



People Against Prisons Aotearoa

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Briefing to Incoming Ministers

Introduction

Kia ora ngā Minita,

Congratulations on your party's re-election to Parliament in October, and to you being awarded your respective portfolios. The people of Aotearoa have chosen you to continue serving in Government, and the Prime Minister has charged you collectively with the responsibility of keeping our communities safe from harm.

By now you will all have received your Briefings to the Incoming Ministers from your Departments and Agencies. However, these briefings fail to address key issues and significantly understate the deep-seated institutional problems inherent in our criminal justice system. Within two months of Election Day, we have been increasingly disturbed by the developments and findings of gross misconduct within prisons,¹ subversive tactics used to continue armed Police presence,² and a general apathy to criminal legislative reform.

This briefing introduces you to the critical issues in our current policing, justice and corrections systems. We seek your commitment to a set of meaningful and constructive policy directions over the next three years, on which we intend to work with you to achieve.

About People Against Prisons Aotearoa

People Against Prisons Aotearoa (PAPA) is a prison abolitionist organisation working for a fairer, safer, and more just Aotearoa. We began in 2015 as a group concerned about the gross mistreatment of transgender people in prisons. Since then, we have expanded our

¹ See: 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; Peter Boshier, 'OPCAT Report: Final Report on an Unannounced Inspection of Auckland Prison under the Crimes of Torture Act 1989' (Wellington: Office of the Ombudsman, 2020), <https://www.ombudsman.parliament.nz/resources/final-report-unannounced-inspection-auckland-prison-under-crimes-torture-act-1989>; Guyon Espiner, 'Gassed in Their Cells, "Begging" for Food at Auckland Women's Prison | RNZ News', *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>.

² John Weekes, 'South Auckland Shootings: Police to Carry Guns after Spate of Shootings', *NZ Herald*, 22 November 2020, <https://www.nzherald.co.nz/nz/crime/south-auckland-shootings-police-to-carry-guns-after-spate-of-shootings/H47HRRUI4FA52WDV5KSJMIT4H4/>.

scope, working with different communities to address the worst problems of the criminal justice system, and to build a better one.

To make this happen, PAPA regularly mobilises people power around key issues. We organise protests, marches, and direct action to highlight and address injustices. We are working with dozens of prisoners and their whānau at any given time, advocating on their behalf, and we provide hundreds of prisoners with a link to the outside world with our prisoner penpal network.³ We also produce research on the criminal justice system, and provide education sessions about alternatives to prisons.

The Case Against the Prison Industrial Complex

The evidence is clear that prisons do not reduce crime, either as a deterrent or as a mode of rehabilitation.⁴ Prisons alienate people from their support networks, whānau and turangawaewae whilst simultaneously forcing people, often themselves vulnerable, into dangerous situations. Prisons perpetuate the longstanding discrimination against tangata whenua and marginalised communities, whilst also making our communities less safe when prisoners bring that violence home with them.

Adopting a justice model that punishes people by placing them into violent and harmful environments still does nothing to resolve the institutional contexts of inequality, racism, and poverty that cause crime and criminalisation. As long as the wider structures that criminalise and marginalise our communities remain, despite efforts for reform, prisons will continue to have the same effects.

An equitable and fair justice system requires addressing the root causes of social harms, which requires rehabilitation of not only people but also the circumstances that lead them to harmful behaviour in the first place. If people are treated with dignity and respect, and given the resources they need to survive and thrive, we can live in a less violent and more peaceful society. Abolitionists believe that there is a better way to achieve justice for everyone, and that prisons can never be part of the way we get there.

Your portfolios

Collectively, you are responsible for three of the most significant interventions a Government can make into people's lives:

1. Authority over the legitimised use of force and violence to uphold the rule of law;
2. Determinations of punishments for breaches of law, including deprivation of freedoms; and
3. Incarceration and detention of people in New Zealand.

Below we outline some of the key problems within each of your portfolios, and seek a series of commitments from each of you in your roles.

³ See: <https://pcn.nz/>.

⁴ For a deeper analysis of why, see: Jordan Anderson et al., 'The Case Against Prisons' (Wellington: JustSpeak, 2018).

Police

You are responsible for administering a budget over \$2.2 billion in taxpayer funds, with over 9,700 officers across 327 stations. You have the responsibility of ensuring that communities are kept safe through the actions of Police, rather than being put into further harm and danger. We, therefore, call for the following immediate changes across your portfolio.

Immediate end to arming Police

Arming police in communities does not make them any safer, and in most circumstances erodes public perceptions of safety when those frontline communities are not consulted.

Following the Armed Response Teams (ARTS) trial which ended in April 2020, the Community Insights reporting conducted by Police found that 52% of survey respondents reported they did not feel any higher trust and confidence in the Police as a result of Armed Response Trials (ARTs).⁵ For Māori, these trials decreased trust and confidence, and 47% of Māori respondents were concerned that vulnerable groups would be targeted.⁶ It is highly distressing that the communities where ARTs were placed were not consulted on whether they felt comfortable with armed Police roaming their streets or not.

In most cases, the presence of ARTs did not de-escalate issues and many were deployed to situations without any presence of weapons – only 2.6% of ART callouts involved firearms.⁷ Having such a disproportionate response of physical force with no evidence that the ARTs eased issues, combined with a lack of community consultation and the fierce public opposition, is a clear sign that there is no place for arming Police in New Zealand.

We are frustrated and angered by recent news of arming police until further notice in South Auckland.⁸ We seek an immediate commitment from you that there will be no further expansion of police armament, including in trials, this parliamentary term.

Immediate end to use of rubber-tipped bullets

Deployment of rubber-tipped bullets is a worrying continuation of the militarisation of frontline Police in situations that do not warrant escalations in force. Overseas, these munitions have blinded people and caused long-lasting brain injuries.⁹ Domestically, more

⁵ Robert Taylor, 'Armed Response Team Trial: Evaluation Report' (Wellington: New Zealand Police Evidence-Based Policy Centre, 2020), <https://www.police.govt.nz/sites/default/files/publications/armed-response-team-trial-evaluation-report.pdf>.

⁶ Ibid.

⁷ Ibid.

⁸ Weekes, 'South Auckland Shootings: Police to Carry Guns after Spate of Shootings'.

⁹ American Academy of Ophthalmology, 'Nation's Ophthalmologists Condemn Use of Rubber Bullets', *American Academy of Ophthalmology*, 3 June 2020, <https://www.aao.org/newsroom/news-releases/detail/nation-s-ophthalmologists-condemn-use-of-tear-gas->; Shabir Ahmed Dhar et al., 'Pattern of Rubber Bullet Injuries in the Lower Limbs: A Report from Kashmir', *Chinese Journal of Traumatology* 19, no. 3 (June 2016): 129–33, doi:10.1016/j.cjtee.2015.05.005; BBC News, 'Rubber

than half of the people Police Officers use rubber bullets against are Māori.¹⁰ As part of our demand for the halt to escalation of arms, we seek a commitment from you to prohibit the use of supposedly 'less-lethal' bullets such as rubber-tipped ammunitions this parliamentary term.

End the use of high-speed pursuits in urban areas and for young drivers

The behaviour of Police during high speed pursuits has also been in the spotlight this year, with several notable pursuits ending in the deaths of both drivers and innocent bystanders. Most worrying was the death of bystander Kenneth McCaul in October 2019 due to a high-speed pursuit, which the IPCA ruled should never have been engaged and was not a justified pursuit.¹¹ We are encouraged by recent news that high speed pursuits will no longer be Police policy. We seek a further explicit commitment from you to end high speed pursuits where the feeling driver is a young person (18 and under), as recommended by the Children's commissioner.¹²

Justice

As Minister of Justice you play a fundamental role in the governance and stewardship of the criminal and civil framework that decides who is a criminal and under what circumstances. You also have the power to determine how defendants and prisoners are treated through legal standards of treatment and conditions. Your primary duty is to ensure that civil and criminal law reflects the modern circumstances in which they operate, and to amend both bodies of law when public appetite shifts.

Pursuing drug law reform

The results of the cannabis referendum clearly showed that Aotearoa is positioned to have a sane and sensible public conversation about moving towards a health-based, rather than punitive, approach to drug use. Current laws exacerbate the existing inequalities by failing to address the underlying causes of drug misuse and prevent the implementation of a health and safety regulatory framework for the production and distribution of currently illegal drugs.

We seek a commitment from you to move towards a health-based approach, rather than a punitive approach, to drug use in Aotearoa, and to actively pursue meaningful and sensible policy reform to that aim.

Bullets: Army Kept Real Dangers in NI Hidden', *BBC News*, 11 June 2013, sec. Foyle & West, <https://www.bbc.com/news/uk-northern-ireland-foyle-west-22848421>.

¹⁰ Hamish Cardwell, 'Sponge Bullets Fired at Māori in More than Half of Incidents - Police Data', *RNZ*, 16 July 2020, <https://www.rnz.co.nz/news/national/421320/sponge-bullets-fired-at-maori-in-more-than-half-of-incidents-police-data>.

¹¹ IPCA, 'Pursuit in Christchurch Leading to Fatality Not Justified' (Wellington: IPCA, 2020), <https://www.ipca.govt.nz/Site/publications-and-media/2020-media-releases/2020-oct-15-fatal-police-pursuit-christchurch-.aspx>.

¹² Jonny Edwards, 'Children's Commissioner Calls for End to Police Pursuits of Young Drivers', *Stuff*, 15 October 2020, <https://www.stuff.co.nz/national/123100713/childrens-commissioner-calls-for-end-to-police-pursuits-of-young-drivers>.

Reducing incentives to keep people locked up

The current laws around placing defendants in remand create perverse incentives to keep people in custody for prolonged periods of time. The Bail Amendment Act 2013, for example, is a direct breach of human rights and due process as it reverses the burden of proof for accused offenders in some cases, creating a presumption of detention unless a defendant can prove they should be released.¹³

Since the passing of the Act in 2013, the remand population has more than doubled.¹⁴ People are also being kept on remand for non-violent offences, such as fraud.¹⁵ The Act had made things worse by creating perverse incentives to continue higher numbers of incarceration.¹⁶

There is a spectrum of alternative and less intrusive options for striking a balance between protection of victims of crime and the inalienable human rights of all defendants. We therefore seek a commitment from you to reform the bail laws to reduce the number of people and length of time spent remanded in custody.

Lack of IPCA resource and funding

A lack of adequate oversight prevents transparency. As an organisation that has the right to use lethal force against the people of Aotearoa, Police conduct must be scrutinised effectively. Matters of concern need to be thoroughly investigated and, if need be, prosecuted.

In the 2018/2019 year, IPCA received 3026 complaints – an increase of 17%.¹⁷ It is predicted this increase will continue, with a forecasted volume of approximately 3800 complaints in 2019/2020 year.¹⁸

Less than 60% of the investigations conducted by the IPCA were completed within the year, due to increased volumes.¹⁹ Of this increased volume of complaints, there were a worrying number of complaints regarding Police Officer attitudes, use of language, and use of force without a weapon.

It is disconcerting that the independent oversight body charged the investigating police misconduct is unable to investigate all complaints itself and to complete investigations in a timely manner. The primary entity with authority and oversight over the Police should be

¹³ Ripu Bhatia, 'Bail Law Changes Reversing Burden of Proof "breached Human Rights" - Law Experts', *Stuff*, 23 July 2020, <https://www.stuff.co.nz/national/300058274/bail-law-changes-reversing-burden-of-proof-breached-human-rights--law-experts>.

¹⁴ Ibid.

¹⁵ Andrea Black et al., 'Bailing Out the Justice System: Reopening the Window of Opportunity' (Wellington: JustSpeak, 2017).

¹⁶ Ibid.

¹⁷ Colin Doherty and Simon Murdoch, 'Independent Police Conduct Authority: Annual Report 2018-2019' (Wellington: Independent Police Conduct Authority, 2019), <https://www.ipca.govt.nz/Site/publications-and-media/Corporate-publications.aspx>.

¹⁸ Ibid.

¹⁹ Ibid.

adequately resourced to meet its core functions. Currently, it is not. This undermines the right to justice and transparency that complainants deserve.

There were also 72 complaints regarding attempted suicide of arrested people while in police custody. This is the first time this category has been in the top 12 category of complaints.²⁰ The IPCA has previously noted significant cause for concern in several of its past Optional Protocol to the Convention Against Torture (OPCAT) reports regarding the number of people experiencing a mental health crisis while detained in police cells awaiting mental health assessments.²¹

It is disturbing to see that the number of complaints regarding suicide attempts while in custody has risen, and even more worrying that the IPCA has noted its funding constraints prevent staff from undertaking cells inspections. Adding to this concern was the Police's decision to not take part in a recent Human Rights Commission investigation into the use of seclusion and restraint in Police custody.²² As Minister, we ask you to ensure that Police will operate with the utmost transparency, especially when it involves the organisation's power to use force and to detain people.

The IPCA is primarily funded via revenue from the Crown. However, some operations are also funded by the Police and Ministry of Justice. We do not consider it appropriate for the IPCA to have inconsistent, impermanent, and vulnerable funding from third parties that the entity itself is investigating. The IPCA should be fully funded directly by the Crown to meet its requirements for investigations. We therefore seek your commitment to review and increase the IPCA's funding.

Corrections

As Minister of Corrections, you are responsible for the welfare and safety of approximately 9100 prisoners in Aotearoa, of whom more than half are Māori.²³ You are also responsible for a budget of over \$2.17 billion in taxpayer dollars.

Prisons play a key role in the continued marginalisation and disenfranchisement of oppressed communities. The 2017 Waitangi Tribunal report, *Tu Mai Te Rangī*, found that the Crown had breached its Treaty obligations by failing to prioritise the reduction of Māori

²⁰ Ibid.

²¹ Human Rights Commission, 'Monitoring Places of Detention: Annual Report of Activities under the Optional Protocol to the Convention Against Torture (OPCAT) -- 1 July 2017 to 30 June 2018' (Auckland: Human Rights Commission, 2019), https://www.hrc.co.nz/files/5015/6392/0537/Monitoring_Places_of_Detention_2018_Online.pdf.

²² Shalev, 'Time for a Paradigm Shift: A Follow Up Review of Seclusion and Restraint Practices in New Zealand'.

²³ Based on most recently available public data: Department of Corrections, 'Prison Facts and Statistics - September 2020', *Department of Corrections*, 11 December 2020, https://www.corrections.govt.nz/resources/statistics/quarterly_prison_statistics/prison_stats_september_2020.

reoffending relative to non-Māori.²⁴ While we are somewhat encouraged by the development of the *Hōkai Rangī* strategy, serious concerns remain.

Abuse of prisoners in Serco prisons

The abuse of people in prison is rampant, especially in privately run prisons. The continuation of contracts with Serco is especially concerning. Serco is renowned worldwide for allegations of fraud,²⁵ coverups of sexual abuse in their facilities,²⁶ cruel treatment of asylum seekers,²⁷ and involvement in military weapons development.²⁸ Serco's failure to keep prisoners safe in Aotearoa is well-known, especially in relation to its handling of the 'Fight Clubs' fiasco at Mt Eden Corrections Facility.²⁹

People Against Prisons Aotearoa has also been made aware of more recent allegations of human rights abuses in Auckland South Corrections Facility (ASCF), which are not publicly known. We believe that if and when the public learns about these alleged abuses, there will be a widespread call to end Serco's contract at ASCF. In light of this, we seek a commitment from you to 1) urgently review all of the Crown's current contracts with Serco and other private prison contracts and to 2) publish any findings of breach of contract.

Immediate halt to solitary confinement

Solitary confinement is the social and physical isolation and detention of a person for 22-24 hours per day. Its use is widespread in New Zealand prisons.³⁰ The prolonged use of solitary confinement in Aotearoa is a breach of Rule 44 of The United Nations Standard Minimum Rules for the Treatment of Prisoners (The Mandela Rules).³¹

²⁴ Waitangi Tribunal, 'TŪ MAI TE RANGI! Report on the Crown and Disproportionate Reoffending Rates' (Wellington: Waitangi Tribunal, 2017), https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_121273708/Tu%20Mai%20Te%20Rangi%20W.pdf.

²⁵ Felicity Lawrence, 'Serco Gave NHS False Data about Its GP Service 252 Times', *The Guardian*, 20 September 2012, <http://www.theguardian.com/society/2012/sep/20/serco-nhs-false-data-gps>.

²⁶ Mark Townsend, 'Sexual Abuse Allegations Corroborated at Yarl's Wood Immigration Centre', *The Guardian*, 21 September 2013, <http://www.theguardian.com/uk-news/2013/sep/21/sexual-abuse-yarls-wood-immigration>.

²⁷ Jamie Grierson, 'Serco given £200m Contract to Run Two More Immigration Removal Centres', *The Guardian*, 20 February 2020, <https://www.theguardian.com/uk-news/2020/feb/20/serco-given-200m-contract-to-run-two-more-immigration-removal-centres>.

²⁸ Serco Asia Pacific, 'Defence | Service Expertise', *Serco*, 20 December 2020, <https://www.serco.com/aspac/sector-expertise/defence>.

²⁹ Isaac Davison, 'Earlier Evidence of "fight Clubs" at Serco Prison Was Buried - Report', *NZ Herald*, 10 July 2016, <https://www.nzherald.co.nz/nz/earlier-evidence-of-fight-clubs-at-serco-prison-was-buried-report/YHWNLRGQIQICIN6RAT2VFPD3Q4/>.

³⁰ Shalev, 'Time for a Paradigm Shift: A Follow Up Review of Seclusion and Restraint Practices in New Zealand'; Sharon Shalev, 'Thinking Outside the Box? A Review of Seclusion and Restraint Practices in New Zealand' (Auckland: Human Rights Commission, 2017); Ti Lamusse, 'Solitary Confinement in New Zealand Prisons' (Wellington: Economic and Social Research Aotearoa, 2018).

³¹ United Nations General Assembly, 'Resolution 70/175: The United Nations Standard Minimum Rules for the Treatment of Prisoners', 17 December 2015.

Sharon Shalev's recent report, *Time for a Paradigm Shift*,³² into the use of segregation and restraint, a follow-up to her 2017 report,³³ had some concerning findings:

- 1339 placements in solitary confinement in 2019 breached international human rights law, lasting longer than 15 days. This was 9% of total solitary confinement placements that year.
- The majority of people in solitary were not released for more than an hour a day, held in bleak and often unsanitary conditions with limited access to basic amenities such as toilets.
- The use of solitary confinement continues to be both racist and sexist. There is a disproportionate number of Māori and Pasifika prisoners placed in solitary confinement and women are almost twice more likely to be put in solitary than men. The situation is even worse for Māori women. In the most controlled segregation areas, Management units, Māori women make up 78% of all stays. We believe these trends reflect broader issues of institutional racism and sexism in the Corrections system.
- Segregation cells are being grossly abused, with prisoners with significant mental health issues being placed in environments that only worsen their underlying conditions. Shalev also found accounts of solitary being used to punish vulnerable prisoners and victims of abuse within prisons.

In sum, Corrections has failed to curtail the already high rates of solitary confinement and, in fact, has expanded its use of prolonged solitary confinement. At the same time, Corrections continues to use these extre



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me forms of detention disproportionately against Māori, Pasifika, and women. Research shows that the longer prisoners spend in solitary confinement, the greater the negative impact it has on their mental health.³⁴ It is highly concerning that people are spending more time in solitary, with potentially long-term mental health consequences.

Shalev recommends an urgent inquiry into racist and sexist discriminatory use of solitary in New Zealand prisons. We strongly support this recommendation and seek a further commitment from you: a total halt on the use of solitary confinement on prisoners. We implore you to read the report 'Solitary Confinement in New Zealand Prisons', which proposes concrete regulatory changes to enable an end to solitary confinement in New Zealand prisons.³⁵

Use of force in prisons:

³² Shalev, 'Time for a Paradigm Shift: A Follow Up Review of Seclusion and Restraint Practices in New Zealand'.

³³ Shalev, 'Thinking Outside the Box?'

³⁴ Sharon Shalev, 'A Sourcebook on Solitary Confinement' (London: Mannheim Centre for Criminology, 2008); Lamusse, 'Solitary Confinement in New Zealand Prisons'.

³⁵ Lamusse, 'Solitary Confinement in New Zealand Prisons'.

Shalev has also found that:

- There has been a 252% increase in the use of force in prisons, including mechanical restraints, since 2016. Spithoods are increasing in use, despite their potentially dangerous effects, as proven by the high-profile death of Alo Ngata in 2018.
- Pepper spray continues to be abused by Corrections staff – the data suggests that pepper spray is being used alongside other forms of restraint, rather than replacing it, and staff are using pepper spray in inappropriate circumstances often in lieu of de-escalation or negotiation.

Pepper spray is an especially dangerous tool to be using in close quarters such as prison cells, where there is often limited ventilation and no opportunities to avoid the gas. When one cell is gassed, the neighbouring prisoners are also affected.³⁶ Concerningly, prisoners which aren't the target of this use of force are also being 'gassed' by the pepper spray. Additionally, Corrections staff seem to be ignoring prisoners complaining of being unable to breathe, which is highly alarming.³⁷

Shalev recommends an urgent investigation into the significant increased use of mechanical restraints and pepper spray. We support this recommendation and seek a further commitment from you to immediately halt all use of pepper spray in Corrections facilities. Additionally, we remind you of your duty to ensure that force should only be used when absolutely necessary, and only the least necessary force should be used (Section 83(1-2) of the Corrections Act 2004). The current use of pepper spray in New Zealand prisons is unsafe, disproportionate, and is not being used for its intended purpose.

Conclusion

We look forward to engaging with you over the next three years to create a more equitable and compassionate criminal justice system. As we extend this olive branch to you all in good faith, we also lay down this wero and trust that you will acknowledge shortly. We head into a time of increased uncertainty both at home and abroad, where Aotearoa is yet again being watched closely on the world stage. The #ArmsDownNZ Campaign this year showed that while we are a small island nation, both the impacts of racial discrimination and the power of flaxroots activism cannot be underestimated. PAPA's ability to galvanise public support quickly around these issues has already been displayed; it would be in your best interest if this support was not in opposition to your Government's policy choices.

³⁶ This finding by Shalev was corroborated by other recent reports: Espiner, 'Gassed in Their Cells, "Begging" for Food at Auckland Women's Prison | RNZ News'; Boshier, 'Auckland COTA Report 2020'.

³⁷ Shalev, 'Time for a Paradigm Shift: A Follow Up Review of Seclusion and Restraint Practices in New Zealand'.