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Submissions on behalf of the Criminal Bar Association of New Zealand in relation to the Corrections Amendment Bill, Amendment Paper, No 17.

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Introduction

1. As at December 2023, the total number of remand tāne across all prisons in Aotearoa was 3,584. Total number of sentenced tāne was 4,910.
2. At the same time, the total number of remand wāhine across all prisons in Aotearoa was 306. Total number of sentenced wāhine was 250.
3. Imprisonment rates in Aotearoa are higher than in most of the OECD. There are around 170 people in prison per 100,000 New Zealanders, compared to the OECD average of around 147 prisoners per 100,000 people.¹
4. In Aotearoa, reoffending rates are high. Around 70% of people with previous convictions are re-convicted within two years following release from prison. Around 49% are re-imprisoned after two years following release from prison.²
5. Most that are in the criminal justice system have been abused. 53% of wāhine and 15% of tāne in prison have reported to being sexually abused. This is only those that have reported the sexual abuse, and the true number may in fact be much higher. 77% of people in prison have reported to be victims of physical violence.

¹ Hāpaitia te Oranga Tangata, reports updated on 18 July 2023, found online at <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/key-initiatives-archive/hapaitia-te-oranga-tangata/>

² ² Hāpaitia te Oranga Tangata, reports updated on 18 July 2023, found online at <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/key-initiatives-archive/hapaitia-te-oranga-tangata/>

6. There is usually a positive nexus between the trauma that they have suffered, the untreated rehabilitation needs and the offending for which they were imprisoned.
7. One problem is that those in custody are not being provided the opportunity to participate in rehabilitation programs. Due to delays within the criminal justice system, a significant number of tāne and wāhine are being released shortly after being sentenced on a “time served” basis. Due to the current unavailability of rehabilitation and reintegration pathways for remand prisoners, they leave prison untreated.
8. If a tāne or wāhine is sentenced to a longer term of imprisonment, they appear before the Parole Board shortly after their sentencing date. Again, they are untreated. As a result, Parole will likely be declined as there is an undue risk to the community if they were to be released prior to treatment.
9. Lack of access to rehabilitation means those that are released will likely re-offend (as the statistics above show) and it leads to lengthy periods of incarceration for long-term prisoners, as they are not released by the Parole Board upon being eligible for release. In addition to the restrictions on the freedom of New Zealanders, this is at a significant cost to the taxpayer. At present, it costs around \$150,000 per annum per prisoner. With 9,115 prisoners in Aotearoa (as at December 2023), that is at an annual cost of more than \$13billion to the tax payer per year.

Proposed amendments

10. The Criminal Bar Association supports the proposed amendment to clause 4, definition of accused prisoner and inclusion of new clause 5A. That amendment will make rehabilitation accessible to all prisoners, regardless of their custody status (accused or remand).
11. The Criminal Bar Association also supports the amendment to the definition of non-offence-based programme and inclusion of new section 6(1)(h). Rehabilitation and reintegration pathways, in order to be successful, need to address more wrap-around services - such as psychological and psychiatric treatment, psychotherapy, counselling for gambling, access to social welfare service, employment, literacy and where appropriate, work experience, education, healthcare (including physical rehabilitation). Where possible, they ought to be culturally appropriate.
12. Learning from the overhaul of the prison systems in Norway and Italy, it is easy to see how non-offence based rehabilitation and integration pathways reduce the re-incarceration risks and likelihood.

13. In 1990's, in Norway, roughly 70% of all released prisoners recommitted crime within 2 years of release (exactly the same as the re-offending rates in Aotearoa at present). At the time, the Norwegian prison system was built on the idea that punishment is a deterrent - that lengthy sentences in harsh conditions sends a message to others.³
14. Some of the measures taken to overhaul the system included:
 - 14.1. Focus on rehabilitation and reintegration;
 - 14.2. Continued contact with the whānau was encouraged, with those incarcerated being housed geographically close to their whānau so that they can maintain contact with their spouses, friends and family. Visits, sometimes up to three times a week, were allowed. The emphasis on building and maintaining these relationships was so that prisoners have a strong support system upon their release;
 - 14.3. Prisons put focus on educations, with workshops to learn practical skills, such as automotive repair and carpentry. The emphasis on furthering education or skills/trade was so that, when released, prisoners had a more certain pathway to employment and therefore means to support themselves. Classrooms have computers and limited access to the internet. Prisoners have the same right to education as the average citizen. Of those who were previously unemployed, there was a 40% increase in employment rates after release due to these measures.
15. Similar to Norway, Italy reformed their prisons in order to address the high incarceration rates.⁴ Some of the measures were:
 - 15.1. Focus on mental and physical health of a prisoner: Italian law states that, upon entering a prison, the prisoner should be visited by a physician and a psychologist no later than one day, to examine him/her and to alert the authorities to any problems, such as drug addiction or substance withdrawal. Italian law recognises that those in prison should enjoy the same access to healthcare as other citizens. The benefit of focus being put on healthcare is that prisoners can focus on their te taha tinana and te taha hinengaro whilst incarcerated;
 - 15.2. Focus on employment: the Italian law allows both work within the prison system and work for private companies, drawing a clear

³ First Step Alliance (2022) *What We Can Learn From Norway's Prison System: Rehabilitation & Recidivism* found online at <https://www.firststepalliance.org/post/norway-prison-system-lessons>

⁴ Marietti, S. *Prison Conditions in Italy*. European Prison Observatory, found online at: http://www.prisonobservatory.org/upload/Italy_Peniten.pdf

pathway to employment upon release. Employment also has a positive impact on their te taha tinana and te taha hinengaro;

- 15.3. Focus on education: Almost all prisons in Italy have access to literacy courses. Sentenced prisoners have access to high school and technical institute courses and there are agreements for further education with universities. There are libraries in almost all Italian prisons. Further education will also improve employment opportunities in the future, along with basic literacy skills affording prisoners the opportunity to write to their whānau, which may be a somewhat foreign concept for those who have previously been unable to read or write. Such has a direct impact on one's te taha whānau, te taha hinengaro and also te taha wairua.
16. Learning from the reforms in Italy and Norway, which have been successful in reducing re-offending and re-incarceration, the Criminal Bar Association supports the inclusion on non-offence-based programmes being offered to both remand and sentenced prisoners.
17. For the same reasons, the Criminal Bar Association supports the inclusion of those services under the definition of rehabilitation programmes in clause 4, section 3(1) and inclusion of kaupapa Māori or religious-based programmes in clause 45 and 46. However, a wider definition to include other culturally based programmes ought to be included.
18. In December 2023, 51.9% of the prison population identified as Māori. But this means 48.1% of the prison population identified with a different culture. A wider definition of culturally appropriate programmes will ensure that all prisoners, regardless of their culture and ethnicity, remains eligible for rehabilitation programmes that are best suited to them.
19. The proposed amendment to section 52 is also supported.

Final comments

20. The proposed amendments will provide better access to justice, which the Criminal Bar Association supports.
21. The Criminal Bar Association is available to make oral submissions before the Select Committee, or to discuss these issues further outside of the Select Committee process should that assist.