People Against Prisons Aotearoa

Submission to the Justice Committee Amendment Bill 2023

People Against Prisons Aotearoa (PAPA) is a prison abolitionist organisation working for a fairer, safer, and more just Aotearoa. Established in 2015, PAPA advocates for prisoners to ensure their human rights are met. We also push for changes to the New Zealand criminal justice system to create more just outcomes.

PAPA makes this submission on the Corrections Amendment Bill (2023) to urge that the Committee only recommend this Bill if a number of changes are made, which we have set out in detail below.

This submission has been prepared on behalf of PAPA by Tom, Ti, Laura, Hayley, Holly, Tasha and Lysh.

PAPA wishes for its members to appear before the committee to present this submission.

Contact details for the purposes of this submission are:

Tom Pearce
PAPA Parliamentary Advocacy Coordinator
Email: govtadvocacy@papa.org.nz

Introduction and summary of recommendations

PAPA is committed to a future without prisons for Aotearoa. Our submission on this Bill stems from our experience as an organisation that has interacted with, and advocated for, incarcerated people for more than eight years. In doing so, we aim to reduce the harm done to people by their experience of incarceration. However, many of the aims of the Bill are undermined by the history and nature of the prison system, and the colonial justice system that underpins it.

Our recommendations, in particular, highlight situations where amendments: would lead to perverse outcomes; provide discretion to Corrections on matters that should be inflexible; create potential for misuse, abuse or greater injustice; are ignorant to, or at odds with, the current functioning of the legislation; or where amendments are unenforceable or impractical. We also suggest some changes or amendments that may not have been considered in preparing the Bill.

Our full list of recommendations are presented in summarised form here, while the discussion below provides context and the supporting research or relevant experience that informs each recommendation. The submission is divided into sections roughly corresponding to the sections in the Bill's explanatory note.

In summary, People Against Prisons Aotearoa recommends the following changes to the Bill:

1. Provide further examples and more explicit guidance around what constitutes a valid "intelligence purpose" in section 127B;
2. Remove section 127B(1)(b);
3. Amend section 104, and related sections of the Corrections Act, to ensure that emails to prisoners are considered the same as physical mail;
4. Remove section 133A;
    a. Failing that, remove section 133A(3);
5. Remove the word "incite" in section 131;
6. Add wording to section 139 that requires consideration be given to a prisoners' ability to participate fairly in a hearing that has any of the interested persons participating by AVL;
7. Ensure that the use of AVL for disciplinary hearings does not reduce Corrections' capacity to provide AVL for other purposes, for example visitations and access to legal representation;
8. Replace the word "may" in section 6(1)(k) with "must";
9. Remove "as far as is reasonable and practicable" from all proposed amendments to sections 6 and 80;
    a. Failing that, develop clear guidelines around what is "reasonable and practicable" in both sections 6 and 80;
    b. If necessary, develop alternative parameters in section 80 to these rights and principles to create certainty and fairness for prisoners.
10. Add wording to section 202(aa)(i) to state specifically when and why mixing of accused and convicted prisoners should occur, beyond practicability or therapeutic considerations, how this decision is to be reached, and by whom;
11. Remove section 202(aa)(iii) completely to ensure that young people are never mixed with the adult prison population;

12. Ensure Corrections budgets prioritise access to accommodation and rehabilitation programmes for small groups, such that mixing of remand and convicted does not take place simply as a cost-saving measure.
13. Change the wording of section 94A such that all prisoners' preferences in relation to searches are respected when reasonable; and
14. Remove the wording of "shared cell" from section 82.
15. Amend the Bill to eliminate the use of solitary confinement in New Zealand prisons.

Surveillance and monitoring

PAPA has a number of significant concerns in relation to the changes made to surveillance and monitoring. These are informed by our experience as an organisation that sends and receives tens of thousands of communications with people in prison each year.

We want to highlight to the committee, in particular, the impact on people in prison of Corrections' monitoring, censorship and mishandling of communications. Incarceration is an isolating experience, and separation from family/whānau and friends is a significant stressor on the mental wellbeing of incarcerated people.[1] The monitoring and withholding of communications, often without informing the recipient; a lack of transparency around communications handling and reasons for censorship;[2] and Corrections' frequent mishandling of communications[3] all adds unacceptable levels of uncertainty around communications. This all contributes to anxiety, stress and feelings of disconnection among incarcerated people.[4]

Some of the proposed amendments risk worsening this situation. While we acknowledge that Corrections have an important responsibility to ensure the safety of people in its care, surveillance and monitoring must be balanced against the ability of incarcerated people to maintain their connections with people outside of prison.

In this regard we have two recommendations:

1. (a) Provide further examples and more explicit guidance around what constitutes a valid "intelligence purpose" in section 127B. This wording underpins many of the expanded powers created by these amendments and is unacceptably broad, such that there are no checks on Corrections officers exercising these new powers.

   (b) In particular we recommend removing 127B(1)(b) completely, as this wording, which exists elsewhere in the current legislation, is highly subjective and has been frequently misused by prison managers to withhold benign communications between PAPA, prisoners, and their whānau. In addition to the concerns raised above, if this

[1] A. Goomany and T. Dickinson, 'The Influence of Prison Climate on the Mental Health of Adult Prisoners: A Literature Review: Prison Mental Health', *Journal of Psychiatric and Mental Health Nursing* 22, no. 6 (August 2015): 413–22, https://doi.org/10.1111/jpm.12231; National Health Committee, 'Health in Justice: Kia Piki Te Ora, Kia Tika! – Improving the Health of Prisoners and Their Families and Whānau: He Whakapiki i Te Ora o Ngā Mauhere Me ō Rātou Whānau' (Wellington: Ministry of Health, 2010).
[2] Corrections have refused to disclose or justify decisions to withhold communications from PAPA to prisoners..
[3] Delivery of emails to people in prison is unreliable enough that, to ensure communications are received, our advocacy team doubles up by sending in the mail a physical copy of any emails, at a cost to PAPA of more than $1000 each year.
[4] Chin 2023 'They're breaching our human rights': Prisoners still denied family visits - https://i.stuff.co.nz/national/131751714/theyre-breaching-our-human-rights-prisoners-still-denied-family-visits

wording remains, we are concerned that any communications from PAPA could be monitored to the detriment of incarcerated people who reach out to us for advocacy or support.[5]

2. Amend section 104 and related sections of the Corrections Act to ensure that emails to prisoners are considered the same as physical mail. At present there is significant inconsistency between Corrections' facilities in the treatment of emails, and a lack of clarity in legislation, which refers only to "mail". This change would be consistent with the modernising goals of the Bill, would avoid issues around the significant and growing cost and delivery times for physical mail, and would support prisoners in maintaining contacts with people on the outside.

Disciplinary processes

PAPA is deeply concerned about two of the proposed changes to disciplinary processes. We also have several reservations about the use of audiovisual links for disciplinary hearings. We discuss each of these below.

Hearings without prisoner present

The provisions in section 133A for disciplinary hearings to proceed without the accused prisoner present mean that these hearings **fail to follow the principles of due process**. Disciplinary processes must be committed to principles of justice, fairness and restoration, regardless of how difficult some contexts may make this.

Furthermore, section 133A(3), which specifically **removes the right to appeal** a decision to proceed with a hearing without the prisoner present, further perpetuates the injustice of these hearings and removes an essential safeguard against abuse of these hearing proceedings.

We want to emphasise to the committee that disciplinary hearings in prisons are already significantly weighted towards Corrections. There are numerous imbalances in the current legislation, as well as in the procedures around disciplinary hearings, that make it difficult for prisoners to obtain fair and just outcomes. These include: imbalances in the information available to prisoners; the onus falling heavily on prisoners to understand what due process is in the context of disciplinary hearings and to ensure it has been followed (rather than on Corrections staff uphold this); and the fact that adjudicators are drawn from Corrections staff at the prison, who lack the necessary impartiality for hearings to be fair and just.

While we acknowledge that there are significant practical challenges to Corrections in engaging reluctant or deliberately obstructive people in disciplinary hearings, **the proposed changes are inappropriate, disproportionate and open the door to significant abuse without even the safeguard of appealing the decision** to proceed without the prisoner present.

The consequences of this for prisoners are significant. Penalties imposed as a result of disciplinary hearings usually involve solitary confinement, or periods of reduced or removed

[5] For example, Corrections has transferred prisoners to other facilities as punishment for their advocacy over poor conditions or failures to meet basic requirements.

entitlements including visits and phone calls.[6] The impact of these on the health and wellbeing of prisoners are significant and there need to be adequate protections against the undue imposition of these penalties.[7]

PAPA, therefore, strongly urges that section 133A be removed entirely. Instead, we recommend providing incentives to prisoners who engage in good faith with the disciplinary hearing process. This could involve the suspension of imposing penalties on condition of good behaviour, consistent with other amendments in the Bill.

Failing that, at an absolute minimum, section 133A(3) should be removed. The right to appeal decisions by adjudicators to Visiting Justices is a crucial safeguard. The need for expediency (i.e. preventing prisoners from delaying disciplinary proceedings by appealing decisions to proceed with hearings without them present) in no way outweighs the need for this safeguard against inappropriate decisions by Corrections staff.

Incitement as an additional offence

We also strongly oppose the amendment in this Bill that adds to section 131 the wording of "incite", such that anyone who is deemed to have incited an offence can be punished as though they had committed that offence.

This is simply too subjective and, similar to the discussion above, further imbalances disciplinary processes towards the discretion of Corrections staff. **This amendment could easily create a situation in which prisoners are punished for comments that are made with no intention to incite an offence**.

In situations where a prisoner is genuinely trying to incite others to commit offence, Corrections already has grounds to take disciplinary action: it is already an offence in section 128(1)(k) if a prisoner "combines with other prisoners for a purpose that is likely to endanger the security or good order of the prison". We therefore recommend that the word "incite" be removed from the amendments in this Bill.

Disciplinary hearings by audiovisual link

We do not oppose the amendments that allow disciplinary hearing participation by audiovisual link (AVL). However, we have two reservations about these changes. The first is that Corrections is already regularly unable to provide AVL for the purposes of visitation or legal representation. We have had numerous complaints from incarcerated people and their whānau over the last several years about the inconsistency of access to AVL. The reasons given are usually due to staffing issues or technical problems.

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[6] Under sections 133 and 137 of the Corrections Act 2004.

[7] Ti Lamusse, 'Solitary Confinement in New Zealand Prisons' (Wellington: Economic and Social Research Aotearoa, 2018); Sharon Shalev, 'A Sourcebook on Solitary Confinement' (London: Mannheim Centre for Criminology, 2008); Sharon Shalev, 'Time for a Paradigm Shift: A Follow Up Review of Seclusion and Restraint Practices in New Zealand', Seclusion and Restraint (Auckland: Human Rights Commission, December 2020), https://www.hrc.co.nz/files/9216/0749/3332/Time_for_a_Paradigm_Shift_Print.pdf; Sharon Shalev, 'Thinking Outside the Box? A Review of Seclusion and Restraint Practices in New Zealand' (Auckland: Human Rights Commission, 2017); Peter Boshier, 'OPCAT Findings Report: A Question of Restraint' (Wellington: Office of the Ombudsman, 2017); National Health Committee, 'Health in Justice'.

Our concern is that, if disciplinary hearings are regularly conducted using AVL, this places further demands on Corrections' already-limited capacity to provide AVL access to prisoners. This could make it more difficult for prisoners to stay connected to whānau and friends, or to access legal representation.

Our second reservation about this change is the appropriateness of AVL for people with disabilities. For example, people with hearing or vision impairments are likely to experience added complications with poor audio or visual quality. People who have learning disabilities or higher communication needs may find it more difficult to understand and partake in the disciplinary hearing process if it is not face to face. Complications like these associated with remote hearings could pose a barrier to the fair, effective and active participation of people with disabilities in disciplinary hearings.

As a result we recommend that wording be added to section 139 of the Bill around the use of AVL. We recommend that AVL be used only where its use is not contrary to the interests of justice, given the needs or ability of a prisoner to participate in a hearing with one or more remote participants.

Summary of our recommendations around amendments to disciplinary proceedings:

1. Remove section 133A, which allows for disciplinary hearings to proceed without the prisoner present;
    a. Remove section 133A(3) which removes the right for a prisoner to appeal to a Visiting Justice an adjudicator's decision to proceed with a hearing without the prisoner present;
2. Remove the word "incite" in section 131;
3. Add wording to section 139 that requires consideration be given to a prisoners' ability to participate fairly in a hearing that has any of the interested persons participating by AVL;
4. Ensure that the use of AVL for disciplinary hearings does not reduce Corrections' capacity to provide AVL for other purposes, for example visitations and access to legal representation.

Use of non-lethal weapons

PAPA broadly supports the amendments around the use of non-lethal weapons, especially the explicit ban on the use of non-lethal weapons in most situations of passive resistance. The proposed amendments will hopefully ensure that the tragic mistreatment of Mihi Bassett and Karma Cripps isn't repeated.[8]

Consistent with legislation around police use of force, the Bill adds discretionary thresholds around the "reasonable" use of non-lethal weapons in situations of imminent threat of injury or harm. However, we note that it can be difficult to accurately perceive threats in stressful and

[8] Guyon Espiner, 'Gassed in Their Cells, "Begging" for Food at Auckland Women's Prison', RNZ, 24 November 2020, https://www.rnz.co.nz/news/in-depth/431299/gassed-in-their-cells-begging-for-food-at-auckland-women-s-prison.

high pressure situations. Police receive specific training around de-escalation and accurately perceiving levels of threat;[9] we recommend that Corrections officers receive the same to further prevent unnecessary use of force and weapons.

Rehabilitation, reintegration and access to cultural activities

PAPA supports efforts made to improve the rehabilitative and reintegrative outcomes for incarcerated people and attempts to ensure legislation is consistent with *Te Tiriti O Waitangi*. However we note that Māori in prison continue to be denied mana motuhake, and that the prison system is inconsistent with tino rangatiratanga guaranteed by *Te Tiriti*.[10] We continue to call for the guarantee of tino rangatiratanga in accordance with *Te Tiriti*, which cannot be achieved simply through consultation with iwi, hapu and whānau.

Amendments to Section 80: Needs relating to particular cultures

Having noted that the Bill fails to comply with *Te Tiriti* and the guarantee of tino rangatiratanga, PAPA nonetheless acknowledges that the amendments to section 80, requiring that Māori and other incarcerated people have access to cultural activities, are an improvement on the status quo. Further work is needed to strengthen these amendments.

PAPA strongly opposes the limits placed on access to cultural activities by the wording of "as far as is reasonable and practicable". We are concerned that this phrasing creates too much uncertainty and broadens the scope for access to be denied. It creates difficulties for prisoners to know their rights, and to know when they will or will not be able to engage with cultural activities. The wording also means that these provisions will not be applied consistently, fairly or equitably within and across prisons.

Of particular concern is that this wording places the onus on incarcerated people to challenge decisions in order to find out where the limits of what is "reasonable and practicable" lie through complaints or appeals. This process is difficult for prisoners to understand and access at the best of times, and already regularly mismanaged.[11] Complaints forms are regularly lost or incorrectly filed.[12] Furthermore, the subjectivity of the wording and level of discretion it gives to Corrections managers means that these provisions could ultimately be unenforceable through legal means.

Instead, PAPA recommends that the legislation contain clear guidelines for when cultural activities can reasonably be denied to prisoners. This would reduce uncertainty, make it easier for prisoner's to understand their rights around access to cultural activities, and will likely prevent added administrative burden to Corrections in the handling complaints and appeals.

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[9] 'Tactical Response Model (TRM)', New Zealand Police, 2023, https://www.police.govt.nz/about-us/programmes-and-initiatives/tactical-response-model-trm.
[10] Moana Jackson, 'He Whaipaanga Hou – Maori and the Criminal Justice System: A New Perspective, Part 2' (Wellington, New Zealand: Policy and Research Division, Department of Justice, 1988); Moana Jackson, 'Why Did Māori Never Have Prisons?', YouTube, 17 November 2017, https://www.youtube.com/watch?v=2vtpA_PbDJU; Te Ohu Whakatika, 'Hui Māori: Ināia Tonu Nei' (Wellington: Ministry of Justice, 2019).
[11] Peter Boshier, 'Kia Whaitake | Making a Difference: Investigation into Ara Poutama Aotearoa | Department of Corrections' (Wellington: The Office of the Ombudsman, 2023), https://www.ombudsman.parliament.nz/sites/default/files/2023-06/Making%20a%20Difference.pdf.
[12] Boshier, 84.

Amendments to Section 6: Principles guiding Corrections system

PAPA generally supports the intention behind amendments to section 6, which creates guiding principles for the corrections system to more closely comply with *Te Tiriti*. Similar to section 80, however, we oppose the use of the wording "as far as is reasonable and practicable". PAPA is concerned that placing such broad qualifiers unnecessarily limits these principles and fails to practically advance toward *Te Tiriti* justice.

The Bill does not propose to amend section 6(2) of the Corrections Act, which requires anyone exercising powers and duties under the Act or any regulations to "take into account" the applicable guiding principles "so far as is practicable in the circumstance". This provision already limits the principles. PAPA is concerned that the additional use of "as far as is reasonable and practical" in section 6(1) makes many of these principles unnecessarily limited and difficult to enforce. The Bill does not include this qualifier in section 6(1)(m), and we recommend that the same approach is taken throughout section 6.

Section 6(1)(l) is particularly vague, providing that the views of family, hapū and iwi "may, where appropriate and so far as is reasonable and practicable, be taken into account". PAPA is concerned that the use of the word "may" means that this is already discretionary as to whether or not the views are taken into account. This is further qualified by the use of "where appropriate". There is no need for such vague and broad qualification of "as far as is reasonable and practicable".

Summary of recommendations around amendments to sections 6 and 80

1. Replace the word "may" in section 6(1)(k) with "must";
2. Remove "as far as is reasonable and practicable" from all proposed amendments to sections 6 and 80;
    a. Failing that, develop clear guidelines around what is "reasonable and practicable" in both sections 6 and 80. These must be specific to each section and in sufficient detail that Corrections' obligations and prisoners' rights are clear;
    b. If necessary, develop alternative parameters in section 80 to these rights and principles to create certainty and fairness for prisoners.

Mixing of remand and convicted, or youth and adult populations

PAPA agrees that access to rehabilitation is important for those serving sentences and awaiting sentencing. However, the proposed mixing of remand and convicted populations is a serious concern. In particular, we are concerned there are no provisions to specify the circumstances under which mixing of prisoners would take place, beyond what is "practicable or therapeutic".

The legislation should contain clear guidelines under which the mixing of remand and convicted prisoners can take place. These should state when and why mixing should occur, beyond practicability or therapeutic considerations, how this decision is reached, and who makes this decision. Without these guidelines **our concern is that, over time, the mixing of remand and convicted prisoners could become the default, rather than something done in exceptional circumstances**.

PAPA would like to highlight that, in line with the *International Covenant on Civil and Political Rights*, **mixing of these groups of prisoners because it "is not financially feasible" to provide separate programs** (as stated in the explanatory notes), **should not be a key factor in determining whether to proceed with mixing**.[13] Instead, we strongly suggest that any considerations of feasibility and practicability be weighed against evidence supporting the impact of rehabilitative programmes. As the Covenant indicates, mixing of sentenced and remand prisoners should only take place in exceptional circumstances.

PAPA further believes that financial feasibility should not be a factor assessed against the consideration to mix remand and sentenced prisoners or accused and convicted persons who are allowed to keep their children, in order to prioritise prisoners' safety. PAPA suggests that Corrections budgets and planning should extend to providing access to rehabilitation programmes to smaller groups or to individuals to avoid scenarios where financial feasibility is factored as a consideration over the safety of the prisoner.

Additionally, PAPA strongly opposes section 202(aa)(iii) which allows for young people to be mixed with adults. We strongly believe **it is never in the best interests of incarcerated young people to be mixed with adults, whether for the purposes of non-offence-based programmes or otherwise**.[14] Research highlights a number of serious concerns around the mixing of youth and adult prison populations. These include a much greater risk of being victimised;[15] the lack of knowledge, understanding, experience and training needed to care appropriately for young people among staff who manage adult facilities;[16] serious negative impacts on the physical and mental health of young people;[17] and harm to the rehabilitation of young people.[18]

As such, PAPA strongly urges that section 202(aa)(iii) is removed from the Bill. Other arrangements must be sought for young people attending non-offence-based programmes, regardless of the circumstances. These could include the provision of programmes in community settings, rather than custodial settings.

Our recommendations relating to the mixing of different classes of prisoners are therefore:

1. Add wording to section 202(aa)(i) in the Bill to state specifically when and why mixing of accused and convicted prisoners should occur, beyond practicability or therapeutic considerations, how this decision is to be reached, and by whom;
2. Remove section 202(aa)(iii) completely to ensure that young people are never mixed with the adult prison population;

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[13] Specifically, Article 10(2)(a) of the *International Covenant on Civil and Political Rights*, stating that: 'Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons'.
[14] As recognised in Article 10(3) of the *International Covenant on Civil and Political Rights*, stating that: 'Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.'
[15] David Tie and Elizabeth Waugh, 'Prison Youth Vulnerability Scale: Administration and Technical Manual' (Wellington: Department of Corrections, 2001), https://www.corrections.govt.nz/__data/assets/pdf_file/0015/10671/pyvsmanual.pdf.
[16] Mark Soler, 'Health Issues for Adolescents in the Justice System', *Journal of Adolescent Health* 31, no. 6 (December 2002): 321–33, https://doi.org/10.1016/S1054-139X(02)00494-9.
[17] Ian Lambie and Isabel Randell, 'The Impact of Incarceration on Juvenile Offenders', *Clinical Psychology Review* 33, no. 3 (April 2013): 448–59, https://doi.org/10.1016/j.cpr.2013.01.007.
[18] Lambie and Randell.

3. Ensure Corrections budgets prioritise access to accommodation and rehabilitation programmes for small groups, such that mixing of remand and convicted does not take place simply as a cost-saving measure.

Strip Searches

PAPA broadly supports the intention of the amendments made around strip searches. Strip searches are humiliating and potentially traumatic experiences for prisoners,[19] so providing alternatives would be a positive change.

We support the intention of section 94A which tries to ensure transgender prisoners are able to choose the sex of the Corrections staff carrying out a strip search on them, as well as the sex of anyone else present. However, the way that this amendment is implemented is to require that a prisoner has had a determination of sex for the purpose of accommodation. This means that it will apply to very few prisoners and fails to capture all, or even most, of the spectrum of gender diversity.

PAPA recommends instead:

1. That the prisoner preferences in relation to searches, established in section 94A, be extended to all prisoners rather than just those who have had a determination of sex for the purposes of accommodation. This would better accommodate trans, non-binary and other gender-diverse prisoners. The section already provides for "reasonable grounds" to refuse these requests, which would prevent abuse or misuse by prisoners.

Case management plans

PAPA does not have any specific recommendations on the proposed changes relating to case management plans in the Bill, which we note act to clarify existing provisions in the Corrections Act 2004.

However, we would like to take this opportunity to raise points regarding the operation of case management and case management plans more generally. We have been concerned regarding the number of complaints that our organisation has recently received from prisoners detailing issues with their case management plans not being adequately met. These prisoner complainants report that they are being denied parole as a consequence of their case management plans not being met, for reasons outside of their control such as a lack of access to programmes. This issue has also been raised in recent research by Johnstone on case management in Aotearoa's prisons,[20] and repeatedly by the Chief Ombudsman, Peter Boshier and the Chair of the New Zealand Parole Board, Sir Ron Young.[21]

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[19] Cathy Pereira, 'Strip Searching as Sexual Assault', *Women in Prison* 27, no. 2 (2001): 187–96.
[20] Laura Johnstone, 'Prisoner Experiences of Case Management in the Aotearoa New Zealand Prison System' (Master of Criminal Justice, Christchurch, University of Canterbury, 2022), https://ir.canterbury.ac.nz/handle/10092/105194.
[21] see: Charlotte Cook, 'Parole Board Says Prisoners Waiting for Rehab, Psych Help', RNZ, 11 August 2021, https://www.rnz.co.nz/news/national/448927/parole-board-says-prisoners-waiting-for-rehab-psych-help; Conor Whitten, 'Prison Watchdog Blasts Corrections over Lack of Access to Rehabilitation', Newshub, 27 November 2021, https://www.newshub.co.nz/home/shows/2021/11/prison-watchdog-blasts-corrections-over-lack-of-access-to-rehabilitation.html.

Participants in Johnstone's study reported waiting years in prison before doing any programmes on their case management plans, with some scheduled for after Parole Board hearings had already occurred. These issues are both delaying opportunities for rehabilitation, and potentially lengthening sentences unnecessarily. PAPA urges the government to improve the scheduling of programmes in case management plans urgently, in order that the goals of case management can be met.

Further recommendations and amendments not currently included

We recommend two further changes to the Bill that broaden its scope but that would greatly improve the conditions in prisons and reduce the harm done to incarcerated people.

Double bunking

PAPA recommends that the Bill include a ban on the practice of 'double bunking', which is when two incarcerated people share a cell. As of 2021, more than a quarter of incarcerated people were double bunked.[22]

Corrections' own review of the practice highlights a long list of negative impacts of double bunking.[23] These include:

- increased conflict and tension between prisoners, which can lead to physical violence;
- added stress for prisoners due to a lack of privacy (physical, emotional and social);
- a lack of physical space for prisoners leading to poor hygiene, physical discomfort, and impeding simple activities like reading, writing or watching TV; and
- greater difficulty for Corrections' staff around cell searches, lock-up and unlock procedures, keeping prisoners' property safe, and meeting case management requirements.

Of greatest concern is the potential for violence and victimisation of incarcerated people. Given the nature of double-bunking, Corrections is unable to prevent violence and victimisation in a shared cell and, where it is one person's word against another, it is unable to fairly and adequately respond to complaints of this nature.

Consequently, we strongly urge that the Bill include a provision to ban double bunking by removing "shared cell" as a permitted accommodation in section 82A of the Corrections Act.

Solitary confinement[24]

The second amendment we recommend to the Corrections Act is to ban the practice of solitary confinement. Solitary confinement is the practice of socially and physically isolating a person in conditions of confinement for 22-24 hours per day. Solitary confinement is the harshest form of

[22] Katie Harris, '"Retraumatised": Calls for Prison Double Bunking to Be Axed as New Data Shows Level of Sex Assault', NZ Herald, 24 November 2021, https://www.nzherald.co.nz/nz/retraumatised-calls-for-prison-double-bunking-to-be-axed-as-new-data-shows-level-of-sex-assault/TB4OLA6YQKQVI74EA5PCDBC7VI/.

[23] Department of Corrections, 'Prisoner Double-Bunking: Perceptions and Impacts' (Wellington: Department of Corrections, 2012), https://www.corrections.govt.nz/__data/assets/pdf_file/0006/11877/Doublebunking_research_report_combined_phases_1_and_2.pdf.

[24] This section is adapted with permission from: Lamusse, 'Solitary Confinement in New Zealand Prisons'.

punishment available in the New Zealand prison system. It can cause severe physiological and psychological pain, exacerbating the risk of self-harm and suicide of those exposed to it.[25] Solitary confinement also undermines public safety, with stays in solitary confinement leading to increased aggression and violence of people being released from prison.[26] Its use in New Zealand prisons has come under increased scrutiny by United Nations,[27] the Office of the Ombudsman,[28] and international human rights observers.[29]

Recognising the severe harm that can be caused from even short stays in solitary confinement, as well as its negative effects on prison suicide, violence and recidivism, the use of solitary confinement in New Zealand prisons must be ended. Numerous researchers and human rights observers have called for the abolition of solitary confinement for young people and people with mental disabilities,[30] as well as its use for indefinite lengths of time,[31] and where it is

[25] Henrik Steen Andersen et al., 'A Longitudinal Study of Prisoners on Remand: Psychiatric Prevalence, Incidence and Psychopathology in Solitary vs. Non-Solitary Confinement', *Acta Psychiatrica Scandinavica* 102, no. 1 (2000): 19–25; Bruce A. Arrigo and Jennifer Leslie Bullock, 'The Psychological Effects of Solitary Confinement on Prisoners in Supermax Units: Reviewing What We Know and Recommending What Should Change', *International Journal of Offender Therapy and Comparative Criminology* 52, no. 6 (December 2008): 622–40; Thomas B. Benjamin and Kenneth Lux, 'Solitary Confinement as Psychological Punishment', *Cal. WL Rev.* 13 (1977): 265; Stanley Brodsky and Forrest Scogin, 'Inmates in Protective Custody: First Data on Emotional Effects', *Forensic Reports* 1 (1988): 267–80; Stuart Grassian, 'Psychopathological Effects of Solitary Confinement', *American Journal of Psychiatry* 140 (1983): 1450–54; Stuart Grassian and Nancy Friedman, 'Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement', *International Journal of Law and Psychiatry* 8, no. 1 (1986): 49–65; Craig Haney, '"Infamous Punishment": The Psychological Consequences of Isolation', *The National Prison Project Journal* 8, no. 2 (1993): 3–7; Craig Haney and Mona Lynch, 'Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement', *NYU Rev. L. & Soc. Change* 23 (1997): 477; Richard Korn, 'The Effects of Confinement in the High Security Unit at Lexington', *Social Justice* 15, no. 1 (31 (1988): 8–19; Terry A. Kupers, 'What To Do With the Survivors? Coping With the Long-Term Effects of Isolated Confinement', *Criminal Justice and Behavior* 35, no. 8 (2008): 1005–16; Holly A. Miller and Glenn R. Young, 'Prison Segregation: Administrative Detention Remedy or Mental Health Problem?', *Criminal Behaviour and Mental Health* 7, no. 1 (1997): 85–94; Peter Scharff Smith, 'The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature', *Crime and Justice* 34, no. 1 (2006): 441–528; G. D. Scott and Paul Gendreau, 'Psychiatric Implications of Sensory Deprivation in a Maximum Security Prison', *Canadian Psychiatric Association Journal* 14, no. 1 (1969): 337–41; Dorte Sestoft et al., 'Impact of Solitary Confinement on Hospitalization Among Danish Prisoners in Custody', *International Journal of Law and Psychiatry* 21, no. 1 (1998): 99–108; Peter Suedfield and Chunilal Roy, 'Using Social Isolation to Change the Behaviour of Disruptive Inmates', *International Journal of Offender Therapy and Comparative Criminology* 19, no. 1 (1975): 90–99.

[26] John J. Gibbons and Nicholas de Belleville Katzenbach, 'Confronting Confinement: A Report of the Commission on Safety and Abuse in America's Prisons', *Washington University Journal of Law & Policy* 22, no. 1 (2006): 385–562; Matthew Lowen and Caroline Isaacs, 'Lifetime Lockdown: How Isolation Conditions Impact Prisoner Reentry' (Tucson: American Friends Service Committee, 2012); David Lovell and Clark Johnson, 'Felony and Violent Recidivism Among Supermax Prison Inmates in Washington State: A Pilot Study' (Seattle: Department of Psychosocial & Community Health, University of Washington, 2004); Daniel P. Mears and William D. Bales, 'Supermax Incarceration and Recidivism', *Criminology* 47, no. 4 (2009): 1131–66.

[27] Juan Méndez, 'Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (New York: United Nations General Assembly, 2011).

[28] Boshier, 'A Question of Restraint'.

[29] Shalev, 'Thinking Outside the Box?'; Shalev, 'Time for a Paradigm Shift: A Follow Up Review of Seclusion and Restraint Practices in New Zealand'.

[30] Arrigo and Bullock, 'The Psychological Effects of Solitary Confinement on Prisoners in Supermax Units'; Terry A. Kupers et al., 'Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs', *Criminal Justice and Behavior* 36, no. 10 (2009): 1037–50; Méndez, 'Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment'; Jeffrey Metzner and Jamie Fellner, 'Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics', *Journal of the American Academy of Psychiatry and the Law* 38, no. 1 (2010): 104–8; Shalev, 'A Sourcebook on Solitary Confinement'.

[31] Méndez, 'Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment'; United Nations General Assembly, 'Resolution 70/175: The United Nations Standard Minimum Rules for the Treatment of Prisoners', 17 December 2015.

prolonged.[32] In New Zealand, the Mental Health Commission in 2004 called for the 'eventual eradication' of solitary confinement ('seclusion') in mental health facilities, recognising that it 'poses significant risks to service users, including death, re-traumatisation, loss of dignity and other psychological harm'.[33]

Given that solitary confinement is potentially damaging to everyone who is exposed to it, solitary confinement must be abolished in all instances. The following recommendations are made about the use of solitary confinement in New Zealand prisons, based on domestic and international literature on solitary confinement:

1. Repeal the legislative framework for the imposition of solitary confinement

Sections 57-61 of the Corrections Act 2004 allow for the denial of prisoners' ability to associate with others. Sections 133(3)(c) and 137(3)(c) allow for a sentence of cell confinement to be imposed on prisoners. These sections of the Corrections Act form sanctioned solitary confinement. Sections 57-61, 133(3)(c), and 137(3)(c) of the Corrections Act must be repealed.

2. Prohibit the use of solitary confinement in any New Zealand prison

In order to remove any uncertainty as to the effects of the first recommendation, the use of solitary confinement in New Zealand prison must be explicitly prohibited. The Corrections Act must be amended to include a prohibition of solitary confinement, defining solitary confinement to mean the social and physical isolation of a person for 22-24 hours per day.

3. Enshrine the right to time out of cells

Because of the high rates of de facto solitary confinement in New Zealand prisons,[34] incarcerated people must also be provided with the positive rights to prevent de facto solitary confinement. While recognising that 1-2 hours per day is an insufficient amount of social contact, it is difficult to establish an exact minimum number of hours out of cells required for healthier conditions.[35] With that in mind, we propose a minimum of 4 hours out of cell per be granted to prisoners as a right. The Corrections Act must be amended to enshrine the rights of all prisoners to a minimum of 4 hours out of cell per day.

4. Establish alternatives to solitary confinement

Research within the mental health setting in New Zealand suggests there are already-existing alternatives to solitary confinement. Te Pou, a mental health, addiction, and disability research and training organisation, has done substantial work to reduce the use of seclusion in mental health facilities. In its 'Best Practice' guide to reducing the use of seclusion, as preventative measures it recommends: improving the physical environment by ensuring 'there is no

[32] Lowen and Isaacs, 'Lifetime Lockdown: How Isolation Conditions Impact Prisoner Reentry'; Méndez, 'Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment'.
[33] Mental Health Commission, 'Seclusion in New Zealand Mental Health Services' (Wellington: Mental Health Commission, 2004).
[34] See: Lamusse, 'Solitary Confinement in New Zealand Prisons'.
[35] Smith, 'The Effects of Solitary Confinement on Prison Inmates', 505.

overcrowding and there are quiet spaces for people to go to';[36] providing people with meaningful activities; creating an 'Atmosphere of listening and respect';[37] 'Behavioural coaching and therapy';[38] de-escalation; sensory modulation; and dispute resolution.[39]

A recent study which used alternatives to solitary confinement to address violent behaviour of prisoners in the New York City jail system led to a substantial decrease in the rate of self-harm.[40] The Clinical Alternative to Punitive Segregation (CAPS) programme provided prisoners with serious mental illnesses who had broken jail rules with various therapeutic activities, normal hours of unlock and substantial opportunity for social interaction. The study found that prisoners who were undergoing treatment in the CAPS programmes had significantly lower rates of self-harm than those who had not, meaning 'clinical improvements among incarcerated patients with mental illness are linked to less restrictive and more therapeutic approaches'.[41]

Amendment to eliminate solitary confinement

In light of the above, we have attached Appendix 1 to this submission. Appendix 1 is a Bill written for the purposes of eliminating solitary confinement, according to the recommendations above.

Timeframe provided for input on the Bill

One final comment we have is that the timeframe given for submissions on this Bill meant that PAPA did not have time to gather input from incarcerated people. Because physical mail is the only reliable way to communicate with incarcerated people, and the cost and delays involved in sending and receiving mail, gathering this input takes a long time and is resource intensive. We ask that any future changes to legislation, if it impacts directly on incarcerated people, have a significantly longer timeframe for submissions. This would allow us to properly gather and represent the voices and input of incarcerated people, which would, in turn, strengthen the legislation. Corrections' own consultation with incarcerated people on the discussion document that informed this Bill[42] was limited.

[36] M. O'Hagan, M. Divis, and J. Long, 'Best Practice in the Reduction and Elimination of Seclusion and Restraint' (Auckland: Te Pou, 2008), 10.
[37] O'Hagan, Divis, and Long, 10.
[38] O'Hagan, Divis, and Long, 10.
[39] O'Hagan, Divis, and Long, 11.
[40] Sarah Glowa-Kollisch et al., 'From Punishment to Treatment: The "Clinical Alternative to Punitive Segregation" (CAPS) Program in New York City Jails', *International Journal of Environmental Research and Public Health* 13, no. 2 (2016): 182.
[41] Glowa-Kollisch et al., 8.
[42] Department of Corrections, 'Options to Achieve Improved Outcomes in the Corrections System: Discussion Document 2022' (Wellington: Department of Corrections, 2022), https://www.corrections.govt.nz/__data/assets/pdf_file/0005/47444/Discussion_Document_Corrections_Act.pdf.

Appendix 1: Corrections (elimination of solitary confinement) Amendment

Part 1

Amendments to Corrections Act 2004

Amendments to Subpart 3 (Establishment and operation of prisons)

1 New section 56A inserted (Solitary confinement)

After section 56, insert:

56A Solitary confinement-

(1) Solitary confinement means the social and physical isolation of a prisoner for 22 or more hours per day and includes-

(a) confinement to a cell or jail for more than 20 hours per day;

(b) isolation outside of a cell or jail.

(2) Solitary confinement does not include segregation in accordance with sections 58 to 60.

(3) No prisoner may be kept in solitary confinement at any time.

2 Section 57 amended (Segregation)

Replace section 57 with:

57 Segregation

(1) Segregation means a temporary restriction on the opportunity of a prisoner to associate with other prisoners.

(2) For the purposes of this Act, "restriction" includes limiting the amount of contact with other prisoners but does not allow the ability to associate with other prisoners to be denied.

(3) The segregation of a prisoner may occur in accordance with sections 58 to 60.

3 Section 58 amended (Segregation for purpose of security, good order, or safety)

(1) In section 58(1), replace "the opportunity of a prisoner to associate with other prisoners be restricted or denied if" with "the opportunity of a prisoner to associate with other prisoners be restricted if".

(2) Replace section 58(3) with:

(3) A direction under subsection (1)—

(a) must be revoked by the prison manager if there ceases to be any justification, under subsection (1), for continuing to restrict the opportunity of the prisoner to associate with other prisoners:

(b) may be revoked at any time by the chief executive or a Visiting Justice:

(c) expires after 3 days unless, before it expires, the chief executive directs that it continue in force:

(d) if it continues in force because of a direction under paragraph (c), must—

(i) be reviewed by the chief executive at intervals of not more than 7 days:

(ii) expire after 14 days unless a Visiting Justice directs that it continue in force:

(e) if it continues in force because of a direction under paragraph (d)(ii), must be reviewed by a Visiting Justice at intervals of not more than 14 days.

4 Section 59 amended (Segregation for purpose of protective custody)

(1) In section 59(1), replace "the opportunity of a prisoner to associate with other prisoners be restricted or denied if" with "the opportunity of a prisoner to associate with other prisoners be restricted if".

(2) In section 59(1)(a), replace "opportunity to associate be restricted or denied and the manager considers" with "opportunity to associate be restricted and the manager considers".

(3) Replace section 59(4) with:

(4) If a direction is given under subsection (1)(b), the direction—

(a) must be revoked by the prison manager if there ceases to be any justification, under subsection (1)(b), for continuing to restrict the opportunity of the prisoner to associate with other prisoners:

(b) may be revoked at any time by the chief executive or a Visiting Justice:

(c) expires after 3 days unless, before it expires, the chief executive directs that it continue in force:

(d) if it continues in force because of a direction under paragraph (c), must—

(i) be reviewed by the chief executive at intervals of not more than 7 days:

(ii) expire after 14 days unless a Visiting Justice directs that it continue in force:

(e) if it continues in force because of a direction under paragraph (d)(ii), must be reviewed by a Visiting Justice at intervals of not more than 14 days.

5 Section 60 amended (Segregation for purpose of medical oversight)

(1) In section 60(1), replace "other prisoners be restricted or denied if the health centre manager of the prison recommends that a direction of this kind is desirable" with "other prisoners be restricted if the health centre manager of the prison recommends that a direction of this kind is necessary"

(2) Replace section 60(3) with:

(3) If a direction is given under subsection (1), the direction—

(a) must be revoked by the prison manager if the health centre manager advises that there ceases to be any justification, under subsection (1), for continuing to restrict the opportunity of the prisoner to associate with other prisoners:

(b) may be revoked at any time by the chief executive or a Visiting Justice:

(c) expires after 3 days unless, before it expires, the chief executive directs that it continue in force:

(d) if it continues in force because of a direction under paragraph (c), must—

(i) be reviewed by the chief executive at intervals of not more than 7 days:

(ii) expire after 14 days unless a Visiting Justice directs that it continue in force:

(e) if it continues in force because of a direction under paragraph (d)(ii), must be reviewed by a Visiting Justice at intervals of not more than 14 days.

(3) In section 60(5), delete ", unless he or she is satisfied that it is not necessary in the circumstances,".

6 Section 61 amended (Accommodation to be provided if segregation direction in force)

Repeal section 61(2).

7 Section 69 amended (Minimum entitlements)

(1) After section 69(1)(k) insert:

(l) To spend at least 4 hours per day outside of their cell, as provided for in section 78A.

(2) Repeal section 69(4)(a).

(3) Repeal section 69(4)(b).

8 New section 78A inserted (Time outside of cell)

After section 78, insert:

78A Time outside of cell

(1) Every prisoner may spend at least 4 hours per day outside of their cell.

(2) Time outside of cell includes any time spent outside of the prisoner's cell in accordance with sections 70 to 78.

Amendments to Subpart 5 (Offences)

9 Section 133 amended (Powers of hearing adjudicator in relation to offences against discipline)

Repeal section 133(3).

10 Section 137 amended (Powers of Visiting Justice in relation to offences by prisoners)

Repeal section 137(c).

Amendments to Schedules

11 Schedule 2 repealed (Items and features of cells for segregated prisoners)

Repeal Schedule 2.

12 Schedule 3 amended (Items in cells and self-care units)

After Part C, insert:

Part D

Additional features of cells for assessment of mental health and prisoners at risk of self-harm

Located close to the prison's health centre.

Part 2

Amendments to Corrections Regulations 2006

Amendments to Part 6 (Segregation of prisoners)

13 Regulation 53 amended (Application)

In regulation 53, replace "authorises the denial or restriction of a prisoner's" with "authorises the restriction of a prisoner's".

14 Regulation 55 amended (Health centre manager to be notified of certain segregation directions)

In regulation 55, replace "as a consequence of any segregation direction, the prisoner is denied the opportunity to associate with other prisoners" with "as a consequence of any segregation direction, the prisoner's opportunity to associate with other prisoners is restricted."

15 Regulation 56 amended (Visits to prisoner)

(1) In regulation 56, replace "prisoner who, as a consequence of a segregation direction, is denied the opportunity to associate with other prisoners" with "prisoner whose opportunity to associate with other prisoners has been restricted as a consequence of a segregation direction."

16 Regulation 57 amended (Mandatory items, features, and standards for segregation accommodation)

(1) In regulation 57(1), delete "(other than a segregation direction issued under section 60(1)(b) of the Act because the prisoner is or may be at risk of self harm)".

(2) In regulation 57(1), replace "Part A of Schedule 2" with "Schedule 3".

(3) Repeal regulation 57(2).

(4) In Regulation 57(3), replace "Part A of Schedule 2" with "Schedule 3".

17 Regulation 58 amended

In regulation 58, delete "or regulation 57(2)".

18 Regulation 59 repealed (Additional segregation facilities for certain segregated prisoners)

Repeal regulation 59.

19 Regulation 60 repealed (Cells for prisoners at risk of self-harm)

Repeal regulation 60.

20 Regulation 61 repealed (Cells for the assessment of prisoner' mental health)

Repeal regulation 61.

21 Regulation 62 amended (Treatment of segregated prisoners)

(1) In regulation 62(1), delete "in the circumstances and if it is not inconsistent with the purposes of the segregation direction".

(2) Replace regulation 62(2) with:

(2) A prisoner referred to in subclause (1) must not be denied access to activities consistent with the fulfilment of his or her prisoner management plan, or to his or her authorised property, or to contact with other segregated prisoners and visitors, simply because he or she is subject to a segregation direction.

(3) Repeal regulation 62(3).

22 Regulation 63 amended (Prisoner at risk of self-harm)

(1) In regulation 63(2)(a), delete "or 60(4)".

(2) Repeal regulation 63(3).

(3) Repeal regulation 63(4).

(4) In regulation 63(5), replace "a recommendation under subclause (3)" with "a recommendation under subclause (1)".

23 Regulation 64 amended (Prisoners suspected of concealing unauthorised items)

(1) After regulation 64(2), insert:

(2AA) While a direction under this section is in force, a medical officer must visit the prisoner concerned at least twice per day.

(2) In regulation 64(3), replace "continuing to deny or restrict the opportunity" with "continuing to restrict the opportunity".

(3) In regulation 64(3A)(a), replace “continuing to deny or restrict the opportunity” with “continuing to restrict the opportunity”.