in this situation. It would seem that few prisons currently offer this opportunity in practice. This may be due in part to the lack of resourcing available within Corrections, as the Corrections staff would have to assist a prisoner with the application process and also with obtaining the ID documents.

Prisoners due for release

A major focus of the research was the situation of the prisoner that is due for release in the near future. As stated above, our research findings include that having a bank account is a key part of successful reintegration into society. One main reason for this is that a person needs a bank account to receive a benefit. We were told by services that work with ex-prisoners that most

¹⁷ This information was obtained from Westpac via email received 24 January 2023. It was suggested to us by a mentor that it is likely these were for lower security prisoners. This mentor works with prisoners in a maximum security prison and had seen no evidence of any such accounts being opened.

¹⁸ "Helping released prisoners reintegrate with 'New Start' bank accounts," Westpac, February 17 2022, <https://www.westpac.co.nz/rednews/helping-released-prisoners-reintegrate-with-new-start-bank-accounts>

SECTION 1 — The problems CONT

prisoners apply for a benefit on release.¹⁹ We were told by a mentor that an ex-prisoner's opportunities for finding immediate employment on release are minimal, notwithstanding that some organisations do have programmes aimed at employing former prisoners.

One of the main services providing reintegration services to ex-prisoners (Te Pā) told us that virtually every person that he (the Te Pā kaimahi we spoke with) sees coming out of prison has no bank account. This person had heard of the Westpac New Start programme but said 'no one' has access to it. Having no bank account was described as a 'big problem'.

On release from prison a person becomes entitled to an MSD payment called "Steps to Freedom". For persons that have been held for 31 days or more, this payment is \$350, less any amount held in the person's prison trust account at time of release.²⁰ The payment is either made to the person's bank account or if they don't have one,

loaded onto a debit card issued by Westpac. The debit card can then be used once the person exits prison.

Apart from the Steps to Freedom payment (which is a one-off), the person just released from prison might apply for an MSD benefit called Jobseeker Support which is a weekly payment. Receipt requires a bank account, but the applicant can ask MSD to pay it to another person's bank account on behalf of the applicant. We heard how adopting this method of payment can lead to problems. In particular the benefit might be used by the other person, or used to control the ex-prisoner, or may lead the ex-prisoner to have to associate with people that they would rather not associate with (in other words, people involved in criminal activity).

One financial mentor told us that where a previously incarcerated person did not have a personal bank account, they would be asked by MSD to designate another person – a 'mate' – into whose account their benefit would be deposited. The mentor said that MSD depositing benefits into the accounts of others exposed the ex-prisoner to vulnerability and possible financial abuse. It was not uncommon for the designated 'mate' not to pass on the entire benefit to the intended recipient. The mentor noted that this sort of arrangement usually required the ex-prisoner to nominate an associate who they would have known prior to incarceration. This often re-initiates contact and associations by the ex-prisoner with questionable people who are involved in criminal/anti-social activity. This was described as "not great" for rehabilitation or re-intergration into society.

19 A strong inference in support of this statement can be drawn from the following pieces of research:

1. According to Corrections in 2017 "87 percent of prisoners did not pay any form of income tax in the month before entering prison. This indicates that 87 percent were unemployed, working for income but not paying tax, receiving a benefit, or being financially supported by another person." see <https://fyi.org.nz/request/6290/response/21095/attach/9/Correspondence%2520from%2520Corrections%2520C87697.pdf>.
2. Another 2017 study of 127 ex-prisoners published in the NZ Corrections journal found that "An examination of the employment pathways of participants revealed that for the most part prison did not appear to adversely affect employment status. For instance, over two-thirds of people revealed no change in their employment status before and after their latest imprisonment: 18% of participants working pre-prison returned to work afterwards, while 50% of participants were consistently unemployed. A further 19% unemployed pre-prison were working post-release, and only 13% appeared to be faring worse having being employed pre-prison but unemployed post-release" see https://www.corrections.govt.nz/resources/research/journal/volume_5_issue_1_july_2017/what_happens_beyond_the_gate_findings_from_the_post-release_employment_study.

Read together, these two items of research indicate that most prisoners are unemployed before incarceration and that most remain unemployed upon release. This supports a finding that most require income support post-release. This is also in accordance with what the VUW researchers were told by services that work with ex-prisoners.

20 This would appear to be another reason why the trust account should not be allowed to exceed \$200 (for example, to receive a compensation payment). One interviewee told us that if the prisoner can nominate a bank account for their steps to freedom payment, that the full amount is paid into that account and no amount is deducted for whatever is left in the trust account.

MSD confirmed that they will pay the benefit to another person that they describe as an 'agent'. MSD told us that they have stories of the recipient and the client wanting to "part ways" which "we do quite quickly".²¹ The ex-prisoner is always encouraged to get their own bank account and that using the agent is only a temporary measure but they "don't seem to follow through" and instead keep their agent until there is a "falling out". "Often it's too late when they inform us and we are unable to stop the payment going out."²²

Te Pā, one of the main organisations involved in reintegration services, also told us that sometimes the ex-prisoner will use a relative as the person who receives the benefit on their behalf but that they had seen situations where this had resulted in the relative taking the money. This was also a problem if the person was trying to get away from the relative and had to use them to get the benefit.

When asked how frequently does the issue of MSD recommending a nominated account for receipt of their benefit arise, one mentor told us she would see it all the time. The mentor added that the practice of MSD putting money into another person's account conceals the fact that the beneficiary does not have a bank account and may not actually be in receipt of the money.

We heard how some budget management service providers will receive the benefit on behalf of an ex-prisoner, which they then hold on behalf of the client through a 'Total Money Management' arrangement. This was described by one mentor as not great for the empowerment of ex-prisoners, but better than having the unbanked client be exposed to vulnerability and financial abuse which occurs when the money is deposited with a 'mate'. Other mentors told us that 'Total Money Management' is empowering, as it creates boundaries around financially vulnerable people to enable them to safely live in their community. 'Total Money Management' is no longer supported by MSD, meaning no new clients can be offered this service.

Some of the mentors we spoke to would like to see the funding for this service reintroduced. We were told it would not replace a bank account but would be of assistance for some clients.

When asked if the practice of allowing a benefit to be paid to a 'mate' should be prohibited, mentors we spoke to were generally of the view that the practice does serve a useful purpose in some situations. For example, the redirection can operate like an automatic payment from the benefit to a nominated account. This is helpful, for example, for people with intellectual disabilities – they can choose to have the benefit sent to a financial mentor who operates Total Money Management – to help them manage their financial situation.

All prisoners are allocated a case manager while in prison. We were told that some prisoners were selected for 'Guided Release' which might, in some instances, include helping the prisoner set up a bank account immediately before or just after release, whereby the case manager would assist with a visit to the bank, getting ID and filling in the forms. We were told it takes 4-5 weeks for a birth certificate to arrive. Once the birth certificate is sourced, it will take 4-5 weeks for the Kiwi Access card to be applied for, processed, and received. All this time the ex-prisoner is without the income they would otherwise have had from the benefit. One mentor told us that sometimes assisting prisoners getting bank accounts arranged appears to fall into the "too much work basket" for case managers. This mentor also told us that 9/10 ex-prisoners that the mentor's organisation sees need support with going to the bank, filling in forms and interacting with bank personnel.

There is also an issue with the cost of getting these ID documents. It currently costs \$33 to get a birth certificate and \$60 to get a Kiwi Access card. This is a significant amount of money for some prisoners and may be beyond their means. This creates another barrier to the prisoners getting these documents.

²¹ This information was obtained from MSD by email dated 18 November 2022.

²² Ibid.

SECTION 1 — The problems CONT

The Kiwi Access card requires two identical photos with the application form. In order to get these, for a person that is still in prison, the prisoner will usually have to go outside the prison and pay for them. We were told that Hospitality NZ has in the past arranged that the Automobile Association (AA) would go into prisons to do these photos (a few times a year) using a bus (the cost is charged to the prisoner). Corrections told us that Hospitality NZ recently made it ‘easier’ by putting the whole application process including the photos, online, meaning there was no need for the AA to come to the prison. However one mentor we spoke to suggested this does not make it any easier for prisoners as they don’t have access to internet in prison, so are not able to apply online for the card.

Financial mentors also told us about a money card that MSD might issue called the Green Card, onto which MSD can load credit, which can be spent on certain approved items such as food or clothing. The balance has to be spent within a certain time. A person does not have to have a bank account to use a Green Card. One person working in a reintegration service told us that apart from their Steps to Freedom payment, the Green Card has on it:

- \$100 for groceries;
- \$150 to be spent at The Warehouse for basic necessities; and
- \$ 120 for a phone.

This person (who works in a reintegration service) said they try to get in touch with MSD over a week in advance of the person being released, to apply for the person’s entitlement so that the entitlement is ready at the time of release. This person told us that a lot of prisoners have anxiety when they leave the prison gate, and that it is good to get things ‘done in advance’.²³

Any person (including an ex-prisoner) who is out in the community can go into a branch of a bank and apply for a bank account. The issues that ex-prisoners face in this situation include that they usually don’t have the requisite ID documents, and it will take several weeks to get that ID. They first need to apply for a birth certificate, which costs \$33, then apply for a Kiwi Access card, which costs \$60.²⁴ One particular issue that can arise here, we were told, is that a common condition of parole, particularly for sexual offenders, is that they are not allowed to have a phone, or access to the internet. Having no access to the internet makes it particularly difficult for the prisoner to apply for a birth certificate, or a Kiwi Access card.

Getting proof of address, which is required by the bank, is also challenging for many ex-prisoners as they may not have stable accommodation. Having the confidence to front up at a bank branch can also be an issue. One bank we spoke to suggested that co-morbidities commonly exist for people who are incarcerated. There may also be ill mental health, family violence, substance abuse or gambling addictions, which can all create barriers to the person starting and maintaining a bank relationship.

In relation to the banks we spoke to, one (Westpac) offers a programme targeted at prisoners, (the New Start programme) whereby a person who is due for release can apply to have a bank account opened while still in custody. This is the main focus of the New Start programme. Westpac told us that the New Start programme, also known as the Bank Accounts Upon Release Scheme, became available at all prison sites in December 2021, following a successful pilot programme in which over 60 applicants opened bank accounts before release.²⁵

²³ We were also told about another card called a Glo-bug card which could be loaded with credit then used to pay for power and phone in the accommodation provided to ex-prisoners.

²⁴ Te Pā told us that they often meet the cost of getting the birth certificate – on the understanding that this will at some stage be refunded (but it often is not). Te Pā was not aware of any government funding for this cost.

²⁵ Ara Poutama Aotearoa Department of Corrections, “Bank account on release is one less challenge.” Department of Corrections Press Release, February 18 2022. See https://www.corrections.govt.nz/news/2022/bank_account_on_release_is_one_less_challenge

A prisoner who was due for release and applying under the New Start programme for a bank account with Westpac would need the necessary ID and proof of address to meet the application criteria. Westpac told us that the process is that Corrections arranges for the prisoner's ID (commonly a birth certificate plus Kiwi Access card or driver's licence). There is no need for the prisoner to come into the branch. The bank then decides whether to approve the application and if approved, provides a debit card.

In a 2022 press release, Corrections set out the process in more detail:²⁶

The applicant and the case manager just need to fill out the paperwork, see an on-site Justice of the Peace or a PCO to get their ID verified, and then send it to Westpac through REFER Online. When their account is opened, the individual receives a welcome pack with all the information they need about their new account. Their debit card is also sent to the prison and is kept with their property.

Proof of address is also required by the bank. If the application is made while the person is still incarcerated, for an application to Westpac, proof of address can be established using the prison identification documents. This is the information from the prisoner's Personal Identity Profile (PIP). Westpac accepts a 'PIP' document that Corrections provides (address is the prison) so the bank has found a way to be flexible here.^{27,28}

All documents used to establish identity and proof of address when the applicant is not physically present in the bank branch have to be certified as true and correct by a trusted referee. This is usually done by a JP or Principal Corrections Officer. Westpac have indicated they will accept other trustee referees. The application is then assessed by a specialist team at Westpac and the application approved or denied.

A Stuff article in 2020 reported the then CEO of Westpac (David McLean) saying:²⁹

So far, the pilot scheme had allowed 110 prisoners to get accounts using them. Not every prisoner would get an account, however, and to date, 14 prisoners who went through the pilot had been turned down. McLean said: Every bank would reserve the right to say, we're sorry, we just don't think you are our type of customer. Anyone who had been violent or aggressive to Westpac staff would not get an account, McLean said.

Westpac expressed the view to us that they are hopeful that other banks will adopt similar processes so that prisoners have more options. As mentioned earlier, most mentors we spoke to that work with prisoners had not seen evidence of the operation of the New Start programme in practice and it seems that while it might have notionally been rolled out to all prisons, that very few prisons actually offer this service to prisoners that are due for release. Westpac has indicated that it is working with Corrections to increase awareness of the programme. Only one mentor we spoke to said that she had seen the New Start programme in operation, with

26 Ibid. REFER Online is the name of the system Corrections use to create the application. We were told by Westpac that Corrections attach documents to the application and use it to generate the email to Westpac.

27 Ibid. The press release stated: *An important feature of this initiative is that Westpac NZ have accepted a prison as a verified address through the Personal Identity Profile (PIP) generated in IOMS.*

28 See **Section 5** for more discussion about the anti-money laundering obligations on banks.

29 Rob Stock, "Post-prison bank accounts: Westpac to help those newly released," *Stuff*, November 30, 2020, <https://www.stuff.co.nz/business/123527850/postprison-bank-accounts-westpac-to-help-those-newly-released>.

In a Jan 2021 press release, Westpac said that: *So far 116 bank accounts have been pre-approved in the initial stages of the pilot, with the same strict acceptance criteria applied for any customer wanting to open an account with Westpac – in line with Anti Money Laundering obligations.* See <https://www.westpac.co.nz/rednews/westpac-offers-bank-accounts-to-help-newly-released-prisoners-re-integrate-into-society>.

The 116 figure seems to refer to all bank accounts for prisoners that had been set up, including prisoners due for release and those not due for release.

SECTION 1 — The problems CONT

a prison she works with, but only a small number of applications had been approved.

A person we spoke to from Te Pā told us, when asked about the Westpac New Start programme, that Westpac had provided a special telephone number for prisoners and ex-prisoners to call, that was helpful. We were told that many prisoners have anger management issues and if they have a bad call centre experience, that can lead to violence. So they need support, and having a special dedicated line does help. But he also told us that overall this programme has not made any noticeable impact.

KiwiBank, ANZ, BNZ and ASB told us that while they don't have any special programme in place as yet, they would in principle accept an application to open an account from a person who was in prison and due for release. The usual ID and proof of address requirements would have to be met. The usual discretionary grounds for declining an application would apply (for example, the person might have previously had an account with the bank but there was fraudulent activity or bank staff had been threatened). BNZ told us that all such applications for an account would be considered on a case by case basis, taking into account all contributing factors (e.g. insolvency, financial crime/nature of crime committed, previous account conduct if a previous customer, ability to meet ID verification requirements, and the requirement to verify in person who they are).³⁰

Our conversations with these banks (KiwiBank, BNZ, ANZ and ASB) suggested that while in principle the bank generally would be prepared to consider opening an account for a prisoner due for release, that ID requirements were likely to be a barrier, and that banks are risk averse when it comes to departing from the usual ID (and proof of address) requirements. It was suggested to us by one bank that as Westpac is offering a service in this space, no change in practice on the part of the other banks is currently required. It was

also suggested that this may be reviewed if there was research that showed there was a need for other banks to be active in relation to this group of customers.

There are problems that arise if only one bank offers a person who is not yet released, the option of opening an account. Westpac might, for example, decline that person's application because of a previous banking history with Westpac. Prisoners currently have no ability to shop around for another bank to open an account with while still in prison.

One mentor told us that a lot of the ex-prisoners they work with, would usually have been trespassed from MSD, their bank, and supermarkets. This would likely mean they often could not get a bank account based on the current practice of all the banks we spoke to, due to the bank's ability to decline an application by a person that had been trespassed from the bank in the past.

We recommend in this Report that all prisoners due for release that do not already have an account should be proactively – and systematically – assisted by Corrections to get an account.

There are equitable considerations that suggest the load should be spread amongst the major banks. According to the Salvation Army report: Beyond the Prison Gate (see **Section 4**), 15,000 people are released from prison each year, but this could include those prisoners held on remand and on short sentences. Based on Corrections statistics for the period 1 July 2019–30 June 2020, 3950 prisoners (serving a sentence of 6 months or more) were released into the community.³¹ If all of those persons were offered the opportunity to open a bank account while in prison and within 6 months of release, this is a very large number of applications for one bank to have to process. Further, in the interests of choice for the consumer, prisoners should have an option as to which bank they open an account with.

30 BNZ told us that if the person had been investigated for fraud in the past or had gone insolvent while BNZ was a creditor they would not be able to open an account with BNZ at any time.

31 See Corrections Volumes 2019-2020," (Ara Poutama Aotearoa Department of Corrections), 2020, p 167 https://www.corrections.govt.nz/_data/assets/pdf_file/0016/41191/Corrections_Volumes_Report_2019-2020.pdf.

A recent report commissioned by Westpac and written by ThinkPlace provides information from a study that explored the lived realities of some communities in New Zealand who struggle to access bank accounts.³² People released from prison was one group that the study looked at. The findings of that study are in many respects very similar to the findings of the VUW Research. In particular, the most common barrier experienced by all groups was the lack of ID required to open an account. For people that had come out of prison, the ThinkPlace report noted that time is crucial, as by the time the hurdles to opening an account can be overcome it may be too late (the person has already “gone off the grid”).³³

The issues around prisoners that have been involved with fraudulent activity or trespassed from a bank for bad behaviour are complex. On the one hand, ideally all ex-prisoners should be given the opportunity to move on with their lives and that includes having access to basic banking services. On the other hand, banks are mindful of the need to protect staff and customers from threats of violence and to also protect customers and the wider economy from risks such as fraud, money laundering and the financing of terrorism. This issue would benefit from further conversation with stakeholders with a view to finding a way to allow ex-prisoners affected by these issues to have access to basic financial services while minimizing any risks that might arise.

Access to a bank account, in particular because it allows receipt of a benefit, is only one component of successful reintegration. Access to stable housing is the other issue that kept coming up in the conversations we had with those working with ex-prisoners. One mentor told us:

“You can’t come out without an income, a place to stay, and bank account; you end up on the street, what else would you do?”

We acknowledge the importance of access to stable housing. The issues around housing are outside the scope of this Report. For more information on the importance of housing and in particular the provision of state housing for persons coming out of prison, see *Exiting Prison with Complex Support Needs: the Role of Housing Assistance*.³⁴ See also the report, *Double Punishment*.³⁵

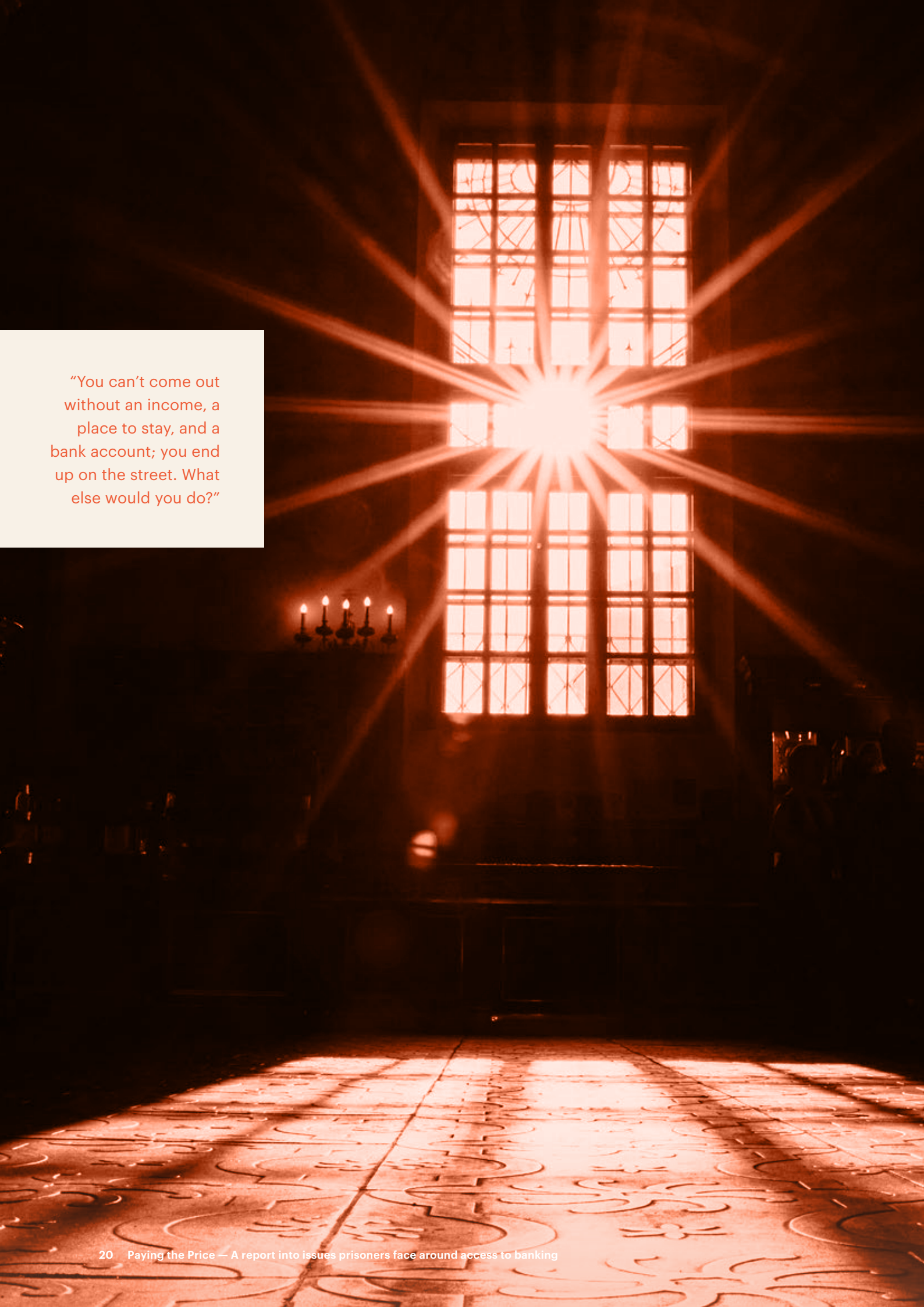
We suggest some solutions to the problems identified above that arise for prisoners due for release, in **Section 10**.

³² See ThinkPlace, “The Westpac NZ Access to Banking in Aotearoa Report”, April 2023, <https://www.westpac.co.nz/personal/life-money/navigating-trying-times/the-westpac-nz-access-to-banking-in-aotearoa-report/?vanity=%2Faccessstobanking>

³³ Ibid, p 19.

³⁴ Martin, C., Reeve, R., McCausland, R., Baldry, E., Burton, P., White, R. and Thomas, S. (2021) *Exiting prison with complex support needs: the role of housing assistance*, AHURI Final Report No. 361, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/361>, doi: 10.18408/ahuri7124801.

³⁵ Financial Counselling Australia, “Double Punishment – How People in Prison Pay Twice,” n 10.



"You can't come out without an income, a place to stay, and a bank account; you end up on the street. What else would you do?"

SECTION 2 – Some facts, figures and general information about New Zealand’s prisons

The following paragraphs set out some facts and figures about New Zealand prisons, as well as some relevant information about how prisons operate.

There are 18 prisons in New Zealand.³⁶ Three are for female prisoners and the rest for male prisoners. One is operated by a private company, Serco (this is the Auckland South Corrections Facility). The rest are operated by Corrections. Auckland South Corrections Facility is operated under an agreement between Corrections and a private company called SecureFuture, which company in turn has subcontracted the operation of the prison to Serco. Corrections remains ultimately responsible for the prisoners in this prison.³⁷

As at September 2022, the total prison population was 7,964. 94% of these were male and 6% female.³⁸ 53% of prisoners were Māori, 29.8% European and 11.6% Pacifica. These figures include remand and sentenced prisoners. Persons go into prison on remand when they are awaiting their trial or sentence hearing, so they are only in prison for a short time. The total number of sentenced prisoners in custody as at September 2022 was 4602.

The most common type of offence was sexual assault (22%), followed by acts intended to cause injury (21%). Fraud and deception offences accounted for 2% of the total. Approximately 79% of prisoners were classified as minimum, low or low/medium security. 18% of prisoners were classified as high or maximum security.

As at June 2020 (the most recent date that Corrections has released detailed statistics about the make-up of the prison population), the average age of sentenced offenders was just under 40, the average imposed fixed term prison sentence was 5 and a half years, and around 32% of prisoners had gang affiliations.³⁹

On arrival into prison, certain steps are taken to establish the person’s identity. They are photographed, fingerprints taken and their identity established and recorded in Corrections’ integrated offender management system (IOMS) database. Identity is also checked two months prior to release as part of the release check. Corrections holds a prison file for every prisoner that contains all information received or generated by Corrections about that prisoner.

Once a person is in prison, they are not allowed their own mobile phone but are permitted to make phone calls on the available communal pay phones, to a list of nominated phone numbers and some global numbers. Every prisoner is entitled to make at least one outgoing telephone call of up to 5 minutes duration each week.⁴⁰ The prisoner will have to pay for phone calls, meaning they have to have a phone card to make a call (unless it is to an approved 0800 number).

36 “Prison facts and statistics – September 2022,” Ara Poutama Aotearoa Department of Corrections, accessed March 2, 2023. See Prison facts and statistics – September 2022 | Department of Corrections.https://www.corrections.govt.nz/resources/statistics/quarterly_prison_statistics/prison_stats_september_2022

37 “Service Providers – Serco,” [www.corrections.govt.nz](https://www.corrections.govt.nz/about_us/working_with_us/partners/service_providers-Serco#:~:text=Serco%20has%20their%20own%20staff.), July 2, 2019, https://www.corrections.govt.nz/about_us/working_with_us/partners/service_providers-Serco#:~:text=Serco%20has%20their%20own%20staff. See also https://www.corrections.govt.nz/about_us/getting_in_touch/our_locations/auckland_south_corrections_facility/prison_operations. “Under the contract Serco is contractually responsible for the safe containment and welfare of prisoners, although ultimately the delivery of this obligation remains with the Department of Corrections.”

38 “Prison facts and statistics – September 2022 – Total Prison Population,” Ara Poutama Aotearoa Department of Corrections, accessed March 2, 2023, n 36.

39 See Ara Poutama Aotearoa Department of Corrections, *Corrections Volumes 2019-2020*, (New Zealand, 2020), https://www.corrections.govt.nz/_data/assets/pdf_file/0016/41191/Corrections_Volumes_Report_2019-2020.pdf.

40 LAGLAW: *Your Rights Inside Prison and on Release*, n 7, p 106.

SECTION 2 — Some facts, figures and general information about New Zealand's prisons CONT

Prisoners are not permitted access to computers with internet access. Prisoners can be contacted by email (they can receive but not send emails) but the email will go via Corrections. Mail via post is possible to and from prisoners and is managed by Corrections. The prison will pay the postage on up to three letters a week sent within Aotearoa New Zealand. Prisoners have to pay for postage for letters sent overseas. The prison provides mail boxes where prisoners can post their mail. Prison officers can't post letters for prisoners.⁴¹ With some exceptions, all mail sent to a prisoner will be opened and checked for money or anything that is banned in the prison.⁴² Prison staff can read a letter from a prisoner if they suspect that:⁴³

"It will intimidate or threaten the person you're sending it to; It will help someone to commit a crime; It will put the discipline or security of the prison at risk; It will endanger someone's safety. The prison has a wide discretion here, and the grounds for suspicion can be quite minor to allow them to read your mail."

Every prisoner is provided with a trust account which enables the prisoner to have money to spend in prison. This is known as a P119 account and it can be used to buy things from the prison canteen, send money to people outside the prison, and buy things for hobbies. It can also be used to buy medical or dietary items, or religious items like crucifixes.⁴⁴

The maximum that can be held in the trust account is \$200 "unless specific approval of the residential manager is obtained".⁴⁵ These accounts are held with Westpac and managed by Corrections. Persons outside prison can deposit money into these accounts for a prisoner. Money in the trust account can be used to buy

approved grocery items on a weekly basis. Prisoners cannot spend more than \$70 per week.

Every prisoner is assigned a case manager who is employed by Corrections. These people "work with people in custody to facilitate services and deliver active and caring support to prepare them to live an offence-free life and to ensure a successful transition to probation colleagues or directly into the community."⁴⁶ In particular, the case manager should work with the prisoner to plan for the prisoner's release.⁴⁷

The following information comes from the Community Law Manual "Your Rights Inside Prison and on Release":⁴⁸

Every prisoner is assigned a "case manager" – their job is to provide you with support and advice during your prison sentence. You won't have contact with the case manager every day; instead your regular contact will be with your "case officer". The case officer is a regular prison officer from within your unit who's responsible for supervising your management plan.

Developing a "management plan" with your case manager.

At some point after you arrive in prison – usually within the first few weeks – you'll have an interview with your case manager and develop a management plan. This is a plan that's designed to help you while you're in prison but that also looks ahead to when you're released from prison. The plan should address any issues you currently have ("rehabilitation") so that you can successfully return to the community when you're released ("reintegration").

⁴¹ Ibid, p 103.

⁴² Ibid, p 104.

⁴³ Ibid, p 105.

⁴⁴ Ibid, p 86.

⁴⁵ "F.05 Prisoner Accounts and Purchases," Ara Poutama Aotearoa Department of Corrections, Prison Operations Manual, March 29, 2022, https://www.corrections.govt.nz/resources/policy_and_legislation/Prison-Operations-Manual/Prisoner-finance-activities/F.05-Prisoner-accounts-and-purchases.

⁴⁶ "Case Management and Planning," Ara Poutama Aotearoa Department of Corrections, July 27, 2022, https://www.corrections.govt.nz/our_work/in_prison/being_in_prison/case-management-and-offender-plan.

⁴⁷ LAGLAW: *Your Rights Inside Prison and on Release*, n 7, p 191.

⁴⁸ Ibid, p 80.

On release, a person receives a Steps to Freedom payment (the amount varies depending on whether the person has been held for more or less than 31 days). The maximum amount is \$350. Any money held in the person's trust account is generally taken off this payment. Steps to Freedom is a grant paid by MSD.

There are a number of organisations that work with prisoners on release from prison. These include (in particular) PARS (now called Te Pā) and the Salvation Army.

Corrections has developed a Strategic Plan relating to the period 2019-2024, called Hōkai Rangī, which expresses Corrections' commitment to delivering great outcomes for Māori in the prison system.⁴⁹ The Plan aims to lower the proportion of Māori in the prison system. In particular, the Plan focuses on doing the best to ensure that chances of Māori returning to prison are reduced. By way of background to the Plan, in 2017, the Waitangi Tribunal, in its report Tū Mai te Rangī!, found that the Crown has a Treaty responsibility to apply "a renewed strategic focus that gives appropriate priority to reducing the disproportionate rate of Māori reoffending."⁵⁰

There are statements in the Strategic Plan that evidence Corrections' commitment to firstly, helping prisoners to put their financial affairs in order when they go into custody, and secondly, to support them with processes necessary to get ID documents and set up bank accounts on to release.

Statements in the Strategic Plan include the following (emphasis added):⁵¹

Do Now – 3.1 Support people who have been sentenced to imprisonment or remanded into custody to put their affairs in order when coming into the care of Ara Poutama Aotearoa, with particular regard to the wellbeing of their whanau.

We will continue to support them through their transition back into the community.

Prior to release, those in our care will receive the support they require.

We will create an environment that improves the ability of people in our care to transition back into society upon release.

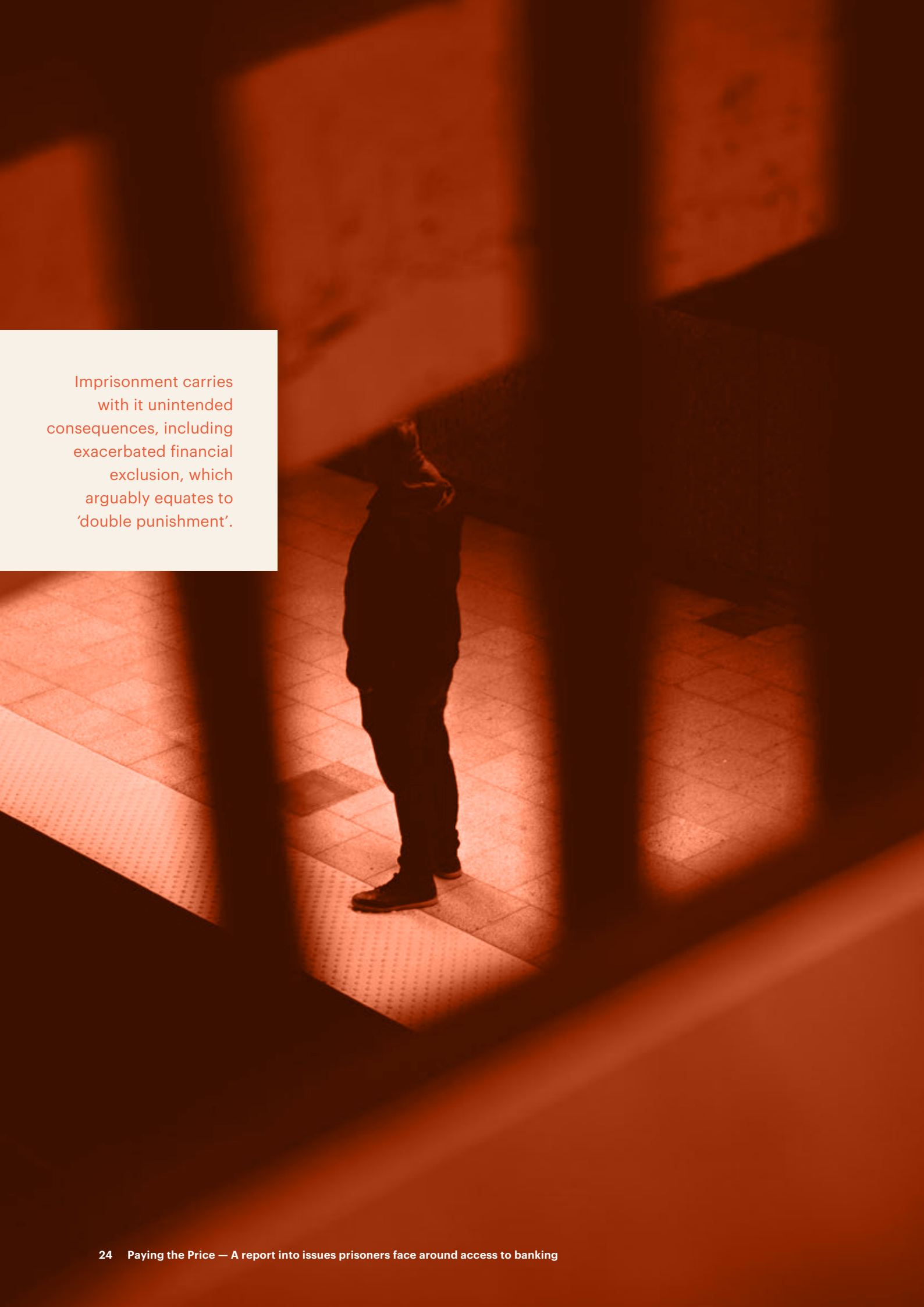
People in the care of Ara Poutama Aotearoa are supported to begin reintegration tasks prior to their release to prepare them for participating in the community.

Do Now – 6.2 Provide opportunities for all people to gain basic living skills such as cooking skills, parenting skills, and basic hygiene, and also tools that enable participation in society including identification, driver licences, and bank accounts.

49 "Hōkai Rangī – Ara Poutama Aotearoa Strategy 2019-2024" (Ara Poutama Aotearoa Department of Corrections, 2019), p 4, https://www.corrections.govt.nz/_data/assets/pdf_file/0003/38244/Hokai_Rangi_Strategy.pdf.

50 "Tū Mai Te Rangī! Report on the Crown and Disproportionate Reoffending Rates" (Wellington: Waitangi Tribunal, 2017), p xi.

51 "Hōkai Rangī – Ara Poutama Aotearoa Strategy 2019-2024", n 49, pp 16-29.

A photograph of a person standing in a prison corridor, silhouetted against a bright light source. The person is wearing a dark jacket and pants. The floor is made of light-colored tiles. The walls are made of concrete. The lighting is dramatic, with strong shadows and highlights. A white text box is overlaid on the left side of the image.

Imprisonment carries
with it unintended
consequences, including
exacerbated financial
exclusion, which
arguably equates to
'double punishment'.

SECTION 3 – How prisoners become financially excluded

Introduction

This section sets out our findings after review of the literature, on how prisoners become financially excluded. Financial exclusion can be broadly understood as meaning not having access to the full range of financial services that most people in society participate in and often take for granted.

In the context of this Report the most important aspect of financial exclusion is the lack of access to a bank account. Financial exclusion for prisoners also includes the repercussions of poor financial management while incarcerated, often resulting in a poor credit record and other adverse consequences.

Overview

A prison sentence can have extreme consequences on the finances of a sentenced person and their whanau on the outside. In New Zealand, the loss of freedom is the most significant aspect of custodial punishment. However, imprisonment carries with it unintended consequences, including exacerbated financial exclusion, which arguably equates to 'double punishment'.⁵²

Background

Upon sentencing, almost all incarcerated people will lose their income. Many will lose their jobs, especially those sentenced to medium or long-term sentences. Those unemployed at the time of their sentencing will have their benefits terminated.⁵³ In addition to losing their income and employment, a prison sentence significantly reduces a person's ability to organise and have access to their financial affairs.

All prisoners, whether sentenced or on remand, can generally not deal with their bank accounts, make arrangements for their families outside, or deal with outstanding debts or scheduled payments beyond the prison walls. The high proportion of prisoners in debt and the overrepresentation of socioeconomic precarity exacerbate the repercussions of losing access to banking.⁵⁴

As noted above, incarcerated persons who have bank accounts before entering prison face challenges managing their finances while in prison. In particular, this is because:

- none of the Police, Ministry of Justice or Corrections have any practice (as far as we could tell) or legal obligation to notify banks that they have incarcerated a banking customer;
- once in prison, prisoners are generally unable to communicate easily with their bank;
- if unable to contact their bank, the prisoner's financial affairs can spiral out of control as funds dwindle; accounts become overdrawn; bills and debts become larger and more complicated, potentially leading to the account being closed down or to entry into an insolvency procedure;
- even if an account is just inactive for an extended time, a bank will sometimes suspend or restrict the account (this is called account dormancy).

52 Financial Counselling Australia, "Double Punishment – How People in Prison Pay Twice," n 10.

53 Ibid, p 11.

54 See Chris Bath and Kimmet Edgar, "Time Is Money: Financial Responsibility after Prison" (Prison Reform Trust (UK) and UNLOCK, the National Association of Reformed Offenders, 2010), pp 71-72. This report resulted from an investigation by the Prison Reform Trust and UK charity UNLOCK into the impact of the criminal justice system on a person's financial situation. See http://www.prisonreformtrust.org.uk/wp-content/uploads/old_files/Documents/Time%20is%20Money_8a_Layout%201.pdf.

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As a result of losing access to their bank accounts and control over their finances, people in prison might and sometimes do assign control of the account to another person they entrust to manage their financial affairs, including paying bills. Handing over control of a bank account presents real risks of misuse of funds, which exposes the prisoner to financial abuse, and additional vulnerability and stress. Moreover, where prisoners cannot contact their bank or their creditors to inform them of their incarceration and to manage their existing obligations, families of the incarcerated person are often left to cover the cost of debts that are not theirs. Otherwise, they risk having the household's assets repossessed or basic utilities like power or internet disconnected.

For sentenced people who enter custody without a bank account, no banks, except for Westpac, will proactively assist them to open an account while they are incarcerated.⁵⁵ There are many reasons why a person would not have a bank account before going to prison. These include:

- not having the appropriate photo ID required by banks to set up an account. For example, the imprisoned person may be a whangai and may not know their legal name from their mix of given names;⁵⁶
- never having held formal employment before incarceration. This is especially common among younger prisoners;
- having been exited or violently trespassed from a bank premise for behavioural issues (e.g. threatening bank staff);

- psychological barriers to accessing financial services. This might include the feeling that banks are not for people like 'them' and mistrusting banks as a result and thus finding other ways of handling their money;⁵⁷
- lacking confidence in managing their finances. Research suggests comparatively low levels of financial literacy and educational attainment are common among prison populations.⁵⁸

Without the ability to open a bank account whilst in prison, 'unbanked' prisoners have no financial facility, apart from their prison trust account, into which they can deposit wages from working in prison or receive payments such as an inheritance, a compensation payment from the Department of Corrections, or for example, receive dividend payments from Māori land trusts.⁵⁹ The most significant consequences of leaving prison "unbanked" are that it makes it harder for an ex-prisoner to get a job, receive a benefit, arrange stable accommodation or do many of the other things most of us take for granted in everyday life.

Some might argue that the loss of access to banking, income, and employment are all inevitable consequences of a custodial sentence. It is logical, the argument goes, to discontinue these benefits while the Department of Corrections is supplying shelter, food and utilities. However, in the modern world of automated payments and direct debits, regular credit commitments and personal debt, where credit ratings are critical, imprisonment may entail more severe and longer lasting consequences than in the past.⁶⁰ In this way, as Bath and Edgar observed in the UK context, the criminal justice system "can increase financial exclusion, and reduce

55 The banks we spoke to other than Westpac did not preclude the possibility of opening an account for a person who was in prison but none were actively involved in providing accounts to this group of customers and indicated there would likely be problems.

56 Jean Bell, "Freed Prisoners Get 'New Start' Bank Accounts to Reduce Reoffending," Newsroom, February 17, 2022, <https://www.newsroom.co.nz/the-importance-of-bank-accounts-for-ex-prisoners>.

57 Ifrim, Oana, "The Many Faces of Financial Exclusion in the Developed Markets & Who Is at Risk." Voice of the Industry, The Paypers, July 15, 2022. <https://thepayers.com/expert-opinion/the-many-faces-of-financial-exclusion-in-the-developed-markets-and-who-is-at-risk-1257545>.

58 See The National Advisory Committee on Health and Disability (NZ), "Review of Research on the Effects of Imprisonment on the Health of Inmates and Their Families," The Ministry of Health, 2007, <https://www.moh.govt.nz/notebook/nbbooks.nsf/0/4A0145602706FD1ACC2574FF006F8A3D>.

59 Jean Bell, "Freed Prisoners Get 'New Start' Bank Accounts to Reduce Reoffending," n 56.

60 Chris Bath and Kimmet Edgar, "Time Is Money: Financial Responsibility after Prison," n 54, p 73.

personal responsibility, creating problems with housing, insurance, employment and family relations, and thus contributing to a greater risk of reoffending”.⁶¹

Defining financial exclusion

The term ‘financial exclusion’ is used in different ways but is often defined as a broad concept describing a lack of access to, and use of, a range of financial services.⁶²

As a *condition*, financial exclusion is characterised by “the inability, difficulty or reluctance, of particular groups to access mainstream financial services” such as bank accounts, affordable credit, and insurance.⁶³ Financial exclusion can also be understood as a *process* or a set of processes through which a person or groups of people, lack or is denied access to affordable, appropriate, and fair financial products and services, with the result that their ability to participate fully in social and economic activities is reduced, hardship is increased, and issues of poverty (measured by income, debt and assets) is exacerbated.⁶⁴

In particular, not having access to a bank account can be seen as a form of financial exclusion because a person without a bank account has no access to digital forms of payment and transactions, no secure mechanism for money storage, and (particularly relevant for prisoners) is unable to receive a benefit.

Dimensions of prisoners’ financial exclusion

The concept of financial exclusion as a *process*, suggests that financial exclusion is a multifaceted condition that requires a multi-faceted response.⁶⁵ Burkett and Sheehan identify five key elements of financial exclusion, referred to as “The Five A’s”.⁶⁶

- Availability
- Affordability
- Appropriateness
- Access
- Awareness

Availability describes conditions where required financial services do not exist at all or do not exist in an individual or a group’s locality.⁶⁷ In policy debates, the availability aspect of financial exclusion generally refers to geographical exclusion from financial participation.⁶⁸ Without access to physical or digital banking facilities, people in prison are effectively excluded from financial participation.

Access denotes a lack of access to financial products and services due to structural barriers such as credit record, language, or physical disability.⁶⁹ Kempson et al., in the UK specifically conceptualised access-based financial exclusion as restriction of access through risk assessment.⁷⁰

61 Ibid, p 5.

62 Transact – the National Forum for Financial Inclusion and Resolution Foundation, “In Brief : Financial Exclusions,” August 2014, <https://www.resolutionfoundation.org/app/uploads/2014/08/Financial-exclusion.pdf>.

63 Donal G. McKillop and John O. S. Wilson, “Financial Exclusion: Editorial,” *Public Money and Management* 27, no. 1 (February 2007): 9–12, p 9, <https://doi.org/10.1111/j.1467-9302.2007.00549.x>.

64 Ingrid Burkett and Genevieve Sheehan, “From the Margins to the Mainstream: The Challenges for Microfinance in Australia” (Brotherhood of St Laurence and Foresters Community Finance, December 2009), p v, https://library.bsl.org.au/jspui/bitstream/1/6175/1/BurkittSheehan_From_the_margins_microfinance_2009.pdf.

65 Tanya Corrie, “Microfinance and the Household Economy Financial Inclusion, Social and Economic Participation and Material Wellbeing,” 2011, p 12.

66 Ingrid Burkett and Genevieve Sheehan, “From the Margins to the Mainstream: The Challenges for Microfinance in Australia,” n 64, p 4.

67 Tanya Corrie, “Microfinance and the Household Economy Financial Inclusion, Social and Economic Participation and Material Wellbeing,” n 65, p 12.

68 H. E. Kempson et al., “In or Out? Financial Exclusion: A Literature and Research Review” (Financial Services Authority (UK), 2000).

69 Ingrid Burkett and Genevieve Sheehan, “From the Margins to the Mainstream: The Challenges for Microfinance in Australia,” n 64, p 4.

70 H. E. Kempson et al., “In or Out? Financial Exclusion: A Literature and Research Review,” n 68.

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Prisoners are excluded from accessing banking based on risks assessed by the Department of Corrections and by individual banks. An interviewee told us that prisons do not allow prisoners to access the internet “for very good reasons”. The comment was made specifically

“He found banks intimidating, from walking onto the premises to navigating the systems with all the ‘big words’ and trying to explain his situation to bank staff”

regarding sexual offenders. However, the broader point is that to eliminate risk of prisoners orchestrating crime or accessing illicit material while incarcerated, internet access, including for banking purposes, is categorically prohibited. Corrections also told us that historically, enabling prisoners to manage external funds (such as money in a bank account)

while in prison was a source of tension and violence between prisoners. To eliminate any money-related risks, the Department of Corrections limited money which prisoners could access to the \$200 that is held in prison trust account.

There are also issues around the banks’ willingness to take on prisoners and ex-prisoners as customers. Responses to our interviews also suggest that banks tend to perceive prisoners as posing a heightened threat of committing financial crime. Some prisoners, who previously have been exited or violently trespassed from a bank premise, are assessed as being a safety threat to the bank. Further, as most prisoners cease to earn income and cannot handle the account while incarcerated, banks assess these accounts as being at risk of becoming inactive, dormant, and overdrawn. Another possible issue might be that prisoners are not likely to be persons to whom the bank will be lending, meaning that the bank’s ability to make a profit from these customers is limited.⁷¹

71 Burkett and Sheehan (2009) suggest that in market-deficiency frameworks the root cause of financial exclusion occurs because financial institutions cannot bear the costs, risks or brand issues associated with providing services to people living in poverty. (See n 64, p 6).

The *Awareness* dimension of financial exclusion describes a lack of awareness of fair products or a lack of capacity to engage with fair financial products or services.⁷² Awareness-based exclusion can result from inadequate promotion of basic, fair products by financial service providers. The latter occurs where targeted marketing and sales of financial services effectively exclude people. Linked to marketing exclusion, people might self-exclude. This occurs where people, like prisoners, decide that there is little point in applying for a financial product because they believe they will be refused.⁷³ “Johnny”, a current prisoner in his mid-fifties provides an example. Before he was incarcerated at Tongariro nine years ago, Johnny only used cash. “He found banks intimidating, from walking onto the premises to navigating the systems with all the ‘big words’ and trying to explain his situation to bank staff”.⁷⁴

That there may be lack of capacity to engage was reinforced by comments from Te Pā who told us that the ex-prisoners they work with commonly have an issue with the stigma of walking into a bank. Often the client looks ‘scary’ and they are treated like a criminal.

Prisoners are generally exposed to awareness-based exclusion from banking before, during, and after their incarceration. Banking services, as Johnny’s story illustrates, are not targeted at or easily accessible to people who have lower levels of educational achievement and come from a socioeconomically disadvantaged background, who are overrepresented among the prison population.⁷⁵

72 Ingrid Burkett and Genevieve Sheehan, “From the Margins to the Mainstream: The Challenges for Microfinance in Australia,” n 64, p 4.

73 H. E. Kempson et al., “In or Out? Financial Exclusion: A Literature and Research Review,” n 68.

74 Jean Bell, “Freed Prisoners Get ‘New Start’ Bank Accounts to Reduce Reoffending,” n 56.

75 The National Advisory Committee on Health and Disability (NZ), “Review of Research on the Effects of Imprisonment on the Health of Inmates and Their Families,” Ministry of Health, 2007, pp 6-10, <https://www.moh.govt.nz/notebook/nbbooks.nsf/0/4A0145602706FD1ACC2574FF006F8A3D/>.

This provides a partial explanation for why many prisoners enter custody without having a current bank account. While imprisoned, prisoners are not commonly made aware of how they can maintain their account, or if necessary, establish one. Upon release, prisoners often either do not know, or do not find it easy to find out how they can go about establishing or re-establishing a bank account.⁷⁶ Evidently, with some exceptions, a lack of generic information from banks about their approach to banking prisoners leads to a lack of awareness, which – in part – contributes to overrepresentation of prisoners and ex-prisoners among New Zealand’s unbanked population.

The *affordability* and *appropriateness* dimensions of financial exclusion refer to broader issues in financial exclusion policy debates that are not unique to prisoners. *Appropriateness* refers to products that are not appropriate for people’s needs.⁷⁷ The conditions attached to financial products may make them inappropriate for some people.⁷⁸ *Affordability* describes an inability for people to afford existing products, or cost structures that charge more for people on lower incomes.

The **Availability, Access, and Awareness** elements of this framework will be the most relevant to framing a discussion of prisoners’ financial exclusion.

The cycle of criminal justice and financial exclusion

In New Zealand, where at least 99.2% of people aged fifteen and over have a bank account,⁷⁹ any relevant definition of financial exclusion must reflect the importance of banking services to participation in society, given that incomes, transactions, and other payments are commonly made directly through bank accounts. Crucially, the use of direct credit for paying social security benefits means that banking services are heavily relied upon by those consumers who are more at risk of exclusion due to limited income.⁸⁰

Although financial exclusion goes beyond measures of income and looks at the accessibility and affordability of financial products, “financial exclusion is very much linked to poverty with the poorest people in society experiencing the highest levels of financial exclusion”.⁸¹ The links between economic deprivation and crime are well documented and long established.⁸² Most prisoners in any country, including New Zealand, come from contexts of social exclusion and economic precarity. Among other things, they are likely to be members of an ethnic minority, have limited education and a history of instability, unemployment, or underemployment.⁸³

⁷⁶ Interview with Bay Financial Mentors.

⁷⁷ Ingrid Burkett and Genevieve Sheehan, “From the Margins to the Mainstream: The Challenges for Microfinance in Australia”, n 64, p 4.

⁷⁸ H. E. Kempson et al., “In or Out? Financial Exclusion: A Literature and Research Review”, n 68.

⁷⁹ World Bank Group, “The Little Data Book on Financial Inclusions,” Global Findex (World Bank Group, 2018), p 115, <https://openknowledge.worldbank.org/bitstream/handle/10986/29654/LDB-FinInclusion2018.pdf?sequence=1&isAllowed=y>.

⁸⁰ Tanya Corrie, “Microfinance and the Household Economy Financial Inclusion, Social and Economic Participation and Material Wellbeing,” n 65, p 12.

⁸¹ Ingrid Burkett and Belinda Drew, “Financial Inclusion, Market Failures and New Markets: Possibilities for Community Development Finance Institutions in Australia” (Foresters Community Finance, August 2008), p 9, <https://www.aph.gov.au/DocumentStore.ashx?id=7880f21d-5725-4896-baa2-9a9b63fb0994>.

⁸² Chris Bath and Kimmet Edgar, “Time Is Money: Financial Responsibility after Prison,” n 54, p 71.

⁸³ The National Advisory Committee on Health and Disability (NZ), “Review of Research on the Effects of Imprisonment on the Health of Inmates and Their Families,” Ministry of Health, 2007, p 10.

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To date there have been no empirical studies of the financial profile of the New Zealand prison population. However, UK-based research suggests that, as a group, people entering the justice system share many characteristics of people living in deprived areas.⁸⁴ A study by the Legal Services Research Centre in 2009 found that 40% of people in prison had no current or other financial product.⁸⁵ Further, survey-based research published by the British Prison Reform Trust in 2010 found that 85% of the people interviewed who did not have an account reported that they had tried, unsuccessfully, to get one.⁸⁶ This suggests at least in Britain, poor access to basic banking is not due to a lack of demand for the product. This illustrates that at least in the UK and possibly also in New Zealand, a substantial proportion of people sentenced to prison enter custody already experiencing significant and persistent financial exclusion relative to the wider public.

Fair and universal access to financial products like a basic bank account⁸⁷ can contribute to a route out of poverty and help promote the rehabilitation and reintegration of formerly incarcerated people into society. Criminal convictions and the lack of active

support from major banks to provide banking has unintended consequences of increasing the risk of reoffending while also trapping already-vulnerable ex-prisoners in low income and exacerbating financial exclusion.⁸⁸ Access to banking is critical for active participation in society. Poor-to-limited access to banking not only affects a person's financial status, but also has long term impacts on their future employment and housing prospects.

“Pinch points” of financial exclusion in the criminal justice system

Drawing on the Bath and Edgar report, “pinch points” can be identified along a person's journey through the criminal justice system, where financial exclusion can undermine efforts at rehabilitation and reintegration. These are assessed under the following themes:⁸⁹

- Sentencing
- Going to prison
- Serving a prison sentence
- Leaving prison

84 Chris Bath and Kimmitt Edgar, “Time Is Money: Financial Responsibility after Prison,” n 54, p 71.

85 Alexy Buck, T Tam, and Cate Fisher, “Putting Money Advice Where the Need Is: Evaluating the Potential for Advice Provision in Different Outreach Locations” (Legal Services Research Centre, 2007). Quoted in Chris Bath and Kimmitt Edgar, “Time Is Money: Financial Responsibility after Prison”, n 56, p 19.

86 Chris Bath and Kimmitt Edgar, “Time Is Money: Financial Responsibility after Prison,” n 54, p 23.

87 In some countries such as the UK the term ‘basic bank account’ appears to have a particular meaning and refers to a special kind of bank account which might be fee free, offer a limited range of services, and is targeted at customers that don’t qualify for a regular account. Some Australian banks for example offer a ‘basic bank account’ that is intended for customers who qualify for a concession card issued by the Government and are aimed at ensuring those on lower incomes have access to affordable banking services. We were told that New Zealand banks don’t provide an equivalent product, largely because most bank accounts offered in NZ are more simplistic in structure, with little or no base fees.

88 Chris Bath and Kimmitt Edgar, “Time Is Money: Financial Responsibility after Prison,” n 54, p 71.

89 Ibid, pp 72-80.

Pinch point	Issues related to banking access	Actions toward financial inclusion: relevant ideas – potential recommendations
Sentencing	<ol style="list-style-type: none"> 1. Where a probation officer carries out the pre-sentencing report, they might (currently this is a discretionary requirement) interview the person, make enquiries with their whanau, family, friends and others and gather evidence from agencies such as police and corrections. 2. However, it may be that without professional advice, a person may not understand the importance of making their personal or family financial situation clear. This may prevent the judge from exercising informed discretion. 	<p>Pre-sentencing reports could consider the financial implications of an incarceration. Potentially the reports could consider the sentenced person's existing financial commitments and the financial consequences for the family of a custodial sentence.</p>
Going to prison	<ol style="list-style-type: none"> 1. The lack of priority currently given to a person's finances in their induction to custodial life exacerbates any financial issues or bank-related obligations a prisoner may owe. 2. Information and advice do not appear to be routinely available to people arriving in prison about how best to organise their finances. 3. Often, banks are unaware that their clients are in prison. 4. Those confident enough to act for themselves, find it difficult to communicate with financial service providers because they cannot visit branches or use the internet or easily access a telephone. 5. Professional mentors or other professional advocacy services are not readily available to assist those who cannot act for themselves to alleviate some of the worst bank-related financial impacts of imprisonment. 	<ol style="list-style-type: none"> 1. Prison induction processes could include a "financial health check". This could happen within an appropriate timescale. A questionnaire could be used, and questions should include whether the prisoner has a bank account, ongoing financial commitment and debts. This could be one of the first things the prisoner's case manager must attend to. 2. As part of the financial health check, people could be asked whether their family is likely to have financial difficulties due to their imprisonment. Information on relevant services and financial mentors local to the family should be provided. 3. The Department of Corrections or individual case managers could be required to advise banks (and possible major creditors and the IRD) that their client is in prison. 4. Generic financial advice products could be made available, like a pamphlet, providing basic information on how prisoners can contact their banks and creditors to manage their accounts and debts and what processes to follow should be made available. In the UK, Citizens Advice provides a guide including a sample letter to write to creditors. 5. Financial mentors could routinely be available in prisons to work with Case Managers to help prisoners. 6. Prisoners could be supported in maintaining contact with their banks and managing ongoing commitments. A financial mentor could facilitate this support from the sentence's beginning or remand. 7. Banks could develop access protocols for how bank staff can deal appropriately with both existing and potential customers that are incarcerated.

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Pinch point	Issues related to banking access	Actions toward financial inclusion: relevant ideas – potential recommendations
Serving a prison Sentence	<ol style="list-style-type: none"> 1. There currently exists no mechanism for people in prison to manage their bank accounts and finances while they serve their sentence. 2. With the notable exception of Westpac’s “New Start” programme, there is no support for prisoners to establish a bank account while in prison. 	<ol style="list-style-type: none"> 1. A secure process could be developed by which prisoners with bank accounts can access their accounts. 2. Thought could be given to how prisoners can be given easier access to their bank for e.g. by an 0800 number. Financial mentors could routinely be available in prisons to work in partnership with Case Managers to support prisoners with financial affairs management. Every prisoner could be allocated time with a financial mentor who could assist with communications with the bank. 3. Case Managers could have a clear obligation to support people to acquire their ID and establish their bank accounts whilst in prison. Case managers could be required to ensure their prisoners have ID and to proactively assist with applications to a bank (currently Westpac) to get an account. The process could be automatic for any prisoner due for release and offered on an as needed basis for other prisoners. Other banks could be encouraged to be part of a programme that offered prisoners bank accounts that become available on release.
Leaving prison	Prisoners due for release are not currently given the option of and assistance with setting up a bank account before release or even given assistance to get their ID documents so they can open an account themselves after release. The person will have a better chance at reintegration if they have an income on release, which means getting access to social security (and that requires a bank account).	<ol style="list-style-type: none"> 1. Prisoners could have assistance with obtaining ID and setting up a bank account before release. 2. If for some reason it was impracticable for a prisoner to get a bank account before release or, where someone is incarcerated for a short prison sentence or on remand, they could be assisted with getting the requisite ID, given information on opening a bank account and be referred to an external agency. 3. All prisoners could be offered basic financial literacy education while in prison, in particular targeted at prisoners that are due for release.

Official recognition of the importance of financial inclusion

Having set out how prisoners become financially excluded, in particular by lack of access to banking services, this section sets out our findings on what official recognition there has been (in New Zealand and overseas) of the importance of ensuring all members of society are financially included.

The Reserve Bank of New Zealand (RBNZ) has recognised the importance of financial inclusion.

In a 2019 Speech entitled “*Conduct, Culture and Financial Inclusion*”, RBNZ Governor Adrian Orr acknowledged in relation to the Conduct and Culture Review jointly undertaken with the Financial Markets Authority, that “the public is demanding that both financial service providers and regulators play a part in providing greater confidence in the health and conduct of the financial sector, including financial education and inclusion”.⁹⁰

⁹⁰ Adrian Orr, “Conduct, Culture and Financial Inclusion: a Speech Delivered at the Westpac Massey Fin-Ed Centre – Building Financially Capable Communities: Our Pathways to Success Conference,” November 29, 2019, p 5, https://www.rbnz.govt.nz/-/media/ebd7ff5085c542cb9e-bab5c91df82810.ashx?sc_lang=en.

The speech identified that a lack of financial inclusion can result in poor availability of accessible and safe financial products, restricted access to banking and insurance services, and societal problems from the impact of high-cost short-term loans.⁹¹ Access to a bank account can be seen as a proxy for financial inclusion because a person with a bank account has access to the cash system as well as to other digital forms of payment and transactions.

According to the Governor's speech, and consistent with what we heard in our interviews, the RBNZ is working with the finance sector and other stakeholders to develop a deeper understanding of the interaction between its policies and financial inclusion. The long-term aim is to ensure financial inclusion is firmly embedded in the RBNZ's normal business practices. The speech also highlights that "financial inclusion is a key priority for the Council of Financial Regulators (CoFR) work plan".⁹²

The Governor's speech points at the "Future of Money" review and the retention of cash, the RBNZ and the Reserve Bank of Australia's work to lower the transaction costs of sending remittance payments to the South Pacific, as well as the RBNZ's Te Ao Māori strategy aimed at shaping a broader and dynamic view on the effects of financial stability on Māori businesses and households, as examples of inclusion-enhancing initiatives.⁹³

In a recent speech to the NZ Economics Forum,⁹⁴ Governor Orr reiterated that a long term aim of the Reserve Bank is to "ensure that consideration of financial inclusion is firmly embedded in the Reserve Bank's normal business practices," and stated that the Reserve Bank is leading the Council of Financial Regulators' work on financial inclusion.⁹⁵

Additionally, the RBNZ assesses financial technology (fintech) as presenting opportunities for financial sector efficiency and broader inclusion. In a speech at the 2019 Singapore FinTech Festival, RBNZ Assistant Governor Simone Robbers, noted:⁹⁶

... With the growth of FinTech solutions the 'un-banked' are quickly gaining access to key financial services which allow them to participate more in local economies.

Some may ask why this is relevant in the New Zealand context, given our high standard of living and rates of financial inclusion, but we can't stand still: there are still pockets of inequality and we need to continue to open up opportunities for people to participate in financial products and services where they have not been before, for innovation to flourish and to ensure initiatives do not inadvertently exclude those who may need access to products and services the most.

⁹¹ Ibid.

⁹² Ibid, p 5.

⁹³ Ibid, pp 5-6.

⁹⁴ Adrian Orr, "Promoting Economic Wellbeing: Te Putea Matua Optimisation Challenges" a speech delivered to the NZ Economics Forum, 3 March 2023, <https://www.rbnz.govt.nz/-/media/project/sites/rbnz/files/events/2023/march/promoting-economic-wellbeing---te-putea-matua-optimisation-challenges.pdf>

⁹⁵ Ibid, at 8.

⁹⁶ Simone Robbers, "The FinTech Opportunity in Personal Finance: A Speech Delivered at the Singapore FinTech Festival," November 13, 2019, p 6, https://www.rbnz.govt.nz/-/media/3d53cf6530c-c4824aa0cf8512720a36f.ashx?sc_lang=en.

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In summary, it can be said that –

- The RBNZ appreciates that stakeholders and the public increasingly expect financial regulators and supervisors to prioritise financial inclusion as a dimension of “providing greater confidence in the health and conduct of the financial sector”.⁹⁷
- The RBNZ sees financial inclusion as a cross-government priority requiring buy-in from multiple agencies. It appears to regard the Council of Financial Regulators⁹⁸ as the appropriate institution/forum for driving progress on financial inclusion themes.
- RBNZ’s work on financial inclusion to date has focused on six themes:
 - Maintaining access to cash and embracing financial technology to provide agency and autonomy as to how people participate in the payments system.
 - Improving affordability for consumers by regulating banks (in conjunction with the FMA), to reduce costs of financial services and insurance, thereby improving the overall efficiency of the financial services market. We refer in particular the RBNZ-FMA Conduct and Culture Review.
 - Enhancing transparency and reducing risk and information asymmetries for consumers. Misinformation to consumers was an identified ‘poor conduct’ on the part of banks in the RBNZ-FMA Conduct and Culture Review. In 2018 the

RBNZ released its Financial Strength Dashboard, an online tool for disclosing financial information on banks. The dashboard allows a side-by-side comparison of banks on a range of key metrics, to help the public and investors judge the relative safety of banks before investing funds. The RBNZ intends to introduce a similar product for life insurance.⁹⁹

- Ensuring ongoing suitability of products for consumers. The RBNZ-FMA Conduct and Culture Review broadly recommended that banks (and insurers) provide better training – particularly on “good” conduct, dealing with vulnerable customers, and product suitability needs. In his 2019 speech, Governor Orr pointed out that while financial service providers are free to make their own commercial decisions “[g]etting [their] risk management, product suitability and pricing right is an important foundation to a sound financial sector”.¹⁰⁰
- Improving Māori access to capital. RBNZ released a issues paper on Māori access to capital in August 2022 and have been working with retail banks to find solutions.¹⁰¹
- Prioritising efficiency of capital flows to the South Pacific by exploring how to improve access to, and lower the cost of, capital flows and international payments and settlements within the Pacific region.^{102 103}

⁹⁷ Adrian Orr, “Conduct, Culture and Financial Inclusion: a Speech Delivered at the Westpac Massey Fin-Ed Centre – Building Financially Capable Communities: Our Pathways to Success Conference,” n 90, p 5.

⁹⁸ The Council of Financial Regulators (CoFR) is a collaborative body comprising of five member agencies, namely the Reserve Bank of New Zealand (RBNZ), Financial Markets Authority (FMA), Ministry of Business, Innovation and Employment (MBIE), Treasury, and the New Zealand Commerce Commission (NZCC). CoFR was established in 2011 to enhance coordination and collaboration between the various financial regulators in New Zealand. CoFR’s primary objective is to promote a stable and efficient financial system in New Zealand. To achieve this, the Council collaborates on issues that cut across the mandates of each member agency. CoFR meets quarterly to discuss issues of mutual interest and concern. The Council’s decisions and recommendations are not legally binding, but member agencies are expected to take them into account in their regulatory activities.

⁹⁹ Adrian Orr, “Conduct, Culture and Financial Inclusion: a Speech Delivered at the Westpac Massey Fin-Ed Centre – Building Financially Capable Communities: Our Pathways to Success Conference,” n 90, p 5.

¹⁰⁰ Ibid.

¹⁰¹ Reserve Bank of New Zealand, “Improving Māori Access to Capital – Issues Paper”, released August 2022, <https://www.rbnz.govt.nz/-/media/project/sites/rbnz/files/consultations/maori-access-to-capital/improving-maori-access-to-capital-issues-paper.pdf>

¹⁰² Adrian Orr, “Conduct, Culture and Financial Inclusion: a Speech Delivered at the Westpac Massey Fin-Ed Centre – Building Financially Capable Communities: Our Pathways to Success Conference,” n 90, p 6.

¹⁰³ See Reserve Bank of New Zealand, “Pacific Central Bankers Prioritise Capital Flows and Climate Change,” April 2019, <https://www.rbnz.govt.nz/hub/news/2019/04/pacific-central-bankers-prioritise-capital-flows-and-climate-change>.

Arguably, these six themes within the RBNZ's financial inclusion work programme are aimed at promoting the *efficiency* of the financial services market; promoting *choice*, and improving *product suitability* of relatively sophisticated financial products at *affordable* prices. Within the context of New Zealand's internationally high rates of account holders/financial inclusion, these policy objectives enhance the welfare and promote greater financial inclusion of market consumers. They do not appear to be primarily targeted at broadening the *availability* and *accessibility* of basic products to presently excluded people and groups. However, recognition of the importance of financial inclusion supports our recommendations around access to bank accounts for prisoners generally. There is also evidence as explained below (see Financial Policy Remit) that the RBNZ is now required to focus, in particular, on those groups in society that are financially excluded.

Financial policy remit

The Financial Policy Remit (FPR) issued by the Minister of Finance to the Chairman and Governor of the RBNZ under section 203 of the Reserve Bank of New Zealand Act 2021 stated that the Government considers "it is desirable to have a financial system that is strong, efficient and inclusive, with a low incidence of failure of entities regulated by the Reserve Bank".¹⁰⁴ Financial inclusion is explicitly set out as a Government policy priority which the RBNZ should have regard to, in the following terms:¹⁰⁵

Financial inclusion

The Government has a priority of improving financial inclusion and maintaining financial sector diversity, including supporting access to finance and financial services for those who are less well-served by traditional institutions, including rural communities, disabled persons, low-income individuals, and small businesses.

The focus on financial inclusion from the FPR is also reflected in the Reserve Bank's Statement of Intent 2022 – 2026.¹⁰⁶ That document states, for example:¹⁰⁷

Financial inclusion is an important enabler of economic wellbeing and prosperity.

Our overarching vision is to better reflect and connect with the population of Aotearoa, embed diversity, equity and inclusion into everything we do, and use our roles as kaitiaki, regulator and influencer to promote financial inclusion.

The importance of financial inclusion has also been recognised overseas. This is discussed further in **Section 9** of this Report.

¹⁰⁴ Hon Grant Robertson, "Reserve Bank of New Zealand Act 2021 – Issuance of the Financial Policy Remit," June 30, 2022, p 3, <https://www.rbnz.govt.nz/-/media/e0ab579412d24185acbc037cbddb3ad9.ashx>.

¹⁰⁵ Ibid.

¹⁰⁶ Reserve Bank of New Zealand Statement of Intent Tauāki Whakamaunga Atu 2022 – 2026, pp 18, 26, 30, 34, 37, 60 and 66, <https://www.rbnz.govt.nz/hub/-/media/project/sites/rbnz/files/publications/statements-of-intent/rbnz-soi-2022.pdf>.

¹⁰⁷ Ibid, pp 34 and 66.



"It is really important to get them a bank account if we want them to stay on the right side of the law."

SECTION 4 – Access to banking as a relevant consideration in reducing reoffending

If we are to reduce reoffending and improve public safety, we must effectively reintegrate offenders in the community.¹⁰⁸

Summary

This section considers whether there is a link between having a bank account on release and a reduction in the chances that a person will reoffend. There is strong support that there is such a link, in particular from work done by the Salvation Army. The importance of having a bank account as part of successful reintegration has also been recognised by Corrections, Westpac and Te Pā. Financial mentors told us that in their view having a bank account was a key component of successful reintegration. In addition, there is research from overseas that supports the existence of such a link.

Having a bank account set up prior to release allows a person exiting prison to receive their benefit straight away. It allows them to pay for living expenses like rent and power by direct debit. More generally it includes them in society's financial system. This has intangible benefits as well as tangible ones – see **Section 3** where we discuss the importance of financial inclusion.

Salvation Army report – Beyond the Prison Gate

The Salvation Army works closely with people coming out of prison. In 2016, the Salvation Army released a report (the Salvation Army Report)¹⁰⁹ that sought to highlight the problems that many people coming out of prison face, with a view to making suggestions that would help reduce New Zealand's high rates of re-incarceration. At the time Government had a target of reducing reoffending rates by 25%, but Corrections had recognised that this target was unlikely to be achieved.¹¹⁰

According to that report, around 15,000 people are released from our prisons in New Zealand each year.¹¹¹

The Salvation Army Report noted that:¹¹²

“there is little evidence of any change in overall reoffending/reimprisonment rates on release from prison over the past decade”

That report included a list of recommendations, the first of which was that:¹¹³

“the Department of Corrections makes it standard practice that: Every prisoner leaving prison has or is supported to apply for a form of ID accepted by most major banks and agencies”

That report explored a wide range of issues around the high rates of incarceration and more specifically of reoffending. It drew on:¹¹⁴

“the experiences of ex-prisoners, the barriers and gaps that they see to meaningful post-prison reintegration into society, and to offer some recommendations for improvement. It was considered important to have the voices of those who have personally experienced life post-prison shape this report, as experts in their own right on their own lived experience.”

108 Annaliese Johnston, Social Policy Analyst, 'Beyond the Prison Gate – Reoffending and Reintegration in Aotearoa New Zealand', The Salvation Army Social Policy & Parliamentary Unit, December 2016, p 3, https://www.salvationarmy.org.nz/sites/default/files/uploads/20161207spput-sa-prison-gate-2016_report.pdf

109 Ibid.

110 Ibid, p 2.

111 Ibid, p 6.

112 Ibid, p 3.

113 Ibid, p 4.

114 Ibid, p 35.

SECTION 4 — Access to banking as a relevant consideration in reducing reoffending CONT

The Salvation Army Report stated that:¹¹⁵

“A major barrier also highlighted repeatedly by participants was that not having ID and a bank account on release from prison significantly slowed down the process of being able to receive a benefit and apply for jobs. Participants described either having no ID on release, or being given a form of prison ID that is no longer accepted at most major banks and agencies. This meant that they were barred (sometimes for several weeks) from:

- opening a bank account
- applying for and receiving a benefit
- applying for jobs and receiving a wage
- applying for accommodation
- applying for a driver’s licence
- enrolling with a primary healthcare provider.

This, in turn, affected the ability of participants to meet key basic needs such as housing, healthcare, income and employment.”

That report also stated that the fact that many ex-prisoners reoffend is at least partially related to the fact that reintegrating into community life is ‘fraught with tribulations, from the practical and mundane’, such as the need for proper identification and a bank account, to more complex issues such as the need for non-criminal associates, positive social supports, and access to employment and housing, among many others.¹¹⁶

The Salvation Army Report said that:¹¹⁷

“The challenges posed simply by lack of acceptable ID for research participants demonstrate how overlooked elements in the release process can impact on other key aspects of reintegration—prisoners need the tools to access other important steps in the reintegration process, and neglecting such tools can hinder efforts to reduce reoffending.

In an American longitudinal study, it was found that holding some form of identification, either at the moment of release or acquiring one soon after that was not affiliated to the Department of Corrections, was an overlooked factor of importance and related to better job outcomes for released prisoners.”

What banks, mentors and others have said about the link between having a bank account and chances of reoffending

Westpac has also recognised the importance of having a bank account on release from prison. This was one of the main reasons the New Start programme was introduced. The following comments were made by the bank in a press release in January 2021 in advance of the roll out of that programme to all prisons in New Zealand later that year:¹¹⁸

“Without a bank account it’s hard to receive a benefit, get a job, pay rent or many of the other things we need to do to successfully to live our lives,” said Westpac’s Extra Care Programme Lead Louisa Brock.

“Banks can play their part in reducing crime, creating safer communities and getting people into work,” Brock said.

“Having a bank account is a key step in helping people step back into the community, reach their financial goals and live a full life,” [then] Westpac CEO, David McLean said.

Corrections has also recognised the importance of reintegration into the community in its Strategic Plan – Hōkai Rangi. That Plan is focused on reducing the rates of incarceration and re-incarceration of Māori. As noted in **Section 2**, that Plan states that Corrections will, as a ‘do now’ action point, provide opportunities for prisoners to

¹¹⁵ Ibid, p 39.

¹¹⁶ Ibid, p 46.

¹¹⁷ Ibid.

¹¹⁸ “Westpac Offers Bank Accounts to Help Newly-Released Prisoners Re-Integrate into Society,” Westpac media release, 26 January 2021, <https://www.westpac.co.nz/rednews/westpac-offers-bank-accounts-to-help-newly-released-prisoners-re-integrate-into-society/>.

get the tools that enable released prisoners' participation in society, including getting a bank account.

Financial mentors told us that having a bank account is a key part of successful reintegration. One mentor said that the current situation is "making it hard for people to not re-offend."¹¹⁹

One financial mentor described the following as a common scenario for a person recently released from prison:

- They go to WINZ.¹²⁰
- It takes time to apply for the benefit.
- They may have to begin sorting out some photos – for ID like a Kiwi Access card – in order to meet bank ID requirements to set up an account.
- In the meantime, in order to receive a benefit, they have to nominate another person's account into which they will have their benefit entitlement paid.
- Often that money does not end up being passed on to the person released from prison.
- The money gets taken – the ex-prisoner is left without income – leaving them without money to pay for food, basic needs, and maybe drugs/alcohol.
- Out of desperation the person may steal or commit some violent crime to get by/ survive which gets them back in contact with the criminal justice system.

One person working for a reintegration service told us that because a lot of their clients currently do not leave prison with their ID sorted, for the first 3-4 weeks while they wait to receive ID (eg. Kiwi Access card) which will enable them to get an account, the service has to receive their benefit on their behalf and to physically hand them cash. This person stated that this state of affairs hinders the released ex-prisoner's self-reliance and their confidence to operate independently in the community.

Te Pā told us that:

It is really important to get them a bank account if we want them to stay on the right side of the law. It is a key part of being part of society. [They] need to be part of mainstream financial services. If not, then [they are] much more likely to go back into crime. Another reason why giving them mainstream financial services is that it later on gives access to credit e.g. if want to borrow to buy a car – all part of being a regular member of society.

Corrections in association with the Police and Ministry of Justice has produced a paper on the effectiveness of reintegration services.¹²¹ The paper suggested that there is very promising New Zealand evidence that the services offered by Corrections, in particular, the Out of Gate programme, reduce reoffending. 'Out of Gate' is a programme whereby each offender is assigned a navigator who works with them one-on-one to help them access the support they need as they move from prison in to the community. No specific mention is made in the paper of helping a person to open a bank account. However, support is provided around employment and accommodation, which would most likely require a bank account to be opened.

Making it easier for prisoners to open a bank account which becomes available immediately on release is only one small part of reintegration into society. Access to stable housing, for example, is another really important consideration and research has been done (in Australia) that suggests providing stable housing to ex-prisoners has a significant impact on reducing reoffending.¹²² But

¹¹⁹ See also Rob Stock, 'Post-prison bank accounts: Westpac to help those newly released', n 29. Stock wrote – *Rachel Ngatai from prisoner release support service Pars said a bank account was essential for people trying to reintegrate into society.*

¹²⁰ WINZ, or Work and Income NZ, is now part of MSD. There was formerly a separate Department of Work and Income but now this is division of MSD.

¹²¹ New Zealand Government (Ministry of Justice), Reintegration Services – Evidence Brief, April 2016, file:///J:/Prisoners/Reintegration-services%20NZ.pdf

¹²² Martin, C., Reeve, R., McCausland, R., Baldry, E., Burton, P., White, R. and Thomas, S. (2021) "Exiting prison with complex support needs: the role of housing assistance", n 34.

SECTION 4 — Access to banking as a relevant consideration in reducing reoffending CONT

enabling access to a bank account is a key part of the bigger picture.¹²³

New Zealand Government's commitment to reducing re-offending rates

The Government has recently re-expressed its commitment to reducing reoffending rates. New Zealand has high reoffending rates. Around 70% of people with previous convictions are reconvicted within 2 years following release from prison.¹²⁴ Around 49% are re-imprisoned after 2 years following release from prison.¹²⁵ An independent advisory group was set up in 2018 (the Safe and Effective Justice Advisory Group Te Uepu Haapi ite Ora), tasked with helping to lead public discussion to develop proposals that address the failures of New Zealand's criminal justice system. The first report was released in June 2019.¹²⁶ That report summarised feedback and ideas around the issues. The next report, which was released in December 2019 (*Turuki! Turuki!*), outlined recommendations for change to the justice system.¹²⁷ One of the recommendations was to focus on rehabilitation.

After noting that:¹²⁸

People who leave prison typically reintegrate poorly and go on to reoffend. About 61% of people who are released from prison reoffend within two years of release and 43% are re-imprisoned,

the December 2019 report went on to stress the importance of investment in rehabilitation services and assisting integration back into the community. The resulting recommendation included that support for rehabilitation should continue after release.¹²⁹

A case-managed wrap-around approach to service delivery would ensure reintegration where basic ongoing needs (such as income, housing, health, employment, education and training) are met and progress continues towards rehabilitation goals. A lack of support on release, along with the social stigma around incarceration, only serves to increase the chances of reoffending. International examples help provide us with lessons about what works.

International evidence of the link between access to banking and successful reintegration

Examples from the United Kingdom and United States suggest a correlation between banking access and successful reintegration, but as one commentator has suggested, “the proposed pathways are also contingent on the willingness of traditional banks—which often lack interest in a formerly incarcerated individual’s successful re-entry—to embrace the proposed reform”.¹³⁰

United Kingdom

The United Kingdom was one of the first countries to experiment with building a pathway for currently and formerly incarcerated individuals to open bank accounts. Several large banks, including Halifax and Barclays, piloted programmes that allowed formerly incarcerated individuals to gain access to financial services in the early 2000s.¹³¹ The programmes that developed from these pilots are discussed in detail in **Section 9**.

123 One tangential but related issue we were told about was the particular situation of Australian deportees. We were told that post-release is much worse for the Australian 501 deportees. We were told that they are released without a home, and they have never lived here, they have no knowledge of the systems in New Zealand and often have no bank accounts. According to one mentor we spoke to, this makes them likely to reoffend.

124 Ministry of Justice. “Key Initiatives – Hāpaitia Te Oranga Tangata,” <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/key-initiatives-archive/hapaitia-te-oranga-tangata>.

125 Ibid.

126 Ministry of Justice. “He Waka Roimata – Transforming our Criminal Justice System – First Report of Te Uepū Hāpai I Te Ora,” <https://www.justice.govt.nz/assets/he-waka-roimata.pdf>

127 Ministry of Justice, “Turiki! Turiki! Move Together! Transforming Our Criminal Justice System – the Second Report of Te Uepū Hāpai I Te Ora,” <https://www.justice.govt.nz/assets/turuki-turuki.pdf>.

128 Ibid, p 57.

129 Ibid, p 58.

130 Sean Kolkey, “People over Profit: The Case for Abolishing the Prison Financial System,” *California Law Review* 110, no. 1 (February 2022), p 281, <https://doi.org/10.15779/Z38GB1XH92>.

131 “November 2012 — Bank Accounts and Insurance: Access in Prison and Beyond,” Prison Reform Trust, November 20, 2012, <https://prisonreformtrust.org.uk/apppag/bank-accounts-and-insurance-access-in-prison-and-beyond>.

A 2008 study of The Co-operative Bank's project to enable prisoners to open basic bank accounts at Her Majesty's Prison (HMP) Forest Bank, found that of 193 people who left the prison with an account, 58 were back inside by the end of March 2008. A further 14 had returned by July 2008. 72 people out of the 193 with accounts returned to the prison, which gives a return rate of 37%. The national average return rate was around 67% (Hansard 2006).¹³² This reduction in the re-offender return rate to just over half the national average suggests that supported access to acquire a bank account assisted a significant proportion of formerly imprisoned people to bank on a better future.

United States of America

Research from the United States, though not directly comparable to the UK experience, suggests a similar relationship between banking access and reduced recidivism.¹³³

A 2018 survey of formerly incarcerated residents of Pennsylvania found that 73% of "successful reentrants" had an account with a credit union or a bank.¹³⁴ Conversely, that same survey found that "[o]f unsuccessful reentrants (those recidivating before three years) only thirty-nine percent had accounts."¹³⁵

Observations

Having reviewed the UK and USA evidence on the contributory role that bank accounts play in promoting better post-release outcomes for former prisoners, in his California Law Review article, American academic commentator Sean Kolkey has observed that:¹³⁶

"Efforts to build pathways between prisons and banks require that the destination banks demonstrate a willingness to accept a demographic group frequently viewed as high-risk into their customer base"... "Traditional banks have little, if any, incentive to act in the best interest of low-income individuals. Indeed, the banking industry has adapted itself to primarily address the needs of wealthy individuals and corporate interests. Banks' overhead costs are the same regardless of the size of a loan, but "the larger loan yields a much higher profit." Faced with this reality, it is unsurprising that formerly incarcerated individuals—an overwhelmingly low-income demographic group—are not well-served by the financial services sector."

Concluding on the relationship between bank accounts and recidivism rates, Kolkey says:¹³⁷

"Banks have no imperative to act in the interest of the general public, much less incarcerated and formerly incarcerated individuals, and efforts to build banking relationships between the two groups should be approached with some degree of scepticism."

132 Paul Jones, "Banking on a Fresh Start" (Research Unit for Financial Inclusion Liverpool John Moores University, 2008), p 25, <https://researchonline.ljmu.ac.uk/id/eprint/16162/1/Banking%20on%20a%20fresh%20start%20FINAL%20241108.pdf>.

133 Sean Kolkey "People over Profit: The Case for Abolishing the Prison Financial System," n 130, pp 281-282.

134 John E. Wetzel and Robin L. Wiessmann, "Wetzel and Wiessmann: Finances after Prison, a Collaborative Approach," www.dobs.pa.gov, 2018, p 2, <https://www.dobs.pa.gov/Documents/Publications/Reports/Financial%20Capability%20for%20Reentry.pdf>.

135 Ibid.

136 Sean Kolkey "People over Profit: The Case for Abolishing the Prison Financial System," n 130, p 281.

137 Ibid, p 282.



In their role as financial intermediaries, banks have a contribution to make towards creating and maintaining inclusive societies.

SECTION 5 – How banks are regulated in New Zealand

Introduction

This section focuses on banks, which play an important role in the context of provision of bank accounts to prisoners. In order to meet our key recommendation of facilitating the provision of a bank account to every prisoner that is due for release, the cooperation and participation of banks (and preferably more than just one bank) is required.

This section explains how banks are regulated in New Zealand, in summary and as relevant to the discussion of provision of banking services to persons in prison. This is useful background to our discussion in the next section of whether banks might be said to have obligations to provide prisoners and/or ex-prisoners with bank accounts as part of corporate social responsibility obligations. It is also important to set out the obligations that banks have under Anti-Money Laundering laws, as these impose important constraints on the processes that banks can follow when opening an account for a customer.

Overview

Financial institutions doing business in New Zealand, such as banks, are subject to a range of regulatory regimes. This includes a prudential supervision regime operated and enforced by the Reserve Bank (for banks, insurers and non – bank deposit takers), a market conduct regime operated and enforced by the Financial Markets Authority (FMA), Anti Money Laundering rules, and other regulation such as regulation around health and safety. NZ has a ‘twin peaks’ model for financial sector regulation. The Reserve Bank (RBNZ) is the prudential regulator focused on financial stability, while the FMA constitutes the ‘market conduct’ peak, focused on conduct regulation.

The RBNZ is a prudential regulator, which broadly means it has responsibility for monitoring the financial condition of banks, and other entities such as insurers and non-bank deposit takers. All banks operating in New Zealand must be registered by the RBNZ and meet certain ongoing solvency requirements. The current legislation governing the prudential regime for banks is the Banking (Prudential Supervision) Act 1989. However

the Government has decided to merge the prudential regulation of banks and non-bank deposit takers into one piece of legislation – the Deposit Takers Act (which at date of writing, April 2023, is still in Bill form). The rationale for the ‘Deposit Takers Act’ is that both banks and non-bank deposit takers are engaging in essentially the same economic function – intermediating credit between savers on the one hand, and borrowers on the other. Building societies and credit unions are examples of non-bank deposit takers.

The FMA is a conduct regulator. In the context of this research, the FMA’s most important role will be to license banks under the recently enacted (but not yet in force) fair conduct regime introduced in the Conduct of Financial Institutions legislation, and to ensure all banks have a fair conduct programme. This regime is expected to come into force in early 2025.

Certain other laws that apply to all financial service providers also apply to banks. These include the Credit Contracts and Consumer Finance Act 2003, the Fair Trading Act 1986 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008. Banks also have industry self-regulation. The New Zealand Banking Association is the industry body for banks and has developed a Code of Banking Practice that all member banks must comply with.

The following paragraphs describe the regulatory regimes operated by the RBNZ and the FMA, with a focus on the aspects of those regimes that are potentially relevant to obligations to provide bank accounts to prisoners. Banks also have other obligations under the RBNZ and FMCA, for example around disclosure and giving of financial advice, but these laws are not directly relevant to the research around prisoners’ access to bank accounts.

SECTION 4 — Access to banking as a relevant consideration in reducing reoffending CONT

Reserve Bank prudential supervision regime

The RBNZ registers and prudentially supervises banks in New Zealand.¹³⁸ A key element of the standards and requirements for banks incorporated in New Zealand is corporate governance.¹³⁹ There are three main components the RBNZ's corporate governance policy for banks:

- Specific rules imposed via a bank's conditions of registration;
- Guidelines on the skills and experience expected of the board of directors;
- Required public disclosure of relevant information, such as details of the individual directors.

The Reserve Bank defines good corporate governance in these terms:¹⁴⁰

Good corporate governance should ensure the interests of a company's shareholders are properly represented, via the board of directors, in the running of the company. Main areas of interest for shareholders are: risk management, the setting of corporate strategy and ensuring the strategy is followed through.

The *Corporate governance in New Zealand. Principles and guidelines. A handbook for directors, executives and advisers*, published by the FMA states:¹⁴¹

Company law requires directors to act in the best interests of the company (subject to certain exceptions). Advancing the interests of other stakeholders, such as employees and customers, will often further the interests of an entity and its shareholders.

Good corporate governance practices will benefit stakeholders and shareholders. Relationships with significant stakeholders can be improved if addressed in specific policies that are disclosed and reported to stakeholders. Managing stakeholder interests should be viewed as good business and can have positive long-term impacts on society and the environment. It ensures entities maintain their social licence to operate.

Registered banks operating in New Zealand need to ensure they are run with good corporate governance and need to take into account how these practices benefit stakeholders and shareholders.¹⁴² There are no specific legally imposed corporate social responsibility requirements on banks other than the recently enacted obligations around climate disclosures, which are not directly relevant to this research.¹⁴³

¹³⁸ Reserve Bank of New Zealand (Te Pūtea Matua), "How We Oversee Banks," February 28, 2002, <https://www.rbnz.govt.nz/regulation-and-supervision/oversight-of-banks/how-we-regulate-and-supervise-banks/how-we-oversee-banks>. Once the Deposit Takers Bill is enacted, the correct terminology will be 'licensing' rather than registration.

¹³⁹ Reserve Bank of New Zealand (Te Pūtea Matua), "Corporate governance policy for banks," February 28, 2002, <https://www.rbnz.govt.nz/regulation-and-supervision/oversight-of-banks/standards-and-requirements-for-banks/corporate-governance-policy-for-banks>.

¹⁴⁰ Ibid.

¹⁴¹ Financial Markets Authority (NZ), "Corporate Governance in New Zealand Principles and Guidelines a Handbook for Directors, Executives and Advisers," 2018, p 28, <https://www.fma.govt.nz/assets/Resources/180228-Corporate-Governance-Handbook-2018.pdf>.

¹⁴² A key platform underpinning corporate governance for banks is the 'attestation regime' – bank directors must sign-off on or attest to the veracity of information contained in the 6-monthly disclosure statements. There are severe criminal penalties for false or misleading information.

¹⁴³ As from the beginning of 2023, large banks have been subject to certain laws around climate-related disclosures, under the recently enacted changes to the Financial Markets Conduct Act 2013 that introduced Part 7A of that Act. Large registered banks are 'climate reporting entities' and will be required to make climate related disclosures from the first reporting period after 1 January 2023.

Reserve Bank objectives

The Reserve Bank has certain legislatively mandated objectives under the Reserve Bank of New Zealand Act 2021. These are:

Economic objectives

- achieving and maintaining stability in the general level of prices over the medium term; and
- supporting maximum sustainable employment;

Financial stability objective

- protecting and promoting the stability of New Zealand's financial system; and

Central bank objective

- otherwise acting as New Zealand's central bank in a way that furthers the purposes of this Act.¹⁴⁴

The RBNZ has a range of functions set out in s 10 of the Act, which together with the Bank's powers, provide the ability to achieve and deliver on the prescribed objectives. These include acting as the central bank for New Zealand and acting as prudential regulator.

As a 'full-service' central bank, the RBNZ promotes and protects the stability of the financial system in a range of ways. Chiefly, the RBNZ regulates and supervises certain financial institutions including banks, also payment and settlement systems, and, in exceptional circumstances, the RBNZ can use its market functions to provide liquidity.^{145 146}

The RBNZ works with a wide range of stakeholders to promote a strong and resilient financial ecosystem. As a member of the Council of Financial Regulators, RBNZ works with Treasury, the Financial Markets Authority,

the Commerce Commission, the Ministry of Business, Innovation and Employment (MBIE) and industry stakeholders to identify, manage and address issues, risk and gaps in the financial system, with the goal of ensuring that it is safe and efficient.

The Fair Conduct regime to be operated by the FMA

Certain financial services entities will soon be subject to a fair conduct principle that says they must treat consumers fairly.¹⁴⁷ This obligation will apply to registered banks, licensed insurers and licensed non-bank deposit takers. The 'fair conduct principle' is to be operationalised by imposing a legal duty on impacted financial institutions (such as banks) to establish, implement and maintain an effective 'fair conduct programme' which contains policies, processes, systems and controls designed to ensure the financial institution treats consumers fairly.

The requirement to treat consumers fairly includes:¹⁴⁸

- paying due regard to consumers' interests;
- acting ethically, transparently, and in good faith;
- assisting consumers to make informed decisions;
- ensuring the products and services the financial institution provides are likely to meet the requirements and objectives of likely consumers (when viewed as a group); and
- not subjecting consumers to unfair pressure or tactics, or undue influence.

Financial institutions will be required by the Financial Markets Conduct Act to establish, implement and maintain an effective Fair Conduct Programme (FCP) designed to ensure their compliance with the fair conduct principle.

¹⁴⁴ Reserve Bank of New Zealand Act 2021, s 9 (1).

¹⁴⁵ Geoff Bascand, "Renewing the RBNZ's Approach to Financial Stability: A Speech Delivered to 15th Financial Markets Law Conference in Auckland on 26 June 2019," June 26, 2019, https://www.rbnz.govt.nz/-/media/1b3e653b68ba4b7e8d3e6646a3199740.ashx?sc_lang=en. The RBNZ is more 'full service' than some central banks overseas (for example those that only focus on monetary policy), but less 'full service' than others (e.g. those who are also the financial market regulator, alongside prudential regulation).

¹⁴⁶ See also Reserve Bank of New Zealand (Te Pūtea Matua), "Protecting and promoting the stability of New Zealand's financial system," February 28, 2002, <https://www.rbnz.govt.nz/financial-stability/our-approach-to-ensuring-financial-stability>

¹⁴⁷ The fair conduct principle has been introduced by the Financial Markets (Conduct of Institutions) Amendment Act 2022, expected to come into force in early 2025. See s 12 of that Act.

¹⁴⁸ Financial Markets Conduct Act 2013, s 446C (as inserted by the Financial Markets (Conduct of Institutions) Amendment Act 2022 and not yet in force).

SECTION 4 — Access to banking as a relevant consideration in reducing reoffending CONT

The minimum requirements for the content of an FCP are set out in section 446J of the FMCA, as inserted by the Financial Markets (Conduct of Institutions) Amendment Act 2022 (CoFI Act) (not yet in force). These are minimum requirements, and financial institutions may choose to implement additional policies, processes, systems and controls to ensure that consumers are treated fairly.¹⁴⁹

The implications of the fair conduct regime in the context of banks' obligations to provide banking services to existing consumers that become incarcerated and to persons in prison who are not existing customers are discussed in **Section 6**.

The CoFI Act notes that the new regime will come into force by Order in Council. MBIE and the FMA have both stated that the new regime is planned to come into force in early 2025.¹⁵⁰ The commencement provisions of the Act note that any provision that has not already been brought into force will come into force 'on the third anniversary of the date of Royal assent' (i.e. on 29 June 2025).

In a media release on 30 November 2022, the FMA stated that applications for licences under this regime will open on 25 July 2023 and that it will "engage and support the sector to prepare for and apply for licensing, leading up to and after this date".¹⁵¹

Anti-Money Laundering obligations on banks

Banks have certain obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML Act). The Reserve Bank is responsible for monitoring banks' levels of compliance with various obligations under the AML Act.

For banks, these obligations include:

- assessing their money laundering and terrorism financing risk;
- appointing an AML/CFT compliance officer;
- designing, implementing and maintaining an AML/CFT compliance programme that sets out the procedures, policies and internal controls for:
 - vetting and training relevant staff;
 - carrying out due diligence on their customers;
 - monitoring customer accounts and activities;
 - reporting suspicious activities and transactions;
 - keeping records; and
 - continuing to monitor and manage all AML/CFT matters, among other obligations;
- auditing and reviewing their risk assessment and compliance programme; and
- submitting an annual report to their AML/CFT supervisor.

Most relevantly, there are obligations around carrying out due diligence on customers. Under the AML Act, at certain points in the bank's relationship with a customer, in particular when an account is first opened, the bank must conduct "customer due diligence". In relation to a standard risk customer, due diligence requires getting certain identity information and verifying that information, to ensure that the bank knows the true identity of the customer. Full name, date of birth and address are key pieces of information the bank must obtain and verify.

149 Financial Markets Authority (NZ), "Fair Conduct Programme (FCP) Information Sheet," 2022, <https://www.fma.govt.nz/assets/Information-sheets/FCP-information-sheet.pdf>.

150 Ministry of Business, Innovation, and Employment, "Conduct of Financial Institutions Regime," December 12, 2022, <https://www.mbie.govt.nz/business-and-employment/business/financial-markets-regulation/conduct-of-financial-institutions-regime>.

151 Financial Markets Authority, "Culture Shift for Financial Services as Conduct of Financial Institutions Bill Passes," June 29, 2022, <https://www.fma.govt.nz/news/all-releases/media-releases/culture-shift-for-financial-services-as-conduct-of-financial-institutions-bill-passes>.

The three AML supervisors (RBNZ, FMA and Internal Affairs) have produced a Code of Practice that provides a suggested best practice for all reporting entities conducting name and date of birth identity verification on customers (that are natural persons) that have been assessed to be low to medium risk.¹⁵² Identification involves obtaining from the customer a range of information about him or her (“identity information”). Verification involves confirming some of that information against documents, data or information obtained from a reliable and independent source.¹⁵³ The Code requires that there be one piece of ‘primary’ photographic identity verification evidence (e.g. a passport), or alternatively one piece of non-photographic identification (e.g. a birth certificate) plus a piece of secondary supporting photographic identification (e.g. a driver’s licence or 18+ Card, now called a Kiwi Access card). There are a number of alternative ways to prove identification, set out in the Code.

If the procedure is not done face-to-face (in other words, in situations where the applicant does not come physically into a branch of the bank), there are requirements around certification of documents, in the Code. There are situations that arise outside of the prison context where a person might wish to set up an account and has no ability to go into a branch of a bank to do this. An example is persons migrating to New Zealand. These people are able to set up an account before they arrive in New Zealand, using the certification procedure. We were told by an RBNZ employee that the account does not usually become operative in this situation until the person presents themselves to a branch of the bank in New Zealand along with their identification documents.

In effect the Code provides a set of ‘safe harbour’ procedures – if a bank complies with the specified procedures, they will be considered to have met their obligations at least in relation to customers that are considered low to medium (but not high) risk. The Code is however just suggested best practice, meaning that banks can comply with their AML identity verification obligations in ways not specified in the Code, but those ways must still be equally effective. The Code itself recognises that banks will have ‘exception handling procedures’ which apply when a person is not able to provide the standard identification documents.¹⁵⁴

When we spoke to the RBNZ about the AML identity verification requirements, the RBNZ stressed that banks can comply in a number of ways and that there was flexibility in how to comply. The legislation requires that the bank must obtain (among other things) the customer’s full name and date of birth (s 15). The bank must also take steps to satisfy itself that the information is correct (s 16).). The RBNZ when asked about using alternative ways of verifying identity, talked about the ‘exception handling procedures’. In a situation where an applicant does not have the prescriptive combination of documents, if the person can provide reasonable grounds for not having the required ID, then they can be dealt with via the exception handling procedures.

The Code refers to exception handling procedures, saying:¹⁵⁵

In order to comply with this code, the reporting entity must have appropriate exception handling procedures in place, for circumstances when a customer demonstrates that they are unable to satisfy the requirements in 1 to 3 above.

¹⁵² See Amended Identity Verification Code of Practice 2013, available from <https://www.fma.govt.nz/library/guidance-library/amended-identity-verification-code-of-practice-2013>.

¹⁵³ Ibid, p 2.

¹⁵⁴ Ibid, p 5 (para [4]).

¹⁵⁵ Ibid.

SECTION 4 — Access to banking as a relevant consideration in reducing reoffending CONT

We were told that most prisoners that come out of prison do not have the commonly accepted forms of ID. They are unlikely to have a passport or driver's licence. Many do not have their birth certificate or a Kiwi Access card.

It is possible for anyone to apply for a copy of their birth certificate from Internal Affairs. There is a fee (\$33) and it will take at least two weeks for the application to be processed. We were told the time to process an application for a birth certificate is likely to be longer than this. It is also possible for anyone to apply for a Kiwi Access card (once they have their birth certificate) and there is a fee (\$60). A photograph must be supplied with the application. It is likely to take at least two weeks for an application for a Kiwi Access card to be processed.

If these documents are not provided in a face-to-face meeting with the bank, the bank is required to obtain certified copies. The Code states that if identity verification is not done face to face, then the documents must be certified by a 'trusted referee'.¹⁵⁶ The types of persons that can act as a trustee referee are listed and include, for example, lawyers, JPs and notaries public.¹⁵⁷ One of the recommendations made in this Report is that prisoners' ID documents should be obtained while the person is still in prison (we also recommend that the account set up before release). This will require certification of the ID documents in the majority of cases (there may be some cases where the prisoner is able to be escorted to the bank). It would be helpful for the Code to include someone in senior management in a prison as a trustee referee to assist with the certification process.

In addition, the bank must obtain proof of address.

What is actually required to meet this is not set out in the AML Act or any code. The Identity Verification Code of Practice does not prescribe the way in which reporting entities can fulfil this obligation.

ASB requires the following to meet the proof of address requirement:¹⁵⁸

- A statement or letter from another bank;
- A letter from a government department or agency, such as the IRD, Department of Justice or the Electoral Commission;
- A statement or letter from a KiwiSaver or superannuation provider other than the bank you are trying to get an account with;
- A house or contents insurance policy;
- A rates or water bill from a local authority;
- A utility bill such as gas, power, fixed phone, internet, Sky TV or an on-account mobile phone;
- A letter from a recognised retirement home that confirms you live there;
- A letter, statement, or bill from a qualifying New Zealand educational institute; or
- A tenancy or lease agreement signed by the landlord and tenants.

The document must meet these criteria:

- It needs to be from a source listed above.
- It must show the person's name and physical home address (not a PO Box).
- It must be less than 12 months old.
- Bills from utilities and local authorities must be for a service at the home address.

¹⁵⁶ Ibid, p 5 (para [7]).

¹⁵⁷ Ibid, p 6 (para [8]).

¹⁵⁸ ASB, "What Documents Can I Use to Verify My Address?," August 24, 2022, <https://www.asb.co.nz/help/what-documents-can-i-use-to-verify-my-address.html>.

Westpac says that its requirements for proof of address are:¹⁵⁹

One of the following documents dated within the last 12 months:

- Utility bill.
- Statement/correspondence from another financial institution.
- Insurance policy document (not issued by Westpac Group).
- Unexpired rental or tenancy agreement.
- Correspondence from a government agency containing a unique reference (such as IRD number, Client File Number or Tenancy Bond reference number).

Providing one of these documents can be challenging for a person that has just come out of prison and has no stable accommodation option. They are unlikely to have a letter of this sort addressed to them and dated within the last 12 months.

Te Pā also told us that the proof of address itself is a very difficult requirement and there is a need to find a ‘work around’, otherwise all transient people are disadvantaged, not just people who come out of prison. In other words – this is a problem that extends to other groups not just prisoners and should be reviewed.


Currently Westpac will accept the prison address as proof of address under the New Start programme. This information is provided to Westpac in a Corrections-generated PIP form. Given that the RBNZ has accepted this as meeting the proof of address requirement for Westpac, it may be possible for other banks to adopt this approach. There is a benefit in having the account set up before release (as it can be more difficult to meet the current proof of address requirements once the person is out in the community).

It should be noted that the Ministry of Justice is currently making some changes to the AML regime as a result of its review of the AML Act. Address verification was recognised as imposing compliance costs disproportionate to the risks being mitigated. Cabinet has agreed that address verification will not be required except where enhanced customer due diligence is required, and instead businesses will have to verify that an address is genuine.¹⁶⁰ This should be of assistance for both persons in prison, and persons who are released from prison, who wish to set up a bank account, as it should make it easier to meet the proof of address requirements.

Research consistently demonstrates that the lack of a bank account leads to a significant negative impact on individuals, communities and, importantly, on society at large.

¹⁵⁹ Westpac, ‘Identification and Proof of Address – Personal Account,’ https://www.westpac.co.nz/assets/Business/institutional/documents/Relationship-Management/joining_westpac_personal.pdf

¹⁶⁰ See Ministry of Justice, AML/CFT ‘Early’ Regulatory Package: Exposure Draft, February 2023, p 29, <https://www.justice.govt.nz/assets/Documents/Publications/Consultation-Draft-AML-CFT-Early-Regulatory-Package-Exposure-Draft-.pdf>.

A close-up photograph of a person wearing a tan, short-sleeved button-down shirt, standing behind vertical metal prison bars. The person's hands are gripping one of the bars. The lighting is warm and orange-toned, creating a somber and confined atmosphere. The bars are weathered and run vertically across the frame.

Central to reducing
social exclusion
is tackling financial
exclusion.

SECTION 6 – Do banks have CSR obligations that require them to do more to facilitate banking for prisoners?

Summary

This section considers if arguments can be made that banks have an obligation to provide banking services to prisoners based on the concept of corporate social responsibility (CSR).

The first part of this section examines the concept of corporate social responsibility (CSR). The second part of this section considers whether it can be argued that banks have an obligation as part of corporate social responsibility that includes giving certain groups of consumers (such as prisoners and persons who have just been released from prison) access to banking services. It also sets out how a selection of New Zealand banks currently report on their corporate social responsibility activities.

In summary, corporate social responsibility is an evolving concept. It suggests that businesses must not only strive to make a profit but must also serve more broadly the needs of society. There is no specifically articulated legal obligation on businesses (such as banks) to recognise corporate social responsibility under current New Zealand law.¹⁶¹ International institutions such as the UN, through the United Nations Environment Programme's Principles for Responsible Banking, recognise and promote a concept of responsible banking, which very broadly can be seen to encompass obligations to provide services to marginalised groups.

The major banks in New Zealand have voluntarily begun to report on Environment, Social and Governance (ESG) policies and practices in their annual reports. Banks will soon also be required to make climate related disclosures under recent changes to the FMCA, which started to take effect in January 2023.

There are also arguments that the Fair Conduct regime to be introduced in 2025 (known as CoFI) imposes obligations on banks in relation to customers who are prisoners and ex-prisoners. These are outlined later in this section.

¹⁶¹ Other than the obligations recently imposed on banks to make climate related disclosures, which apply for the first reporting period from 1 January 2023. See **Section 5**.

Corporate Social Responsibility

The United Nations Industrial Development Organization (UNIDO) defines Corporate Social Responsibility (CSR) as “a management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders. CSR is generally understood as being the way through which a company achieves a balance of economic, environmental and social imperatives (“Triple-Bottom-Line – Approach”), while at the same time addressing the expectations of shareholders and stakeholders”.¹⁶²

Understanding Corporate Social Responsibility

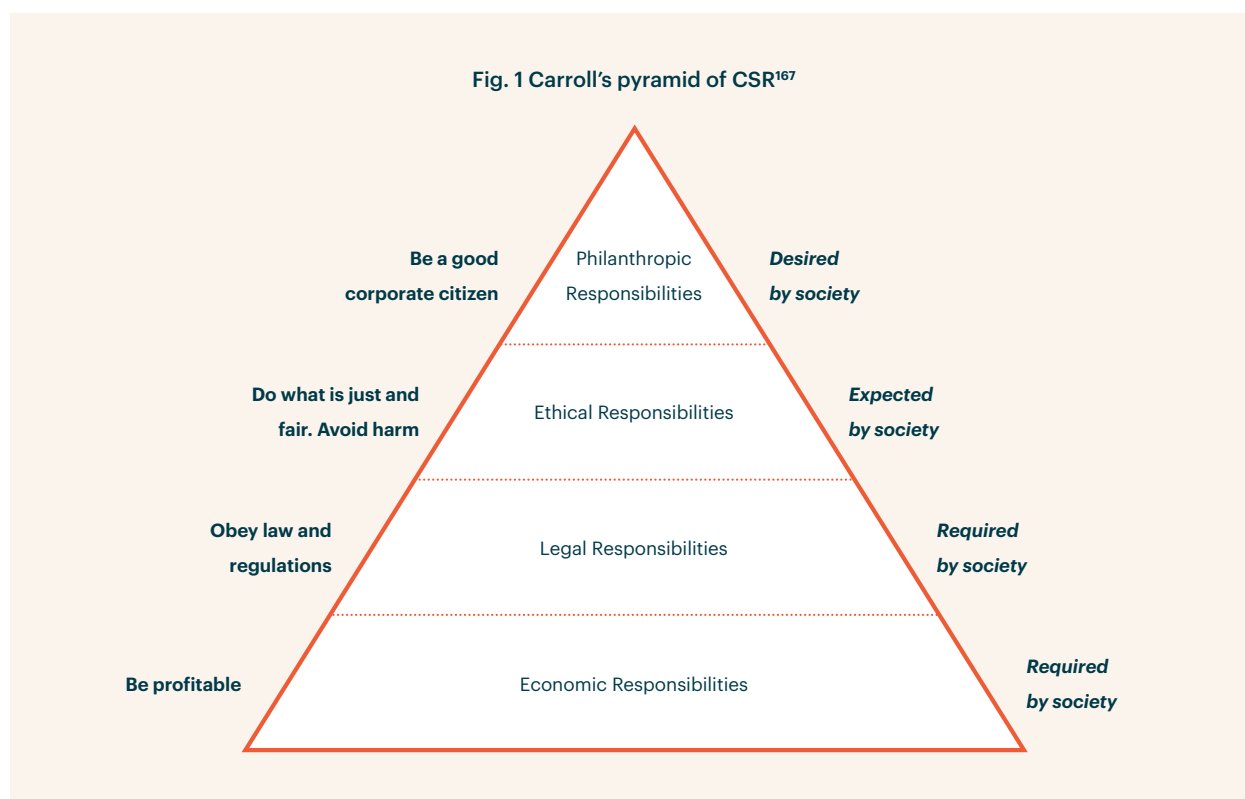
The origins of modern understandings of CSR can be found in the Committee for Economic Development's publication of the *Social Responsibilities of Business Corporations* in 1971 which explored the new expectations that society began placing on the business sector. That report advanced the public debate around CSR by acknowledging that “business functions by public consent, and its basic purpose is to constructively serve the needs of society – to the satisfaction of society”.¹⁶³ The idea of business requiring ‘licence to operate’ rests on the concept of a ‘social contract’ between businesses and society. This social contract is based on the idea that a business functions because of public consent, therefore business has an obligation to contribute more to society than just the goods and services they sell.¹⁶⁴

¹⁶² UNIDO, “What Is CSR?,” United Nations Industrial Development Organization, 2021, <https://www.unido.org/our-focus/advancing-economic-competitiveness/competitive-trade-capacities-and-corporate-responsibility/corporate-social-responsibility-market-integration/what-csr>.

¹⁶³ Committee for Economic Development, “Social Responsibilities of Business Corporations,” https://www.ced.org/pdf/social_responsibilities_of_business_corporations.pdf (USA: Committee for Economic Development, June 1971), p 11.

¹⁶⁴ “Corporate Social Responsibility: A Brief History,” Association of Corporate Citizenship Professionals, March 1, 2021, <https://accp.org/resources/csr-resources/accp-insights-blog/corporate-social-responsibility-brief-history/>.

SECTION 6 — Do banks have CSR obligations that require them to do more to facilitate banking for prisoners? CONT



Carroll's Pyramid of CSR

In academic literature, Carroll's CSR Pyramid is probably "the most well-known model of CSR".¹⁶⁵ Carroll's unified definition states "the social responsibility of business encompasses the economic, legal, ethical, and discretionary expectations that society has of organisations at a given point in time".¹⁶⁶ Based on his four-part definition of corporate social responsibility, Carroll created a graphic depiction of CSR in the form of a pyramid.

Carroll's four-part CSR definition forms a conceptual framework that includes the economic, legal, ethical, and philanthropic or discretionary expectations that society places on businesses at a given point in time. And, in terms of understanding each type of responsibility, it could be said that the economic responsibility is "required" of business by society; the legal responsibility also is "required" of business by society; the ethical responsibility is "expected" of business by society; and the philanthropic responsibility is "expected/desired" of business by society. Also, as time passes, what exactly each of these four categories means may change or evolve as well.¹⁶⁸

¹⁶⁵ Wayne Visser, "Revisiting Carroll's CSR Pyramid: An African Perspective," in *Corporate Citizenship in a Development Perspective*, eds Rahbek & Hünich (Copenhagen Business School Press, 2005).

¹⁶⁶ Archie B. Carroll, "A Three-Dimensional Conceptual Model of Corporate Performance," *The Academy of Management Review* 4, no. 4 (October 1979): pp 497-505.

¹⁶⁷ Archie B. Carroll, "Carroll's Pyramid of CSR: Taking Another Look," *International Journal of Corporate Social Responsibility* 1, no. 3 (July 5, 2016): 1-8, <https://doi.org/10.1186/s40991-016-0004-6>.

¹⁶⁸ Ibid, p 4.

The responsibilities of corporations in Carroll's pyramid of CSR

Economic Responsibilities

Carroll's pyramid places economic responsibility at the base of the pyramid because it is a foundational requirement in business. "Just as the footings of a building must be strong to support the entire edifice, sustained profitability must be strong to support society's other expectations of enterprises".¹⁶⁹ The underlying idea is that the infrastructure of CSR builds the foundation of an economically sound and sustainable business.¹⁷⁰ Carroll argues that societies *expect*, indeed *require*, business organisations to be able to sustain themselves, for only by being profitable will they be able to incentivise owners or shareholders to be able to invest and have enough resources to continue operating. Understood thus, societies view business organisations as institutions that will produce and sell the goods and services it needs and desires, and, as an inducement, society allows businesses to take profits.¹⁷¹

Legal Responsibilities

Society also requires businesses to comply with laws and regulations as a condition of operating. Businesses are expected to observe their legal responsibilities because, according to Carroll, law and regulations are society's codification of the basic ground rules – society's "*codified ethics*" – upon which business is to operate in a society.¹⁷² Legal infrastructure is essential for providing a foundation for legitimate business growth.¹⁷³

Ethical Responsibilities

In addition to economic and legal obligations – which society *requires* firms to abide by, society *expects* firms to observe ethical obligations. Ethical responsibilities transcend the letter of the law and encompass society's normative expectations of businesses to operate

and conduct their affairs in an ethical fashion. This imports an obligation that a business "will do what is right, just, and fair and to avoid or minimise harm to all the stakeholders with whom it interacts".¹⁷⁴ Relevantly, conforming to ethical obligations implies that "businesses will conduct their affairs in a fair and objective fashion even in those cases when laws do not provide guidance or dictate courses of action".¹⁷⁵

Philanthropic Responsibilities

Finally, at the apex of Carroll's pyramid are philanthropic responsibilities. Corporate philanthropy embraces business's voluntary or discretionary activities.¹⁷⁶ Societies *desire* for businesses to be good corporate citizens. That is, to give back and to contribute financial, physical, and human resources to the communities in which they operate, and of which they are a part.¹⁷⁷ Writing in 2016, Carroll opined that the modern public "does have a sense that businesses will 'give back,' and this constitutes the 'expectation' aspect of the responsibility". He goes on to observe that "[w]hen one examines the social contract between business and society today, it typically is found that the citizenry expects businesses to be good corporate citizens just as individuals are."¹⁷⁸ Business organisations can go about fulfilling their ethical obligations by giving in a variety of ways. They can provide monetary gifts, donate products and services, promote volunteerism by employees and management, and contribute in other discretionary ways to the community, or other "stakeholder groups" which are part of the community.¹⁷⁹ While in some instances, 'business giving' is driven by altruistic motives, Carroll points out that for most businesses, corporate philanthropy is undertaken to demonstrate their good citizenship and to "enhance or augment the company's reputation and not necessarily for noble or self-sacrificing reasons".¹⁸⁰

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Ibid, p 3.

¹⁷² Ibid.

¹⁷³ Ibid, p 5.

¹⁷⁴ Ibid, p 4.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

SECTION 6 — Do banks have CSR obligations that require them to do more to facilitate banking for prisoners? CONT

Ethics permeate Carroll's conceptual framework

Ethical assumptions underpin Carroll's four-part conceptual framework of CSR. Regarding the economic responsibilities of corporations, Carroll's pyramid "implicitly assumes a capitalistic society wherein the quest for profits is viewed as a legitimate, just expectation".¹⁸¹ Regarding the corporation's legal responsibilities, Carroll's description of laws as "codified ethics" implicitly acknowledges that most laws and regulations are justified by some ethical reasoning which deem them, in society's eyes, to be appropriate.¹⁸² Ethical responsibilities, by definition, imply conduct that transcends legal requirement. Finally, the philanthropic dimension speculates as to the ethical motivation for why businesses strive to do the "right thing".¹⁸³ While some business organisations pursue philanthropic activities as a strategic decision – just to be seen as 'good corporate citizens', some, according to Carroll, "pursue philanthropy because they consider it to be the virtuous thing to do".¹⁸⁴

Tensions and trade-offs within the framework

Tensions and trade-offs inevitably arise when companies seek to adequately perform with respect to their economic, legal, ethical and philanthropic responsibilities. How companies choose to balance their various – *sometimes competing* – responsibilities defines the organisation's CSR orientation and reputation.¹⁸⁵ A business's economic responsibility to owners or shareholders requires deliberate, careful trade-offs between the organisation's short-term and long-term profitability. In the short term, the companies' spending on its legal, ethical and philanthropic responsibilities will "appear" to conflict with their

obligations to their shareholders. This is because the resources invested into fulfilling legal, ethical, and philanthropic obligations will seem to serve the primary interests of other stakeholders and the broader community, not the company itself. The tension thus arises as to whether the company should compromise and "cut corners" on its corporate social responsibilities or seek out "best long-range advantage".¹⁸⁶ The traditional thought has been that resources spent for legal, ethical and philanthropic purposes necessarily detract from profitability. But, according to the "business case" for CSR, this is not a valid assumption or conclusion. In recent times the emerging view has been that social activity can and does lead to economic rewards and that business should attempt to create such a favourable situation.¹⁸⁷

The business case for CSR

The business case for CSR refers to the arguments for why the business community should embrace and advance the CSR cause. "The business case is concerned with the primary question – What does the business community and commercial enterprises get out of CSR? That is, how do they benefit tangibly and directly from engaging in CSR policies, activities and practices (Carroll and Shabana 2010)".¹⁸⁸

Four effective arguments have been advanced by Kurucz, et al., and these include:¹⁸⁹

- cost and risk reductions,
- positive effects on competitive advantage,
- company legitimacy and reputation, and
- the role of CSR in creating win-win situations for the company and society.

181 Ibid.

182 Ibid, p 5.

183 Ibid.

184 Ibid.

185 Ibid, p 8.

186 Ibid, p 6.

187 Ibid, pp 5-6.

188 Ibid, p 6.

189 Elizabeth C. Kurucz, Barry A. Colbert, and David David Wheeler, "The Business Case for Corporate Social Responsibility," in *The Oxford Handbook of Corporate Social Responsibility*, ed. Andrew Crane, Dirk Matten, Abigail McWilliams, Jeremy Moon, and Donald S. Siegel (Oxford University Press, 2008), https://www.researchgate.net/publication/235771847_The_Business_Case_for_Corporate_Social_Responsibility

Other studies have enumerated the reasons for businesses to embrace CSR to include:¹⁹⁰

- innovation
- brand differentiation
- employee engagement, and
- customer engagement.

“The purpose for business case thinking with respect to the Pyramid of CSR is to ameliorate the conflicts and tensions between and among the four categories of responsibilities. In short, the tensions and tradeoffs will continue to be important decision points, but they are not in complete opposition to one another as is often perceived”.¹⁹¹

Arguments in favour of corporations having social responsibilities

The outline contained in this section is drawn from chapter 13.3 of The Business Ethics Workshop digital textbook.¹⁹²

Key points

Broadly, there are three kinds of arguments in favour of placing corporations, at least large and fully developed ones, within an ethical context of expansive social and environmental responsibilities:

- Corporations are morally required to accept those responsibilities.
- The existence of externalities attaches companies, in operational and economic terms, to those responsibilities.
- Enlightened self-interest leads to voluntarily embracing those responsibilities.

The Moral Requirement Argument

The moral requirement that business goals go beyond the bottom line to include the people and world we all share is built on the following arguments:

- *Corporations Are Already Involved In The Broad Social World And The Ethical Dilemmas Defining It.*
 - This argument posits that companies deciding whether or not to be involved in surrounding ethical issues *is* an ethical choice. Accordingly, because companies are inescapably linked to the ethical issues surrounding them, they are involved with some form of corporate social responsibility whether they like it or not.¹⁹³
- *Corporations, At Least Well-established, Successful, And Powerful Ones, Can Be Involved In The Effective Resolution Of Broad Social Problems, And That Ability Implies An Obligation.*
 - Whether we are talking about a person or a business, the possession of wealth and power also suggests a duty to balance that privilege by helping those with fewer resources. Many accept the argument that individuals who are extraordinarily wealthy have an obligation to give back, hence the saying: “to whom much is given, much is expected.”¹⁹⁴ Here, what’s being argued is that the same obligation applies to companies.¹⁹⁵
- *Corporations rely on much more than their owners and shareholders.*
 - Businesses need suppliers who provide materials, employees who labour, cities where the workplace may be located, consumers who buy, air to breathe, water to drink, and almost everything. Because a business relies on all that, the argument goes, it’s automatically responsible—to some extent—for the welfare and protection of those things.¹⁹⁶

190 Archie B. Carroll, “Carroll’s Pyramid of CSR: Taking Another Look,” n 167, p 6.

191 Ibid.

192 Andy Schmitz, “Should Corporations Have Social Responsibilities? The Arguments in Favor,” saylordotorg.github.io, 2012, https://saylordotorg.github.io/text_the-business-ethics-workshop/s17-03-should-corporations-have-social-responsibilities.html.

193 Ibid.

194 The Gospel according to St Luke 12:48.

195 Andy Schmitz, “Should Corporations Have Social Responsibilities? The Arguments in Favor,” n 192.

196 Ibid.

SECTION 6 — Do banks have CSR obligations that require them to do more to facilitate banking for prisoners? CONT

- *Because businesses cause problems in the larger world, they are obligated to participate in the problems' resolution.*
 - The decisions businesses make may, in fact, be necessary or fully justified, but that does not change the fact that problems are produced, and with them comes a responsibility to participate in alleviating the negative effects.¹⁹⁷

Taken together, these arguments justify the vision of any particular enterprise as much more than an economic wellspring of money. Businesses become partners in a wide world of interconnected problems and shared obligations to deal with them.

The Externality Argument

The second type of argument favouring corporate social responsibility revolves around *externalities*. These attach corporations to social responsibilities not morally but operationally. An externality in economics describes as a “spill-over effect” a cost of a good or service that is not accounted for in the price (when that price is established through basic laws of supply and demand).¹⁹⁸ Externalities can be positive or negative.

Whether an externality is negative or positive—whether a company’s bottom line rises or falls with it—a strong argument remains for broad corporate responsibility wherever an externality exists. Because these parts of corporate interaction with the world are not accounted for in dollars and cents, a broad ethical discussion must be introduced to determine what, if any, obligations or benefits arise.¹⁹⁹

The Enlightened Self-interest Argument

Closely related to the “business case for CSR”, the third kind of argument in favour of corporations as seats of social responsibility grows from the notion of enlightened self-interest. Enlightened self-interest means businesses take on broad responsibilities because, on careful analysis, that public generosity also benefits the company. The benefits run along a number of lines:

- Corporations perceived as socially engaged may be rewarded with more, and more satisfied, customers.
- Organisations positively engaged with society, or the environment may find it easier to attract high-quality employees.
- Organisations taking the initiative in regulating themselves in the name of social betterment may hold off more stringent requirements that might otherwise be imposed by governmental authorities.

Enlightened self-interest starts with the belief that there are many opportunities for corporations to do well (make money) in the world by doing good (being ethically responsible). From there, it’s reasonable to assert that *because* those opportunities exist, corporations have no excuse for not seeking them out, and then profiting from them, while helping everyone else along the way.

One basic question about enlightened self-interest is: *are corporations making money because they are doing good deeds, or are they doing good deeds because it makes them money?* In terms of pure consequences, Andy Schmitz points out that this distinction may not be significant. However, if the reality is that social good is being done *only* because it makes money, then some will object that corporate social responsibility is turning into a clever trick employed to maximise profits by deceiving consumers about a business’s intention. Thus, CSR becomes an example of cause egoism—that is, giving the false appearance of being concerned with the welfare of others in order to advance one’s own interests.²⁰⁰

¹⁹⁷ Ibid.

¹⁹⁸ Emma Hutchinson, “5.1 Externalities,” in *Principles of Microeconomics* (University of Victoria, 2017), <https://ecampusontario.pressbooks.pub/uvicmicroeconomics/chapter/5-1-externalities>.

¹⁹⁹ Andy Schmitz, “Should Corporations Have Social Responsibilities? The Arguments in Favor,” n 192.

²⁰⁰ Ibid.

Arguments against corporations having social responsibilities

The outline contained in this section is drawn from chapter 13.4 of The Business Ethics Workshop digital textbook.²⁰¹

In 1970, just as the concept of corporate social responsibility was gaining traction and influential advocates in the United States, the economist Milton Friedman published a short essay titled “*The Social Responsibility of Business is to Increase its Profits.*” Possibly the most provocative single contribution to the history of business ethics, Friedman set out to show that large, publicly owned corporations ought to be about making money, and the ethical obligations imposed by advocates of CSR should be dismissed.²⁰² The following paragraphs, drawn from the Andy Schmitz’s textbook chapter, discuss each of the arguments made by Friedman in that essay.

Businesses can’t have social responsibilities

The first argument Friedman made was that a business can’t have moral responsibilities any more than a wrench can. Only humans have moral responsibilities because only we have consciousness and intentions: we are the only things in the world that can control our actions, that can distinguish between what we want to do and what’s right to do. Therefore, only we can have responsibilities in the ethical sense. What, then, is a business? Nothing more than a tool, something we make to further our ends. It may work well or poorly, but no matter what, it does not do what *it* wishes, so we cannot blame or credit the business, only those individuals who use it for one purpose or another.

According to this argument, it makes no sense to say that the industrial chemical maker W. R. Grace in Woburn, Massachusetts, has some kind of corporate responsibility to keep the environment clean. A company does not have any responsibilities. It’s like a wrench, a thing out in the world that people use, and that’s all. Would you accuse a wrench of being irresponsible if someone uses it to loosen the bolts on some truckers’ tires and so causes an accident and disastrous spill of toxins? You would probably accuse the person who *used* the wrench of acting irresponsibly, but blaming the wrench for something would be madness.²⁰³

Corporate executives are only responsible to shareholders

Friedman’s second argument was that executives are employees of the owners of the enterprise. They are contracted and obligated to conduct the business as the owners’ desire, not in accord with the wishes of some other people out in the world advocating broad social concerns. Executives in this sense are no different from McDonald’s burger flippers: they are hired and agree to do a certain thing a certain way. If they do not like it, they are free to quit, but what they cannot do is take the job and then flip the hamburgers into the trash because their friends are all texting them about how unhealthy McDonald’s food is.²⁰⁴

What do corporate owners desire? According to Friedman, the typical answer is the highest return possible on their investment. When you buy shares of the industrial chemical maker W. R. Grace, you check once in a while what the stock price is because price (and the hope that it’s going up) is the reason you bought in the first place. It follows, therefore, that executives—who in the end work for you, the owner—are duty bound to help you get that higher share price, and the quickest route to the goal is large profits.

201 Andy Schmitz, “Should Corporations Have Social Responsibilities? The Arguments Against,” saylordotorg.github.io, 2012, https://saylordotorg.github.io/text_the-business-ethics-workshop/s17-03-should-corporations-have-social.html.

202 Milton Friedman, “The Social Responsibility of Business Is to Increase Its Profits,” *The New York Times*, September 13, 1970, <https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html>.

203 Andy Schmitz, “Should Corporations Have Social Responsibilities? The Arguments Against,” n 201.

204 Ibid.

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What about the executive who decides to dedicate time and a corporation's resources to social welfare projects (to things like reducing runoff pollution even further than the law requires or hiring released felons as a way of easing their passage back into society)? Friedman is particularly cutting on this point. It's despicable selfishness. There's nothing easier than generosity with other people's money. And that's what, Friedman hints, CSR is *really* about. It's about corporate executives who like the idea of receiving accolades for their generous contributions to society, and they like it even more because the cash does not come out of their pay cheque; it's subtracted from shareholder returns. There is the seed of an argument here, finally, that not only is corporate social responsibility not recommendable, it is reproachable: in ethical terms, corporate leaders are duty bound to refuse to participate in social responsibility initiatives.²⁰⁵

Society won't be served by corporate social responsibility

Friedman's next argument was that one serious practical problem with the vision of corporate executives resolving social problems is *it's hard to be sure that their solutions will do good*. Presumably, corporate executives got to be executives by managing businesses profitably. That's certainly a difficult skill, but the fact that it has been mastered does not automatically imply other talents. Moreover, given the fact that corporate executives frequently have no special training in social and environmental issues, it's perfectly reasonable to worry that they will do as much harm as good.²⁰⁶

The right institution for managing social problems is government

Another argument made by Friedman against CSR was that social problems should not be resolved by corporations because we already have a large institution set up for that: government. If members of a society really are worried about carbon emissions or the disposal of toxic waste at chemical plants, then they should express those concerns to elected representatives who will, in turn, perform their function, which is to elaborate laws and regulations guiding the way all of us—inside and outside of business—live together. Government, the point is, should do its

job, which is to regulate effectively, and those in the business world should do their job, which is to comply with regulations while operating profitably.²⁰⁷

Marketplace ethics reinforce human freedom and corporate social responsibility threatens society with socialism.

Friedman argues that underneath this division of labour, there is a crucial distinction. Friedman believes that human freedom is based to some significant degree in economic life. Our fundamental rights to our property and to pursue our happiness are inviolable and are expressed in our working activities. The situation is complicated, however, because it's also true that for us to live together in a society, *some* restrictions must be placed on individual action. No community can flourish if everyone is just doing what they want. There's room for quite a bit of discussion here, but in general, Friedman asserts that while government (and other outside institutions) have to be involved in regulation and the imposing of limits, they should not start trying to mould and dictate basic values in the economic realm, which must be understood in principle as a bastion of individual liberty and free choices.

At this juncture, Friedman's essay reaches its sharpest point. The notion of corporate social responsibility, Friedman asserts, is not only misguided; it's dangerous because it threatens to violate individual liberty. Stronger, the violation may ultimately lead to socialism, the end of free market allocation of resources because rampant political forces take control in the boardroom.²⁰⁸

The movement to socialism that Friedman fears comes in two steps:

1. Environmental activists, social cause leaders, and crusading lawyers will convince at least a handful of preening business executives that working life is not about individuals expressing their freedom in a wide-open world; it's about serving the general welfare. The notion of corporate social responsibility becomes a mainstream concern and wins wide public support.²⁰⁹

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ Ibid.

²⁰⁸ Ibid.

²⁰⁹ Ibid.

2. With the way forced open by activists, the risk is that the government will follow: the institution originally set up to regulate business life while guaranteeing the freedom of individuals will fall into the custom of imposing liberty-wrecking rules. Under the weight of these intrusive laws, working men and women will be forced to give up on their own projects and march to the cadence of government-dictated social welfare projects. Hiring decisions, for example, will no longer be about companies finding the best people for their endeavours; instead, they will be about satisfying social goals defined by politicians and bureaucrats. Friedman cites as an example the hiring of ex-prisoners. Obviously, it's difficult for people coming out of jail to find good jobs. Just as obviously, it's socially beneficial for jobs to be available to them. The problem comes when governments decide that the social purpose of re-integrating ex-prisoners is more important than protecting the freedom of companies to hire anyone they choose. When that happens, hiring quotas will be imposed—corporations will be forced to employ certain individuals. This intrusive workplace rule will be followed by others. All of them will need to be enforced by investigating agents and disciplining regulators. As their numbers grow and their powers expand, freedom will be squeezed. Ultimately, freedom may be crushed by, as Friedman puts it, "the iron fist of Government bureaucrats."²¹⁰

It's difficult to miss the fact that Friedman's worries were coloured by the Cold War, by a seemingly remote historical moment in which the world really did hang in the balance between two views of working life: the American view setting individual freedom as the highest value and the Soviet view raising collectivism and the general welfare above all personal economic concerns and liberties.

Still, and even though today's historical reality is quite different from the 1970s, the essence of Friedman's objection to CSR has not changed. It is that you and I get to be who we are by going out into the world and making something of ourselves. When our ability to do that gets smothered beneath social responsibility requirements,

we may help others (or possibly not), but no matter what, we sacrifice ourselves because we would have lost the freedom to go and do what we choose. This loss is not just an inconvenience or a frustration: it is the hollowing out of our dignity; it is the collapse of our ability to make ourselves and therefore the end of the opportunity to be someone instead of just anyone.²¹¹

The best way for corporations to be socially responsible is to increase profits

The final major argument posited by Friedman against corporate social responsibility in its various forms is that the best way for most corporations to be socially responsible is to contribute to the community by doing what they do best: excelling in economic terms. When corporations are making profits, the money is not just disappearing or piling up in the pockets of the greedy super rich (though some does go there); most of it gets sent back into the economy and everyone benefits. Jobs are created, and those that already exist get some added security. With employment options opening, workers find more chances to change and move up: more successful corporations mean more freedom for workers.

Further, corporations do not become successful through luck, but by delivering goods and services to consumers at attractive prices. Corporate success, that means, should indicate that consumers are doing well. Their quality of life improves as their consumer products improve, and those products improve best and fastest when corporations are competing against each other as freely as possible.

What about the public welfare in the most general sense, the construction of parks, schools, and similar? Here, too, corporations do the best for everyone by concentrating on their own bottom line. More hiring, sales, and profits all also mean more tax revenue flowing to the government. And since elected governmental entities are those organisations best equipped to do public good, the most a corporation can hope for with respect to general social welfare is to succeed, and thereby generate revenues for experts (or, at least democratically elected officials) to divide up wisely.

210 Ibid.

211 Ibid.

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The term marketplace responsibility, finally, names the economic and social (and political) view emerging from Friedman's arguments. The title does not mean ethical responsibility in the marketplace so much as it does the specific conception of ethical responsibility that the open marketplace produces. It has two aspects: first, the notion of corporate social responsibility is misguided and dangerous, and second, the corporate purpose of profit maximisation serves the social welfare while cohering with the value of human freedom that should be paramount in business ethics.²¹²

Conclusion: corporate social responsibility versus marketplace responsibility

Advocates of corporate social responsibility believe corporations are obligated to share the burden of resolving society's problems. They maintain that the responsibility stands on pure moral grounds. Moreover, there are operational reasons for the responsibilities: if businesses are going to contaminate the environment or cause distress in people's lives, they should also be actively working to resolve the problems. Finally, there is the strong argument that even if the corporate purpose should be to make profits, social responsibility is an excellent way to achieve the goal.²¹³

Advocates of marketplace responsibility—and adversaries of the corporate social responsibility model—argue that by definition corporations cannot have moral responsibilities. Further, to the extent ethical obligations control corporate directors, the obligations are to shareholders. Moreover, corporate directors are not experts at solving social problems, and we already have an institution that presumably does have expertise: government. Finally, there is a strong argument that even if the corporate purpose should include broad social responsibilities, free individuals and corporations in the world making profits is an excellent way to achieve the goal.

What international financial organisations have said about CSR

The Basel Committee on Banking Supervision – Corporate governance principles for banks

The Basel Committee on Banking Supervision is the primary global standard setter for the prudential regulation of banks and provides a forum for regular cooperation on banking supervisory matters.²¹⁴ The Committee has published *Corporate governance principles for banks*, although it does not talk about corporate social responsibility.²¹⁵

The United Nations Environment Programme's Principles for Responsible Banking

The United Nations Environment Programme has a finance initiative called *Principles for Responsible Banking*.²¹⁶ According to the Programme,²¹⁷

We work with the banking community through the UN Principles for Responsible Banking to accelerate a positive global transition for people and the planet. With over 300 signatory banks representing almost half of the global banking industry, the Principles are the world's foremost sustainable banking framework. Through the Principles, banks take action to align their core strategy, decision-making, lending and investment with the UN Sustainable Development Goals, and international agreements such as the Paris Climate Agreement.

²¹² Ibid.

²¹³ Ibid.

²¹⁴ Bank for International Settlements, "The Basel Committee – Overview," June 28, 2011, <https://www.bis.org/bcbs>.

²¹⁵ Basel Committee on Banking Supervision, "Guidelines Corporate Governance Principles for Banks" (Bank for International Settlements, 2015), <https://www.bis.org/bcbs/publ/d328.pdf>.

²¹⁶ United Nations Environment Programme – Finance Initiative, "Principles for Responsible Banking – United Nations Environment – Finance Initiative," Unepfi.org, 2019, <https://www.unepfi.org/banking/bankingprinciples/>.

²¹⁷ Ibid.

The framework consists of the following six principles which signatory banks have agreed to uphold which are designed to bring purpose, vision and ambition to sustainable finance.²¹⁸

- **Alignment.** We will align our business strategy to be consistent with and contribute to individuals' needs and society's goals, as expressed in the Sustainable Development Goals, the Paris Climate Agreement and relevant national and regional frameworks.
- **Impact & Target Setting.** We will continuously increase our positive impacts while reducing the negative impacts on, and managing the risks to, people and environment resulting from our activities, products and services. To this end, we will set and publish targets where we can have the most significant impacts.
- **Clients & Customers.** We will work responsibly with our clients and our customers to encourage sustainable practices and enable economic activities that create shared prosperity for current and future generations.
- **Stakeholders.** We will proactively and responsibly consult, engage and partner with relevant stakeholders to achieve society's goals.
- **Governance & culture.** We will implement our commitment to these Principles through effective governance and a culture of responsible banking.
- **Transparency & Accountability.** We will periodically review our individual and collective implementation of these Principles and be transparent about and accountable for our positive and negative impacts and our contribution to society's goals.

Both the ASB Bank Limited and the Bank of New Zealand are signatories to the U.N's Principles for Responsible Banking. The Australian parent companies of ANZ New Zealand and Westpac New Zealand are also signatories.²¹⁹

218 United Nations Environment Programme – Finance Initiative, "About the Principles – United Nations Environment – Finance Initiative," United Nations Environment Programme – Finance Initiative, 2019, <https://www.unepfi.org/banking/more-about-the-principles>.

219 United Nations Environment Programme – Finance Initiative, "Signatories – United Nations Environment – Finance Initiative," accessed November 25, 2022, https://www.google.com/url?q=https://www.unepfi.org/banking/prbsignatories/&sa=D&source=docs&ust=1669344240165992&usg=AOvVaw1J9Yhfel_5uH9VKxcmXUtl.

How it can be argued that banks owe a duty of corporate social responsibility to socially and economically marginalised communities

A summary of the arguments identified in literature as to why banks owe a duty of corporate social responsibility (elaborated on below) is as follows:

- Banks play a critical role in financial and economic development, especially in developing countries, which means they have a big social responsibility.²²⁰
- The repayment concept – firms draw all their resources from the society; so they must repay the society.²²¹
- Sustainability of business firms depends on the wellbeing of the society.²²²
- In their role as financial intermediaries, banks have a contribution to make towards creating and maintaining inclusive societies.²²³
- Promoting financial inclusion is a collective responsibility of the public and private sectors.²²⁴

220 N Dorasamy, "Corporate Social Responsibility and Ethical Banking for Developing Economies," *Journal of Economics and Behavioral Studies* 5, no. 11 (November 30, 2013): 777–85, <https://doi.org/10.22610/jebs.v5i11.450>.

221 Safdar Ali Butt "The Case For and Against Corporate Social Responsibility," *Insurance Journal*, Vol 36, Issue 142-143, 30 June 2020.

222 Ibid.

223 United Nations Environment Programme – Finance Initiative, "Principles for Responsible Banking– United Nations Environment – Finance Initiative," n 216.

224 Christine Lagarde, "Empowerment through Financial Inclusion, Address to the International Forum for Financial Inclusion by Christine Lagarde, Managing Director, International Monetary Fund," IMF, June 26, 2014, <https://www.imf.org/en/News/Articles/2015/09/28/04/53/sp062614a>.

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Banks play a critical role in financial and economic development, which means they have a social responsibility

Dorasamy argues that banks have a diverse range of stakeholders whom they are obligated to satisfy.²²⁵ Banks must maximise profits for shareholders and maintain adequate liquidity to meet the demand of depositors. Apart from being obliged to satisfy the legitimate requests for credit, banks also need to comply with regulatory requirements to do business. Overall, Dorasamy argues, banks need to be seen as good corporate citizens who contribute to the maximum development of the economy and society. These complex relationships with different stakeholders have made corporate social responsibility and the existence of banks interdependent and inseparable. Banks need to be socially responsible to be able to build their “reputational capital”, thereby enabling them to attract high quality employees, negotiate better contracts, expand their customer base, attract investors and win public trust and confidence.

Since the relationship between banks and their stakeholders is based on trust that demands ethical behaviour from banks, banks are obliged to show responsibility in terms of integrity, responsibility and affinity. San-Jose, Retolaza and Gutierrez-Goiria elaborate on the following three levels of responsibilities.²²⁶

- Integrity – banks should not operate on exclusivity by excluding individuals or groups because of poverty, ethnicity or affiliations.
- Responsibility – banks should be accountable for the social and economic consequences of their behaviour.
- Affinity – banks should adopt positive criteria in investments.

Regarding the social conduct of banks, Dorasamy observes that “The fact that society grants the legitimate and continued existence of banks as supported by the stakeholder theory, banks therefore have a social responsibility to all stakeholders for permitting their existence. Hence, banks need to optimise the economic satisfaction of all stakeholders, without exploiting the environment, depleting resources or violating human rights. Failure to do so can compromise economic and environmental sustainability, while highlighting a weak corporate social orientation and values.”²²⁷

Repayment concept argument – firms draw all their resources from the society; so they must repay the society

In Safdar Ali Butt’s 2020 article *The Case For and Against Corporate Social Responsibility*, the following argument is put forward in support of CSR:²²⁸

Firms draw all their resources from the society; they must repay the society. Some sociologists equate expenditure on CSR as a form of voluntary taxation – a mode of ensuring some equity in distributing the profits earned by the firm instead of passing all of them to just one group of stakeholders. The expenditure on CSR can be taken as an implicit cost of doing business.

²²⁵ N Dorasamy, “Corporate Social Responsibility and Ethical Banking for Developing Economies,” n 220, p 777.

²²⁶ Leire San-Jose, Jose Luis Retolaza, and Jorge Gutierrez-Goiria, “Are Ethical Banks Different? A Comparative Analysis Using the Radical Affinity Index,” *Journal of Business Ethics* 100, no. 1 (February 2, 2011): 151–73, <https://doi.org/10.1007/s10551-011-0774-4>.

²²⁷ N Dorasamy, “Corporate Social Responsibility and Ethical Banking for Developing Economies,” n 220, p 783.

²²⁸ Safdar Ali Butt “The Case For and Against Corporate Social Responsibility” n 221.

Sustainability of business firms depends on the wellbeing of the society

In Safdar Ali Butt's article, the following further argument is put forward in support of CSR:²²⁹

Sustainability of business firms depends on the wellbeing of the society. Opportunities for good returns on investment thrive only if the society is thriving. If the society suffers due to the negligence of firms, the society will not be able to continue buying their products, thereby jeopardising the very existence of commercial units.

In their role as financial intermediaries, banks have a contribution to make towards creating and maintaining inclusive societies.

The *UN Finance Initiative: Principles for Responsible Banking: Commitment to Financial Health and Inclusion*²³⁰ is a first-of-its-kind commitment by signatory banks to promote universal financial inclusion and foster a banking sector that supports the financial health of customers.²³¹

The Commitment, signed by a number of banks around the world, states:²³²

"...we recognise that in our role as financial intermediaries we have a contribution to make towards creating and maintaining inclusive societies founded on human dignity, which are necessary for achieving shared prosperity for both current and future generations..."

Promoting financial inclusion is a collective responsibility of the public and private sectors.

In her 2014 speech *"Empowerment Through Financial Inclusion, Address to the International Forum for Financial Inclusion"*, IMF Managing Director Christine Lagarde argued that:²³³

...promoting financial inclusion [is] a collective responsibility. It is a task for both the government and the private sector. Each has a role to play—the private sector in harnessing technology and adapting to consumer needs, the government in creating an enabling environment for greater financial inclusion. Civil society also has a role to play, of course, by providing informal support and oversight.

An Australian commentator, Therese Wilson, is critical of financial inclusion-oriented CSR initiatives. She states:²³⁴

Voluntary CSR initiatives by banks will, for the most part, be limited to achieving strategic outcomes for banks, such as improving their public reputations, and may therefore not go far enough to effectively address financial exclusion. These initiatives are also potentially ephemeral, in the sense that a major change within a banking corporation, such as a change to the Chief Executive Officer, could well spell the end for some of these initiatives, particularly in difficult financial times.

²²⁹ Ibid.

²³⁰ United Nations Environment Programme – Finance Initiative, "Financial Health & Inclusion Commitment – United Nations Environment – Finance Initiative," United Nations Environment Programme – Finance Initiative, accessed November 25, 2022, <https://www.unepfi.org/banking/commitments/commitment-to-financial-health-and-inclusion>.

²³¹ United Nations Environment Programme – Finance Initiative, "Principles for Responsible Banking– United Nations Environment – Finance Initiative," n 216.

²³² Ibid.

²³³ Christine Lagarde, "Empowerment through Financial Inclusion, Address to the International Forum for Financial Inclusion by Christine Lagarde, Managing Director, International Monetary Fund," n 224.

²³⁴ Therese Wilson, "Consumer Credit Regulation and Rights-Based Social Justice: Addressing Financial Exclusion and Meeting the Credit Needs of Low-Income Australians", *UNSW Law Journal*, Vol 35 (2), 2012, p 515.

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For Wilson, the power, resources, and privileged positions of banking corporations as authorised deposit-taking institution licence holders give rise to an obligation to contribute to a solution to financial exclusion in Australia. In her view:²³⁵

“Banking corporations, because of their central role in the Australian financial system, wield a certain amount of power and influence in Australian society. Further, the privilege of being able to receive consumer deposits as authorised deposit-taking institution (‘ADI’) licence holders undoubtedly places banks in a favourable position in terms of fundraising to sustain profitable lending activities. They are also in a position of significant economic power due to the resources which they hold and, unlike most other corporations, have the benefit of a government guarantee that, at least in the case of the larger banks, they should not be allowed to fail”.

Given the central role of banks in the Australian financial system, Wilson argues for mandated CSR for banking corporations, quoting with approval research into financial exclusion in Australia by Connolly and Hajaj which supported the view in 2001 that:²³⁶

It is not sufficient to argue that banks are now like any other competitive business whose primary business is to maximise the return to the shareholder. The major banks, because of their key role in the financial system, have a utility function that confers responsibilities beyond that of ordinary business.

This view is supported by Professor Cartwright, who asks ‘whether the special nature and importance of banking justifies the imposition of an obligation to provide certain suitable banking services and products to consumers?’²³⁷

Cartwright then considers arguments surrounding CSR and the ‘services of general interest’ argument espoused by Wilhelmsson, before concluding that ‘it is possible to argue that it is legitimate to put social obligations on banks although the precise justification for such an imposition is a matter for debate’.²³⁸

Relevance of the Fair Conduct regime

There are two ways in which the fair conduct regime (not yet in force but expected to come into force in 2025) is potentially relevant to the provision of bank accounts to prisoners. The first relates to existing customers (including persons in prison) and the second relates to prisoners and ex-prisoners that are not existing customers.

If a person is an existing bank customer when they enter prison, then the fair conduct principle is clearly applicable. This requires that the bank pays due regard to their interests, acts in good faith, and ensures that the banking services provided meet the requirements of this group of customers.²³⁹ It could be argued, for example, that this requires the bank to stop charging fees once a person is in prison and to not close their account because they are in prison. Support for such policies can perhaps be drawn from the requirement in the CoFI legislation to have specific regard to vulnerable consumers when designing the fair conduct programme.²⁴⁰

More difficult is the question whether the fair conduct regime has any implications for a prisoner not already a customer who wishes to open an account. These could be prisoners not due for release, prisoners who are due for release, or people who have come out of prison.

²³⁵ Ibid.

²³⁶ Ibid. Quoting Chris Connolly and Khaldoun Hajaj, “Financial Services and Social Exclusion” (Report, Financial Services Consumer Policy Centre, University of New South Wales, March 2001).

²³⁷ Peter Cartwright, *Banks, Consumers and Regulation* (Bloomsbury Publishing, 2004), p 212.

²³⁸ Ibid, p 218. Quoted in Therese Wilson, “Consumer Credit Regulation and Rights-Based Social Justice: Addressing Financial Exclusion and Meeting the Credit Needs of Low-Income Australians,” n 234, p 516. See also the discussion at pp 81-83 of this Report.

²³⁹ Financial Markets Conduct Act 2013, s 446C (as inserted by the Financial Markets (Conduct of Institutions) Amendment Act 2022 and not yet in force).

²⁴⁰ Financial Markets Conduct Act 2013, s 446J (as inserted by the Financial Markets (Conduct of Institutions) Amendment Act 2022 and not yet in force).

The fair conduct principle states that financial institutions must treat consumers fairly.²⁴¹ ‘Consumer’ is a broader term than customer. ‘Consumer’ is defined in s 446P (relevantly) as a person who receives a service from the bank as a retail client or is offered the service and would be a retail client if they received the service. The service in question here is setting up a bank account (which would be a debt security under the FMCA).²⁴² The fair conduct obligation applies when the product is designed, offered and provided (and to dealings and interactions with a consumer in connection with the service).

It would seem that the fair conduct principle does not have any application in relation to the decision whether to offer a product to any person or group of persons. So long as the product has been designed with the requirements and objectives of likely consumers, then there appears to be no direct obligation under the new regime to persons to whom the product is not offered. However, once the product was offered to a prisoner then they would become a consumer and the fair conduct principle would apply in relation to conduct towards that person.

Our research has revealed that currently only one bank in New Zealand is actively offering the service of setting up a bank account for a person while they are still in prison. That bank would have the obligation to comply with the fair conduct principle in relation to prisoners (as a group), on the basis it can be argued that all prisoners have been offered the product.²⁴³

If a bank had a policy of not offering the services of the bank to a person who is still in prison, it would be difficult to argue that the product had been ‘offered’ to these people, meaning that the fair conduct principle likely does not apply in this situation.

Some of the major banks are not proactive in this space but told us they would potentially consider an application from a prisoner if the AML ID and address requirements could be met. These banks might arguably be under fair conduct obligations on the basis that the product is on offer to persons in prison.

If it can be argued that the product (a bank account) is on offer to prisoners, then prisoners become “consumers” for the purposes of the fair conduct regime, and the bank is then obliged to – pay due regard to the prisoners’ interests, act ethically, transparently and in good faith, assist the prison to make informed decision and ensure that the product (bank accounts) are likely to meet the prisoners’ requirements and objectives. However there remains that hurdle that the fair conduct regime does not require a bank to decide to offer the product to this group (prisoners) in the first place.

Do banks in practice acknowledge a duty of corporate social responsibility?

Banks are becoming more aware of their social responsibilities and have started providing Environment, Social and Governance (ESG) visions and reports.

New Zealand does not have a government mandated ESG sustainability reporting framework or standard. Currently, there is a range of voluntary and some mandated corporate reporting that relates to climate and sustainability.²⁴⁴ In the last decade, uptake of voluntary sustainability reporting has increased, along with a deepened understanding of environmental and social risks for corporate New Zealand.²⁴⁵

²⁴¹ Ibid.

²⁴² Note that even though bank-issued debt securities have an exemption from Part 3 of the Financial Markets Conduct Act, they are captured by s 5 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

²⁴³ A counter argument would be that the product is not offered until the application has been approved. This is a narrower construction of “offer” and would be based on a legal analysis that found the bank invited persons to apply for an account, then once it had considered the application it would *then* offer the service of providing an account to the person who would then accept or decline.

²⁴⁴ Daniel Meech & Tom Bayliss, “International Developments in Sustainability Reporting” (Ministry of Business, Innovation, and Employment, 2021), <https://www.mbie.govt.nz/dmsdocument/15110-international-developments-in-sustainability-reporting-pdf>. Since this publication there have been more international developments in relation to sustainability related disclosures. In March 2022 the ISSB published Exposure Draft IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information, proposing overall requirements for an entity to disclose sustainability-related financial information about its sustainability-related risks and opportunities.

²⁴⁵ Ibid, p 16.

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In October 2021, the Government introduced a new regime making climate-related disclosures mandatory for some organisations. Organisations covered (known as Climate Reporting Entities or CREs) will have to make annual disclosures covering governance arrangements, risk management, strategies and metrics and targets for mitigating and adapting to climate change impacts. The requirement applies to the large publicly listed companies, big insurers, large banks, large credit unions and building societies, and managers of large investment schemes.²⁴⁶ This reporting requirement is separate from the ESG reporting that the major banks have been already voluntarily undertaking.

ANZ Bank

The ANZ New Zealand notes:²⁴⁷

ANZ is one of New Zealand's largest companies. We know that our actions have the potential to significantly impact the wellbeing of staff, customers, communities and the environment. Being a responsible corporate citizen is one of the best ways we can show New Zealand that we're committed to long term success for all.

Our approach to corporate responsibility focuses on the issues and opportunities most relevant to our business.

Each year we set goals and establish work programmes around priority issues for our industry, customers, employees and the community. These include providing responsible products and services for our customers, creating a diverse and inclusive workforce, and improving financial knowledge and capability in our communities.

ANZ produces ESG reports to meet the needs of the bank's key external stakeholders, including investors and customers, and to take account of the social, environmental, and economic risks and opportunities.²⁴⁸

The ANZ ESG reports assess the bank's performance against the United Nations Sustainable Development Framework.²⁴⁹ The 2022 ESG Supplement dedicates an entire section (at pp 62-63) to human rights.²⁵⁰

Financial wellbeing is identified as a 'strategic priority' in ANZ's 2022 ESG Supplement Report. The report identifies the following ways for ANZ to progress 'financial wellbeing':

*Promoting and enabling access to safe and affordable products and services, particularly for lower-income consumers and customers in need of extra care. Work with cross-sector partners to help customers, employees and the broader community meet current financial commitments and needs and improve their financial resilience.*²⁵¹

Regarding financial inclusion, the 2021 and 2022 ESG supplement reports state:

Approach to Accessibility and Financial Inclusion
– making our products, services, workplace and culture supportive of people with disability and improving outcomes for those at risk of financial exclusion.^{252 253}

²⁴⁶ Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021.

²⁴⁷ "Corporate Responsibility | ANZ," (ANZ, 2019), <https://www.anz.co.nz/about-us/corporate-responsibility>.

²⁴⁸ ANZ, "ESG Reporting," 2022, <https://www.anz.com.au/about-us/esg/reporting>.

²⁴⁹ ANZ, "ANZ 2022 ESG Supplement," 2022, <https://www.anz.com.au/content/dam/anzcom/shareholder/2022-anz-esg-supplement.pdf>.

²⁵⁰ Ibid.

²⁵¹ Ibid. p 7.

²⁵² Ibid.

²⁵³ ANZ, "ANZ 2021 ESG Supplement," 2021, <https://www.anz.com.au/content/dam/anzcom/shareholder/2021-esg-supplement.pdf>.

The ANZ has a volunteering programme, delivers a financial knowledge programme called MoneyMinded, financial hardship assistance, and has an ANZ New Zealand Staff Foundation (which is a charitable trust).²⁵⁴

ASB Bank

The ASB's purpose statement states:²⁵⁵

At ASB, we have always been driven by a passion for progress.

We deliver on our purpose by providing simple, meaningful ways to help Kiwis improve their financial wellbeing, today and tomorrow. We achieve this by doing what we do best, championing innovation and fresh thinking, so we can open up new opportunities for more people to stay one step ahead.

We believe it is important to deliver our purpose not just for our customers, but for our communities and the New Zealand economy as a whole.

ASB assesses its ESG performance in its annual Corporate Responsibility Report. ASB, like ANZ, assesses its performance against the UN Sustainable Development Goals and is increasingly directing greater focus on reporting its performance against human rights standards.^{256 257} The reports don't contain a specific focus on financial inclusion.

BNZ

BNZ assesses its ESG performance in its annual Sustainability Report. The 2020 Report acknowledged that "It is almost impossible to function in New Zealand without a relationship with a bank, meaning financial inclusion is a core element of prosperity".²⁵⁸ Identifying financial wellbeing as the BNZ's fifth highest-ranking of six strategic priority, the report stated:

*BNZ's commitment to financial wellbeing was identified as a strength, but one where we can provide even greater leadership. By supporting greater financial inclusion and literacy, BNZ can increase its positive impacts in communities.*²⁵⁹

The BNZ's 2021 Sustainability Report identifies tackling economic abuse; disrupting predatory lending; GoodLoans and PaySauce schemes as the key elements of the Bank's financial inclusion work.²⁶⁰

- **GoodLoans:** BNZ partners with Good Shepherd NZ, to provide no-and low-interest 'Good Loans' to eligible people across NZ who may not otherwise be able to access mainstream credit. Good Shepherd NZ provides the framework, quality assurance, monitoring and learning, and development for the partnership. Good Loans provide a pathway to fair and affordable borrowing, through Good Shepherd NZ and its community provider partners The Salvation Army, Aviva, Presbyterian Support Otago, and BudgetFirst.²⁶¹
- **PaySauce payday solution:** BNZ PayNow is a no interest way for employees to access wages before payday and an alternative to predatory payday loans. Employees can use the PaySauce mobile app to draw down on funds they've already earned, effectively letting them choose their own payday on demand.²⁶²

254 ANZ, "Community," 2019, <https://www.anz.co.nz/about-us/corporate-responsibility/community>.

255 ASB, "About Us | ASB," <https://www.asb.co.nz/about-us>.

256 ASB, "2020 Corporate Responsibility Report," 2020, pp 13 and 27, <https://www.asb.co.nz/content/dam/asb/documents/community/corporate-responsibility/asb-corporate-responsibility-report-2020-21.pdf>.

257 ASB, "2021 Corporate Responsibility Report," 2021, <https://www.asb.co.nz/content/dam/asb/documents/community/corporate-responsibility/asb-corporate-responsibility-report-2020-21.pdf>.

258 BNZ, "Te Pae Tawhiti Looking to the Future," 2020, p 33, <https://www.bnz.co.nz/assets/bnz/about-us/PDFs/BNZ-Sustainability-Report.pdf?7b1ac169c7005cec26dfee7ac5e091759464ca24>.

259 Ibid, p 12.

260 BNZ, "Sustainability Report 2021," 2021, <https://www.bnz.co.nz/assets/bnz/about-us/PDFs/Sustainability-Report-2021.pdf?ec2dc44ee40b02b3e7354cfa44a905afb61a199c>.

261 Ibid, p 27.

262 Ibid, p 28.

SECTION 6 — Do banks have CSR obligations that require them to do more to facilitate banking for prisoners? CONT

Westpac Bank

Westpac New Zealand's has a vision statement on their website:²⁶³

Our commitment is manaaki te ao, manaaki te tāngata, e tipu pūtea ora. Care for the planet, care for people and grow financial wellbeing.

We are taking action to create a better future for the people who bank with us, work with us, invest in us or are part of our broader communities. We do this through our core business, and more widely by using our financial and economic expertise to generate positive economic, social and environmental outcomes for our customers and Aotearoa.

Westpac has a Sustainability Strategy 2025.²⁶⁴ Westpac strategy is to be assessed against the Sustainable Development Goals. Regarding financial inclusion, the Strategy aims to 'enable all Kiwis to be financially secure and independent' and, specifically, to "help 15,000 Kiwis who are at risk of financial exploitation and exclusion".²⁶⁵

Westpac also has a number of partnerships, the most recognised is the Westpac Rescue Helicopters.²⁶⁶

The Westpac New Start programme is particularly relevant to this research. A January 2021 media release by Westpac states that:²⁶⁷

Westpac – as part of its role as the Government's bank – is working with the Department of Corrections to enable newly-released prisoners to be given valid ID, a bank account, debit card and access to online banking – all to be ready on their release date.

A form of acceptable identification is needed to open a bank account, and this has been the main barrier to financial services for the financially excluded.

Westpac works with the Ministry of Social Development, Ministry of Justice and Police to deliver the New Start pilot programme.

Westpac identifies the New Start pilot scheme as part of its broader work of "helping provide more inclusive financial services." Westpac's 2021 Sustainability Report reflects that "since early 2020, 38 bank accounts have been opened by people soon to be released from prison through the New Start pilot."²⁶⁸

Westpac NZ's other self-reported initiatives to broaden financial inclusion include:

- A partnership with SeniorNet through which Westpac reports helping 1,656 older New Zealanders.
- A partnership with iSign, which makes Westpac New Zealand's first bank to offer free in-branch sign language interpreters to their deaf and hearing-impaired customers.
- Implementing training for their customer facing team members on how to support customers experiencing family and domestic violence.
- A partnership with FinCap.²⁶⁹

In summary, there are arguments that banks should recognise they owe CSR obligations, even though this is not mandated by New Zealand law. However banks would likely argue that they are doing just that with the various programmes that they support, many of which are listed above.

²⁶³ Westpac New Zealand, "Sustainability & Community," <https://www.westpac.co.nz/about-us/sustainability-community>.

²⁶⁴ Westpac New Zealand, "Westpac New Zealand 2025 Sustainability Report," <https://www.westpac.co.nz/assets/About-us/sustainability-community/documents/Westpac-NZ-2025-Sustainability-Strategy.pdf>.


²⁶⁵ Ibid, p 1.

²⁶⁶ Westpac New Zealand, "Our Partnerships," <https://www.westpac.co.nz/about-us/sustainability-community/partnerships>.

²⁶⁷ "Westpac Offers Bank Accounts to Help Newly-Released Prisoners Re-Integrate into Society," Westpac media release, n 118.

²⁶⁸ Westpac New Zealand, "2021 Summary Sustainability Report," 2021, p 8, <https://westpacsustainability.co.nz/assets/images/Westpac-NZ-Summary-Sustainability-Report-2021.pdf>.

²⁶⁹ Ibid.



There are writers that argue that the right to financial inclusion, which includes having access to a bank account, should be considered a human right.

SECTION 7 — Is access to a bank account a human right?

Introduction

Many of the parties that we spoke to in the course of doing the research told us that they considered access to a bank account was a human right. This seemed to be an instinctive statement rather than something that they had looked into in any detail. Mentors often expressed this view.

For example, one mentor said access to a bank account is a human right because:

- *It was 'essential for life'.*
- *We are becoming a cashless society.*
- *Basic banking service are essential to enabling folks to meet their lower-level needs, which enable them to pursue other things which make their lives worth living*
- *Social connectedness*
- *Ability to participate in everyday life.*

Not only mentors held this view. One bank told us that while banks, traditionally, are risk averse institutions, there is a growing understanding that a bank account is a human right.

We decided to find out if legal arguments can be made to support that statement.

There is nothing in the New Zealand Bill of Rights Act 1990 that might apply to give anyone in New Zealand the right to a bank account. There is the right to freedom from discrimination on the grounds set out in the Human Rights Act 1993 (section 19). The Human Rights Act imposes certain obligations on private providers of goods and services, namely not to refuse to provide services or treat any customers less favourably on any of the listed grounds of discrimination (section 44). However, discrimination on the grounds of incarceration is not a prohibited ground of discrimination.

Nevertheless, there are writers that argue that the right to financial inclusion, which includes having access to a bank account, should be considered a human right. New human rights are recognised at an international

level from time to time, as evidenced by the UN General Assembly's recognition in July 2022 of a human right to a clean, healthy and sustainable environment.²⁷⁰

After setting out the context of how human rights norms interact with banks and clarifying the concept of 'financial inclusion' as it relates to our research, this section will present arguments for framing a putative human right to financial inclusion. A key part of financial inclusion is the right to a bank account.

The arguments that there is a human right to financial inclusion – Overview

Drawing extensively from a 2015 book chapter by Professors Kimberly Brownlee and Zofia Stemplowska, and a 2016 chapter by Jahel Queral, there are three strategies for defending the argument that there is a human right to financial inclusion. The arguments, discussed in turn are:

- A human right to financial inclusion supports the fundamental human interest to live autonomously.
- A linkage argument can be made, that financial inclusion supports the enjoyment and realisation of other, fundamental human rights, such as the right to an adequate standard of living.
- A proposed right to financial inclusion is relevantly similar to a right to basic education, and that, if a compelling case can be made for a human right to basic education, then, in principle, a comparable case can be made for a human right to financial inclusion.

²⁷⁰ United Nations UN News, "UN General Assembly declares access to clean and healthy environment a universal human right", 28 July 2022, <https://news.un.org/en/story/2022/07/1123482>.

A different but related approach is taken by Australian commentator Therese Wilson, who argues that there is a human right to social justice that includes access to banking services, as these enable participation in everyday life as well as supporting a sense of dignity which is central to human rights law. This approach is supported by the writings of Finnish academic Thomas Wilhelmsson.

Arguments in support of a human right to financial inclusion

This next section provides a very brief conceptual and legal background, against which a putative human right to financial inclusion can be framed, considered, and defended.

The concept of human rights

Philosophically, the concept of a human right is the “concept of a minimum standard for treating people addressed to institutions”.²⁷¹ Institutions – say, banks, for our purposes – are the targets of human rights claims, because “individuals join together to form institutions and submit to them in ways that make institutions more powerful than individuals”.²⁷² More powerful means “more capable than typical individuals acting alone of significantly benefiting or harming individuals”.²⁷³ Usefully, Professor Tim Sorrell clarifies that the institutions in question need not be states – the paradigm duty-holders in human rights law – but neither can the duty holders be individuals in general; “otherwise all failures to discharge moral duties, or too many, might count as a human rights violation”.²⁷⁴

Human rights law and banks

Human rights are inherent to all human beings. They are defined and established in more than 80 international legal instruments²⁷⁵ and define the fundamental protections of human dignity, needs, and freedoms, such as food, housing, privacy, personal security, and democratic participation. Since the adoption of the Universal Declaration of Human Rights (UDHR)²⁷⁶ in 1948, the responsibility to protect human rights has primarily fallen on governments. Beginning in the early 2000s, however, it became increasingly clear that the freedoms enshrined in the framework could also be violated—and promoted—by the private sector.²⁷⁷

Banks, and businesses more generally, arguably have a duty to ‘respect’ human rights. The United Nations Guiding Principles on Business and Human Rights²⁷⁸ stipulate that all business enterprises, including banks, should ‘respect’ human rights – which means avoid infringing on the human rights of others and addressing adverse human rights impacts with which they are involved. ‘Respect’ is a term of art in human rights law. Respecting rights means not to infringe upon them. In contrast, States have a duty not only to respect but also to protect human rights against infringement by third parties, and to fulfil those rights by facilitating the increased enjoyment of them.²⁷⁹ More specifically, companies can be involved with adverse human rights impacts both through their actions and their omissions.²⁸⁰

271 Tom Sorrell, “Is There a Human Right to Microfinance?,” in *Microfinance, Rights and Global Justice*, ed. Luis Cabrera, 2015, 27–46, p 29, <https://doi.org/10.1017/cbo9781316275634.003>.

272 Ibid.

273 Ibid.

274 Ibid.

275 Including, notably, the rights guaranteed by the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) with its two Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights (1966).

276 United Nations General Assembly, The Universal Declaration of Human Rights (UDHR). New York: United Nations General Assembly, 1948.

277 Business for Social Responsibility, “10 Human Rights Priorities for the Extractives Sector | Primers | Sustainable Business Network and Consultancy | BSR,” 2022, <https://www.bsr.org/en/primers/10-human-rights-priorities-for-the-extractives-sector>.

278 United Nations – Office of the High Commissioner, “Guiding Principles on Business and Human Rights,” (Geneva: United Nations, 2011).

279 Foley Hoag LLP and United Nations Environment Programme Finance Initiative, “Banks and Human Rights: A Legal Analysis,” 2015, p 8, fn 3, <https://www.unepfi.org/fileadmin/documents/BanksandHumanRights.pdf>

280 Ibid. p 8.

SECTION 7 — Is access to a bank account a human right? CONT

The UN Guiding Principles apply to all enterprises in all sectors, including banks. They define the scope of the corporate responsibility to include the bank's own impacts and potentially those arising from its business relationships. In order to respect human rights, companies should:²⁸¹

- avoid causing adverse human rights impacts;
- avoid contributing to adverse human rights impacts; and
- seek to prevent or mitigate impacts that are linked to their operations, products or services through their business relationships.

The landscape for banks as well as other companies with regard to human rights is changing. Standards such as the UN Guiding Principles have shifted the discussion from one focused on whether companies have any responsibility for human rights, to a dialogue regarding the scope and practical consequences of such a responsibility. That the ANZ, ASB, and Westpac banks are assessing, measuring and publicly reporting their corporate performance against human rights and Sustainable Development Goals (SDGs), is an additional demonstration of how human rights are becoming a core business consideration.²⁸²

Understanding financial inclusion

In scholarly debates about financial inclusion, non-usage of financial services is used as a proxy for lack of access to these services. However, Jahel Queralt clarifies that from a normative perspective, the concepts of non-usage and lack of access to financial services should be clearly distinguished.²⁸³ “While financial usage is the act of employing or utilising financial services, financial access refers to the availability of such services. Financial inclusion is

concerned with *effective* access to financial services. It seeks to ensure universal availability – not usage – of affordable and adequate *basic* financial services”.²⁸⁴

Situations where individuals are prevented from gaining or unable to gain access to basic financial services can thus be described as cases of financial exclusion.

Queralt, writing about the financial exclusion of the global poor, identifies four elements that contribute to financial exclusion:²⁸⁵

- **High cost barrier:** this includes economic and non-economic costs. Economic costs are the fixed fees and interest rates charged by mainstream financial institutions. The non-economic costs of using financial services include the time and effort needed to maintain a relationship with a bank and to access the required banking services.
- **Bureaucratic barrier:** this refers to the documentation requirements for opening a savings account or contracting other financial services which typically exclude people who do not have proof of address or of a legal identity.
- **Discrimination barrier:** this refers to financial discrimination which takes place when financial services are denied or adjusted on the basis of non-relevant factors such as race, gender or ethnicity. Financial discrimination can be sanctioned by law (i.e. the requirement for women to have a co-signing male relative in order to apply for credit in Middle-Eastern and South Asian countries).
- **Financial illiteracy:** this barrier describes how poor people often turn to informal finance because they are unfamiliar with the existence and the functioning of formal financial services and may lack the necessary means to obtain the relevant information.

²⁸¹ United Nations – Office of the High Commissioner “Guiding Principles on Business and Human Rights,” n 278.

²⁸² See, for example: ANZ, “ANZ 2022 ESG Supplement,” 2022, <https://www.anz.com.au/content/dam/anzcom/shareholder/2022-anz-esg-supplement.pdf>.

²⁸³ Jahel Queralt, “A Human Right to Financial Inclusion,” in *Ethical Issues in Poverty Alleviation*, ed. Helmut P. Gaisbauer, Gottfried Schweiger, and Clemens Sedmak (Springer, 2016), 77–92, pp 79–80, https://doi.org/10.1007/978-3-319-41430-0_5.

²⁸⁴ Ibid.

²⁸⁵ Jahel Queralt “A Human Right to Financial Inclusion,” n 283, p 80.

In the presence of these barriers, Queralt goes on to argue that non-use of financial services is tantamount to a lack of access to financial services. Still, it is important to keep the concepts of access and usage separate because it might be the case that individuals have the possibility of using adequate and affordable financial services but decide not to. From the standpoint of financial inclusion, such decisions are not problematic.²⁸⁶ But, in the instance of unbanked, justice-impacted individuals, many of the four features identified by Queralt are relevant, suggesting both a lack of access and non-usage of financial services which characterise financial exclusion.

Three things ought to be clear from the foregoing discussion of financial inclusion. First, financial inclusion is concerned with real possibilities of using financial services. That is, financial inclusion conceptually focuses on access rather than usage, necessarily, of those services. Second, financial inclusion can be defined as “a state or a process that ensures effective access to adequate and affordable financial service – or negatively, as the absence or the removal of barriers and obstacles that makes access to [basic] financial services difficult”. Thirdly, financial inclusion can be understood as a distributive dimension of financial development, concerned with the availability of financial services to all.²⁸⁷

Framing financial inclusion as a putative human right

This section addresses the question of why access to basic financial services is an appropriate object of human rights protection.

Professors Kimberly Brownlee and Zofia Stemplowska (2015), and Jahel Queralt (2016), provide similar, albeit slightly different, definitions of a right to financial inclusion. Brownlee and Stemplowska define the right to financial inclusion as “a putative right to be accepted within a functioning financial services system irrespective of one’s financial position, and to have

access to legitimate financial services such as a bank account, saving facilities, and borrowing facilities on reasonable terms, all provisions which expand persons’ opportunities to shape their own lives”.²⁸⁸

Queralt’s definition goes further. She defines the human right to financial inclusion as being a right to “a full suite of high quality basic financial services – including credit, savings, insurance, and payment services – at an affordable cost without being discriminated against on grounds of financial situation, race, religion, ethnicity or gender.”²⁸⁹ Three elements of Queralt’s definition require elaboration.

First, “high-quality should be understood as an all-encompassing term that includes (i) product-fit – i.e. adequacy of the products to the needs of the clients-, (ii) client protection – e.g. prevention of over-indebtedness, transparency, mechanisms for complaint resolution, etc. – and (iii) respectful treatment”.²⁹⁰

Second, “the right to financial inclusion ensures access to a range of financial services that can be considered basic in the sense that they are essential to enable individuals’ full participation in the mainstream economy. It is thus not concerned with the availability of more sophisticated financial products such as stocks and derivatives”.²⁹¹

Thirdly, “the full realisation of the right to financial inclusion requires universal availability of affordable financial services. Thus, it is fulfilled when all individuals, including the very poor, can access basic financial services at a price that is in line with their ability to pay”. Queralt hastens to emphasise that “the right to financial inclusion assigns a duty to the right holders to pay for the services they receive. It does not ensure free basic financial services for all – its aim is to make financial markets maximally inclusive, not to transform them into something else”.²⁹²

²⁸⁶ Ibid.

²⁸⁷ Ibid, p 81.

²⁸⁸ Kimberley Brownlee and Zofia Stemplowska, “Financial Inclusion, Education, and Human Rights,” in *Microfinance, Rights, & Global Justice*, Cambridge University Press 2015, p 48.

²⁸⁹ Jahel Queralt “A Human Right to Financial Inclusion,” n 283, p 82.

²⁹⁰ Ibid.

²⁹¹ Ibid.

²⁹² Ibid.

SECTION 7 — Is access to a bank account a human right? CONT

Duty-bearers

As a human right, the right to financial inclusion is held by all individuals and imposes nondiscretionary obligations on states and other actors.²⁹³

The issue of identifying the duty-bearers of a human right is usually not a simple one, but it is particularly complicated in the case of the proposed right. Financial services are provided by the financial industry and so identifying the range of businesses belonging to this industry as the primary addressees of a right to those services seems at a cursory level pretty straightforward. This, however, is doubly problematic. First, considering that human rights are typically conceived as norms addressed to states, it seriously weakens the case for a right to financial inclusion.²⁹⁴ Second, given that financial institutions operate under important economic constraints – e.g. solvency and deposit protection, considering them as the primary duty-bearers makes the fulfilment of the right highly conditional.²⁹⁵

For those two reasons, Queralt proposes that the “primary obligation” inherent in the (putative) right to financial inclusion should be that governments take the necessary steps to create an enabling environment for a well-functioning inclusive financial system. This, in turn, entails different duties. First, it imposes a duty on governments not to facilitate, promote, or undertake activities such as rent seeking behaviour or taking bribes, that hinder financial inclusion. Secondly, a right to financial inclusion generates a positive duty to regulate financial markets and provide incentives to financial institutions with the purpose of ensuring the progressive realisation of full financial inclusion.²⁹⁶

Justifications for the right to financial inclusion

Financial inclusion and individual autonomy

A common justificatory approach to human rights holds that a right is justified as a human right if it secures fundamental human interests.²⁹⁷ The core idea behind this view is that individuals will have a better life if they live in a society that respects and secures their human rights. Human beings have a broad range of interests but we can only consider fundamental, and thus worthy of human rights protection, those that are “recognisable as important in a wide range of typical lives that occur in contemporary societies”.²⁹⁸ Even though human rights theorists do not agree on which specific interests pass this test, our interest in living as autonomous agents, or simply, our interest in autonomy is endorsed by many of them as a good candidate. The ideal of autonomy holds that individuals – adults of normal capacities – should be the authors of their own lives. They should be able to reason on the basis of their values, goals and preferences and choose freely – i.e. without coercion or manipulation – from an adequate range of available options.²⁹⁹ The interest in autonomy can thus be broadly defined as an interest in having the mental capacities to form intentions and beliefs of certain complexity and being able to use such capacities to pursue a worthwhile life.^{300 301}

The human interest in autonomy yields three more specific claims, namely:³⁰²

- i. the claim to assistance in the development of the ability to choose autonomously;
- ii. the claim to non-interference with one’s exercise of autonomy; and
- iii. the claim to the creation and maintenance of meaningful opportunities for choice.

293 Ibid, p 83.

294 Ibid.

295 Ibid.

296 Ibid.

297 James Nickel, *Making Sense of Human Rights: Philosophical Reflections on the Universal Declaration of Human Rights*, University of California Press, 1987, p 84.

298 Charles R Beitz, *The Idea of Human Rights*, Oxford Univ. Press, 2011, p 210.

299 Joseph Raz, *The Morality of Freedom*, Clarendon Press, 1986, p 373. See also Jahel Queralt “A Human Right to Financial Inclusion”, n 283, p 84.

300 Ibid.

301 Jahel Queralt “A Human Right to Financial Inclusion,” n 283, pp 82-83.

302 Ibid.

These claims often have a prominent role in the justification of other human rights.

First, granting people basic financial services is an important way of assisting them in acquiring the capacities to choose autonomously and, thus, satisfy claim (i). Savings and credit facilities allow individuals to have access to the resources they need in order to obtain basic goods – e.g. food, clothes, housing and education – that are necessary for the development of such capacities.³⁰³

Second, being able to make financial choices is a dimension of individual autonomy that concerns the freedom to manage one's economic resources.³⁰⁴ Furthermore, the proposed right has crucial instrumental value to advance claim (ii) in a more general sense – i.e. not only concerning financial decisions.³⁰⁵ Savings (and insurance) help protect people against the economic consequences of health shocks, long-term unemployment and other contingencies. In doing so, they render individuals less vulnerable to exploitation and coercive offers, for whom it would otherwise be easier to take advantage of their situation.³⁰⁶

Third, financial services make resources available to individuals to pursue their aims. Financial services help individuals to enjoy options that, in the absence of economic resources, are only available in a formal sense.³⁰⁷ Moreover, they enable them to make intertemporal choices regarding these options, which is essential for life planning. Saving facilities protect people from immediate pressures to spend monetary resources thus helping them to postpone its use.³⁰⁸ Credit gives them the possibility to use resources they currently need but do not have. In short, access to financial services advances claim (iii) because it increases individuals' effective possibilities to pursue their goals and their capacity to plan their realisation.³⁰⁹

Financial inclusion and other human rights

"An alternative non-foundational strategy to justify a right to X as a human right is to show that it can be derived from one of several well-established human rights. This type of argument is known as linkage – argument and can be summarised by saying that a right R1 should be acknowledged as human right if it provides strong support for the implementation or enjoyment of R2, which is already accepted as a justified human right."³¹⁰ Linkage arguments rely on the idea that the realisation of different human rights is highly correlated due to existing supporting relationships between them. They require strong one-way supporting relationships between two rights – not necessarily interdependence or bidirectional support.³¹¹

In her chapter, Queralt offers two linkage arguments that connect the right to financial inclusion with (i) the right to an adequate standard of living and (ii) the right to development. For our purposes, the right to an adequate standard of living is most relevant.

Financial inclusion and the right to an adequate standard of living

The right to an adequate standard of living is recognised as a human right in the UDHR (art.25)³¹² and in the International Covenant on Economic, Social and Cultural Rights (art.14).³¹³ It requires, at a minimum, that people have sufficient access to the necessary means of subsistence – e.g. food, clothing, shelter, basic health care, etc. The right to financial inclusion supports this right in two important ways. First, access to finance enhances the capacities of the poor to engage in income-generating activities and to fend for themselves.³¹⁴ Basic financial services are necessary tools for taking full advantage of the productive opportunities available and, more generally, of the benefits of a productive system.³¹⁵

303 Ibid, p 84.

304 Ibid, p 85.

305 Ibid.

306 Ibid.

307 Ibid.

308 Ibid.

309 Ibid.

310 Ibid, p 86.

311 Ibid, p 85.

312 UN General Assembly, Universal Declaration of Human Rights, 1948, 217 A (III).

313 UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 1966, United Nations, Treaty Series, vol. 993, p. 8.

314 Amartya Sen, "Development as Freedom", (Oxford: Oxford University Press, 1999), p 39.

315 Jahel Queralt "A Human Right to Financial Inclusion," n 283, p 83.

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Analogy with the right to education

Brownlee and Stemplowska highlight a parallel between the opportunities that would be secured by a right to financial inclusion and those that are secured by a less contentious, established human right: the right to basic education. The claim of their chapter is that a proposed right to financial inclusion is relevantly similar to a right to basic education, and that, if a compelling case can be made for a human right to basic education, then, in principle, a comparable case can be made for a human right to financial inclusion.

Justification for the human right to basic education

First, basic education of a person, be she a child or an adult, secures and protects certain fundamental interests that are important both for her life in the present and for her life in the future, including, but not restricted to, her interests in social participation, economic activity, and citizenship.³¹⁶

Second, more specifically, basic education is fundamental to the meaningful exercise of many uncontested human rights such as civil and political rights as well as the rights to marry, to try to have children, to raise children, to associate freely with others, to secure and to maintain employment, and to participate in the social and cultural aspects of a community.³¹⁷

Third, basic education, although it is neither necessary nor sufficient to ensure protection of rights such as the right to basic subsistence or the right not to suffer extremely cruel or degrading treatment, is nonetheless intertwined with those rights in the sense that basic education can render a person less vulnerable to such experiences or treatment, and in cases of degrading treatment can make her aware of, and better able to make use of, mechanisms for support and redress.³¹⁸

An additional feature of the right to education, which is important for Brownlee and Stemplowska's arguments below, is that it is part of the inner logic of a right to education that it directly empowers and enhances the conditions of its recipient. Education puts information, knowledge, practical skills and abilities, reasoning skills, judgement, and understanding directly into the hands of the student. As such, the right to education does something distinct from many other human rights, including those that nonetheless have positive dimensions (which most, if not all, of them appear to do).³¹⁹

Basic analogy

Brownlee and Stemplowska posit that the three arguments presented in favour the right to education, apply in a similar fashion to financial inclusion. First, a right to financial inclusion secures and protects certain fundamental interests including, but not restricted to, people's interests in social participation, economic activity, and citizenship. Second, it is fundamental in the modern society to the meaningful exercise of many uncontested human rights such as civil and political rights as well as the rights to marry, to try to have children, to raise children, to associate freely with others, to secure and to maintain employment, and to participate in the social and cultural aspects of a community. Third, it can render a person less vulnerable to cruel and degrading treatment and enable her better to recover from and redress such treatment if it occurs.³²⁰

Empowerment argument

The types of needs and interests that financial inclusion would secure are comparable in form to those secured through education since financial inclusion opens up direct opportunities to better shape one's life. Herein lies the crux of the analogy between education and financial inclusion alluded to at the outset. It is part of the logic and purpose of each of these provisions that they directly empower or enhance the conditions and capacities of the person who accesses them.

³¹⁶ Kimberley Brownlee and Zofia Stemplowska "Financial Inclusion, Education, and Human Rights," n 288, p 51.

³¹⁷ Ibid.

³¹⁸ Ibid.

³¹⁹ Ibid, p 52.

³²⁰ Ibid, p 54.

“A right to education is a right to have one’s condition improved in a certain way, i.e., it is a right to be given tools necessary not just for survival, but for social cooperation, mutual aid, self-sufficiency, and autonomous choice. It is a right to have one’s situation bettered.”³²¹ The same is true, it is argued, of the (putative) right to financial inclusion.³²²

More relevant to our project, simply being able to have a bank account empowers a person to plan for a future; it protects individuals from immediate pressures to use financial resources, and, if the individuals’ bank account has an interest rate, it allows them to grow their resources over time. These benefits are important not only for those in financial need, but for those who otherwise would lack control over their resources, such as wives and daughters who are denied independent access to financial services. Being able to make financial choices is an important dimension of, and condition for, autonomy.³²³

Since both education and financial inclusion are integral to human life in advanced societies, the life-prospects of a person who is denied either education or access to financial services are directly worsened (or made more vulnerable) both irrespective of her attitude toward the value of education or financial inclusion and irrespective of her general financial condition. That said, *ceteris paribus*, the denial or absence of education or financial inclusion is most grave in the context of poverty and illiteracy (or functional illiteracy), both of which are strongly correlated with social and political exclusion. Poor people and uneducated people (two groups that intersect closely) not only tend to experience social exclusion, but also tend as a result to have this reinforce and worsen their poverty and ignorance.³²⁴ Thus, in the case of prison-experienced people, who are a disproportionately socioeconomically disadvantaged group, exclusion from basic financial services can be understood as a compounding factor to their continued social and economic marginalisation, as well as a complicating factor to the multiple dysfunctions at play in their lives.

Some apparent dissimilarities

Despite the parallels between education and financial inclusion outlined above, it could be argued that there are as many dissimilarities as there are similarities between these domains and that, in consequence, the right to education does not provide a useful starting point from which to consider the merits of a putative right to financial inclusion.³²⁵ Brownlee and Stemplowska consider below four possible dissimilarities – of which the three most relevant are discussed – but then argue that none of these is sufficiently compelling to undermine the parallel that they identify.

Conditionality

A commonsense view might be that basic education and financial inclusion differ with regard to their conditionality. “Whereas the right to basic education should be unconditional and thus secured for everyone, even criminals, [...] the right to financial inclusion should be conditional on good conduct, so the argument might go, requiring no misuse of borrowed funds, no defaulting on loans, and no over-extending, that is, taking out more loans than one can repay”.³²⁶

However, Brownlee and Stemplowska point out that there are good reasons to resist the conditionality of the right to financial inclusion and hence to reject this ostensible dissimilarity.³²⁷ A reason to be wary of conduct sensitive conditionality in financial inclusion lies in the implications of using character as ‘collateral’ for a loan or for accessing basic financial services more broadly. For Brownlee and Stemplowska, the idea of character as collateral is morally troubling, because “it implies that a person seeking financial inclusion must cultivate a sufficiently ‘sympathetic self’, that is, an attractive persona, in order to be viewed as creditworthy. Such a conception of collateral not only can be overly invasive, since it asks lenders to seek, however modestly, to pass judgement on the character of the prospective borrower, but also is discriminatory. In its starkest form, it divides poor people into the ‘deserving poor’ and the ‘undeserving poor’”.³²⁸

321 Ibid, p 55.

322 Ibid.

323 Ibid, p 56.

324 Ibid.

325 Ibid, p 57.

326 Ibid, p 58.

327 Ibid.

328 Ibid.

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Intrinsic Value versus Instrumental Value

Undeniably, the right to education provides something that is valuable in itself. The experience of learning is (typically) an intrinsically valuable experience, and the state of being educated is an intrinsically valuable state. By contrast, it is not clear that financial inclusion provides something valuable in itself. Indeed, at first glance, the state of becoming or being financially secure seems not to be intrinsically valuable, but rather only to make available opportunities to engage in intrinsically valuable activities and projects. However, even if this were true, Brownlee and Stemplowska argue that it would not require us to abandon the analogy between education and financial inclusion, because the central argument for securing and enforcing a human right to education concerns not the intrinsic worth of being educated, but the instrumental effects of education upon a person's capacity to lead her life and to contribute meaningfully to her community. "The language of the UDHR and other international treaties highlights this instrumental reading of the importance of education: 'Education shall be directed to the full development of the human personality and to the *strengthening of respect* for human rights and fundamental freedoms. It shall *promote* understanding, tolerance and friendship among all nations, racial or religious groups, and shall *further the activities of the United Nations* for the maintenance of peace".³²⁹

This conclusion does not, however, lead us to differentiate the right to education from the right to financial inclusion because there is, in fact, intrinsic value for a person in being a decision maker who has funds at her disposal. Being able to make financial choices is one way of expressing and exercising autonomy and is a form of personality development. By way of example, Brownlee and Stemplowska point out how one of the ways in which even rich women whose

husbands control their finances are disempowered is that they cannot make such decisions. Therefore, although financial (monetary) resources are themselves only instrumentally valuable, the decision-making capabilities that they give to people are not.³³⁰

A Duty to Exercise

Another possible, normatively salient difference between the right to basic education and the proposed right to financial inclusion concerns whether there is a duty to exercise it. "Although it is implausible to hold that, in general, people have a duty to exercise their human rights, it is generally held that the right to basic education is one that people do have a duty to exercise both in themselves and on behalf of their children and dependants. The UDHR declares that 'Elementary education shall be compulsory'. That duty is grounded both in persons' own interests and in the interests of others; the necessity of education (in the wider sense) for individual and general safety and security, mutual aid, and toleration, are among the most modest reasons to endorse the claim that education is a duty-based right".³³¹

Concerning a putative human right to financial inclusion, it is not clear that such a right could be a duty-based right. Brownlee and Stemplowska argue that financial inclusion may seem to be more analogous in this respect to the right to movement or the right to marry than to the right to education because, although certain financial opportunities should be available, there seems to be no plausible duty to take up those opportunities. "To say that there is a duty to exercise the right to financial inclusion may stretch the notion of duty-based rights to all rights on the grounds that rights protect persons' interests and the interests of their dependents and persons have duties to take care of those interests".³³²

³²⁹ Ibid, p 59.

³³⁰ Ibid, p 60.

³³¹ Ibid.

³³² Ibid, p 61.

Social justice as a human rights issue

Commentator Therese Wilson has a different approach that warrants discussion. She posits that social justice can be characterised as a human rights issue, compelling states to regulate to protect economic and social rights such as the right to access financial services like safe and affordable small-amount credit to acquire necessary items, pay emergency bills, and lead a ‘normal life’ in a modern consumerist society.³³³ Social rights are moral, legal or societal rules and an understanding of what is necessary to fulfil people’s social needs and to promote social inclusion and social solidarity. Social rights concern how people live and work together and the necessities of life. They are based on the ideas of equality and guaranteed access to essential social and economic goods, services, and opportunities.³³⁴

Wilson argues that the recognition and facilitation of equitable access to financial services supports a sense of human dignity in a way that charitable and welfarist models do not. Thus, because competitive, free-market models for the provision of financial services are not delivering equality of opportunity to low-income Australians in terms of financial inclusion, she advocates for regulatory models that incentivise fairer, non-discriminatory models of credit provision as well as serving to discourage predatory lending.³³⁵

Wilson’s rights-based approach to social justice draws upon human rights discourse, taking the concept of state regulation to protect human rights beyond the

protection of civil and political rights, extending it to economic and social rights.³³⁶ In this way, human rights discourse can be linked to social justice concerns thus satisfying what Jürgen Habermas described as the “moral promise to respect the human dignity of every person equally”.³³⁷ Habermas identified human dignity as the moral source of human rights, and argued for a broader conceptualisation of human rights to “encompass social justice concerns and give rise to a ‘responsiveness to the legitimate claims of marginalised and underprivileged populations to inclusion’”.³³⁸

Connected to the ideas of human dignity and autonomy which animate human rights law, Wilson identifies the manifold injustices which flow from the financial exclusion of the underprivileged and marginalised from the financial mainstream. The link between financial exclusion and social exclusion “within a contemporary capitalist society can become extremely problematic” and leaves marginalised and disadvantaged people exposed to unsafe and exploitative financial services, which in turn entrenches poverty and indebtedness, thus cementing and reproducing economic and social disadvantage.³³⁹ In this way, exclusion from basic financial services, and the different patterns of use of financial services including small-amount credit “may act as a potential ‘multiplier’ of advantage and disadvantage in society, potentially heightening social divisions ... Exclusion to [basic financial services] may therefore mean both economic exclusion from markets ... and exclusion from a central aspect of public expression in modern society.”³⁴⁰

333 Therese Wilson, “Consumer Credit Regulation and Rights-Based Social Justice: Addressing Financial Exclusion and Meeting the Credit Needs of Low-Income Australians,” n 234.

334 Council of Europe Portal, “*Social Rights and Enter! Recommendation – Enter! Access to Social Rights for Young People*” accessed January 25, 2023, <https://www.coe.int/en/web/enter/social-rights#:~:text=What%20are%20Social%20Rights%3F>.

335 Therese Wilson, “Consumer Credit Regulation and Rights-Based Social Justice: Addressing Financial Exclusion and Meeting the Credit Needs of Low-Income Australians,” n 234.

336 Ibid. p 502.

337 Jürgen Habermas, “The Concept of Human Dignity and the Realistic Utopia of Human Rights,” *Metaphilosophy* 41, no. 4 (July 20, 2010): 464–80, p 469, <https://doi.org/10.1111/j.1467-9973.2010.01648.x>.

338 Therese Wilson, “Consumer Credit Regulation and Rights-Based Social Justice: Addressing Financial Exclusion and Meeting the Credit Needs of Low-Income Australians,” n 234, pp 502 – 503, quoting from Habermas, *ibid*, at 479.

339 Therese Wilson, “Consumer Credit Regulation and Rights-Based Social Justice: Addressing Financial Exclusion and Meeting the Credit Needs of Low-Income Australians,” n 234, p 512.

340 Iain Ramsay, “Consumer Credit Law, Distributive Justice and the Welfare State,” *Oxford Journal of Legal Studies* 15, no. 2 (1995): 177–97, <https://doi.org/10.1093/ojls/15.2.177>, p 181. Quoted in Wilson, n 234, at 510.

SECTION 7 — Is access to a bank account a human right? CONT

Examples of the economic and social rights which Wilson argues should be protected by state regulation include a right to an adequate standard of living and social inclusion, and a right to access services that should be regarded as ‘services of general economic interest’ as articulated in the Charter of Fundamental Rights of the European Union.³⁴¹ Wilson draws on the writings of Wilhelmsson in 2003,³⁴² who explained the concept of services of general economic interest (encompassed in the phrase ‘services of general interest’) as encompassing services necessary to enable a person to lead a ‘normal’ life in the context in which he or she lives. Wilhelmsson’s arguments are discussed further below. The core idea is that many financial services are now central to the infrastructure of society, and consumers cannot reasonably be expected to live without them.

Wilson also refers to the work of the American legal scholar Martha Fineman, who argued strongly that the state should be held responsible for ensuring equality of opportunity to overcome societal disadvantage, refusing to “tolerate a system that unduly privileges any group of citizens over others”.³⁴³ Fineman states that:

*True equality of opportunity carries with it the obligation on the state to ensure that access to the societal institutions that distribute social goods, such as wealth, health, employment, or security, is open to all, and that the opportunities these institutions provide are evenly distributed so that no persons or groups of persons are unduly privileged while others are disadvantaged to the extent that they can be said to have few or no opportunities.*³⁴⁴

To achieve better *equality of opportunity* of financial inclusion, Wilson invokes the work of Professor Lesley Jacobs to identify three types of fairness that must be achieved in the competitive processes through which goods and services are distributed in society: procedural fairness, stakes fairness and background fairness. Procedural fairness is the fairness that surrounds the rules and regulations governing the particular competition; stakes fairness concerns the distribution of the resources at stake in the competition; and background fairness considers the “initial starting positions or backgrounds” of those involved in the competition and regulates the competitive process “with a sensitivity to remedies for these inequalities”.³⁴⁵ In effect, background fairness strives for a ‘level playing field’.³⁴⁶ By ensuring that competitive processes for the allocation of goods and services involve these types of fairness, regulation can be used to “remedy unequal opportunities in civil society”.³⁴⁷

Wilson’s arguments are directly relevant to our research on prisoner access to banking. It has been found in New Zealand that children who have a parent in prison are 10 times more likely to experience time in prison themselves. Māori are imprisoned at seven times the rate of the general population. Ex-prisoners typically have lower educational qualifications, have trouble obtaining employment, and may experience lower income or deprivation as a result.³⁴⁸ In terms of *background fairness*, the established cycles of persistent socio-economic disadvantage and intergenerational incarceration mean that certain groups are overrepresented in the New Zealand prison-experienced population and are, as a result,

341 Charter of Fundamental Rights of the European Union [2000] OJ C 364/1, art 36.

342 Thomas Wilhelmsson, “Services of General Interest and European Private Law” in Charles E F Rickett and Thomas G W Telfer (eds), *International Perspectives on Consumers’ Access to Justice* (Cambridge University Press, 2003), 149, 154–5.

343 Martha Albertson Fineman, “The Vulnerable Subject and the Responsive State,” *Emory Law Journal* 60 (October 21, 2010), p 274, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1694740. Quoted in Wilson, n 234, at 503.

344 Ibid, pp 256–7.

345 Lesley A Jacobs, *Pursuing Equal Opportunities: The Theory and Practice of Egalitarian Justice*, Cambridge University Press (Cambridge University Press, 2004), pp 16–17. See Wilson, n 234, at 503–505.

346 Ibid. See Wilson, n 234, at 504.

347 Therese Wilson, “Consumer Credit Regulation and Rights-Based Social Justice: Addressing Financial Exclusion and Meeting the Credit Needs of Low-Income Australians,” n 234, p 504. See also Lesley A Jacobs, *Pursuing Equal Opportunities: The Theory and Practice of Egalitarian Justice*, Cambridge University Press, n 345.

348 Peter Gluckman and Ian Lambie, “It’s Never Too Early, Never Too Late: A Discussion Paper on Preventing Youth Offending in New Zealand” (Office of the Prime Minister’s Chief Science Advisor, June 12, 2018), <https://dpmc.govt.nz/sites/default/files/2021-10/pmcsa-Its-never-too-early-Discussion-paper-on-preventing-youth-offending-in-NZ.pdf>.

disproportionately exposed to the consequences associated with incarceration, including enhanced vulnerability to financial exclusion. In terms of *stakes fairness*, the multiple socio-economic disadvantages which are prevalent in the lives of most prisoners, mean that there are structural forces of persistent disadvantage that contribute to reproduced patterns of intergenerational incarceration meaning that many prisoners do not start out on a 'level playing field' in the competitive process for accessing, qualifying, and obtaining basic financial services. Thus, in terms of *procedural fairness* – as discussed elsewhere in this Report, because of the persistent disadvantages and multiple vulnerabilities which feature in most prisoners' lives, their confidence and ability to successfully navigate the processes – Jacobs' rules and regulations, governing the "competition" to qualify for, and access a basic bank account, it may mean that many unbanked prisoners may require pre-release or post-release support to interact with banks to establish relationships with them by establishing a bank account. Treating access to basic financial services as a human right, or as a public utility and a Service of General Economic Interest, may be another mechanism to consider the initial starting positions or backgrounds of New Zealand's prison-experienced population and to regulate the competitive process for financial services "with sensitivity to remedies for ... inequalities".³⁴⁹

Bank accounts as services of general economic interest and public utility

The concept of Services of General Economic Interest is established and articulated in the *Charter of Fundamental Rights of the European Union* (Art 36). Professor Thomas Wilhelmsson has explained the

concept, which he refers to as services of general interest to encompass various national European doctrines, as meaning services necessary to enable a person to lead 'a decent life' in modern society.³⁵⁰ They are services that are created to meet the basic needs of the people and are therefore viewed as social rights in Europe. Although there is no strict legal definition of those necessary services, Wilhelmsson argues that a service of general interest has the following characteristics: it fulfils a basic need of its users; there is no reasonable alternative to the service; there are few producers; and it is based on a long-term relationship.³⁵¹ They are services that a consumer in a modern society cannot reasonably be expected to do without.³⁵²

Wilhelmsson notes that "in discussion about [Services of General Economic Interest], the focus has been on services that are significantly affected by privatisation".³⁵³ The services commonly referred to in this context include the provision of electricity, gas, heating, water and telephone services, and postal services. These public utilities, Wilhelmsson accepts, are necessary services that a consumer in modern society cannot be expected to do without.³⁵⁴ However, he argues that the concept and content of the basic needs of the citizenry, is a concept which evolves over time and is "largely socially and technologically determined".³⁵⁵ Against this backdrop, writing in 2003, Wilhelmsson argues that within a rapidly digitising society, certain financial services seemed essential to the fulfilment of citizens' needs and thus ought to be treated as a public utility. Commenting on the necessity of basic banking facility, Wilhelmsson states that "[t]he performance of day-to-day payments as well as the ability to receive payments is often dependent on access to a bank account, and in the mature 'credit card society' some form of access to credit cards is important".³⁵⁶

³⁴⁹ Lesley A Jacobs, *Pursuing Equal Opportunities: The Theory and Practice of Egalitarian Justice*, n 345, pp 16-17. Quoted in Wilson, n 234, at 504.

³⁵⁰ Thomas Wilhelmsson, "Services of General Interest and European Private Law," n 342, p 153.

³⁵¹ *Ibid.*

³⁵² *Ibid.*

³⁵³ *Ibid.*

³⁵⁴ *Ibid.*, p 154.

³⁵⁵ *Ibid.*

³⁵⁶ *Ibid.*

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Wilhelmsson acknowledges that basic financial services are different from traditional public utilities in the sense that citizens have not traditionally expected the public sector to provide them. However, he argues that basic financial services must be considered as part of a basic bundle of essential services as the provision of means of payment (i.e. money) is undoubtedly considered a public task, and basic bank products like cards, internet banking, and contactless payment methods are presently the most important means of payment. The exclusion of marginalised and disadvantaged citizens can reproduce and intensify inequalities between what Wilhelmsson describes as the “information rich and the information poor”,³⁵⁷ as the benefits of increased choice, more convenient shopping and better financial information are received to a greater extent, by better-off consumers while marginalised and disadvantaged consumers, such as incarcerated people are usually not in a position to benefit to the same extent and are thus excluded from maximal social inclusion and participation.³⁵⁸ Understood thus, because many ‘information society services’ and financial services are now central to the infrastructure of society, Wilhelmsson argues that consumers should not and cannot be expected live without them and as such, aspects of basic financial services which facilitate day-to-day inclusion and participation in modern society (e.g. basic bank accounts) should be treated as social rights in the same way that services provided by the ‘traditional’ public utilities are.³⁵⁹ He concludes that some financial services therefore qualify and that a case can be made for public service obligations on the bases of legitimate expectations and corporate responsibility.

Legitimate expectations as a justification for treating financial services as public utilities

Wilhelmsson identifies the concept of legitimate expectations as being productive of the necessary connection between private, commercial law principles and more general principles of a constitutional and human rights character. “The concept of legitimate expectations opens up legal discourse in various

directions, as contractual expectations are tied up to various other kinds of social expectations. As the expectations always arise in relation to specific environments of practice and values, the content of the principle of legitimate expectations can differ depending on the setting.”³⁶⁰ Framed in this way, within a consumer policy context, Wilhelmsson suggests that:³⁶¹

“... the subjective element ‘expectations’ refers directly to the views among consumers, and the objective element ‘legitimate’ gives the courts the ability to screen those expectations by considering what enterprises can be expected to cope with.”

Whether – say, prisoners – do expect to be offered a product or service on the same terms as others (or to be offered it at all) is an empirical question. But Professor Peter Cartwright writing on the vulnerable consumers of financial services in 2015, elaborated on Wilhelmsson’s conception of legitimate expectations, stating that:³⁶²

Expectations may differ from one group to another. It seems doubtful that many consumers would believe that they are entitled to, say, a short-term loan. It seems equally doubtful that they would believe they are entitled to one on the same terms as other, less risky borrowers. In either case, the courts are unlikely to regard such an expectation as legitimate. However, where banking services are concerned, it is plausible that consumers might expect to be able to open a basic bank account, and on terms that apply to all. This expectation may indeed be legitimate, particularly given the Government’s support of basic bank accounts. Those without a bank account are vulnerable in a number of ways. For example, holding cash puts them at risk of crime, and having to use cheque cashers is expensive.

³⁵⁷ Ibid.

³⁵⁸ Ibid, p 153.

³⁵⁹ Ibid, pp 154-155.

³⁶⁰ Ibid, p 156.

³⁶¹ Ibid, p 155.

³⁶² Peter Cartwright, “The Vulnerable Consumer of Financial Services: Law, Policy and Regulation,” <https://www.nottingham.ac.uk/business/who-we-are/centres-and-institutes/gcbfi/documents/researchreports/paper78.pdf> (University of Nottingham.).

The challenges of being unbanked transcend the prohibitive costs of alternative financial services. Not belonging to a bank takes extra time. Unbanked consumers don't have access to the many conveniences that come with online and mobile banking, such as automatic bill pay and free money-transfer services. Further, unbanked consumers cannot bank on their time, according to US-based research, this may force people to miss work, hurting their paychecks. If people must travel to take care of money-related chores, they incur transportation costs. Not being able to use standard banking products hurts people in other ways, too. A bank gives people access to tools that can help them maintain or improve their financial health, such as savings accounts, certificates of deposit, and secured credit cards. These can, for example, help them create an emergency fund and build credit, which reduces the need for costly payday loans.³⁶³

The basic social welfare and inclusion-enhancing dimensions of basic financial services potentially fortify Wilhelmsson's and Cartwright's arguments of a legitimate expectation to be serviced by financial institutions which are regulated to be maximally inclusive.

Corporate responsibility as a justification for treating financial services as public utilities

In relation to corporate responsibility, Wilhelmsson submits three arguments.

- First, he says that consumers have a special trust in (some) corporations – perhaps, such as banks – which justifies imposing enhanced responsibility.³⁶⁴
- Second, he suggests that corporations can redistribute loss between consumers based on the price mechanism. As he puts it: “[t]he losses caused by the responsibility to take into account the special needs of some consumers can be borne by the consumer collective through (usually modest) price increases.”³⁶⁵

- Third, Wilhelmsson argues that corporations should bear responsibility for problems they cause. Although there were several causes of the global financial crisis, it is common ground that banks' lending practices were a factor. Against this background, (and the cost to taxpayers of resolving it) justifications can be found for expecting banks to take on some social responsibilities.³⁶⁶

Putting obligations on banks to provide basic services is found in other jurisdictions. In the USA, the Community Reinvestment Act (CRA) obliges financial institutions to show that their deposit facilities serve the convenience and needs of the community in which they are chartered to do business. It includes the need for credit as well as the need for deposit services.³⁶⁷ The CRA rates banks on the extent of their lending to borrowers at different income levels, and their provision of community development loans. A poor CRA rating can affect a bank's application for deposit-taking facilities, including applications for mergers with and acquisitions of deposit-taking institutions. CRA ratings can also be considered in the approval process for opening or closing bank branches and banks must have a satisfactory CRA rating to be allowed to engage in extended financial activities such as insurance and securities. Further, a bank's CRA rating can affect its reputation and is regarded as an important part of a bank's public image. The provisions of the CRA are subject to the requirement that the bank's actions must be consistent with the sound and safe operation of the bank. Each institution's record is regularly evaluated, although the lack of sanctions for non-compliance is frequently viewed as something of a weakness.³⁶⁸ The Act is primarily an information-based measure, acting to shame the banks into action. It can also be used to highlight discrimination.³⁶⁹

³⁶³ Tony Armstrong, “The Cost of Being Unbanked,” NerdWallet, September 13, 2016, <https://www.nerdwallet.com/article/banking/unbanked-consumer-study>.

³⁶⁴ Thomas Wilhelmsson, “Services of General Interest and European Private Law,” n 342, p 157.


³⁶⁵ Ibid, pp 157-158.

³⁶⁶ Ibid, p 157.

³⁶⁷ 1997 12 USC 2901. See I Ramsay and T Williams “Racial and Gender Equality in Markets for Financial Services” in P Cartwright (ed) *Consumer Protection in Financial Services* (Kluwer, 1999).

³⁶⁸ Peter Cartwright, “The Vulnerable Consumer of Financial Services: Law, Policy and Regulation,” n 362, p 41.

³⁶⁹ Ibid.

A person is shown in silhouette, sitting at a desk and looking out of a large window. The person's hand is resting on their chin in a contemplative pose. On the desk, there is a laptop and a mug. Outside the window, a large tree is visible against a bright, hazy background. The entire image has a warm, orange-red color cast.

While there may be a perception that justice-involved people are “banned” from opening a bank account, the reality is most are in fact eligible to own an account.

SECTION 8 – The importance of money management education at the time of opening an account

Importance of financial literacy education for prisoners

Providing basic training about how to operate a bank account and more generally teaching basic financial literacy skills is a key part of putting prisoners on the path to successful reintegration into society. This has been recognised in the UK in the context of the UNLOCKing Banking programme discussed in Section 9.

It has also been recognised in an Australian report. In 2016 a study was done in Australia by Financial Counselling Australia looking at the serious financial issues people in prison face as a result of their incarceration. The report, entitled Double Punishment – How People in Prison Pay Twice, gives information on the sorts of problems that prisoners face and gives some proposed solutions.³⁷⁰ Poor financial literacy among prisoners was noted as one issue. Lack of financial literacy compounds the problems prisoners face with sorting out their financial affairs. Financial literacy sessions run in the prison were recommended.³⁷¹

Said one financial counsellor quoted in that report:³⁷² “Obviously we have a captive audience, but it is also a perfect time to educate our clients and start the rehabilitation process. Let’s teach them how to manage money – the lack of which is often what led to them being incarcerated in the first place. Often they have committed crimes simply to survive.”

Financial mentors around New Zealand currently offer financial literacy courses to persons in prison. We spoke to several financial mentors that operate in prisons or provide services to prisoners. The services appear to be offered on an ad hoc basis depending on what financial mentors are available and interested in this work and how actively involved the prison management are in providing these types of services. Much of the work has been on-line in the last few years due to COVID. One financial mentor told us that the availability of financial mentoring services is “haphazard”. In some prisons, financial mentoring is not available. In prisons where mentoring is available, such as at Rimutaka, the service is not available to all prisoners. One mentor attributed the ‘haphazard’ availability of financial mentoring support, to Corrections “[lacking] knowledge of what financial mentors do.”

NZ recognition of the importance of financial literacy education for Māori

In 2021 the Commission for Financial Capability (led by the Retirement Commissioner) produced a National Strategy for Financial Capability.³⁷³ The Strategy was compiled after consultation with key stakeholders and partners across Government, Māori, community and industry. The Strategy provides a framework for collaboration, communication, and knowledge sharing, with a view to increasing the financial capability of New Zealanders. Priority audiences included Māori and Pacific Peoples. This strategy does not specifically refer to the financial literacy needs of prisoners. But it does recognise the importance of improving levels of financial literacy among Māori generally.

370 Financial Counselling Australia, “Double Punishment – How People in Prison Pay Twice,” n 10.

371 Ibid, p 27.

372 Ibid.

373 Retirement Commission, The National Strategy for Financial Capability 2021 – 2024, <https://retirement.govt.nz/financial-capability/national-strategy/>

SECTION 9 — Comparative research — How other countries have addressed these issues

Introduction

This section reviews the approach taken in a range of other jurisdictions to the issue of prisoners' access to bank accounts.

The jurisdictions considered are:

- United Kingdom
- Australia
- United States of America

United Kingdom

The policy context/background

Financial exclusion gained traction as a policy priority in the United Kingdom in the late 1990s. The term 'financial inclusion' was first used in UK public policy in 1997, and in many respects replaced 'financial exclusion' in much of the policy and literature on this topic.³⁷⁴ In the 1990s, the concept of 'financial exclusion' reflected concern among researchers regarding bank closures in many areas, which created the risk of geographic exclusion from financial services for some communities. Gradually the concept came to describe the inability, difficulty or reluctance to access mainstream financial services, which without intervention, can cause social exclusion, poverty and inequality.^{375 376}

The UK Legal Services Commission defined financial exclusion with reference to five practical elements: having no bank account, holding no savings, using high interest credit, owing priority debts, or having an annual income less than £14,500.³⁷⁷ Research found that poorer households in the UK pay a 'poverty premium' – *on average £1,000 annually or almost a tenth of their income* — for goods and services such as gas, electricity, credit and banking because they cannot access the deals offered to higher income households.³⁷⁸ The consequences of financial exclusion are significant. The maintenance of household budgets without mainstream financial services is often expensive and difficult. Regardless of how well low-income families manage their finances, their efforts can be undermined by a lack of access to affordable credit and debt advice.³⁷⁹

As financially excluded people are unable to access mainstream loan and credit services, they may turn to less regulated, costly and sometimes illegal sources of credit which harm their financial wellbeing and create complex regulatory challenges for governments.³⁸⁰

374 House of Lords Select Committee on Financial Exclusion, "Tackling Financial Exclusion: A Country That Works for Everyone? Report of Session 2016–17" (London: Published by the Authority of the House of Lords, March 25, 2017), p 12, <https://publications.parliament.uk/pa/ld201617/ldselect/ldfinexcl/132/132.pdf>.

375 Joseph Rowntree Foundation, "Financial Inclusion in the UK: Review of Policy and Practice," July 16, 2008, <https://www.jrf.org.uk/report/financial-inclusion-uk-review-policy-and-practice>.

376 HM Treasury, "Financial Inclusion: The Way Forward," March 2007, [file:///H:/Financial%20inclusion%20UK%20The%20Way%20Forward%202007%20\(1\).pdf](file:///H:/Financial%20inclusion%20UK%20The%20Way%20Forward%202007%20(1).pdf).

377 Alexy Buck et al., "Outreach Advice for Debt Problems: Research and Evaluation of Outreach Services for Financially Excluded People" (Legal Services Commission, 2009).

378 Lucy Ward, "Poor Families Face £1,000 a Year 'Poverty Premium', Say Charities," *The Guardian*, March 5, 2007, sec. Money, <https://www.theguardian.com/money/2007/mar/05/creditanddebt.sociallexclusion>.

379 Alexy Buck et al., "Outreach Advice for Debt Problems: Research and Evaluation of Outreach Services for Financially Excluded People," n 377.

380 Ibid.

A 1999 report published by the UK Social Exclusion Unit estimated that about 1.5 million low-income households in the UK used no financial services.³⁸¹ The report highlighted a “mismatch between potential customers’ needs and the products on offer” and geographic issues such as remoteness and higher costs (such as insurance in areas with high crime rates). It recognised that paying benefits electronically would increase demand for financial services but concluded that financial exclusion would reduce as the market developed a diverse range of more appropriate products for low-income households.³⁸² The report recommended:³⁸³

- simpler bank accounts;
- greater flexibility in identity requirements;
- wider access to insurance;
- expansion of credit unions; and
- provision of financial advice and support during the transition from benefits to work.

Responding to the report, the Labour Government pledged support for:³⁸⁴

- the deregulation and expansion of credit unions;
- the widespread introduction of insurance with rent schemes for home contents insurance;
- exploring a wider role for the social fund to help those in low-paid employment;
- better access to counselling and refinancing for those in debt; and
- greater disclosure by banks of their provision of services to the socially excluded.

The increased prominence of financial inclusion in public policy debates was reflected by the publication of a financial inclusion strategy by the Blair Labour Government in 2004. This strategy, entitled ‘*Promoting Financial Inclusion*’, outlined several key policies.³⁸⁵ *Promoting Financial Inclusion* also initiated the creation of the Financial Inclusion Taskforce in 2005. The Taskforce, comprised of industry, the voluntary sector, consumer groups, local government and academia, was set up to advise Government departments, with a mission to:³⁸⁶

- Increase access to banking;
- Improve access to affordable credit, savings and insurance; and
- Improve access to appropriate money advice.

The importance of developing basic banking services was also a key theme of the *Cruickshank Report on Competition in UK Banking* published in March 2000, which noted that the additional costs and other problems faced by those without a bank account were likely to increase as electronic money transmission became more common, and which recommended that the Government give priority to developing a benchmark for basic banking services.³⁸⁷

381 HM Treasury, “Access to Financial Services” (London, 1999).

382 Ibid. Quoted in Chris Bath and Kimmet Edgar, “Time Is Money: Financial Responsibility after Prison,” 2010, n 54, p 11.

383 Ibid.

384 HM Treasury, “Initiatives to Tackle Financial Exclusion, HM Treasury Press Release, 16 November 1999” (London, 1999).

385 HM Treasury, “Promoting Financial Inclusion,” December 2004, http://news.bbc.co.uk/1/hi/shared/bsp/hi/pdfs/02_12_04_pbr04_prof-inc_complete_394.pdf.

386 Friends Provident Foundation, University of Birmingham, “Financial Inclusion Annual Monitoring Report 2016,” 2016, p 8, <https://www.birmingham.ac.uk/Documents/college-social-sciences/social-policy/CHASM/annual-reports/financial-inclusion-monitoring-report-2016.pdf>.

387 House of Commons Committee on Treasury, “Treasury Committee, Twelfth Report of Session 2005–06,” 2006, <https://publications.parliament.uk/pa/cm200506/cmselect/cmtreasy/848/84802.htm>. See also *Competition in UK Banking: A Report to the Chancellor of the Exchequer*, HM Treasury, March 2000, chapter 7.

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These reports served as a stimulus to the more general spread of basic bank accounts among major banks in 1999 and 2000 and to the joint development by the Government, the banks and the Post Office of the Post Office Card Account. These developments were reviewed by the Treasury Committee in the 1997-2001 Parliament in a Report on Banking and the Consumer in March 2001, which drew attention to continuing problems of financial exclusion and recommended that the banks market basic bank accounts more actively. Concern about the failure of banks to adequately market and promote basic bank accounts was also expressed by the Treasury Committee early in the following, 2001-05, Parliament.³⁸⁸

Promoting financial inclusion

In 2004, the Treasury renewed commitments to tackling financial exclusion in the Pre-Budget Report & Spending Review and *Promoting Financial Inclusion*. *Promoting Financial Inclusion* concluded that “access to banking could be the key to unlocking access to other financial services” and that policy interventions should be focused on the “core financially excluded people who are most likely to suffer the negative consequences of a vicious circle of exclusion” and be “delivered through trusted intermediaries with whom they are already in contact.”³⁸⁹

In the *Spending Review* the Government announced the establishment of a Financial Inclusion Fund to support initiatives to tackle financial exclusion and the creation of a Financial Inclusion Taskforce to monitor progress.³⁹⁰ Having identified that there were around

2.8 million adults in 1.9 million households with no access to a bank account, the government and banks also announced a shared goal of “halving the number of adults in households without a bank account and of having made significant progress in that direction within two years.”³⁹¹ The Spending Review also committed the Government to seek progress in three key areas by:³⁹²

- working with the banks to identify a target for reducing the number of people without a bank account;
- working in partnership with the private and voluntary and community sectors to develop models which made more affordable loans available; and
- increasing the capacity to provide free face-to-face money advice for vulnerable consumers facing debt problems.

Building on the preceding inquiries and reports, in 2006 the House of Commons Treasury Select Committee published “*Banking the unbanked: banking services, the Post Office Card Account, and financial inclusion*”.³⁹³ In its analysis the Committee considered the possibility of imposing statutory requirements relating to access to, or the provision of, banking services for the financially excluded. However, it concluded that “more can be achieved at present by a voluntary partnership approach” and that “the willing participation of the banks [is] essential in tackling financial inclusion regardless of legislative action”.³⁹⁴

388 Ibid (“Treasury Committee, Twelfth Report of Session 2005–06.”)

389 HM Treasury, “Promoting Financial Inclusion,” n 385, p 16.

390 HM Treasury, “2004 Spending Review: New Public Spending Plans 2005–2008: Stability, Security and Opportunity for All: Investing for Britain’s Long-Term Future,” July 2004.

391 HM Treasury, “Opportunity for All: The Strength to Take the Long-Term Decisions for Britain – 2004 Pre-Budget Report,” December 2004, para 5.47, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/251116/6408.pdf.

392 HM Treasury, 2004 Spending Review: New Public Spending Plans 2005–2008: Stability, Security and Opportunity for All: Investing for Britain’s Long-Term Future,” n 390.

393 House of Commons Treasury Committee, “Banking the Unbanked: Banking Services, the Post Office Card Account, and Financial Inclusion – Thirteenth Report of Session 2005–06,” 2006, <https://publications.parliament.uk/pa/cm200506/cmselect/cmtreasy/1717/1717.pdf>.

394 Ibid, pp 13–14.

Referring to the 2004 'shared goal' between Government and the financial services industry to halve the number of adults in households without a bank account, the House of Commons Treasury Select Committee stated:³⁹⁵

There is evidence to indicate that steady progress has been made so far towards the target of halving the number of people without access to a bank account. Banks are collectively accountable for progress so far and in the future. However, it is also vital that each bank can be held to account individually for its contribution to meeting this target. This is not possible at the moment. Individual banks need to accept this responsibility, and accordingly we recommend that the Government, the Financial Inclusion Taskforce and the banks reach an agreement enabling each individual bank to regularly publish figures for the numbers of basic bank accounts it has opened in each year. We would expect each bank to develop strategies for ensuring that it makes a proportional and appropriate contribution towards meeting the target, and we would also expect such strategies to take due account of the analysis which follows on the issues surrounding the opening of basic bank accounts.

...

While the provision of basic bank accounts will not be immediately profitable, we welcome recognition by the banks that they have a responsibility to provide such a service and that, in the longer term, bringing more people into the financial services sector will be profitable for the banks.

Criminal justice policy dimensions and social factors that drive offending

The Social Exclusion Unit's 2002 report, *Reducing Re-offending by Ex-Prisoners* recognised the importance of social factors in promoting successful resettlement.³⁹⁶

The publication of the *Reducing Re-offending by Ex-Prisoners* report was significant. Welsh criminologists Mike Maguire and Peter Raynor have noted that the report provided the "key stimulus for the sudden elevation of resettlement to a position of relatively high priority in penal policy" as it highlighted the Government's concern that prison sentences were not succeeding in turning the majority of offenders away from crime.³⁹⁷ In response, the report called for a more holistic, focused and inter-agency approach to the resettlement of offenders.

Nine factors were identified: education, employment, housing, drug and alcohol misuse, mental and physical health, attitudes and self-control, institutionalisation and life-skills, family networks and financial support and debt.³⁹⁸ Seventeen adverse circumstances related to finance, benefits and debt were identified, including:³⁹⁹

- inconsistent benefits and debt advice;
- failure to close down benefits;
- difficulties claiming on release;
- loss of identification;
- low rate of discharge grant; and
- difficulties securing insurance.

³⁹⁵ Ibid, p 17.

³⁹⁶ Social Exclusion Unit, "Reducing Re-Offending by Ex-Prisoners" (Office of the Deputy Prime Minister, 2002), <https://www.bristol.ac.uk/poverty/downloads/keyofficialdocuments/Reducing%20Reoffending.pdf>.

³⁹⁷ Mike Maguire and Peter Raynor, "How the Resettlement of Prisoners Promotes Desistance from Crime," *Criminology & Criminal Justice* 6, no. 1 (February 2006): 19–38, p 22, <https://doi.org/10.1177/1748895806060665>.

³⁹⁸ Social Exclusion Unit, "Reducing Re-Offending by Ex-Prisoners", n 396, p 6.

³⁹⁹ Chris Bath and Kimmet Edgar, "Time Is Money: Financial Responsibility after Prison," n 54, p 14. See Social Exclusion Unit, "Reducing Re-Offending by Ex-Prisoners", n 396, p 190.

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The report argued:⁴⁰⁰

“The evidence shows that these factors can have a huge impact on the likelihood of a prisoner re-offending. For example, being in employment reduces the risk of re-offending by between a third and a half; having stable accommodation reduces the risk by a fifth.”

The report noted, although in just one line towards the end of the publication, an additional factor, the importance of which became much more significant:⁴⁰¹

“Ex-prisoners... experience difficulties opening bank accounts, often because of lack of ID”. (SEU, 2002).

As penal resettlement policy endeavoured to tackle issues of employment, housing and education, the importance of prisoner access to a bank account increased. Without a bank account, resettling prisoners into jobs, into most rented housing or into education was difficult. For prisons, there was no easy solution, for without the appropriate form of identity, prisoners would continue to find bank account access problematic.

The National Offender Management Service (NOMS) was established in 2004 with the intention of bringing together HM Prison Service and the Probation Service and focusing on reducing reoffending. In its reducing reoffending action plan, NOMS drew on the 2002 SEU report in defining seven ‘pathways’, intended to guide national policy making, regional commissioning and local delivery across prisons and probation.⁴⁰²

- accommodation;
- education, training and employment;
- mental and physical health;
- drugs and alcohol;
- finance, benefit and debt (FBD);
- children and families of offenders; and
- attitudes, thinking and behaviour.

Financial exclusion can relate to several, if not all of the above pathways. However, the most obvious link is with the finance, benefit and debt (FBD) pathway.⁴⁰³ For each pathway a specific delivery plan was produced and, in pathway 5 – FBD – which concerned finance, benefit and debt, prisoner access to a bank account became a key priority. The Government’s first *National Reducing Re-offending Delivery Plan* (2005) recognised that “[s]ecuring access to financial services such as bank accounts for offenders is also a key area of work for this pathway”.⁴⁰⁴

Prisoner access to a bank account was further stressed in the NOMS report published in the same year, *Signposting Offenders to Financial Capability Training, Debt Advice and Financial Services*. That report stated:⁴⁰⁵

“Access to financial services: Offenders often encounter difficulties in opening bank accounts and obtaining insurance. This can have an impact on their ability to obtain employment, for example, if they need an account for their wages to be paid into, or if a job requires a car and therefore car insurance. NOMS aims to ensure that offenders in custody and in the community have access to the appropriate financial services to mitigate such problems”.

⁴⁰⁰ Social Exclusion Unit, “Reducing Re-Offending by Ex-Prisoners”, n 396, p 6.

⁴⁰¹ Social Exclusion Unit, “Reducing Re-Offending by Ex-Prisoners”, n 396, p 190.

⁴⁰² Chris Bath and Kimmet Edgar, “Time Is Money: Financial Responsibility after Prison,” n 54, p 14.

⁴⁰³ Ibid.

⁴⁰⁴ National Offender Management Service, “The National Reducing Re-Offending Delivery Plan” (UK Government, 2005), p 38, <https://www.nicco.org.uk/userfiles/downloads/024%20-%20Reducing%20Reoffending%20Delivery%20Plan%202009.pdf>.

⁴⁰⁵ National Offender Management Service and Financial Services Authority, “Signposting Offenders to Financial Capability Training, Debt Advice and Financial Services.” (Home Office, 2005). Quoted in Paul Jones, “Banking on a Fresh Start”, n 132, p 15.

An aim was set to ensure that offenders both in custody and in the community had access to a bank account. For example, in the North West NOMS region's *Reducing Re-offending Delivery Plan*, published in 2007, which develops the themes of the National Action Plan, the commitment to enable prisoners to access a bank account was further emphasised. The *Delivery Plan* stated that NOMS will "[d]evelop agreements with local financial institutions and identify opportunities to pilot new approaches".⁴⁰⁶ These new approaches include a financial institution agreeing to pilot bank accounts for offenders in a local prison, which, if successful, according to NOMS, would be established as a mainstream provision.⁴⁰⁷

The developments in UK penal policy outlined in this sub-part demonstrate the move to prioritise resettlement of prisoners in the community, post – incarceration. Financial capacitation and inclusion forms one plank of the resettlement policy and depends in part on the active cooperation and collaboration of financial institutions, particularly banks, in order to put in place mechanisms to enable prisoners to access a bank account. Thus understood, the participation of UK banks in servicing prisoners cannot be seen as just local, practical and pragmatic arrangements with prisons, but rather forms an integral element of the delivery of Government penal policy.⁴⁰⁸

Social and financial inclusion – the significance of a bank account

Reducing Re-offending by Ex-prisoners highlighted how prisoners disproportionately have a history of social exclusion and "are far more likely than the general population to have grown up in care, poverty or an otherwise disadvantaged family".⁴⁰⁹

"Before they ever come into contact with the prison system, most prisoners have a history of social exclusion, including high levels of family, educational and health disadvantage, and poor prospects in the labour market.

The failure of mainstream agencies to deal with these aspects of social exclusion means that the Prison Service and Probation Service are in many cases being asked to put right a lifetime of service failure".

The report argued that social exclusion and disadvantage contributed significantly to people becoming involved in crime and to their likelihood of re-offending. Initiatives to reduce re-offending, therefore, had to prioritise such issues as poor educational attainment, family disadvantage, disengagement from the labour market and homelessness if they were to have any hope of real long-term success. It was envisaged by the Government that efforts to reduce the effects of social exclusion would help to prevent people getting involved in crime in the first place. This in turn would help to tackle the intergenerational disadvantage experienced by the children of prisoners, who themselves appear more likely to grow up socially excluded and at greater risk of getting involved in crime.⁴¹⁰

Central to reducing social exclusion is tackling financial exclusion. "The two realities are not coterminous but clearly interwoven and conjoined for many people suffering disadvantage".⁴¹¹ As Devlin and Gregor point out, the patterns of financial exclusion follow those of social exclusion and are concentrated primarily among people on low incomes.⁴¹² In 1999, the Blair Labour Government recognised that achieving the wider aim of eliminating social exclusion depended ultimately on success in tackling financial exclusion.⁴¹³

406 National Offender Management Service, "North West Reducing Re-Offending Delivery Plan" (Home Office, 2007), <https://www.nicco.org.uk/userfiles/downloads/024%20-%20Reducing%20Reoffending%20Action%20Plan%202004.pdf>. Quoted in Paul Jones, "Banking on a Fresh Start", n 132, p 15.

407 Paul Jones, "Banking on a Fresh Start", n 132, p 16.

408 Ibid.

409 Social Exclusion Unit, "Reducing Re-Offending by Ex-Prisoners," n 396, p 18.

410 Paul Jones, "Banking on a Fresh Start", n 132, p 15.

411 Ibid. p 17.

412 Ibid. See James F Devlin and Milla Gregor, "From Access to Inclusion. An Evaluation of the Role of Basic Bank Accounts in Promoting Financial Inclusion" (Tonybee Hall, July 2008), <https://financialhealthexchange.org.uk/wp-content/uploads/2015/11/From-access-to-inclusion-an-evaluation-of-basic-bank-accounts-in-promoting-financial-inclusion.pdf>.

413 Paul Jones, "Banking on a Fresh Start," n 132, pp 15-16.

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Fact Box

Financial exclusion of people in prison

Imprisoned people experience disproportionately greater incidences of financial exclusion compared to the non-incarcerated public. A survey-based study published by the UK Legal Services Research Centre⁴¹⁴ found that

- 54% of prisoners (58 people) had a total household income of less than £10,000 per year before going to prison. In comparison, 21% of employees, including full-time and part-time workers, reported less than £10,000 per year, in terms of individual (rather than household) income.
- 40% of prisoners (53 people) were unemployed before going to prison... In comparison, the head of the household in 3% of households in England and Wales was unemployed in 2001.
- At 60%, the majority of those who were in prison for the first time were financially excluded, while 80% of prison interviewees who had been to prison before were financially excluded. Looking at the number of times interviewees had gone to prison, results showed that financially excluded prisoners had served significantly more prison sentences than financially included people in prison.⁴¹⁵

The research concluded that “the survey findings provide a compelling picture of the relationship between financial exclusion and prison sentences.”

To tackle financial exclusion, access to a bank accounts became a crucial stepping stone for NOMS and the UK Government, on the pathway to greater financial inclusion.⁴¹⁶ As Jones points out in *Banking on a Fresh Start*, this position was supported in the literature.⁴¹⁷ Bridges and Disney argue, for example, that a bank account acts as a gateway to a range of other financial services and is necessary to progress into longer-term financial stability and inclusion.⁴¹⁸ Moreover, research consistently demonstrates that the lack of a bank account leads to a significant negative impact on individuals, communities and, importantly, on society at large.⁴¹⁹ For society, lack of access to financial services, to banking in particular, is often a critical factor that lies behind persistent income inequality and slow economic growth.⁴²⁰ For individuals, including ex-offenders, having no bank account is a barrier to employment or starting a business, and results in paying far higher charges for basic financial services (e.g. cashing cheques), and in limiting access to certain products and services (e.g. mobile phone contracts and discounts on utility bills that require direct debit or standing order payment).⁴²¹ In addition, having no bank account contributes to people failing to grow in financial capacity, and results in a poor credit score which is central to a path to financial inclusion.⁴²²

416 Paul Jones “Banking on a Fresh Start,” n 132, p 17.

417 Ibid.

418 Ibid. See Sarah Bridges and Richard Disney, “Use of Credit and Arrears on Debt among Low-Income Families in the United Kingdom,” *Fiscal Studies* 25, no. 1 (March 2004): 1–25, <https://doi.org/10.1111/j.1475-5890.2004.tb00094.x>.

419 Ibid. See BMRB Social Research, “Access to Financial Services by Those on the Margins of Banking” (British Market Research Bureau, 2006).

420 Ibid. See Asli Demirguc-Kunt, Patrick Honohan, and Thorsten Beck, “Finance for All? Policies and Pitfalls in Expanding Access, World Bank Policy Research Report,” 2008, <https://elibrary.worldbank.org/doi/epdf/10.1596/978-0-8213-7291-3>.

421 Ibid. See J. Brown and W. Thomas, “Basic Bank Accounts: The Case for a Universal Service Obligation” (New Economics Foundation, 2005) and Tony Herbert and Francesca Hopwood Road, “Banking Benefits – CAB Evidence on Payment of Benefits into Bank Accounts,” January 2006.

422 Ibid. See BMRB Social Research, “Access to Financial Services by Those on the Margins of Banking,” n 419.

414 Alexy Buck, T Tam, and Cate Fisher, “Putting Money Advice Where the Need Is: Evaluating the Potential for Advice Provision in Different Outreach Locations”, n 85.

415 Reported in Chris Bath and Kimmet Edgar, “Time Is Money: Financial Responsibility after Prison,” n 54, p 15.

Financial exclusion and the impact on the families of prisoners

Jones also notes in *Banking on a Fresh Start* that it is increasingly recognised that prisoners' families are particularly vulnerable to financial instability, poverty and debt following the imprisonment of a family member.⁴²³ NOMS highlighted in *Signposting Offenders to Financial Capability Training, Debt Advice and Financial Services* (2005), that 60% of prisoner families report that a family member being imprisoned has made them less well off.⁴²⁴ Jones states that facilitating access for ex-prisoners to a bank account, therefore, holds out the possibility of furthering the financial inclusion of the entire family and thus strengthening the family environment within which long-term prisoner resettlement can take place.⁴²⁵

UNLOCKing Banking

The UNLOCKing Banking Scheme was developed in 2005 by UK charity UNLOCK (the National Association of Reformed Offenders), to provide access to basic bank accounts for prisoners who were due for release. The scheme also aimed to increase past offenders' practical financial capability and develop greater awareness of financial issues. UNLOCK coordinated the programme for nine years between 2005-2014. It was then transferred to the government's National Offender Management Service in 2014.

Evolving project objectives

The UNLOCKing Banking programme started off with an original aim, that by the end of the project:⁴²⁶

"An increased number of prisoners are enabled to open bank accounts prior to release due to prisons being better enabled to deliver account opening services."

This was later refined in 2010 as the programme grew to:⁴²⁷

"Every prison that wants and needs a bank account opening service has one."

The objectives underlying these aims included:⁴²⁸

- Increasing the extent to which banks offer bank accounts to serving prisoners;
- Increasing the number of prisons offering support to prisoners wishing to open a bank account; and
- Establishing links between prisons and banks wishing to offer a bank account support service.

Project Background

In 2005, UK-based charity UNLOCK identified the issue of people coming out of prison who had managed to secure employment but were losing those opportunities because they lacked a bank account into which they could have their wages paid into. Figures reflecting the number of imprisoned people without a bank account vary significantly, however:

- 40% of people in prison surveyed by the Legal Service Research Centre in 2008 reported having no current account or other financial products, compared to 5% of people interviewed in the community;⁴²⁹

423 Ibid, p 18. See Rose Smith et al., "Poverty and Disadvantage among Prisoners' Families," May 4, 2007, <https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/poverty-disadvantage-2007.pdf> and Lavinia Mitton, "Financial Inclusion in the UK: Review of Policy and Practice," 2008, <https://www.jrf.org.uk/report/financial-inclusion-uk-review-policy-and-practice>.

424 Ibid. See National Offender Management Service, 2005b, "Signposting Offenders to Financial Capability Training, Debt Advice and Financial Services." (Home Office, 2005).

425 Ibid.

426 UNLOCK – The National Association of Reformed Offenders, "Unlocking Banking Impact Report (2014)," 2014, p 5, file:///H:/Unlocking-banking-impact-report-developing-effective-efficient-secure-access-to-banking-for-people-in-prison-before-release%20(6).pdf.

427 Ibid.

428 Ibid.

429 Alexy Buck, T Tam, and Cate Fisher, "Putting Money Advice Where the Need Is: Evaluating the Potential for Advice Provision in Different Outreach Locations", n 85.

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- An evaluation by John Moores University found that, prior to the UNLOCKing Banking scheme, 69% of prisoners at one prison had no bank account;⁴³⁰ and
- UNLOCK's own research, published in 2010, found that 30% of those surveyed in prison reported they did not have a bank account.⁴³¹

In response to this recognised need, UNLOCKing Banking was developed to provide access to basic bank accounts for prisoners who are due to be released, as well as increasing their practical financial capability and developing greater awareness of financial issues.⁴³²

The UNLOCKing Banking scheme began in 2005 as a 12-month pilot programme, based in two prisons, to provide access to bank accounts between Halifax Bank of Scotland and HM Prison Service. Many issues had to be overcome, including proof of identity, offence histories, card and PIN security, access to accounts and a lack of basic personal finance skills. Over time, UNLOCK developed a process that offered support in completing applications, a bespoke identification document and tailored basic financial capability, refined by detailed feedback from all stakeholders.⁴³³

Initial pilot project (2005 – 2006)

Between 2005-2006, a pilot project to provide bank accounts to prisoners was set up by the National Offender Service ('NOMS'), UNLOCK and Halifax Bank of Scotland in a men's and a women's prison in the South East of England.⁴³⁴

The pilot originally intended to enable prisoners who were based in the 'resettlement wings' of the prisons and were serving the last six months of their sentences, to open Easycash bank accounts.⁴³⁵ Easycash bank

accounts provide customers with a cash card to withdraw money from an ATM and the facility to set up direct debits and standing orders.⁴³⁶

From 135 applications, the pilot project successfully opened 133 basic bank accounts, all for serving prisoners without any mainstream ID. The project had quickly identified the need for financial capability training tailored towards first time account holders and 98% of participants rated the training as excellent or good.⁴³⁷ Halifax tracked usage of the accounts after release and found that participants in the project were statistically better than average basic bank account customers, with low rates of closure, high rates of activity and no charges being levied.⁴³⁸

As the pilot progressed, a number of prisoners with longer periods to serve were selected. For example, prisoners serving life sentences who were part of a Howard League project in the men's prison were selected by the prison on the basis of identified need and in preparation for open conditions.⁴³⁹

Undischarged bankrupts and those with a record of bank fraud were the only prisoners excluded from the pilot scheme.⁴⁴⁰

Prisoners were required to participate in financial literacy training before opening a bank account.⁴⁴¹

Barriers and solutions identified

The following table is sourced from the UK National Offender Management Service's 2007 Post Project Review Report on the Making Bank Accounts Accessible to Offenders pilot.⁴⁴²

430 Paul Jones, "Banking on a Fresh Start," n 132, p 17.

431 Chris Bath and Kimmet Edgar, "Time Is Money: Financial Responsibility after Prison," n 54, p 15.

432 UNLOCK – The National Association of Reformed Offenders, "Unlocking Banking Impact Report (2014)," n 426.

433 Ibid. p 6.

434 Ibid. pp 6-7.

435 National Offender Management Service, "Making Bank Accounts Accessible to Offenders Post Project Review Report," June 2007, https://unlock.org.uk/wp-content/uploads/2014/05/Banking_Pilot_Report.pdf, p 4.

436 Halifax Bank of Scotland, "Halifax – Internet Banking – Error," www.halifax.co.uk, accessed February 3, 2023, <https://www.halifax.co.uk/bankaccounts/current-accounts/basic-account.html>.

437 UNLOCK – The National Association of Reformed Offenders, "Unlocking Banking Impact Report (2014)," n 426, p 6.

438 Ibid.

439 National Offender Management Service, "Making Bank Accounts Accessible to Offenders Post Project Review Report," n 435, p 4.

440 Ibid.

441 Ibid, p 5.

442 Ibid, pp 7-9.

Barriers	Solutions
Identification People applying for a bank account are required to provide proof of their identity. Many prisoners do not have required forms of identification such as a passport or driving licence. Acquiring such ID can be cost prohibitive for the individual and the necessary logistics are resource intensive.	When a prisoner was not able to provide proof of identification, Halifax Bank of Scotland (HBOS) agreed to allow the prison governor or their nominated deputy to vouch for the applicant's identity.
Incorrectly Completed Forms Low levels of literacy can result in application forms being rejected because they are illegible or incorrectly completed.	Completion of the application forms was integrated into the training day. The UNLOCK trainer provided step-by-step guidance and support, using a computer-based simulation of an application form on a large screen. The forms were then checked thoroughly and marked with UNLOCK stickers before being forwarded to HBOS.
Delays to Application Process Bank staff unable to identify application forms from the prison thus delaying the application process.	Envelopes containing applications were addressed to a specific team within the HBOS processing centre. The accounts were processed centrally with key contacts set up in the processing department to simplify ongoing contact between UNLOCK, NOMS and HBOS.
Use of Aliases Prisoners' use of aliases can create identification issues when opening a bank account	This was overcome by using the name on the arrest warrant
Security of Documents There are security risks concerned with prisoners receiving cash cards and PIN numbers.	NOMS are aware that some banks are concerned with sending cash cards and PIN numbers directly to the prison, for reasons of potential fraud. In the pilot, HBOS sent cash cards by registered post. Prisoners signed for the cards which were then placed into their valuable property. PIN numbers were sent by normal post to the prison. Prisoners were advised not to open the letter and to request the PIN to be stored with their personal belongings.
Halifax Banks of Scotland (HBOS) Concerns The banks were concerned about possible negative media coverage, and about which prisoners would be allowed to apply for accounts.	HBOS felt that it was important that the initiative was carefully managed. The work carried out by HMPS to identify and select appropriate prisoners for the scheme overcame any concerns that HBOS had over the category of prisoners accessing the scheme. There was no negative media coverage.
Address History Application forms require 3 years address history, but many prisoners have experienced 'chaotic lifestyles' prior to imprisonment.	The current prison address was accepted as covering the entire current sentence. HBOS accepted "No Fixed Abode" as an address for parts of people's address history. UNLOCK used the internet to complete prisoner's previous addresses where they could only recall partial details e.g. the full postcode could not be recalled.
Branch Staff unaware of Offender Issues Staff at Branch level are not receptive to opening accounts for prisoners and will insist on mainstream ID.	Relationships were established with the bank at a national level, rather than relying on local branches. Applications were sent to a trained team in the HBOS central processing centre.

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Lessons learnt from the Making Bank Accounts Accessible to Offenders pilot.

The 2006 pilot programme provided a model for overcoming barriers which exist for prisoners wishing to open a bank account, particularly lack of identification and lack of freedom to visit banks. The National Offender Management Service's ('NOMS') 2007 Post Project Review Report suggests that "that basic training in the effective use of a bank account supports individuals in successfully using that account".⁴⁴³ Important lessons from the pilot included the following:

- **Start small and spend time establishing relationships.** The NOMS evaluation found it was important in the pilot that time was spent developing relationships with the key stakeholders (the prison service, banks and UNLOCK) and that the objectives of the pilot were clear, concise and achievable.
- **Ensure that there are 'Champions' or key personnel in each organisation supporting the scheme.** The prison coordinators had an essential role in promoting the pilot amongst the prisoners as well as ensuring that the scheme ran smoothly. Without the support, enthusiasm and knowledge of the prison staff involved in the pilot, it would have been difficult to ensure that the scheme was a success. The coordinators also played an important role in supporting prisoners in transferring money into bank accounts and providing advice on how to use the accounts.
- It was also important that the pilot had the full support of the bank. Halifax Bank of Scotland played an instrumental role in ensuring that the processes ran smoothly and that prisoners were provided the necessary administration support to ensure that bank accounts were opened efficiently.
- **Work with stakeholders in setting clearly detailed objectives and methodology.** Before the pilot started, the National Offender Management Service worked with UNLOCK, HBOS and the Prison Service to set out, in a Terms of Reference document, the objectives and detailed methodology for the pilot. This allowed NOMS to define a clear process which could be followed by all stakeholders involved in the pilot. It also provided NOMS with an early opportunity to identify any barriers and to propose solutions.
- **Reaching compromises to overcome barriers.** During the pilot, NOMS and UNLOCK faced specific issues that required changes in the way that the bank worked. NOMS also had to introduce new processes for the prison. It was important that all stakeholders were clearly focused on the objectives of the pilot and were willing to make compromises to ensure its success. For example, in order to overcome the issues created by a prisoner's lack of ID, it was key that the bank was willing to accept the ID pro-forma endorsed by the prison governor, but it was equally important that the governors were willing to vouch for the prisoners' identification.
- **Working with the banks to overcome their concerns.** From the outset NOMS worked with HBOS to address their concerns, which were initially around the type of prisoner who would apply for a bank account and their potential lack of financial awareness. These concerns were solved by the prison coordinator playing a proactive role in sifting the applications and ensuring that only eligible prisoners applied. Although not a prerequisite for opening a bank account, HBOS's concerns over prisoners' lack of financial awareness were overcome by the UNLOCK training.⁴⁴⁴

⁴⁴³ Ibid, p 9.

⁴⁴⁴ Ibid, pp 9-10.

Project development (2006-2008)

A post project review was carried out by the National Offender Management Service (NOMS). The evaluation led to a commitment by NOMS to “develop a model for wider roll out by 2006/07” within their 2005 delivery plan. However, no roll-out occurred.⁴⁴⁵

Private prison HMP Forest Bank formed a partnership with Co-operative Bank in 2006, delivering a pilot project providing access to basic accounts. Only 39% of the 107 who opened a bank account reoffended. The national reoffending rate of people serving sentences of less than 12 months was 59.9%.⁴⁴⁶

The Co-operative Bank’s openness to applications spread quickly into many prisons. The bank eventually came to cover 29 prisons.⁴⁴⁷

In December 2009, earlier events led the National Offender Management Service (NOMS) and the British Banking Association to agree on a standardised ID form for prisoners, based on the one used by UNLOCK and Barclays. NOMS published a revised Prison Service Instruction (PSI 35/2009) which instructed prison governors to support access to banking by using the ID solution developed by the pilot. However, as stated in the PSI, “The completion of the form does not mean that a bank will automatically accept it as ID for the purpose of opening an account.” Local bank branches remained unaware of the form, causing significant frustration for people in prison, prison staff and branches.⁴⁴⁸

National campaign (2010 – 2014)

The focus of UNLOCK’S national campaign was to:⁴⁴⁹

- Promote the new ID document contained in PSI 35/2009 to prisons and banks;
- Develop and provide practical guidance to prisons on running a banking project efficiently, effectively and securely;
- Seek agreements from the major banks that they would work with prisons to open accounts for serving prisoners in order to support resettlement; and
- Develop a strategic framework for bank/prison partnerships.

In 2010, a joint UNLOCK and Ministry of Justice initiative agreed three objectives:⁴⁵⁰

- increase the extent to which banks offer bank accounts to serving prisoners;
- increase the number of prisons which offer support to prisoners wishing to open a bank account; and
- establish links between prisons and banks wishing to offer a bank account support service.

UNLOCK mapped the then-existing provision of banking services in prisons and identified that up until then only 53 prisons had been able to develop relationships with banks but that many others had found it impossible to do so. Guidance was published for prisons on how to deliver access to banking, based on best practice. Dialogue was established with the major banks with a view to the development of a co-ordinated national approach to prisons. As a result, Barclays committed to covering an entire NOMS region, consisting of a total of 14 prisons.⁴⁵¹

445 Ibid.

446 Paul Jones, “Banking on a Fresh Start,” n 132, p 7.

447 Ibid.

448 UNLOCK – The National Association of Reformed Offenders, “Unlocking Banking Impact Report (2014),” n 426, p 7.

449 Ibid, p 8.

450 Ibid.

451 Ibid.

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At a roundtable discussion with the British Banking Association, UNLOCK proposed a model for developing partnerships between prisons and the banks to ameliorate the difficulties faced by prisoners and prison staff in engaging with banks at a local level. Under the proposed model, each bank would agree to accept applications for basic accounts from a number of prisons. Larger banks would take on more prisons. Processing of applications would take place centrally within each bank, rather than at branch level. The ultimate objective was to reach a point where every prison that wanted and needed a bank account opening service had one.⁴⁵²

Political leadership was critical to securing the cooperation of the banks to service prisoners. In 2011, a joint letter was sent from Crispin Blunt MP (Secretary of State, Ministry of Justice) and Mark Hoban MP (Secretary of State, HM Treasury) to all banks encouraging them to increase the work that they were doing in opening bank accounts for people before they are released from prison. This was followed by a meeting held at the British Banking Association with all major banks to discuss responses to the Ministerial letter and to explore ways forward.⁴⁵³

Shortly after this, Halifax agreed to expand their work in prisons so that they were covering the number of prisons equivalent to their market share of current account customers, which saw a dramatic increase from 3 prisons to approximately 30 prisons. This received significant media coverage at the time (including an article in the Mail on Sunday), because as part of this they committed to cover all women's prisons that were needing an arrangement of this sort.

However, there remained three banks that were yet to engage on the agenda – HSBC, RBS and Santander.⁴⁵⁴

A further joint Ministerial letter was sent in March 2012, and this had almost instant results. The following month, HSBC began a 6-month pilot in 3 prisons. This was quickly followed by Santander, who in September 2012 began a 6-month pilot in 5 prisons.⁴⁵⁵

The pilots of HSBC and Santander, alongside the significant expansion of Halifax, led to an All-Party Parliamentary Group focusing on Access to Banking in November 2012, where the focus was on recognising the progress that had been made. The only major bank left to get involved was RBS.⁴⁵⁶

In December 2012, a meeting was held between Jeremy Wright MP (Secretary of State, Ministry of Justice) and Directors of RBS bank. At this meeting, the bank agreed to begin a 12-month pilot in 5 prisons, to begin in March 2013.⁴⁵⁷

2013 saw further developments in bank activity, including an expansion from HSBC, expanding the programme to cover 15 prisons. This was later followed by RBS, which expanded in November 2013 to also cover 15 prisons. The result is that all prisons that want and need a bank account opening service now have one.⁴⁵⁸

Evaluation of UNLOCKing Banking

The project was deemed successful. In its final year before the Government took over running the scheme:⁴⁵⁹

- UNLOCK had helped to set up 74 prison/banking programmes;
- 114 prisons had links with a high-street bank;
- The 'big 5' account providers (Barclays, Halifax (part of Lloyds Banking Group), HSBC, Santander and RBS) were all actively involved; and
- By the end of 2013, all prisons that wanted and needed a basic bank account opening programme had one.

⁴⁵² Ibid.

⁴⁵³ Ibid.

⁴⁵⁴ Ibid, p 9.

⁴⁵⁵ Ibid.

⁴⁵⁶ Ibid.

⁴⁵⁷ Ibid.

⁴⁵⁸ Ibid.

⁴⁵⁹ Ibid, p 1.

Why it's worked – bank perspective

From the perspective of banks, the UNLOCKing Banking scheme has succeeded because the strategic nature of the project provided an opportunity for the banking industry to be taking leadership in achieving financial inclusion in the banking industry. The British Banking Association (BBA) promoted its partnership work with UNLOCK and the NOMS as strong evidence of the financial industry's commitment to tackling financial exclusion. The role of the BBA was important in keeping the banks committed to advancing the scheme.⁴⁶⁰

Efforts to improve access to banking in prisons received universally positive coverage in the national media, such as the Mail on Sunday, The Guardian and BBC Radio 4, which reflected well on the banking sector.⁴⁶¹

Further, banks were keen and able to show their support for a key government policy priority. Crime-reduction through reduced reoffending was a key objective for the Labour Government due to its electoral importance and the need to reduce fiscal costs. HM Treasury, the Department of Work and Pensions and the Ministry of Justice all indicated support for access to banking for prisoners.⁴⁶² Additionally, having avoided the imposition of a legislatively mandated universal obligation in the 2006 House of Commons Treasury Select Committee, voluntary cooperation was the best approach to demonstrate good will and to show support for a major government initiative.⁴⁶³ Relatedly, while the numbers of prison-based applicants were miniscule in contrast to the 'normal' customer bases of the banks, the region-based collective impact approach fostered by UNLOCKing Banking contributed to large-scale, national impact both strategically and in terms of delivery.⁴⁶⁴

The model of delivering the scheme, involving the pre-screening and pre-approval of applications by NOMS and UNLOCK before the applications are sent to the banks mean that the labour involved and the costs to the banks were kept to a minimum and were relatively low.⁴⁶⁵ UNLOCK provided a single point of contact to each of the banks. This helped at all stages of the process – from initial 'business case' development, to securing sign-off internally within the bank, to developing operational processes and launching processes in operation with identified prisons. Significant support was also given on a day-to-day basis, responding to questions raised as part of the operational process.⁴⁶⁶

'Remote' account opening – the act of opening a bank account at a bank without physically showing up in person – ensures that banks can utilise the arrangements they already have in place. The relatively low costs of participation mean it allows the UNLOCKing Banking scheme to remain sustainable.⁴⁶⁷ The focus on account opening has been integral to the sustainability and success of UNLOCKing Banking.

A basic bank account is only one part of a bigger picture. For example, the provision of financial capability training is also important. However, this scheme has only focused on opening a basic account, to ensure that the processes set up are sustainable and are not too vulnerable to changes in local bank staff or project priorities. A singular focus on account-opening provision and resisting suggestions for banks to do more than that, ensures the sustainability of the programmes, and makes the initiative 'business-as-usual' for banks. While worthwhile, resource-intensive projects were considered more likely to be vulnerable to being closed when market conditions change, or bank leadership changes.⁴⁶⁸

⁴⁶⁰ Ibid, p 21.

⁴⁶¹ Ibid, p 22.

⁴⁶² Ibid, p 21.

⁴⁶³ House of Commons Treasury Committee, "Banking the Unbanked," n 393.

⁴⁶⁴ UNLOCK – The National Association of Reformed Offenders, "Unlocking Banking Impact Report (2014)," n 426, p 21.

⁴⁶⁵ Ibid.

⁴⁶⁶ Ibid, p 22.

⁴⁶⁷ Ibid, p 21.

⁴⁶⁸ Ibid.

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The sustainability of the scheme is also supported by national tailored arrangements under which each bank developed its own bespoke process that applies across the prisoners that the bank works with. This ensures that the bank can sign-off on a number of key parts in the process. While all the individual bank schemes work across broadly similar lines, they vary in different ways. This responds to the individual focus for each bank. It also ensures that arrangements are not vulnerable to being ‘pulled’ by Head office, an issue that locally designed processes experience.⁴⁶⁹

Why it’s worked – prison perspective

Standard prison framework

UNLOCK and NOMS worked closely to ensure that there was a standard set of operating practices which were in line with prison rules and policies, which each prison was able to sign up to.⁴⁷⁰

Dedicated ‘banking leads’

The designation of dedicated ‘banking leads’ in each prison ensures that the bank is able to maintain a single point of contact at the prison, should any queries arise.⁴⁷¹

Ownership by the prison

It has been important for the banks to agree their process with the prison, rather than organisations working in those prisons. This ensures that the process can continue in the event of a change in the service-delivery contract operating in a particular prison.⁴⁷²

Operational contacts with the bank

Unlike ordinary account opening processes, prison banking leads were in touch with operational contacts at the bank, which has enabled the process to move much smoother all round.⁴⁷³

Prison inspections

UNLOCK worked with HM Chief Inspector of Prisons to ensure that the provision of bank account opening services was looked at as part of their inspection process. This has prompted interest from prisons who have an upcoming inspection or have been criticised by a recent inspection. This ‘external review’ process is a useful way of holding prisons to account.⁴⁷⁴

Why it’s worked – imprisoned individual’s perspective

Basic bank accounts

Lots of people in prison have not had a bank account before, or if they did, they may not have used it for some time. In some cases, the reason they end up in prison was because of financial difficulties which led them into the situation that they are now in. So, the focus on a basic bank account made the likelihood of application success much greater.⁴⁷⁵ The main difference between a ‘basic bank account’ and other types of current accounts is that you cannot get a cheque book (which are still used in the UK), or an overdraft, with a basic account.

Set up before release

Critically for this project, the accounts are designed so that applications are processed while the individual is still in prison. If successful, the account is up and opened before somebody is released. This allows, in most cases, cards & PINs to be issued by the bank and held by the prison on behalf of the individual. It also means that payments can be made before release.⁴⁷⁶

469 Ibid.

470 Ibid.

471 Ibid.

472 Ibid, p 22.

473 Ibid.

474 Ibid, p 23.

475 Ibid.

476 Ibid.

Australia

The extent of financial exclusion in Australia

Australia enjoys one of the highest rates of financial product penetration in the world. The Global Financial Inclusion (Global Findex) Database compiled by the World Bank using nationally representative data in 2011 found that 99% of Australian adults possessed an account with a formal financial institution, and 64% owned a credit card.⁴⁷⁷ Even within the lowest income quintile, account penetration was still high, at 97%.⁴⁷⁸

In Australia, financial services are regarded as a social norm. According to the 2006 *Community Understanding of Poverty and Social Exclusion* survey, 90.2% of people considered access to a bank or a building society as essential.⁴⁷⁹ However, while there is a high rate of bank account penetration across the Australian adult population, financial exclusion remains a significant long-term policy issue. A study commissioned by the National Australia Bank, conducted by the Centre for Social Impact (CSI), found that more than three million people (16.9% of the adult population in Australia), approximately 1 in 5 Australians, were either fully excluded or severely excluded from financial services in 2013.⁴⁸⁰ This figure comprises 1% of adults who were fully excluded (they had no financial services products) and 15.9% of adults who were severely excluded (they had only one financial services product: either a transaction bank account, a credit card, or general insurance).⁴⁸¹ In real terms, 181,000 Australian adults were fully excluded and

2,859,000 were severely excluded, totaling 3,040,000 people experiencing financial exclusion in 2013.⁴⁸²

In the same study, women were slightly more likely to experience full or severe financial exclusion – comprising 50.2% of the total population, yet 53% of the financially excluded population.⁴⁸³ The research also found that young people were represented in extremely high numbers in the fully excluded and severely excluded categories. More than one million financially excluded individuals were in the 18 to 24 age bracket, suggesting that being aged 18 to 24 resulted in an exclusion rate that was 78% higher than the national average.⁴⁸⁴ Further, the research found that Aboriginal and Torres Strait Islander Australians, and people born outside Australia in non-English speaking countries, and those speaking a language other than English at home, enjoyed slightly lower rates of overall financial inclusion. In each of these areas there is considerable intersection between financial exclusion and other dimensions of social disadvantage within Australia, thus reflecting that financial exclusion can create, reinforce, or be an outcome of disadvantage.⁴⁸⁵

Financial inclusion and the Australian policy context

There is no universal service obligation imposed by legislation for the provision of financial services in Australia. Inquiries into the Australian financial and banking system in the 1980s and 1990s made no direct recommendations on improving financial inclusion. Rather the focus of those inquiries were on other major economic and financial sector reforms.⁴⁸⁶ Subsequent Commissions of Inquiry into the Australian financial system prior to 2017 generally failed or omitted to focus on, or make recommendations around, financial inclusion as a policy issue or priority.⁴⁸⁷

477 Asli Demircuc-Kunt, and Leora Klapper, "Measuring Financial Inclusion : The Global Findex Database," *World Bank Policy Research Working Paper* 6025, April 1, 2012, p 50, <http://hdl.handle.net/10986/6042>.

478 Ibid, p 15.

479 Sherman Chan, "Financial Exclusion: An Empirical Study of Household Access to Financial Services in Australia," *Unsworks.unsw.edu.au* (University of New South Wales, 2017), p 138, <http://hdl.handle.net/1959.4/58348>.

480 Centre for Social Impact for National Australia Bank, "Measuring Financial Exclusion in Australia," April 2014, p 9, <https://www.nab.com.au/content/dam/nabrwtd/documents/reports/financial/2014-measuring-financial-exclusion-in-australia.pdf>.

481 Ibid.

482 Ibid.

483 Ibid, p 23.

484 Ibid, p 20.

485 Ibid. See also Jordan Grace, "Partnering to Address Financial Exclusion in Australia," in *Debt and Austerity* (Elgar Online, 2020), 260–78, p 264, <https://doi.org/10.4337/9781839104350.00022>.

486 Sherman Chan, "Financial Exclusion: An Empirical Study of Household Access to Financial Services in Australia," n 479, p 10.

487 Ibid.

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The latest financial system inquiry, the Haynes *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* (2017-2019) set out 76 recommendations, including expectations of needed change in regulation, conduct, and other aspects of the financial system.⁴⁸⁸ While that Royal Commission's reports made no recommendations specifically directed at reducing financial exclusion, a number of the recommendations were made to improve the accessibility of banking for all Australians. The Commission's Final and Interim Reports took the view that banking should be regarded as an essential service and that full participation in society requires access to banking services.⁴⁸⁹ This translated to recommending the imposition of greater obligations on banks to support particular types of vulnerable customers to access and undertake banking.⁴⁹⁰ Relevant to our research, the Haynes Royal Commission *Interim Report* stated that:⁴⁹¹

A 'basic account' is a bank account that provides the account holder with essential banking services at a lower cost than other forms of account. Those who are on a low income, especially those in receipt of certain government benefits or holding government concession cards, may find that a 'basic account' suits their needs better than other forms of account.

The 2014 Murray *Inquiry into the Australian Financial System* preceded the 2019 Haynes Royal Commission. The Murray Commission Report acknowledged that financial services play a "vital role in supporting a vibrant, growing economy that improves the standard of living for all Australians, allowing people to make payment, access credit, manage risk and save for

retirement".⁴⁹² Similar in focus to the later Haynes Report, recommendations under the "consumer outcomes" chapter of the Murray Report predominantly related to protecting consumers against the potential poor conduct of financial providers in designing, marketing and providing financial products.⁴⁹³ In other words, there were no recommendations directed at reducing financial exclusion (i.e., the group of people not targeted by financial providers). However, the Murray Report explicitly expressed support for "continuing industry and government efforts to increase financial inclusion" and noted that community organisations should be involved in the further development of the financial services framework.⁴⁹⁴

In tandem with the financial system inquiries which have concentrated on consumer protection, legislative changes in Australia have been introduced to protect consumers from the unethical and predatory practices of some credit providers.⁴⁹⁵ The *National Consumer Protection Act 2009* required the regulation of consumer credit to be transferred from the states and territories to the Commonwealth Government in July 2010.⁴⁹⁶ Enhancements to that Act, enacted through the *Consumer Credit Legislation (Enhancements) Act 2012* took effect in July 2014.⁴⁹⁷ These enhancements standardised policies across Australia in regulating the Small Amount Credit Contract (SACC) industry's fees and charges and introduced measures to prevent predatory lending to vulnerable or unsuitable consumers. Crucially, however, a subsequent review of the effectiveness of laws relating to Small Amount Credit Contracts found that such laws "should be designed in a way that promotes financial inclusion and

488 Commonwealth of Australia, "Final Report: Misconduct in the Banking, Superannuation and Financial Services Industry," February 4, 2019.

489 Ibid, p 91, Commonwealth of Australia, "Interim Report: Misconduct in the Banking, Superannuation and Financial Services Industry," 2018, p 260.

490 Ibid, pp 22, 88-94 (Final Report).

491 Commonwealth of Australia, "Interim Report: Misconduct in the Banking, Superannuation and Financial Services Industry," n 489, p 260.

492 Commonwealth of Australia, "Financial System Inquiry Final Report" (The Treasury, November 2019), p 3, <https://treasury.gov.au/sites/default/files/2019-03/p2014-FSI-01Final-Report.pdf>.

493 Ibid, pp 193-227.

494 Ibid, p 193.

495 Sherman Chan, "Financial Exclusion: An Empirical Study of Household Access to Financial Services in Australia," n 479, p 11.

496 National Consumer Credit Protection Act 2009 (Cth), <http://www.comlaw.gov.au/Details/C2009A00134>.

497 Consumer Credit Legislation Amendment (Enhancements) Act 2012 (Cth), <https://www.legislation.gov.au/Details/C2012A00130>.

attempts to protect consumers from descending into financial exclusion”.⁴⁹⁸

In summary, policy attention in Australia has focused predominantly on consumer protection of financial service users. As economic researcher Dr Sherman Chan concluded in her empirical study of household access to financial services in Australia: “policy measures have concentrated on fine details such as the level at which to set interest rate caps on SACCs, as opposed to investigating the underlying demand for predatory lending or targeting some broader social objectives such as tackling financial exclusion”.⁴⁹⁹

Australian Government initiatives to promote financial inclusion

Despite an absence of legislative or high-level policy attention focused at tackling financial exclusion, the Australian Commonwealth Government has supported several initiatives targeted at reducing financial exclusion and promoting financial inclusion. The most recent example is the G20 Financial Inclusion Action Plan (FIAP) which was endorsed by G20 leaders in 2010 and updated in 2014 and 2020 by the G20 Global Partnership for Financial Inclusion.⁵⁰⁰ The 2020 FIAP reaffirms the G20 Leaders’ commitment to “advance financial inclusion benefiting all countries and all people, including vulnerable (such as elderly people, migrants and forcibly displaced persons) and underserved groups (including the poor, women, youth, and people living in remote rural areas)”.⁵⁰¹

Relevant action items in the FIAP inclusion plan include incorporating financial inclusion in the work of standard setting bodies, promoting consumer protection and financial education, and dealing with the markets and financial systems. Subsequent to the updated G20 FIAP, Good Shepherd Microfinance was appointed by the Australian government in 2015 to develop a country-level Financial Inclusion Plan.⁵⁰²

Australia’s Financial Inclusion Action Plan (FIAP) programme, delivered by Good Shepherd in partnership with Ernst Young (EY), the Centre for Social Impact and the Australian Government is described as a “collaborative, cross-sectoral national programme, engaging with and guiding organisations (FIAP Trailblazers) through a process of developing and implementing an action plan to enable inclusion and resilience within their own sphere of influence, in alignment with their own strategy.”⁵⁰³ The FIAP programme provides a framework for organisations to enable financial inclusion and resilience for their employees, customers and the wider community. The programme supports participating organisations to develop Action Plans containing specific actions which they can take to promote increased inclusion and resilience for vulnerable groups.⁵⁰⁴ The FIAP framework is underpinned by four key action areas, identifying ten ‘system-wide’ strategies required to ‘move the dial’ on, or enhance, financial inclusion and resilience in Australia (Figure 1.1).⁵⁰⁵

498 Commonwealth of Australia, “Review of the Small Amount Credit Contract Laws: Final Report,” March 2016, https://treasury.gov.au/sites/default/files/2019-03/C2016-016_SACC-Final-Report.pdf. p. v. (letter of transmittal).

499 Sherman Chan, “Financial Exclusion: An Empirical Study of Household Access to Financial Services in Australia,” n 479, p 11.

500 Global Partnership for Financial Inclusion, “G20 2020 Financial Inclusion Action Plan | GPFI,” www.gpfi.org, 2020, <https://www.gpfi.org/publications/g20-2020-financial-inclusion-action-plan>. Australia has been a member of the G20 since its inception in 1999.

501 Ibid.

502 Sherman Chan, “Financial Exclusion: An Empirical Study of Household Access to Financial Services in Australia,” n 479, pp 11-12.

503 Centre for Social Impact, “Collective Action on Financial Inclusion Can Generate an Annual \$2.9 Billion in GDP | CSI,” Centre for Social Impact, November 25, 2016, <https://www.csi.edu.au/news/collective-action-on-financial-inclusion-can-generate-an-annual-2.9-billion-in-gdp/>.

504 Financial Inclusion Action Plan, “From Foundations to Actions Measuring the Achievements of Phase One of the Financial Inclusion Action Plan (FIAP) Program Part Two – Action Plans,” 2018, https://fiap.org.au/wp-content/uploads/2022/10/FIAP-2018_From-Foundations-to-Actions_Actions-Plans_Report-Part-2-1.pdf.

505 Abigail Powell, “Measuring the FIAP Impact: Process and Baseline Impact Evaluation of the Financial Inclusion Action Plan (FIAP) Program 2018. Report for Good Shepherd Microfinance.” (Centre for Social Impact, UNSW, 2018), p 5, <https://assets.csi.edu.au/assets/research/Financial-Inclusion-Action-Plan-Process-and-Baseline-Impact-Evaluation-2018-Final-Report.pdf>.

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Figure 1.1 FIAP Action Areas and ‘Move the Dial’ Strategies

FIAP action areas	Products and services	Capabilities, attitudes and behaviours	Understanding of culture and diversity	Economic participation and status
Identified actions to ‘move the dial’ for financial inclusion	Improve access (availability, affordability and appropriateness) of financial products and services	Build financial literacy and capabilities among vulnerable groups	Improve and facilitate social, community and/or government support for vulnerable groups	Facilitate transitions to stable housing for those who do not already have it
	Promote saving and other supports that protect people in times of need associated with financial risk	Improve the capacity, attitude and behaviours of staff (including cultural awareness) to support those who are financially excluded and vulnerable groups	Increase understanding of vulnerable groups and engage/collaborate with other stakeholders to identify appropriate pathways of support	Address economic participation and employment opportunities
			Support customers and other stakeholders in times of need associated with financial risk.	Increase economic resources and reduce income equality
Key triggers for financial hardship	Responds to key triggers: Hardships Financial literacy/capability Ethnicity, gender & culture	Responds to key triggers: Social isolation Financial literacy/capability Digital exclusion	Responds to key triggers: Social isolation Life stages/life events Ethnicity, gender and culture	Responds to key triggers: Unemployment Life stages/life events Hardships

These action areas, according to an evaluation by the UNSW Centre for Social Impact, respond directly to key triggers of financial exclusion and low resilience, including lack of access to safe, affordable and appropriate products and services; low capability both external to participating organisations (their clients and community partners) and internal (their staff, policies and processes, and suppliers); lack of understanding of vulnerability; and fewer opportunities for economic participation and equality.⁵⁰⁶

In 2018, 30 Trailblazer organisations – including nine financial service providers – identified more than 580 actions that represent practical and tangible actions that are currently underway to address problems of financial inclusion in Australia.⁵⁰⁷ Trailblazers from the financial services sector have focused on ensuring their product design and delivery is best able to support ‘at-risk’ customers. By way of example, the Commonwealth Bank committed to “continue to

provide over-the-counter banking services to customers outside of major cities” and to “continue to offer monthly account and withdrawal fee waivers for eligible low income Australians, according to product terms and conditions”.⁵⁰⁸ Bank Australia committed itself to reviewing the suitability of its existing low-income insurance product as well as piloting a coordinated approach to financial inclusion in certain branches. Bank Australia’s pilot programme would include responsible referrals to microfinance institutions; no interest emergency loans; low-income insurance and matched savings programmes.⁵⁰⁹ National Australia Bank (NAB) committed, among other things, to “support Australians with access to fair and affordable microfinance products and services”.⁵¹⁰ If implemented as intended, such actions by banks could enhance financial inclusion for service-users by enhancing the availability, affordability, and accessibility of suitable financial products by minimising some of the known barriers to inclusion. However, the actions committed

⁵⁰⁶ Ibid.

⁵⁰⁷ Financial Inclusion Action Plan, “From Foundations to Actions Measuring the Achievements of Phase One of the Financial Inclusion Action Plan (FIAP) Program Part Two – Action Plans,” n 504, p 1.

⁵⁰⁸ Ibid, p 25.

⁵⁰⁹ Ibid, pp 15-19.

⁵¹⁰ Ibid, p 41.

by banks in their Financial Inclusion Action Plan programmes are not primarily focused on the group of people not already engaged with financial providers.

Thriving Communities Partnership – Fostering Financial Stability for People in Prison Project

Between 2020-22 the Fostering Financial Stability for People in Prison Project was undertaken by the Australian NGO, Thriving Communities Partnership. Thriving Communities Partnership is an organisation dedicated to ensuring that everyone has fair access to the modern essential services they need to thrive in contemporary Australia.⁵¹¹ The Fostering Financial Stability for People in Prison Project sought to understand the financial issues that impact people in prison and frequently leave them in a worse financial position when they exit prison than when they enter.⁵¹² The project built on existing work, most notably Financial Counselling Australia's 'Double Punishment: How People in Prison Pay Twice' report.⁵¹³

The following paragraphs provide a concise summary of the research finding relevant to financial inclusion for imprisoned individuals. A more detailed summary of the research findings can be found at **Appendix 2** of this Report.

The Fostering Financial Stability for People in Prison Project identified that being in prison can create numerous challenges for people, including difficulties in managing one's finances. Prisoners face a variety of barriers when it comes to managing their money, such as limited access to banks, inability to pay bills, and restrictions on computer and phone usage. Additionally, prisoners cannot inform their utility companies and creditors that they are incarcerated, leading to debts and unpaid bills. As a result, prisoners often end up owing bigger, and more complicated debts which can

lead to financial troubles both during and after their imprisonment.⁵¹⁴

The Project's report identified five further barriers which make it difficult for prisoners to manage their money while incarcerated. Firstly, it was noted that some people in prison require assistance with managing their money and debt. Secondly, it can be difficult for individuals in prison to communicate with utility companies, banks and creditors to inform them of their situation due to limited phone and computer access. Thirdly, those who are incarcerated for short periods face challenges in communicating with utility companies, banks and creditors as communication is primarily conducted through letters or with the help of others through informal channels, which can be time-consuming. Fourthly, utility companies, banks and creditors are often unaware of an individual's incarceration, making it challenging for them to provide support. Lastly, many imprisoned people lack knowledge about financial management and debt when entering prison.⁵¹⁵

Several recommendations were made on possible intervention to assist persons who were in prison to manage their money and debt. First, the report suggested that financial counsellors should meet with a group of prisoners, upon their arrival, to educate them about debt management and how to properly manage their finances while incarcerated. This would require increased access to financial counsellors onsite at corrections facilities and remotely. The report further recommended that there should be ways for financial counsellors to support prisoners, upon entering custody, to have their debts and financial obligations paused to create the best possible opportunity for them to repay their debts when they are financially stable.

⁵¹¹ Thriving Communities Partnership, "About the Thriving Communities Partnership," Thriving.org.au, 2019, <https://thriving.org.au/about-tcp>.

⁵¹² Ibid, p 12.

⁵¹³ Financial Counselling Australia, "Double Punishment – How People in Prison Pay Twice," n 10.

⁵¹⁴ Thriving Communities Partnership, "Fostering Financial Stability for People in Prison Research – Phase 2 Report," November 2022, pp 7-11, <https://thriving.org.au/what-we-do/fostering-financial-stability-for-people-in-prison-project>.

⁵¹⁵ Ibid.

SECTION 9 — Comparative research — How other countries have addressed these issues CONT

The report also recommended that discussions about money management and debt take place with all incarcerated individuals. To aid in this process, utility companies, banks and creditors should provide a phone number specifically for financial counsellors to call and assist those in prison. Lastly, the report underscored the importance of ensuring that individuals leaving prison have someone to turn to for guidance on how to continue managing their finances effectively.⁵¹⁶

Relevant to financial inclusion of prisoners, the report observed that for people inside the corrections system, banks, telecommunications, utilities, and other service providers can have a significant impact on their ability to achieve financial stability both during incarceration and after release. As vulnerable customers, prisoners require support to access and navigate financial services. However, issues with ID can be a common barrier to accessing financial services while in prison, causing delays in accessing support and difficulties during reintegration. Delays in services such as freezing of accounts can lead to long-term financial issues and affect mental health. To support successful reintegration, this research emphasised that it is essential to remove barriers for people exiting prison, including making it easier for them to open or unfreeze bank accounts.⁵¹⁷

In summary, the Fostering Financial Stability for People in Prison Project research underscores how ensuring fair and accessible financial services for incarcerated individuals is crucial for their financial stability and supports successful reintegration upon release.

United States of America

The US: Criminal justice system involvement and financial exclusion.

Based on data from 2017, approximately 2.3% of the population, or about 7.7 million Americans, had been imprisoned at some time in their life.⁵¹⁸ According to the Federal Reserve Board's 2019 Survey of Household Economics and Decisionmaking, 22% of respondent households reported themselves or an immediate family member as justice-involved.⁵¹⁹ In the context of this research 'justice-involved' is a term used to describe anyone who has been arrested, charged, or convicted of a criminal offence and may also include family members affected by fees, fines, or burdens of incarceration or supervision.

Several studies have investigated financial issues among people with histories of incarceration. A 2018 study, conducted by the University of Chicago, found that half of those who were formerly incarcerated said their imprisonment harmed them financially.⁵²⁰ There were few differences by gender, race, income, or education. American experience reinforces that being incarcerated lowers financial well-being at similar levels no matter what the demographic.

Additionally, nearly one-third (37%) of family members of formerly incarcerated individuals reported that having an immediate family member who was in correctional custody negatively affected their

518 Terry-Ann Craigie, Ames C. Grawert, and Cameron Kimble, *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality* (Brennan Center for Justice at New York University, 2020), p 6.

519 ABA Bank Community Engagement Foundation, "Expanding Financial Services Access for Justice System-Involved Individuals," November 2021, p 5, https://www.aba.com/-/media/documents/reports-and-surveys/financial-inclusion-for-justice-involved-individuals-report.pdf?rev=9ab77e333158467ba69327c693643407&__cf_chl_tk=oCZJMcHxDH1GS0tb.zpyyBinixhfLac4FCRS6laWZu4-1676630530-O-gaNycGzNGvs.

520 Peter K. Enns et al., "What Percentage of Americans Have Ever Had a Family Member Incarcerated?: Evidence from the Family History of Incarceration Survey (FamHIS)," *Socius : Sociological Research for a Dynamic World* 5 (2019).

516 Ibid.

517 Ibid, p 61.

finances.⁵²¹ A 2016 study of the reinforcing dynamics of mass incarceration, employment, and racial disparities in US household wealth, found that an incarcerated family member is associated with 64% lower assets for the rest of the family, and 85% more debts.⁵²² The debt burdens for ‘justice-involved’ individuals includes debts which they had before conviction and incarceration, as well as fees and fines related to the court system. Child support arrears or ‘back payments’ are a common financial liability for formerly incarcerated Americans.⁵²³ A 2021 study by the Financial Health Network on the impacts of criminal justice system involvement on financial health found that of those who were incarcerated at least five years ago, 62% did not attempt to borrow from either a bank or a nonbank lender within the first three years of release.⁵²⁴ The same study also found that 29% of prisoners were unbanked prior to being incarcerated.⁵²⁵ This rate is more than three times higher than the average unbanked rate in the USA over the last 10 years. That number was even higher for individuals from households with incomes under \$30,000 (41%).⁵²⁶

Barriers to financial inclusion for justice-impacted Americans

As mentioned before, nearly one-third (29%) of respondents in the Financial Health Network survey of formerly incarcerated people reported they did not have an account before they were convicted.⁵²⁷ A 2021 report by the ABA Bank Community Engagement Foundation found that there are five primary barriers to financial access for the millions of justice system-

involved individuals in the U.S. They include a lack of valid identification or permanent address, prior problems managing a bank account, misperceptions that a conviction record will disqualify someone from opening an account, levies on bank accounts or court garnishment orders because of past-due debt and high levels of fear or anxiety around banking services.⁵²⁸

- **Lack of valid ID.** Justice-involved people who have been incarcerated may lack a valid form of identification and/or a permanent address — information that many banks require to open an account under Customer Identification Program rules. These provisions were enacted under the Bank Secrecy Act (BSA) and other Anti-Money Laundering (AML) regulations to protect against financial crimes but can be a burden for some people trying to open an account. One study suggested as many as 1 in 10 people — and about 1 in 4 Black adults — lack a government-issued photo ID.⁵²⁹
 - To open an account, an individual must provide their name, a physical address, an identification number such as a Social Security number, and their date of birth. Their identity must then be verified, but formerly incarcerated persons often lack the most common forms used to verify identity, such as a current driver’s licence or passport. They may also not have access to records or documents or have a permanent address. These factors alone can make applying for a bank account more difficult. Some banks may rely on credit records for identification verification, where applicants answer questions about prior addresses or previous loans. This may also be a barrier since people who are justice-involved are less likely to have any credit history, or the information is too old to easily recall.⁵³⁰

521 Bryan Sykes and Michelle Maroto, “A Wealth of Inequalities: Mass Incarceration, Employment, and Racial Disparities in U.S. Household Wealth, 1996 to 2011,” *RSF: The Russell Sage Foundation Journal of the Social Sciences* 2, no. 6 (2016): 129, <https://doi.org/10.7758/rsf.2016.2.6.07>.

522 Ibid.

523 Haney, Lynne, and Marie-Dumesle Mercier. “Child Support and Reentry.” National Institute of Justice, September 2021, p 13, <https://www.ojp.gov/pdffiles1/nij/300780.pdf>.

524 Arjun Kaushal, Tanya Ladha, and David Silberman, “Financial Health and Criminal Justice – the Impacts of Involvement” (Financial Health Network, 2012), Financial Health Network, p 4.

525 Ibid, p 16.

526 Ibid, p 17.

527 Ibid, p 16.

528 ABA Bank Community Engagement Foundation, “Expanding Financial Services Access for Justice System-Involved Individuals,” n 519, pp 7-9.

529 Brennan Center for Justice, “Citizens without proof: A survey of Americans’ possession of documentary proof of citizenship and photo identification.” 2006.

530 ABA Bank Community Engagement Foundation, “Expanding Financial Services Access for Justice System-Involved Individuals,” n 519, p 8.

SECTION 9 — Comparative research — How other countries have addressed these issues CONT

- **Some people applying for an account have had prior problems in managing a bank account.** Justice-involved people can have problems opening an account because of their banking history. For example, they may have an outstanding negative balance on an older account. Many banks will check an account applicant with a system like ChexSystems or EWS (Early Warning Systems), which track people who have a negative account history and certain involuntarily closed accounts. Under the Fair Credit Reporting Act, negative information may be reported for up to seven years. Depository institutions have varying procedures for new account applications, which may make the process more confusing for someone who has not had an account in years.⁵³¹
- **There may be misperceptions that a conviction record will disqualify someone from opening an account.** Generally, only financial crimes preclude someone from opening a bank account. In reality, financial fraud convictions are quite rare. Only 0.2% of inmates have convictions for bank or insurance fraud, counterfeiting, or embezzlement. Less than 2% of arrests are for bank fraud, forgery, counterfeiting, or embezzlement, amounting to about 170,000 arrests in 2019, compared to more than 10 million arrests of any kind. While there may be a perception that justice-involved people are “banned” from opening a bank account, the reality is most are in fact eligible to own an account.⁵³²

- **People leaving the justice system often find that they owe fees, fines, or child support payments and are facing collections on past-due debt.** These collections may result in court garnishment orders and levies on bank accounts. Moreover, while incarcerated, some people are victims of fraud or are targeted by financial scams, so when they exit the criminal justice system and try to set up their own accounts, they discover they must first confront identity theft or other problems.⁵³³
- **People who have been incarcerated may have a high level of fear and anxiety related to the banking system.** They may have had negative banking experiences in the past, and they may not perceive banks as being for them or traditional banking products as being useful. Without financial education and experience, people may not develop trust or willingness to deal with banks.⁵³⁴

Pathways to facilitate prisoner banking in the USA

Strategies suggested in the ABA Bank Community Engagement Foundation report included financial education in jails or prisons, special access to bank accounts upon release or while under supervision and continued financial education and support for people facing challenges due to their criminal records. Using an ‘inclusive design’ approach, banks can create financial services offerings that have easier application processes and reduce unintentional barriers to getting bank accounts, payments cards, or check cashing services. Many banks have formed partnerships with public and nonprofit agencies to create innovative programmes.⁵³⁵

⁵³¹ Ibid, p 8.

⁵³² Ibid, pp 8 – 9.

⁵³³ Ibid, p 9.

⁵³⁴ Ibid.

⁵³⁵ Ibid, p 3.

Linking external bank accounts to prison accounts

In Texas, for example, the Department of Criminal Justice encourages inmates to open accounts at an external bank of their choice. They can then link this bank account to their prison account. This can be used to replenish their account for items bought while in prison. Excess funds in their prison account can also be transferred to their external bank account.⁵³⁶

Partnership between banks and government agencies

Some banks have adopted novel strategies for serving justice-involved populations through partnerships with government agencies. Community-based approaches foster collaboration among banks, court systems, jails and prisons, and state and local agencies to help justice-involved populations access a combination of financial education and improved financial services. Participating in these coalitions helps banks gain a stronger presence in their communities, support community reinvestment goals, and expand their reputation with key stakeholders. Banks involved in these partnerships may also build institutional capacity through staff training and volunteerism.⁵³⁷

Case Study – Bank On 2.0 pilot programme

One example is the coalition assembled to serve formerly incarcerated persons by the City of Lansing Office of Financial Empowerment in Michigan. The goal of the City's Bank On 2.0 pilot programme is for every returning citizen (in other words, persons exiting prison) to have the tools to succeed.⁵³⁸ Four local financial institutions – three banks and one credit union – worked to ease the transition for those parolees and probationers by helping them join the financial mainstream.⁵³⁹ CASE Credit Union helps fulfil part of the

credit union mission of serving the underserved. CASE identified that ex-prisoners were disproportionately unbanked. It evolved into a position of “We’ve got all of these parolees or probationers that no one will touch their money – the banks won’t touch their money because they’re felons”.⁵⁴⁰ In response the credit union began “going to the parole office here in Lansing twice a month and sitting down with these people and taking their money and opening accounts and helping them to understand their finances. Some of them have been in jail so long they didn’t know what a debit card was. Some of them have never written a check. So we provided information to them about a checking account and what things you can and can’t do.”⁵⁴¹ Participants are offered financial counselling and access to safe and affordable bank accounts that meet Bank On National Account Standards at participating depository institutions, including Dart Bank, Flagstar Bank, and PNC Bank.⁵⁴²

During the pilot phase, which ran from 2015 to 2017, the programme helped open safe, affordable accounts for 102 individuals at four partnering depository institutions (CASE Credit Union, Dart Bank, Flagstar Bank, and PNC Bank). Of those, 83 went on to open additional accounts and 31 established direct deposit. The programme also provided workshops using the “Bank On It” module of the FDIC’s MoneySmart Curriculum; 75 participants attended at least one workshop of the 24 offered. It is worth noting that 46% of participants had a bank account prior to incarceration, and 60% of participants said they would not have opened an account after exiting prison if they had not been involved with the programme.⁵⁴³

536 Rebecca Lake, “Can You Open a Savings Account for an Inmate?,” SoFi, September 18, 2022, <https://www.sofi.com/learn/content/how-to-open-a-savings-account-for-an-inmate>.

537 ABA Bank Community Engagement Foundation, “Expanding Financial Services Access for Justice System-Involved Individuals,” n 519, p 15.

538 Ibid.

539 Allison Prang and Aaron Passman, “How One City Is Helping Bring Parolees into the Financial Mainstream; in Lansing, Mich., a Partnership between Banks and a Local Credit Union Is Helping Recently Released Prisoners Gain Access to Traditional Banking Products,” *Credit Union Journal* 21, no. 9 (July 17, 2017), <https://go.gale.com/ps/i.do?p=ITOF&u=vuw&id=GALE%7CA498685450&v=2.1&it=r>.

540 Ibid.

541 Ibid.

542 ABA Bank Community Engagement Foundation, “Expanding Financial Services Access for Justice System-Involved Individuals,” n 519, pp 15-16.

543 Ibid. p 25.

SECTION 9 — Comparative research — How other countries have addressed these issues CONT

The City of Lansing's support of returning citizens through financial empowerment offers the following important insights for the banking sector:

- **Ex-prisoners face challenges that require strong partnerships to address.** The pilot programme required strong partnerships with parole and probation officers to succeed. These partners had to understand the costs of being unbanked, the important role banking plays in achieving financial stability, and the unique circumstances facing this population when it comes to becoming banked. For example, because many returning citizens fear garnishments due to unpaid debts, they should receive financial counselling to deal with those debts prior to opening an account. Financial counselling can also identify theft, as many of these individuals become victims while incarcerated.⁵⁴⁴
- **There is a widespread need for safe and affordable bank accounts.** The City of Lansing partners with depository institutions offering certified Bank On products or products that meet National Accounts standards. Key features include no minimum balance, no or low monthly fees, and at least one bounced check forgiveness. The programme aims to 'graduate' customers to higher-level products once they have demonstrated the ability to manage their account.⁵⁴⁵
- As evidenced by the pilot, formerly incarcerated citizens who participate in the city's reentry programme gain a higher level of financial stability than they would on their own, and many go on to be long-term customers at the partner depository.⁵⁴⁶

Case Study – Bank of Hawaii partnership with Department of Public Safety

The Bank of Hawaii is another example of an innovative bank that is focusing on improving access to accounts and services for justice-involved populations. Bank of Hawaii (BOH) provides savings accounts and basic check cashing for participants in the Department of Public Safety (DPS) Laumaka Work Furlough Programme (LWFP), a work-release programme for inmates at the Oahu and Maui Community Correctional Centers. The bank has partnered with DPS since 2013 to open accounts for LWFP participants. Bank staff at participating branch locations also assist with automatic deposits and provide financial education to participants. These interactions help build trust and can contribute to lasting relationships with participants, who may go on to become regular customers.⁵⁴⁷

Since 2013, BOH has opened nearly 1,000 accounts for inmates who have participated in the Laumaka Work Furlough Program. While LWFP helps BOH fulfil its Community Reinvestment Act (CRA) obligations, the engagement has also been beneficial in other ways. At the end of 2019, BOH had approximately 125 active LWFP accounts with nearly \$700,000 in deposits. Many participants go on to open mainstream accounts with BOH once they have completed the programme. Additionally, the programme is responsible for a significant reduction in recidivism rates for participants.⁵⁴⁸

Drawing on the ABA Bank Community Engagement Foundation research, BOH's experience working with justice-involved individuals provides the following insights:

- **Financial education helps build trust.** LWFP accounts have certain restrictions based on DPS regulations and BOH branch staff are able to explain these rules (e.g., restrictions on withdrawal amounts). During these interactions, they have embraced the opportunity to provide additional financial education, which helps establish trust and build relationships.⁵⁴⁹

⁵⁴⁴ ABA Bank Community Engagement Foundation, "Expanding Financial Services Access for Justice System-Involved Individuals," n 519, pp 29-30.

⁵⁴⁵ Ibid, p 30.

⁵⁴⁶ Ibid, p 30.

⁵⁴⁷ Ibid, p 11.

⁵⁴⁸ Ibid, pp 21-22.

⁵⁴⁹ Ibid, p 22.

- **These relationships retain and attract customers.** Many of the participants in LWFP open regular accounts with BOH after incarceration.⁵⁵⁰
- **Involvement is good for staff.** Bank employees who had the opportunity to work with current and newly released inmates have provided positive feedback on the experience.⁵⁵¹

Financial capability development

The ABA Bank Community Engagement Foundation report found that having little financial literacy knowledge is a significant problem for formerly incarcerated individuals since they may not have financial management skills or experience managing their own finances. A commonly used strategy to help people leaving prison is to provide financial education classes, workshops, and other programmes that help them engage with banking. A 2007 study found that money management classes can improve the financial knowledge of people who are incarcerated based on pre – and post-test scores.⁵⁵²

The United States appears to have a variety of credit union-run financial education programmes. The National Credit Union Foundation has produced a guide for union members who are interested in offering financial wellness and education programmes in prisons.⁵⁵³ Royal Credit Union's financial skills education programme, which is run in several US prisons, is an example of credit union-run prison financial education.⁵⁵⁴ Royal Credit Union developed a curriculum focused on important money management topics like understanding spending habits, creating a budget, dealing with debt, and building credit. This curriculum is delivered by Royal Credit Union staff members inside prisons to small groups of prisoners. The programme

has been well received by prisoners. A 2022 evaluation attributed the success of the programme to the flexibility of the curriculum, the ability of instructors to create respectful classroom environments where money issues can be discussed, and the ongoing commitment of Royal Credit Union to delivering the programme and investing the necessary resources to support it.⁵⁵⁵

Case Study – Old National Bank: 12 Steps to Financial Success and EZ Access Accounts

Old National Bank (ONB) has been operating 12 Steps to Financial Success since 2014. The programme was created after in-depth discussions between an ONB manager and a local substance abuse counsellor revealed a need for basic financial education and access to mainstream banking services among those incarcerated for substance-related crimes as part of their recovery and reintegration into society. The programme was first piloted to groups of female inmates at the Henderson County Detention Center in Kentucky, and the curriculum was developed to target this population — nonviolent offenders serving time for drug-related convictions. Given that many in this group were in recovery, 12 Steps to Financial Success was designed with traditional 12-step recovery programming in mind. The programme consisted of 12 weekly classes addressing issues related to financial psychology, savings and budgeting, credit and debt, account management, and investing. Examples of specific topics included entrepreneurship, home ownership, insurance, taxes, and retirement.⁵⁵⁶

In addition to the 12 Steps programme, Old National Bank offers EZ Access accounts featuring no minimum balance and no overdraft fees for programme participants.⁵⁵⁷

⁵⁵⁰ Ibid.

⁵⁵¹ Ibid.

⁵⁵² Ibid, p 12.

⁵⁵³ National Credit Union Foundation and Royal Credit Union (Wis.), "Financial Education in Jails – National Credit Union Foundation," NCUF, August 23, 2022, <https://www.ncuf.coop/resource/financial-well-being-programs-incarcerated-individuals/>.

⁵⁵⁴ Cooper Larson et al., "Making a Difference: Correctional Facility Financial Education," National Credit Union Foundation and Royal Credit Union, 2022, <https://files.rcu.org/docs/0122-Correctional%20Facility%20Report-8.5x11.pdf>.

⁵⁵⁵ Ibid.

⁵⁵⁶ ABA Bank Community Engagement Foundation, "Expanding Financial Services Access for Justice System-Involved Individuals," n 519, pp 25-26.

⁵⁵⁷ Ibid, p 25.

SECTION 9 — Comparative research — How other countries have addressed these issues CONT

Impact

The ABA Bank Community Engagement Foundation report found that by 2021, the 12 Steps programme had helped hundreds of women at the detention center. Not only had it been a popular offering (with a long waitlist to start), but a lengthy assessment administered at the end of the pilot period found a pass rate of over 80%. Based on the success in Henderson County, other facilities contacted ONB to adapt the programme to their populations. ONB plans to expand the 12 Steps programme offering from Indianapolis into Michigan.⁵⁵⁸

In addition to the 12 Steps programme, ONB offers EZ Access accounts featuring no minimum balance and no overdraft fees for programme participants. EZ Access, according to The ABA Bank Community Engagement Foundation report, has also been successful especially for customers who were previously unbanked.⁵⁵⁹

Key Lessons

ONB's experience with 12 Steps to Financial Success and EZ Access offers important insights for working with justice-involved individuals. The ABA Bank Community Engagement Foundation research identifies the following key insights:

- **Build trust and confidence to attract these customers.** Conversations with programme participants often revealed a multigenerational lack of trust in banks and a deep-seated fear that participating in mainstream banking services would lead them back to incarceration. ONB used this information to tailor the 12 Steps programme, incorporating role-playing activities to build participants' confidence. Instructors also changed the way they dressed to better build rapport and made concerted efforts to form relationships.⁵⁶⁰

- Participant feedback was also instrumental in designing the EZ Access product. This population in particular expressed fear of hidden fees and fines and discomfort with paper checks. As a result, ONB removed overdraft fees and included a simple \$4.95 monthly fee to cover the cost of five free money orders per month.⁵⁶¹

- **Financial education is an important part of prevention and rehabilitation.** ONB found that for those who were incarcerated, especially for substance related offences, dire financial situations often played a role in their criminal justice involvement.⁵⁶²
- **These efforts are beneficial for all.** Expanding its offerings has been rewarding for ONB and its customers. Bankers who have assisted in the courses or attended graduation ceremonies have been moved by participants' progress. One former participant so inspired one banker with her entrepreneurial pitch presentation that he connected her with a local chamber of commerce to propel her startup.⁵⁶³
- **These efforts have helped ONB's bottom line as well.** One former inmate, who served time for financial crimes, met with ONB's risk management group to advise on ways to improve anti-fraud practices. Other programme participants have gone on to open not just EZ Access accounts but emergency savings and education savings accounts as well. The opportunity to provide the 12 Step programme has also helped ONB build out its educational programming, which benefits all customers. It also builds good will with the public, which may well appeal to future customers.⁵⁶⁴

⁵⁵⁸ Ibid.

⁵⁵⁹ Ibid.

⁵⁶⁰ Ibid, p 26.

⁵⁶¹ Ibid.

⁵⁶² Ibid.

⁵⁶³ Ibid.

⁵⁶⁴ Ibid.



The strategic nature of the project provided an opportunity for the banking industry to be taking leadership in achieving financial inclusion in the banking industry.

SECTION 10 — Our recommendations

Recommendations aimed at Government recognition of the importance of providing access to banking by prisoners

- There should be official recognition by the Government of the importance of facilitating access by all prisoners to a bank account on release.
- There should be commitment by the Government to such resourcing as is necessary to enable Corrections to deliver the services necessary to ensure that every prisoner is provided with ID documents prior to release (birth certificate and a form of photo ID), and every prisoner is given the opportunity to apply for a bank account prior to release, with all costs associated with the process met by Corrections.
- The Government should ask the New Zealand Banking Association to recommend to its major bank members that they participate in a programme that provides banking access to people in prison, with a focus on providing all prisoners due for release with the opportunity to apply for a bank account before release, but also to provide banking facilities for prisoners not due for release, where needed.

Recommendations aimed at addressing the issues that arise on a person's entry into prison

Financial Health Check shortly after incarceration

There is a need for a mandatory financial health check to be undertaken for every prisoner shortly after entry into prison, whether after sentencing or on remand.

This should be undertaken by the person's case manager and would happen within one or two weeks of entry into prison.⁵⁶⁵

This would include a checklist of matters such as:

- Do utilities (power, phone, etc) need to be stopped?
- Are child support payments going out?
- What is the prisoner's family's financial situation?
- Who does the prisoner bank with?
- Does the prisoner have any automatic payments that are still going out and need to be stopped?
- Who are the prisoner's creditors (for example, car financing credit)?
- What other financial obligations does the prisoner have?
- Where was the prisoner living, and does the landlord need to be notified?
- Does the prisoner have a birth certificate or any other form of identification (eg driver's licence or Kiwi Access card)?

The case manager would then inform the person's bank, major creditors and the IRD of the fact of incarceration.

The case manager would give the prisoner information about how to contact a financial mentor. The case manager would assist in setting up an introduction to a mentor if requested by the prisoner.

Printed resources to be available

Printed resources would be available to all prisoners and their whanau covering matters such as how to contact a financial mentor, and how to cancel debt and contact the bank. Case managers would prioritise providing access to such resources to prisoners in their care.

Every prison should have a relationship with a financial mentoring service

Every prison should be serviced by at least one of financial mentoring service and mentoring services should be funded to enable this. Case managers should be provided with a list of the mentoring service(s) and individual mentors that are servicing the particular prison.

Financial mentors should work with each prisoner (where the prisoner requests a meeting with a mentor) and their whanau to help them manage their finances as well as preparing them for release.

⁵⁶⁵ One mentor we spoke to suggested that the financial health check should be done at the pre-sentencing stage – this might be the responsibility of someone in the Court system eg a probation officer. A recommendation along these lines would be that pre-sentencing reports could consider the financial implications of an incarceration. Potentially the reports could consider the sentenced person's existing financial commitments and the financial consequences for the family of a custodial sentence. We welcome comments from Corrections and others as to whether this is a preferable or practicable option.

Corrections should proactively assist financial mentors working with prisoners. This would include providing the prisoner's PIP photo ID to the mentor to enable the mentor access to credit reporting services and other financial information on behalf of their client.

Privacy waivers should be standardised

Corrections, the NZ Banking Association and Financial Services Federation should work together to develop a generic form of privacy waiver that is acceptable in relation to a prisoner so that mentors know what form of waiver has to be obtained from prisoner clients that will be acceptable to all major creditors including banks, with no requirement for any additional individual bank waiver.

MoneyTalks phone line should be a free calling number for prisoners

The MoneyTalks phone number (0800 345 123) should be added to the free calling numbers for prisoners. MoneyTalks could provide a triage service that would direct prisoners to mentors.

Creditors should have staff that are trained up to work with debtors that are in prison

All creditors should have a central contact point in their hardship departments specifically for prisoners and this contact must have the authority to make decisions. Frontline staff in hardship departments should be trained up so they are able to tackle cases that don't follow the usual pattern, such as when dealing with prisoners. Banks in particular should have a dedicated team that are trained up to work with applications and other interactions from people in prison and ex-prisoners. The NZ Banking Association should assist banks to develop standardised protocols that apply with dealing with customers and potential customers that are in prison or have been released from prison.

Establish a database of insurance providers that will provide insurance to people who have been in prison

The Insurance Council should maintain a database showing which companies will provide insurance to people who have been in prison.

Code of Practice for debt collectors should be developed that covers treatment of debtors in prison

A code of practice should be developed for debt buyers and debt collectors, which includes guidance on how to deal fairly and compassionately with debtors in prison.⁵⁶⁶

MSD debt should be suspended

MSD will have been notified of the fact of incarceration of a person in receipt of a benefit and should suspend any MSD debt obligations of that person while they are incarcerated.

Recommendations aimed at addressing the issues for a person who is in prison and not due to be released

Financial capability workshops should be run in prisons

Financial capability workshops should be run regularly in every prison. Some prisons currently run financial capability workshops but a nationwide programme would ensure all prisoners have access to this form of learning. There are existing resources available (such as the MoneyMates financial literacy curriculum that was developed by MSD). These could be developed for use in prisons with the assistance of financial mentors.

⁵⁶⁶ NZ does not have any formal debt collection code of practice as yet, either for debt collection by creditors or their agents, or for the debt purchasing industry.

SECTION 10 — Our recommendations CONT

All prisoners should be given the opportunity to set up a bank account while in prison

All prisoners (excluding those on remand or who are sentenced for less than 6 months in prison) who want one should be given the opportunity to set up a bank account. The account would be a basic account for depositing money into and transferring money out of. Restrictions might apply to persons who have been involved in fraud in the past. The account would most likely not provide any access to credit or overdraft and would be fee free. It might be a specially designed 'basic bank account' similar to those offered in the UK and Australia, or it might be an account of a type already offered by the bank. Details of the type of account would be worked out with the banks who participate in the programme referred to in the next recommendation.

All major banks should participate in a programme that offered prisoners' bank accounts

All major banks would agree to be part of a programme that offered accounts to persons in prison not due for release.

Proof of address met by PIP documents

All banks would agree to use the prison PIP of a prisoner as the proof of address.

Costs of getting ID documents to be met by Corrections

All the costs of getting the prisoner's ID documents (the birth certificate, a Kiwi Access card and any required photos) would be met by Corrections.

Banks and Corrections to work together to develop a bespoke form of ID for prisoners

The major banks, the Reserve Bank, the NZ Banking Association and Corrections should work together to develop a tailored form of ID that would be acceptable by banks in relation to applications from prisoners. This would replace the birth certificate and Kiwi Access card. The UK UNLOCKing Banking programme ID provides a model that can be followed and adapted for NZ use. The Identity Verification Code of Practice could be amended to provide for the specific form of ID that was considered to be acceptable for persons in prison.

Certification of documents could be done by the prison officers

Any ID documents that have to be certified as true and correct should be able to be certified by a prison officer at an appropriate level of seniority (for example, a senior Corrections Officer). This practice could be recognized in the Identity Verification Code of Practice.

Banks would have immunity in law from loss or damage caused by messaging between prisoners using their bank transactions, if all reasonable steps have been taken by the bank to prevent this occurring.

Banks would not be responsible in the event that persons in prison used their bank account transactions to message criminals. However this immunity would only apply if the bank had taken all reasonable steps to prevent this occurring.

Recommendations aimed at addressing the issues for a person who is due for release or parole

Financial capability workshops offered in all prisons

Financial capability workshops should be run regularly in every prison. Some prisons currently run financial capability workshops but a nationwide programme would ensure all prisoners have access to this form of learning. There are existing resources available (such as the MoneyMates financial literacy curriculum that was developed by MSD). These could be developed for use in prisons with the assistance of financial mentors.

Pre-release obligation on case manager to assist every prisoner to get ID and a bank account set up

Case managers should be required to go through a pre-release checklist no later than 6 months prior to release or date of Parole hearing. The checklist should include asking does the person have ID and a bank account, and if not, the case manager should assist the prisoner through all the steps required to get an account open before release/ parole. This would include getting the requisite ID documents and assisting with filling in all the forms required for the bank account application. The bank account number would be made available to the prisoner on their release.

The account would be a basic account for depositing money into and transferring money out of. Restrictions might apply to persons who have been involved in fraud in the past. The account would most likely not provide any access to credit or overdraft and would be fee free. It might be a specially designed 'basic bank account' similar to those offered in the UK and Australia, or it might be an account of a type already offered by the bank. Details of the type of account would be worked out with the banks who participate in the programme referred to in the next recommendation.

If a person is incarcerated for less than 6 months or is on remand the case manager would provide the prisoner with information on how to get ID and set up an account, and refer the prisoner to an agency that could assist the prisoner on release.

All major banks should participate in a programme that offered prisoners' bank accounts

All major banks would agree to be part of a programme that offered accounts to persons in prison due for release.

Proof of address requirements

All banks would agree to use the prison PIP of a prisoner as the proof of address.

Costs associated with ID to be met by Corrections

All the costs of getting the prisoner's ID documents (the birth certificate, a Kiwi Access card and any required photos) would be met by Corrections.

Banks and Corrections to work together to develop a bespoke form of ID for prisoners

The major banks, the Reserve Bank, the NZ Banking Association and Corrections should work together to develop a tailored form of ID that would be acceptable by banks in relation to applications from prisoners. This would replace the birth certificate and Kiwi Access card. The UK UNLOCKing Banking programme ID provides a model that can be followed and adapted for NZ use. The Identity Verification Code of Practice could be amended to provide for the specific form of ID that was considered to be acceptable for persons in prison.

Certification of documents could be done by the prison officers

Any ID documents that have to be certified as true and correct should be able to be certified by a prison officer at an appropriate level of seniority (for example a senior Corrections Officer). This could be recognized in the Identity Verification Code of Practice.

Total Money Management to be reinstated

Total Money Management should be reinstated as a service offered by financial mentoring organisations and supported by MSD.

MSD should review the practice of payment of a benefit to an agent

MSD should review the current system of allowing a benefit to be paid to a 'mate' or other nominated person to ensure there are robust checks in the system that will enable the beneficiary to ultimately benefit from the payment.

Corrections to review the process by which photo ID is facilitated

Corrections should review the current system by which a photo is obtained for photo ID and liaise with Hospitality NZ to ensure that the system works effectively for obtaining photos for persons who are incarcerated.

Recommendations aimed at addressing the issues for persons who have been released into the community

On release from prison, all prisoners should be given information on:

- The services available to assist with managing financial matters, including the contact details for a financial mentoring service that offers these services to prisoners and ex-prisoners.
- Organisations that work with ex-prisoners such as mentoring services, Te Pā and the Salvation Army should be given additional funding to ensure that they can assist prisoners to get their financial affairs sorted out to the best extent possible to enable reintegration into the community

Appendix 1

The Victoria University researchers spoke to or had email exchanges with the following persons or representatives of the following organisations in the course of the research for this Report:

- Amanda Hill, Barrister and Solicitor
- ANZ
- ASB
- Bay Financial Mentoring
- BNZ
- Department of Corrections Ara Poutama Aotearoa
- Dunedin Budget Advisory Service.
- Family Finances Service Trust, Upper Hutt
- FinCap
- KiwiBank
- Ministry of Social Development
- North Harbour Budgeting Services
- Reserve Bank of New Zealand
- Take2
- Te Pā
- The Salvation Army Reintegration Services
- Vaiola Budgeting Services
- Westpac Bank
- Whanganui Budgeting Service

Appendix 2

Research findings from the 2022 Australian research report *Fostering Financial Stability for People in Prison Research Phase 2 Report*, are summarised here.⁵⁶⁷

Research Findings

1. The prison environment creates unique challenges for people, that prevent control of finances and access to financial support.
 - 1.1 People in prison experience a lack of agency and control over their lives which causes delays, frustration and problems in fostering financial stability.
 - 1.2 Even the most basic of tasks can take months to complete in prison.
 - 1.3 Sudden changes to restrictions occur in prison, creating a constant state of uncertainty and barriers to accessing support.
 - 1.4 There is very limited access to technology in prison, so managing finances is far more complex and requires tailored solutions.
 - 1.5 Moving between prisons is common, causing complications, delays in support and loss of key contacts.
 - 1.6 People on remand face unique and additional challenges of uncertainty, limited support options and cognitive overload.
2. Relationships in prison are integral to support across all stages of the journey, but can be doubled-edged with inherent risks, stresses and complex power dynamics.
 - 2.1 Families play a crucial role in supporting financial stability for people in prison, but it can come at a cost as it often strains the relationship.
 - 2.2 Relationships between people in prison can provide important support and communication networks, but elements of distrust can create complexity.
 - 2.3 Peer mentors can be a key facilitator between corrections staff, support services and people in prison.
 - 2.4 Corrections staff's role in people's journey through prison is vital, but overreliance, conflicting priorities and power dynamics can cause challenges and barriers in the relationship.
 - 2.5 Judgment and stigma, and a lack of awareness and understanding of the corrections journey, can prevent effective relationships between people in prison and their service providers.
3. Effective, tailored communication of services through formal and informal channels is integral to supporting access, awareness and the overall financial stability of people in prison.
 - 3.1 Formal communication channels can be restricted and complicated, so communications must consider the variety of challenges faced by people in prison and be disseminated through multiple channels.
 - 3.2 Informal communication channels can be effective ways to spread information, but misinformation and distrust can cause challenges.
4. Timely, clear and direct access to and awareness of support services (e.g. financial counsellors) in prison can support financial stability, but existing barriers and challenges prevent effective support.
 - 4.1 Financial counsellors are a valuable support service to people in prison, so easier access and greater awareness of their services is key.
 - 4.2 Corrections staff act as important intermediaries between people in prison and financial counsellors or other external supports, but timely, consistent, and more direct access to services is needed for effective support.
 - 4.3 Restrictions and limitations on phone calls greatly impact the ability for people in prison to self advocate and engage with external services.

⁵⁶⁷ Thriving Communities Partnership, "Fostering Financial Stability for People in Prison Research – Phase 2 Report," n 514, pp 7-11.

Appendix 2 CONT

5. Avenues for building financial capability are limited in prison, and tailored education and support strategies are required.
 - 5.1 People in prison often earn a very small wage, however this money is managed by the correctional facility and in most circumstances is only enough to cover what they need within the prison environment.
 - 5.2 A lack of autonomy can inhibit people's ability to build savings and manage their own money, impacting their attempts to prepare for reintegration and build financial capability.
 - 5.3 There is a lack of formal financial capability training in prison. This type of training could present opportunities to build real-world budgeting skills and act as a stepping stone to financial counselling support.
6. Early intervention in addressing finances in prison is key, but overwhelm and complex financial situations can prevent effective engagement.
 - 6.1 When entering prison, people may not prioritise their finances due to overwhelm and limited bandwidth, and people with large debts may be reluctant to disclose this information.
 - 6.2 People become engaged with their finances at any stage of the corrections journey, motivated through a variety of different factors, so access to support should be available across all phases of the corrections journey.
 - 6.3 Different debts operate in different ways and require unique management strategies to best support people in prison.
7. Finances, telecommunications, utilities and other service providers can greatly influence someone's ability to achieve financial stability while in prison and during reintegration.
 - 7.1 People inside the corrections system are vulnerable to financial abuse and require equal opportunity and support as other customers and clients.
 - 7.2 Issues with ID is a common barrier in prison, causing delays in support, difficulties during reintegration and challenges engaging with service providers.
 - 7.3 Delays in services (freezing accounts for example) for people in prison can cause long-term financial issues and impact mental health.
 - 7.4 Removing barriers for people exiting prison with opening/unfreezing accounts is essential to the reintegration process.
 - 7.5 A lack of support options and misalignment of eligibility criteria for available support negatively impacts people's experience in regards to their utilities and telecommunications.
8. People exiting prison can suffer double punishment long after they have served their sentence, including inflated prices for products and services, housing issues, employment problems and financial scams.
 - 8.1 Post-release requirements can prevent full engagement in reintegration processes, including managing finances.
 - 8.2 Judgment and stigma can prevent employment post-release, inhibiting people's ability to reintegrate and achieve financial stability.
 - 8.3 Housing is a key factor in recidivism and stability.
 - 8.4 Ex-prisoners often face inflated insurance premiums based on corrections history.
 - 8.5 People in prison can be susceptible to frauds and scams and require support that caters to their unique circumstances.
 - 8.6 The inability to pay off debts in prison can result in being immediately overburdened with late fees and debt accumulation upon leaving.
 - 8.7 Continuity of support, from serving time through to reintegration, is essential to fostering long-term financial stability and preventing double punishment.
9. Complex life experiences, and human and behavioural factors are amplified in prison.
 - 9.1 People with an acquired brain injury (ABI) and people eligible for disability support pension (DSP) can experience a variety of complications in relation to managing their finances upon exiting prison.
 - 9.2 Experiences of domestic and family violence (DFV) can be common in prison and continue to affect people's lives in complex ways throughout the corrections journey.

- 9.3 Drug, alcohol and gambling addictions can affect people's physical and mental health in prison, as well as their financial stability.
 - 9.4 For migrants and people with residency issues in the corrections system, financial stability is seemingly impossible.
 - 9.5 There is a strong link between mental health and financial wellbeing, both of which can be adversely impacted by an experience in prison.
 - 9.6 Some people in prison have a desire to give back and are a great source of lived experience insight for support services.
10. Corrections staff are essential to fostering financial stability for people in prison, but they constantly face their own unique barriers and challenges in advocacy.
 - 10.1 Without adequate access to financial counsellors and professionals, financial capability training and the management of financial issues for people in prison can become the responsibility of corrections staff.
 - 10.2 Without the support of the service ecosystem, corrections staff can feel alone in their advocacy which can affect their mental health and resilience when attempting to advocate for people in prison.
 - 10.3 Corrections staff can face similar barriers when trying to access support for people in prison, with access restrictions, resourcing limitations and lack of understanding from organisations, affecting their ability to advocate.
 - 10.4 Inconsistencies between organisations in communication, policy and practices can cause delays and barriers for staff's advocacy.
 - 10.5 Relationships between custodial and programmes staff can be key to providing adequate support for people in prison, but complexities and challenges can prevent effective support.

Key Opportunities Identified

The following were the key opportunities identified in the *2022 Thriving Communities Partnership report*.

Structures

- Service providers (banks, utility, telecommunications, and insurance etc) should consider having a team specifically trained and equipped to support people before, during and after prison. This team should have a direct phone line for corrections staff and financial counsellors, set times for contact and consistency in support provided. This can, for example, help reduce the potential for vicarious trauma of staff who may be triggered by a phone call from a corrections facility.
- Service providers should work with lived experience advocates, corrections staff and financial counsellors to develop and deliver organisational training that builds organisation-wide understanding and empathy of the experience of people in prison.
- Service providers should improve organisation-wide understanding and processes for staff when working with financial counsellors, corrections staff and people in prison.
- Local community organisations and service providers should foster relationships with local corrections facilities to ensure people in prison can have a smooth transition when exiting prison.
- Banks should develop relationships with corrections departments/prisons to support people in prison to set up bank accounts prior to release.

Appendix 2 CONT

Policies

- Organisations should consider accepting prison/ corrections ID as a valid form of identification.
- Upon entering prison, people may need to have their debt paused to create the best possible opportunity for them to repay their debts when they are financially stable.
- Ensure the same support options are available to people on remand as to those who are sentenced.
- Prior to leaving/upon leaving prison, give people breathing room and tailor hardship programmes and repayment plans to support the reintegration process.
- Many organisations have policies to support people experiencing family violence, people with a disability, and Aboriginal and Torres Strait Islander people. Organisations should consider the overrepresentation in prison of the people in these policies and use existing policies to gain organisational buy-in and action to improve support for people in prison.
- Review insurance criteria and consider the impact on people exiting the prison system to ensure policies do not unfairly punish people with inflated premiums post-release.
- Explore options for reducing the costs of phone calls in prison or other alternatives that may assist in reducing the impact of phone call costs on people's financial stability.
- Organisations need to ensure they attach Authority to Act paperwork to people's accounts to make it easier for financial counsellors, family, friends and other advocates to support people while they are in prison.
- Support timely access to credit reports – making this process quicker and easier is vital to the work of financial counsellors in supporting the financial stability for people in prison.
- Ensure consistency within industries and sectors in processes and communications for supporting people in prison. Industry peak bodies should develop key relationships with corrections departments to ensure these policies and processes can be communicated by a central point to maintain clarity and consistency.
- Provide discounted or free birth certificates and proof of age documents to people in prison and recently exiting prison to assist with the reintegration process.
- When seeking to engage corrections staff in a service offering, ensure that the service is simple and easily fits in with their existing processes. This will allow staff to more easily see the benefits and increase potential for engagement.
- Provide more support and education for family members and friends who are navigating the system on behalf of the person in prison, especially for people with complex issues like ABI (acquired brain injury), CALD (culturally and linguistically diverse) groups and migrants.
- Focus on small wins – these help to build confidence in support offerings, encourage people to recommend services to others and may mean they are more likely to reach out for help upon exiting prison.
- Gain as much information as possible about people's finances upon entry into prison/ remand to assist in preparations for support and follow up shortly after to ensure nothing has been missed due to overwhelm.

Practices

- Consider wiping debt, especially smaller debts, to remove reintegration challenges and to support people exiting prison to achieve greater financial stability.
- If organisations want someone in prison to send a document via post, send them a stamp/reply paid envelope.
- Remove conditionalities and complications from hardship and support programmes for people in prison and those exiting prison.

- Provide people in prison with access to transition workers, case managers and other staff that help prepare people in prison for release at earlier stages of the corrections journey.
- Explore options for people in prison to earn interest on their savings or other ways in which they can take greater control of their finances, build financial capability and exit prison in a financially stable position.
- For people needing to travel longer distances to return home post-release, ensure they are already connected to services in the person's local area.
- Offer tailored support for people who may be deported after their release from prison to ensure they can access superannuation or any other entitlements they are eligible for.

Communication

- Centralise the information on available support services across industries and sectors and ensure these are communicated with corrections staff clearly so they can more easily advocate for and support people in prison.
- Provide corrections staff with information on what services are available for different financial issues (e.g. small business management, Buy Now Pay Later debt) in multiple formats so that they can pass on the information to people in prison or assist them themselves.
- Increase awareness of the National Debt Helpline prison resource webpage.
- Service providers should communicate with people in prison regarding activities relating to their accounts, eg. acknowledgement of correspondence and following up on resolutions to requests, to help relieve stress and anxiety.
- Improve communication channels across states to ensure that people in intrastate prisons don't face barriers when trying to obtain ID.

- Work with people with lived experience when designing communications to be delivered internally in prison. This will help support more tailored and effective messaging and create more engagement between people in prison and service providers.
- Include "postcards" in leaving packs that contain very basic information and contact details for financial counsellors and other services. These should be co-designed with people with lived experience, using simple language and contact details.
- Run basic consumer messaging on intra-TV inside prisons which can provide information on where to go for financial help, what to do when you're in financial distress etc.
- Peer mentors can be a quick and effective way to communicate with the broader prison population. If peer mentors are involved in communicating support or programmes offerings, this involvement needs to consider the following:
 - Respecting the position of peer mentors as leaders in the corrections community.
 - Designing communications with peer mentors and people in prison to ensure it can be understood.
 - Peer mentors would need to be confident the service works before they are happy relaying the information to others.
 - Support for peer mentors in the process, recognising that without the appropriate training and knowledge, their ability to influence solutions is limited.



