



People Against Prisons Aotearoa

People Against Prisons Aotearoa would like to thank Te Tira Ārai Urutā | The NZ Royal Commission COVID-19 Lessons Learned for reaching out to us in September of this year to submit. We regret that we were unable to do so at the time due to other commitments. We submit now in the hopes that our experiences, and those of the people we support, can contribute to the inquiry.

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 Aotearoa New Zealand criminal justice system to create more just outcomes.

This submission was prepared on behalf of PAPA by Tom, Laura, and Peyton.

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Introduction

COVID-19 markedly changed the criminal justice landscape of Aotearoa New Zealand. The COVID-19 landscape shift was felt most keenly in our justice response systems, particularly the courts, policing, and Corrections.¹

While the pandemic revealed a lack of preparation in these organisations, particularly in prisons, it also highlights opportunities for change and aspirational goal setting.² The pandemic further demonstrates potential for approaching criminal justice through a public health lens that aligns with the Crown's obligations and the principles of Te Tiriti.³

Our submission will focus on prisons and the impact of the pandemic on incarcerated people in Aotearoa New Zealand. Our incarcerated population is particularly vulnerable in pandemics for a variety of reasons that we discuss below.

Our submission draws on several sources of information. These include (a) experiences of PAPA members supporting people in prisons throughout the COVID-19 pandemic, especially drawing from the mahi of our advocacy working group (who receive about 10-15 letters each week directly from people in prison each week asking for a wide range of support), (b) requests for support and information and given to us by people in prison, and the whānau of people in prison, throughout the pandemic, and (c) research into the New Zealand prison system carried out by our members.

Incarcerated people are very vulnerable during a pandemic

The prison population in Aotearoa New Zealand is made up disproportionately of Māori and Pacific people, who are at greater risk of serious health effects from COVID-19.⁴ People in prison are more likely to have ill-health or comorbidities as well as low rates of vaccination, making them more vulnerable to COVID-19.⁵ Many people in prison also have complex trauma histories that have related impacts on their physical and mental wellbeing.

¹ Cheung, L., & Gunby, P. (2021). Crime and mobility during the COVID-19 lockdown: a preliminary empirical exploration. *New Zealand economic papers*, 1-8. <https://doi.org/10.1080/00779954.2020.1870535>.

² Gluckman, P. D., & Bardsley, A. (2020). *The future is now: exploring the post-pandemic direction for Aotearoa New Zealand*. Koi Tu: The Centre for Informed Futures. <https://informedfutures.org/wp-content/uploads/The-future-is-now-post-pandemic-direction.pdf>.

³ Gordon, F., Klose, H., & Lyttle Storrod, M. (2021). Youth (in)justice and the COVID-19 pandemic: rethinking incarceration through a public health lens. *Current issues in criminal justice*, 33(1), 27-46.

⁴ Steyn, N., Binny, R. N., Hannah, K., Hendy, S. C., James, A., Lustig, A., Ridings, K., Plank, M. J., and Sporle, A. (2022). Māori and Pacific people in New Zealand have a higher risk of hospitalisation for COVID-19. *The New Zealand Medical Journal*, 134(1538). <https://journal.nzma.org.nz/journal-articles/maori-and-pacific-people-in-new-zealand-have-a-higher-risk-of-hospitalisation-for-covid-19-open-access>.

⁵ Allan, K. (2020). *A Report by the Deputy Health and Disability Commissioner: (Case 16HDC01922)*. Health and Disability Commission. <https://www.hdc.org.nz/media/5429/16hdc01922.pdf>;

King, P., Cormack, D., & Keenan, R. (2020). COVID-19 and the mass incarceration of Indigenous peoples. *Journal of Indigenous Social Development*, 9(3), 141-157.

The physical environments of prisons compound the vulnerability of incarcerated people. Our prisons are an ideal environment for disease to spread because they are overcrowded and have very poor sanitation and ventilation. Additionally, people in prison have inadequate access to healthcare, further exacerbating the harm of the physical environment.⁶ These issues are noted both internationally as well as in numerous Inspectorate and Ombudsman reports, the latter of which have also criticised Corrections for a failure to improve conditions.⁷

Prisons are also harmful social environments, heightened by both the pandemic and the pandemic response of Corrections. People in prison experience violence and suffer lasting harm to their mental health as a result of their incarceration.⁸ Incarcerated people and their whānau reported to us an increase in poor mental health and attempts at self harm throughout the pandemic.

The following section will provide examples and discuss in more detail the specifics of Corrections response and its impacts on incarcerated people.

Corrections' response to the pandemic

During the early stage of the pandemic, when there was no community spread of COVID-19 in Aotearoa New Zealand, the wider government strategy of elimination kept incarcerated people safe. Unfortunately, Corrections failed to use this period to adequately prepare for the

⁶ Franco-Paredes, C., Ghandnoosh, N., Latif, H., Krsak, M., Henao-Martinez, A. F., Robins, M., Vargas Barahona, L., & Poeschla, E. M. (2021). Decarceration and community re-entry in the COVID-19 era. *The Lancet infectious diseases*, 21(1), e11-e16;

Gordon, F., Klose, H., & Lyttle Storrod, M. (2021). Youth (in)justice and the COVID-19 pandemic: rethinking incarceration through a public health lens. *Current issues in criminal justice*, 33(1), 27-46.
<https://doi.org/10.1080/10345329.2020.1859966>;

King, P., Cormack, D., & Keenan, R. (2020). COVID-19 and the mass incarceration of Indigenous peoples. *Journal of Indigenous Social Development*, 9(3), 141-157;

Murray, L. J., & Kras, K. R. (2020). "We Must Go Hard and We Must Go Early": How New Zealand Halted Coronavirus in the Community and Corrections. *Victims & offenders*, 15(7-8), 1385-1395.
<https://doi.org/10.1080/15564886.2020.1830212>;

Nowotny, K., Bailey, Z., Omori, M., & Brinkley-Rubinstein, L. (2020). COVID-19 Exposes Need for Progressive Criminal Justice Reform. *American journal of public health (1971)*, 110(7), 967-968.
<https://doi.org/10.2105/AJPH.2020.305707>.

⁷ Boshier, P. (2023). *Kia Whaitake | Making a Difference: Investigation into Ara Poutama Aotearoa | Department of Corrections*. The Office of the Ombudsman.
<https://www.ombudsman.parliament.nz/news/chief-ombudsman-calls-urgent-reset-corrections>.

⁸ National Health Committee (2009). *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*, 31-32;

Gordon, L. (2011). *Causes of and Solutions to Inter-Generational Crime: The Final Report of the Study of the Children of Prisoners*. Pillars Incorporated. 24-29;

Mlinac, I. (2016). *Exclusion, over-Regulation and Complexities: The Effects of Parental Incarceration on Prisoners' Children and Their Families*. University of Auckland;

Gordon, L. & MacGibbon, L. (2011). *A Study of the Children of Prisoners: Findings from Māori Data June 2011*, 32-39. Social Wellbeing Agency.

eventuality of community spread of COVID-19. **The failure to adequately prepare meant that when the national strategy shifted away from elimination in 2021, Corrections was left to respond with inhumane and deeply harmful operational changes to minimise the infiltration and control the spread of COVID-19 in prisons.**

Extended lockdown periods

Corrections' primary tool for mitigating the spread of COVID-19 within prisons was to isolate prisoners who had contracted the disease, and to significantly limit unlock time during which prisoners are allowed out of their cells.

In many cases the isolation and limited unlock time meant effective solitary confinement. Many prisoners and whānau of people in prison reported to us that they were under 23-hour lockdown, with only one hour each day outside their cell. **We received reports of 23-hour lockdowns lasting for much more than two weeks in some facilities. In some cases, these isolations lasted more than a month.**

These extended lockdowns violate the United Nations Standard Minimum Rules for the Treatment of Prisoners (the “Mandela Rules”).⁹ The Mandela Rules define solitary confinement as 22 hours per day without meaningful human contact, specify its use *only* as a last resort or in exceptional circumstances and for as short a period as possible, prohibit its use for prolonged periods (defined as 15 or more days), and further prohibit the use of solitary confinement for anyone with physical or mental disabilities which would be exacerbated by that confinement.

The negative impacts of solitary confinement are well researched and well understood, and the harm cannot be understated:

“Solitary confinement is the harshest form of 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. Solitary confinement also undermines public safety, with stays in solitary confinement leading to increased aggression and violence of people being released from prison. Its use in New Zealand prisons has come under increased scrutiny by the United Nations, the Office of the Ombudsman, and international human rights observers.”¹⁰

To have the entire prison population subjected to solitary confinement, in some cases prolonged solitary confinement, caused untold harm to incarcerated people during the pandemic.

It is of further concern that Corrections' use of solitary confinement was not merely in response to cases of COVID-19. Prisoners and their whānau reported to us at the time their concern that

⁹ United Nations Office on Drugs and Crime. (2015). *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*. UNODC. https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

¹⁰ People Against Prisons Aotearoa (2023). *Submission to the Justice Committee on the Corrections Amendment Bill (2023)*. <https://papa.org.nz/wp-content/uploads/2023/08/Submission-on-Corrections-Amendment-Bill-2023.pdf>.

Corrections was using the pandemic as an excuse to simplify prison operations – it is much easier to manage a prison where prisoners are not allowed out of their cells. It has since been confirmed that Corrections used (and, concerning, continues to use) these solitary confinement conditions to manage staffing shortages.¹¹

Lack of connection to the outside

In-person visits stopped at Mount Eden Corrections Facility in August 2021 as a result of the community outbreak of COVID-19 in Auckland. It is likely that other Auckland prisons suspended in-person visits at the same time, but we cannot confirm the exact dates. In-person visits stopped at all facilities in January 2022. In-person visits did not resume in some facilities until past October 2022. When they eventually resumed, they were limited and inconsistent.

Without in-person visits, prisoners' only option to see people on the outside was through audio-visual link (AVL). Unfortunately, access to AVL was highly inconsistent both across and within facilities. People in prison reported to us that individual Corrections officers held a lot of discretion over provision of access to AVL, leading to unequal and unfair treatment. Many reported being unable to see their whānau/family, friends, or legal representation for long periods. Corrections was regularly unable to provide dates or estimates on if or when AVL would be available, adding to the uncertainty and sense of disconnection and isolation.

In recognition of the negative impacts of this disconnection, Corrections issued \$5 phone cards to each prisoner. At the time, all prisoners were required to pay for their own phone calls.¹²

Despite the \$5 Corrections-issued phone cards, prisoners reported significant challenges even contacting people by phone. The phone lines in many facilities were poor quality, and frequently dropped calls or made it difficult to understand what was being said. Alongside poor quality of phones, many units have only one or two phones shared between hundreds of prisoners. **When coupled with the extended lockdown times outlined previously, the ability of prisoners to contact anyone by phone was severely limited or negligible.**

To provide a concrete example of the situation, a woman contacted us about her son who had been held on remand in July 2021. He ended up being held on remand for more than two years, during which time she saw him only twice, and only via AVL, never in person. This situation describes a person who had not yet even been sentenced.

Across the prison system in Aotearoa New Zealand the pandemic and **Corrections' pandemic response created unacceptable barriers to maintaining the connections with people outside that are so crucial for the well-being of prisoners.**

¹¹ Truebridge, N. (2023, April). Mt Eden Prison inmates face 22 to 23-hour lockdowns in cells, physical visits denied as Corrections struggles with staff crisis. *Newshub*. <https://www.newshub.co.nz/home/new-zealand/2023/04/mt-eden-prison-inmates-face-22-to-23-hour-lockdowns-in-cells-physical-visits-denied-as-corrections-struggles-with-staff-crisis.html>.

¹² Corrections has since moved to a new phone system that is meant to be free for all prisoners. However, we cannot confirm if the number or quality of phones has improved, and we still receive requests from prisoners for phone cards, indicating that some facilities have yet to introduce the new system.

The pandemic and Corrections' pandemic response further made it difficult for many prisoners to get legal representation. **The difficulty or in some cases inability of prisoners to contact legal representatives raises significant ethical and legal concerns over the validity of their ongoing incarceration.**

Lack of rehabilitation and enrichment programs and healthcare services

Along with in-person visits, the shift in national strategy away from elimination led Corrections to suspend all in-person programs in prisons from January 2022. This suspension likely happened from August 2021 in Auckland prisons.

The suspension of in-person programs had a significant negative impact on the well-being of people in prison, as well as on their rehabilitation efforts. Enrichment, education, and cultural programs are key contributors to prisoner wellbeing.¹³

Mental health and addiction services, as well as some core health services, were also suspended or became more difficult to access in some facilities. In one case, a Corrections officer even reached out to us with concern over prisoners' access to health services, highlighting the severity of the problem.

Suspension of programs also made it impossible for some prisoners to meet requirements for parole. Parole hearings for some prisoners were delayed due to a failure by Corrections to organise them via AVL. As a result, affected prisoners served unnecessarily and unjustly long sentences.

Other issues

Communications from Corrections

Communications from Corrections to whānau/families of people in prison throughout the pandemic was often rude, dismissive, and opaque.

Beginning with Auckland prisons in August 2021, inconsistent and contradictory advice was given to whānau/families about if or when in-person visits would resume. **Some whānau/families were told they could visit once they were vaccinated, which they complied with, but then they were not allowed to visit.** Whānau/families were told they could stay in touch via AVL, but then AVL was not offered. At times, whānau/family inquiries were simply ignored by Corrections. Some whānau/families even had to go to the inspectorate to get a response.

The inconsistency, lack of clarity, and frequently rude and dismissive tone of emails created significant distress for people concerned about the well-being of their incarcerated loved ones.

¹³ Tartarini, F. (2021). Prisoners' rehabilitation and wellbeing: a psychosocial perspective. In Searle, B. A., Pykett, J. and Alfaro-Simmonds, M. J. (eds.) *A Modern Guide to Wellbeing Research*, pp.110-128. <https://doi.org/10.4337/9781789900163.00017>.

Failures in Corrections' processes

People in prison regularly report issues to PAPA that involve Corrections failing to meet its obligations or minimum standards. During the pandemic many of these were exacerbated, and we received reports of unusual process failures. The reasons or cause of these failures are unclear, but they were likely linked to the pandemic and Corrections' pandemic response. For some prisoners they included:

- very limited access to showers – as few as one per week in one facility;
- not being provided materials to clean their cells;
- multiple cases of food poisoning;
- increased incidents of mail in and out being lost or delayed;
- the complaints process becoming backed up, with some complaints taking months to resolve.

Recommendations

The disruptions to prosocial connections that are already experienced while incarcerated were felt even more intensely during the pandemic, as public health risks thwarted access to whānau visits, programmes, social workers, therapists, and friends.¹⁴ Alongside disruptions to connections was a failure on the part of Corrections to prepare, in the first 18 months of the pandemic, for the widespread COVID-19 in the community and in prisons.

There is no safe way for someone to be incarcerated during a pandemic. There was therefore also a failure on the part of the government to reduce the prison population or to investigate decarceration as a strategy for keeping people in prison safe. This government failure is despite decarceration or prison population reduction as a public health strategy being called for by advocates as early as March 2020.¹⁵

In response to the shift in national strategy away from elimination, PAPA wrote an open letter, along with Amnesty International and JustSpeak, urging the government to take a range of measures to improve the safety and well-being of people in prison, including by reducing the prison population.¹⁶ Reducing the prison population would have reduced overcrowding and eased staffing pressures at Corrections. Staffing pressures were already suspected to be the cause of inhumane treatment of prisoners as early as May of 2020.¹⁷ None of the suggestions were put in place.

¹⁴ Gordon, F., Klose, H., & Lyttle Storrod, M. (2021). Youth (in)justice and the COVID-19 pandemic: rethinking incarceration through a public health lens. *Current issues in criminal justice*, 33(1), 27-46. <https://doi.org/10.1080/10345329.2020.1859966>.

¹⁵ Boyle, C. (2020, 26 March). Covid 19 coronavirus: Call to lower prison population to combat spread of virus. *New Zealand Herald*. <https://www.nzherald.co.nz/nz/covid-19-coronavirus-call-to-lower-prison-population-to-combat-spread-of-virus/0VILQWNPBAHYIH65SLRMBNWHI/>.

¹⁶ JustSpeak, Amnesty International Aotearoa New Zealand, and People Against Prisons Aotearoa. (2022). *Open Letter regarding COVID in prisons*. <https://papa.org.nz/wp-content/uploads/2023/05/Open-Letter-regarding-COVID-in-Prisons.pdf>.

¹⁷ Pritchard, R. (2020, May 19). The Covid-19 crisis is an opportunity to reform our prisons. *The Spinoff*. <https://thespinoff.co.nz/politics/19-05-2020/the-covid-19-crisis-is-an-opportunity-to-reform-our-prisons/>.

The pandemic response, as outlined in this submission, represents a failure by the Crown to ensure the wellbeing of the people in its care. Given the high proportion of Māori in the prison system, and the high rate of comorbid health issues among this population, it also represents a failure of the Crown to meet its obligations to protect Māori under *Te Tiriti o Waitangi*.¹⁸

We would therefore like to highlight the following steps that would ensure better outcomes in the event of a future pandemic.

- Improve sanitation in prisons, with a particular focus on ventilation and the provision of air purifiers;
- Ensure visitation facilities in prisons are adequately equipped to prevent the spread of airborne illness from outside;
- End double bunking, which makes social distancing impossible;
- Establish norms that pandemic conditions and the increased risk involved in being in prison during a pandemic are taken into consideration by judges during sentencing;
- Improve AVL and phone facilities in prisons;
- Designate a class of offenders in the Parole Act who, in the event of a pandemic, could be considered for early release from prison as a result of health issues, comorbidities or other issues that put them at higher risk from a pandemic.

However, we emphasise that the key lesson in the experience of people in prisons throughout the pandemic has been that the prison system is not able to keep them safe. **Our carceral justice system forced a choice between exposing a highly vulnerable population to infectious disease, or subjecting that population to inhumane and deeply harmful conditions of isolation and confinement. A project of decarceration would achieve better outcomes and would avoid having to make this choice in the future.**

Thus, we recommend initial decarceration of women and younger people. There is little evidence supporting the imprisonment of children as a just or effective response to harm; research has long found that alternative options should be used instead.¹⁹ The same has been

¹⁸ Just Speak. (2020). *Justice Leaders Must Take Urgent Action To Protect People In Prison From COVID-19*. Retrieved June 27 from <https://www.justspeak.org.nz/ourwork/justice-leaders-must-take-urgent-action-to-protect-people-in-prison-from-covid-19>;

King, P., Cormack, D., & Keenan, R. (2020). COVID-19 and the mass incarceration of Indigenous peoples. *Journal of Indigenous Social Development*, 9(3), 141-157.

¹⁹ Maxwell, G., Robertson, J., & Kingi, V. (2002). Achieving the diversion and decarceration of young offenders in New Zealand. *Social policy journal of New Zealand*(19), 76-100. <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/journals-and-magazines/social-policy-journal/spj19/19-pages76-100.pdf>;

Mendel, Richard. (2023). *Why Youth Incarceration Fails: An Updated Review of the Evidence – the Sentencing Project*. The Sentencing Project. <https://www.sentencingproject.org/reports/why-youth-incarceration-fails-an-updated-review-of-the-evidence/>;

Lambie, Ian, and Isabel Randell. (2013). "The Impact of Incarceration on Juvenile Offenders." *Clinical Psychology Review*, 33(3), 448-59. <https://doi.org/10.1016/j.cpr.2013.01.007>.

found for women, who tend to commit lower level offending and whose removal from their family structure and their children is needlessly destructive.²⁰

We also recommend implementing all 12 recommendations in the Turuki Turuki! report,²¹ which would transform our justice system and take steps towards broader decarceration and harm reduction.

Finally, we recommend the government proceed down the pathway towards the abolition of prisons set out in *Abolitionist Demands: Towards the End of Prisons in Aotearoa*.²²

The messaging from the Government throughout the pandemic was of kindness and compassion. We believe that this kindness and compassion needed to be extended to all members of society, including those entrapped in the criminal justice system.

²⁰ London Assembly Police and Crime Committee. (2018). *A long way from home: Improving London's response to women in the criminal justice system*. Greater London Authority. https://www.london.gov.uk/sites/default/files/20180724_pcc_report_-_a_long_way_from_home.pdf.

²¹ Ministry of Justice. (2023). *Key Initiatives: Hāpaitia te Oranga Tangata - Safe and Effective Justice*. Ministry of Justice. <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/key-initiatives-archive/hapaitia-te-oranga-tangata/>.

²² No Pride In Prisons. (2016). *Abolitionist Demands: Towards an End to Prisons in Aotearoa*. <https://papa-site-assets.ams3.cdn.digitaloceanspaces.com/publications/abolitionist-demands.pdf>.