WHAREHEREHERE WHARETĀMIMANA
NO PRIDE IN PRISONS

Submission to the Select Committee on the Family and Whānau Violence Legislation Bill

No Pride in Prisons wishes for its Parliamentary advocates to appear before the committee to speak to this submission.

No Pride in Prisons (NPIP) is a prisoner advocacy organisation established in early 2015, in part to advocate for and with incarcerated people, particularly those who are LGBTIQ. *NPIP* advocates for incarcerated people with respect to various issues, focusing primarily on those of housing and prison placement, access to medical and counselling services, and complaints of sexual and other physical assault. The organisation has recently campaigned around allegations of cruel and inhumane treatment of prisoners.

NPIP is united in the belief that prisons are inherently violent places and imprisonment must be entirely avoided. We see prisons as treating the symptoms of injustice, rather than the root causes. Instead, we favour community-centred approaches to justice that heal and empower individuals and communities, such as that which was practised in pre-colonial Aotearoa where there was no equivalent to the criminal justice or state care systems.

For these reasons, the organisation is concerned about this Bill and the unintended consequences it may incur.

This submission has been made on behalf of *NPIP* by Kendra Cox, Rei-Marata Goddard, Ti Lamusse, Paige Macintosh, Kate McIntyre, and Dani Pickering.

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INTRODUCTION

No Pride in Prisons (NPIP) rejects the following proposed changes outlined in the Family and Whānau Violence Legislation Bill (FWV Bill):

1. The lengthening of sentences and increasing number of offences, as outlined in Clauses 29, 93, 94, 97, and 127.
2. The restricting of the right to bail for those who have been accused of an offence of family and whānau violence, as outlined in Clauses 76 and 77(1).

NPIP also expresses concerns about the following proposed changes outlined in the Family and Whānau Violence Legislation Bill:

1. Clause 69, as relates to information sharing. *NPIP* is concerned about breaches of privacy and compulsory information sharing that could prevent victims from reaching out.

NPIP shares the concerns of the committee members regarding the shocking rates of family and whānau violence in New Zealand. Serious steps must be taken to address the issue but this Bill fails to take it seriously enough. *NPIP* is concerned that the punitive response to family and whānau violence in this Bill will only *increase* its prevalence. This would be the unintended consequence of an increased length and number of sentences, as well as further limitations on bail. We submit that this response to family violence would make it more difficult to successfully rehabilitate those who do harm to their family and whānau, and disempower the ability of victims to reach out for aid or reconciliation. In this way, it would be entirely ineffective at ending the cycle of family and whānau violence.

PART ONE: EFFECTS OF NEW OFFENCES

Since the Bail Amendment Act in 2013 came into effect, the number of people being held on remand has increased by more than 40% between 2014 and 2016,[1] and the population of those incarcerated has exceeded 10,100 people as of February 2017.[2] This Bill will further increase the now-record high prison population.

[1] Annaliese Johnston, *Beyond the Prison Gate: Reoffending and Reintegration in Aotearoa New Zealand*, (Auckland: The Salvation Army, 2016), 8.
[2] Roger Brooking, "Explaining New Zealand's Record High Prison Population", *Brookingblog*, May 21, 2017, https://brookingblog.com/2017/05/21/explaining-new-zealands-record-high-prison-population/.

Clause 29 increases the scope of the offence of breaching a protection order, while clause 93 creates the new offence of strangulation, clause 94 the new offence of assault on person in a family relationship, and clause 97 the offence of coerced marriage. Further, clause 127 would have the effect of increasing the length of some sentences. Clause 127 amends the Sentencing Act 2002, creating an aggravating factor of committing a family violence offence while subject to a protection order. This would likely increase the length of such a sentence.

Regardless of the intention of these new and lengthened offences, the effect would be to increase the total number of people who are imprisoned. This is accepted by the Ministry of Justice in its *Review of family violence legislation: Regulatory impact statement*. It notes that the new offences considered in its review "are expected to increase the number of prosecutions in the criminal justice system and consequently sentences managed by Corrections".[3] Corrections noted at the time that there were "considerable pressures on the prison estate" and Treasury submitted that the "total cost of the options and flow-on impacts are significant".[4] Keeping in mind that the effect of this Bill would be to increase the prison population, it is important to consider the [in]effectiveness of imprisonment as a response to family and whānau violence.

PART TWO: PRISON CONDITIONS AND LACK OF REHABILITATION

Four reports produced by the Office of the Ombudsman under the Crimes of Torture Act (COTA) were released in December 2016. The COTA reports detail cruel and inhumane conditions in New Zealand prisons, finding that poor treatment of prisoners, including inadequate health care, long breaks between mealtimes, violence and sexual assault, and breaches of privacy were rampant. *NPIP* wrote a briefing on these reports, from which the following information is lifted.[5]

The COTA reports detail a prevailing culture of violence in New Zealand prisons, as well as a lack of safety felt by prisoners. According to the report into Invercargill, "Sixty-two percent (28 respondents) of prisoners report having felt unsafe in the units and in the yards; 40 percent (17 respondents) reported to feeling unsafe at the time of the inspection and 51 percent of prisoners (23 respondents) in both units stated they had been assaulted during this period of custody".[6]

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[3] Ministry of Justice, *Review of Family Violence Legislation: Regulatory Impact Statement*, (Wellington: Ministry of Justice, 2016), 31.
[4] Ibid.
[5] Ti Lamusse et al., *Torture in New Zealand Prisons: A Briefing*, (Auckland: No Pride in Prisons, 2017).
[6] Office of the Ombudsman, *COTA Report: Report on an Unannounced Inspection of Corrections Service Invercargill Prison Under the Crimes of Torture Act 1989*, (Wellington: Office of the Ombudsman, 2016), 15.

These feelings about lack of safety are reflected in the high number of assaults in New Zealand prisons. In the report into Otago Corrections Facility, 32% of survey respondents said they had been assaulted while in prison,[7] while 46% said the same at Manawatu Prison. 71% of respondents at Otago who said they had been assaulted did not report it to prison staff.[8] Some of those who did not report assaults told inspectors that they felt that there was no point because when they had reported incidents previously, staff did nothing about it. Prisoners also felt that staff were unable to protect them against immediate threats of violence, and some had been encouraged by staff not to report incidents of assault.

The overcrowding of prisons is a major contributing factor to the increase of assaults that occur there, since keeping people in close proximity to each other with very limited access to privacy breeds frustration and resentment.[9] Recently, the ballooning prison population has been dealt with through double-bunking, where two or more prisoners share a cell. A 2010 report by The National Health Committee found that double-bunking results in higher rates of violence and sexual assault.[10] Several of the people *NPIP* advocates for have reported incidences of sexual assault while being double-bunked.

The culture of violence in New Zealand prisons therefore fails to provide an environment that can result in perpetrators of family and whānau violence becoming less violent. The National Health Committee report on the effects of the prison environment on the mental health of prisoners finds that:

> Prison culture is recognised as encouraging prisoners to adapt in ways that are *more harmful than helpful* (ie, maladaptations) such as hyper-vigilance, paranoia, and aggression. Aggressive and avoidance strategies can have deep, and sometimes permanent, psychological, emotional, and behavioural ramifications; none of which translates well into families or the wider community.[11]

The degrading and dehumanising treatment of people within New Zealand prisons creates an environment that hinders rehabilitation, with 52% of prisoners returning to prison

[7] Office of the Ombudsman, *COTA Report: Report on an Unannounced Inspection of Corrections Service Otago Corrections Facility Under the Crimes of Torture Act 1989*, (Wellington: Office of the Ombudsman, 2016), 32.
[8] Ibid.
[9] National Health Committee, *Health in Justice: Improving the health of prisoners and their families and whānau*, (Wellington: Ministry of Health, 2010), 31.
[10] Ibid.
[11] Ibid., 32. Emphasis added.

within five years of being released.[12] The prison environment discourages help-seeking behaviour and expression of vulnerability or emotions,[13] which are required for successful rehabilitation.[14]

We therefore submit that the proposed changes in this Bill that lengthen and increase the number of sentences would be ineffective at enabling people who cause harm to rehabilitate, maintain healthy nonviolent relationships, and end the cycle of violence. Increasing the prison population does not solve issues of violence – it simply moves that violence from the family home to the prison. In its *Regulatory Impact Statement*, the Ministry of Justice finds that one of the risks of creating new offences is that "perpetrators who are convicted of a FV offence may be at a higher risk of reoffending once released".[15] *NPIP* concurs. New Zealand prisons are demonstrably violent and make people who go through them even more so, rendering Clauses 29, 93, 94, 97, and 127 of the Bill counterintuitive.[16]

PART THREE: BAIL AND REMAND

The biggest increase to the prison population in recent years has been the remand population. The number of prisoners held on remand has risen from 1,694 people in 2014 to 2,380 people in 2016.[17] Before 2014, the remand population had been declining, with 1,909 people being held on remand in 2012 decreasing to 1,836 people in 2013.[18] Meanwhile the population of sentenced prisoners has steadily increased since 2006, but remained fairly stable since 2013.[19]

The rise in remand population has been a direct result of the Bail Amendment Act 2013,[20] which aimed to reduce instances of people reoffending while on bail. The same principle is applied in Clause 77(1), which reads:

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[12] Arul Nadesu, *Reconviction Patterns of Released Prisoners: A 60-months Follow-Up Analysis*, (Wellington: Department of Corrections, 2009), 6.
[13] National Health Committee, *Health in Justice*, 35.
[14] Dot Goulding & Brian Steels, "Developing, Implementing and Researching a Communitarian Model of Restorative and Transformative Justice for Adult Offenders in Magistrates' Courts", *Murdoch University Electronic Journal of Law; Special series* 1 2007: 27-50, 167-181.
[15] Ministry of Justice, *Review of Family Violence Legislation,* 20, 21.
[16] National Health Committee, *Health in Justice*, 32.
[17] Johnston, *Beyond the Prison Gate*, 8.
[18] Ibid.
[19] Ibid.
[20] Andrea Black et al., *Bailing Out the Justice System: Reopening the Window of Opportunity*, (Wellington: JustSpeak, 2017). Ti Lamusse, "One Easy Way to Reduce the Prison Population", *No Pride in Prisons*, Feb. 8, 2017, http://noprideinprisons.org.nz/post/156955285040/one-easy-way-to-reduce-the-prison-population.

> In deciding, in relation to a defendant charged with a family violence offence, whether or not to grant bail to the defendant or to allow the defendant to go at large, the court's primary consideration is the need to protect—
> (a) the victim of the alleged offence; and
> (b) any particular person or people in a family relationship with the victim.

Clause 76 reverses the presumption of bail in cases of assault on a person in a family relationship. It amends the Parole Act 2002 s 7(2), to say that

> A defendant is bailable as of right who is charged with an offence for which the maximum punishment is less than 3 years' imprisonment, unless the offence is one against…
> (b) section 194A of the Crimes Act 1961 (which relates to assault on a person with whom the defendant is, or has been, in a family relationship).

While *NPIP* absolutely agrees that the safety of victims should be ensured, we are concerned that like the Bail Amendment Act 2013, these changes will further increase the number of people remanded in custody. It is of course important to note that in 2015/16, 44.7% of people who were remanded in custody were not ultimately sentenced to imprisonment.[21] Given that imprisonment makes people more violent, and that even short stays in prison can lead to job losses, housing insecurity, and additional financial strain for whānau, it is illogical to place more people in prison on remand.

PART FOUR: THE INTERESTS OF THE VICTIMS

Victims of family and whānau violence share an emotional connection to the person who is harming them and often do not desire that that person be put in prison.[22] Bearing in mind the cruel and inhumane conditions of prisoners detailed above, many victims of family and whānau violence do not want to subject their partners to that treatment. It is crucial that they have the option to reach out and take steps to ensure their own safety, without feeling pressured into reporting that violence to the police. For many victims, if they feel that their only option for ensuring their safety and stability is to report their family member to the police, they will not take that step, and will remain in an unsafe domestic situation.[23]

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[21] Jacquelyn Shannon, "Official Information Act Response to Ti Lamusse", *fyi.org.nz*, Feb. 20, 2017, https://fyi.org.nz/request/5239/response/17117/attach/4/60581%20Ti%20Lamusse%20response.pdf.
[22] Marilyn Fernandez, *Restorative Justice for Domestic Violence Victims an Integrated Approach to Their Hunger for Healing*, (Lanham: Lexington Books, 2010).
[23] Ira Hutchison et al., "Family Violence and Police Utilisation", (*Violence and Victims* 9, no. 4, 1994): 301.

Further impeding victim aid in recent years is the significant defunding of NGOs who provide advocacy, support, and counselling services to those seeking refuge from family violence. In 2014, Christchurch Rape Crisis Centre closed for lack of funding.[24] Other organisations such as Wellington's Shakti Refuge[25] and Wellington Women's Refuge have also experienced significant and debilitating funding cuts since 2011.[26] These organisations aim to provide support to victims of family violence, and yet are struggling to survive on unstable methods of funding such as public donations and corporate sponsorship. In the case that victims wish to seek a course of action that addresses the family violence they are experiencing without police or court intervention, these NGOs should be readily available to provide a non-carceral response. Funding cuts to these NGOs make non-carceral responses to victimisation much more difficult. These cuts, alongside the increasing punitiveness of the judicial approach proposed in this Bill, make it harder both for victims to find safety and for perpetrators to rehabilitate.

PART FIVE: INFORMATION SHARING

The compulsory information sharing regime detailed in Clause 69 of this Bill would result in yet more barriers to aid for victims of family violence.

NGOs who provide services to victims of family violence have expressed concern about this information sharing regime. Rape Crisis has stated that it will risk losing funding in order to protect the privacy of its clients,[27] while Dawn Rangi-Smith from Women's Refuge reported to *Stuff* that "many women would be turned off coming in for help if they knew their information would be shared with the ministry and other providers".[28]

In Clause 69, the proposed Section 124V(5) reads:

> In determining whether to disclose information under this section, the holder agency or practitioner must have regard to the principle that helping

[24] "Christchurch loses rape crisis centre", *Radio New Zealand*, July 5, 2014, http://www.radionz.co.nz/news/national/248961/christchurch-loses-rape-crisis-centre.
[25] Bronwyn Torrie, "Women's Refuge cuts may lead to waiting lists", *Stuff*, July 30, 2011, http://www.stuff.co.nz/dominion-post/news/5362955/Womens-Refuge-cuts-may-lead-to-waiting-lists.
[26] Sarah Harris, "Shakti Wellington refuge only one not government-funded", *The New Zealand Herald*, April 28, 2017, http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11845563.
[27] "Rape Crisis will risk funding to keep data private", *Radio New Zealand*, March 7, 2017, http://www.radionz.co.nz/news/national/326040/rape-crisis-will-risk-funding-to-keep-data-private.
[28] Tess Brunton, "Women's Refuge takes a stand against data colleciton policy", *Stuff*, March 16, 2017, http://www.stuff.co.nz/timaru-herald/news/90490693/Womens-Refuge-takes-a-stand-against-data-collection-policy

> to ensure that a victim is protected from family violence should usually take precedence over...
> (b) any applicable limit under information privacy principle 11 in section 6 of the Privacy Act 1993 on disclosure of the information

This section takes away the autonomy of victims to maintain their privacy, and would absolutely constitute another barrier in deciding to seek the services of an NGO that is subject to compulsory information sharing. Any changes that further intimidate victims of family violence from taking measures to protect themselves must be avoided completely. Recommendations from the Privacy Commissioner that people be able to report information anonymously, or opt out from this information sharing, underline how significant these privacy concerns are.[29]

RECOMMENDATIONS

NPIP would like to reiterate the following recommendations for the committee's consideration:

1. That Clauses 29, 93, 94, 97, and 127 be rejected. Incarceration only perpetrates and exacerbates the cycle of violence, and must be avoided.
2. That Clauses 76 and 77(1) be rejected. The remand population makes up for the majority of recent growth of the prison population. Incarceration only perpetrates and exacerbates the cycle of violence, and must be avoided.
3. That Clause 69 be reconsidered. Information sharing cannot be compulsory if victims are to retain their right to privacy.

[29] Demelza Leslie, "New MSD system will be rushed say community groups", *Radio New Zealand*, April 7, 2017, http://www.radionz.co.nz/news/national/328328/new-msd-system-will-be-rushed-say-community-groups.