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Beyond The Holding Tank – the need for prison reform

A recent report by The Salvation Army Social Policy and Parliamentary Unit *Beyond the Holding Tank: pathways to rehabilitative and restorative prison policy* depicts a rising prison crisis that New Zealand must face up to.

The report shows that New Zealand, with an imprisonment rate of 181 people per 100,000 of the population, has the second highest rate in the western developed world. On any given day around 7,500 people are in our prisons. The only nation that imprisons more people is the United States, who are way out ahead with an imprisonment rate of 724 per 100,000 of the population.

The typical inmate is male, of European or Maori ethnicity, aged between 20 and 40 years, who left school at the end of Year 11 (Form 5) without any qualifications and, for about half, they have been unemployed before entering prison. About 60 percent of these inmates will have a diagnosable mental health condition, and of this group, 90 percent will also be addicted to drugs and alcohol.

The majority of these inmates will also have been in prison before. New Zealand has a relatively high recidivism (re-offending) rate, with 86% re-convicted and 51% re-imprisoned within 5 years of release.

This data shows that if prison is meant to deter offending and re-offending then it is not working. The Salvation Army report suggests that prison is unlikely ever to succeed because as it currently operates it fails to deal with the underlying causes of crime and may in fact exacerbate them. For example in 2005 the Department of Corrections was funded to provide only 174 places in a drug and alcohol programme and there is almost no employment and very few vocational programmes inside our prisons. Many inmates find themselves released with almost no money, having lost (if they had it before) housing, employment, and sometimes family. It should be of little surprise that the majority return to their old criminal alliances and re-offend.

Prison also fails because it is designed to punish and thousands of studies world-wide have shown that punishment is ineffective in changing people's behaviour. Few offenders are making thought through choices based on consequences and therefore the level of sanction or punishment is irrelevant.

If prisons are to become more than holding tanks with revolving doors, then, the Salvation Army suggests, we need to re-think who we send to prison and what we do with them while they are there. Internationally and within New Zealand there are models of better ways to work with offenders both before, within and after prison, ways that reduce the need for prison and prevent re-offending.

What is required is public and political recognition that our current incarceration rate is unsustainable, that our prisons are not working and that we need to make a change. The Salvation Army's report makes a number of recommendations for change and action. The key recommendation calls on the government to lead a multi party accord to stop crime and punishment being a political football. New Zealand needs to get away from rhetoric and base its prison policy on research, fact and rationality.

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PARLIAMENT

Introduced

New Zealand Superannuation & Veterans' Pensions (Entitlements of Spouses & Partners of people in Long-Term Residential Care, and Remedial Matters) Bill

Introduced on 21 February, this Government Bill:

- extends the eligibility for the single/living alone rate of NZ Super to all superannuitants whose spouses or partners are in long-term residential care in a hospital or rest home;
- removes the 'sharing expenses' rule, so that entitlement to the 'living alone' rule is based solely on actual living arrangements;
- increases from 52 to 156 weeks the period that a person can get NZ Super or the veterans' pension while working overseas voluntarily for an aid agency; and
- allows additional increases in veterans' pension rates by Order in Council.

The bill is now before the Social Services Select Committee and submissions close on 31 March.

Employment Relations (Probationary Employment) Amendment Bill

A private members' Bill put forward by National's Wayne Mapp, this Bill aims to introduce a 90-day probationary period for new employees. During this time, either employer or worker may end the employment 'forthwith' and no personal grievance or other employment dispute may be brought. It excludes the use of employment relations mediation services, but makes clear that the Human Rights Act 1993 continues to apply to such employees. They would retain rights under the general law relating to contracts, which would be enforceable in the District and High Courts, but employees could not access the specialized employment tribunals.

The Bill has passed its first reading and is now before the Transport and Industrial Relations Select Committee. No closing date for submissions has yet been set.

Electoral (Reduction in Number of Members of Parliament) Amendment Bill

Another private members' Bill, put forward by NZ First MP Barbara Stewart, this aims to amend the Electoral Act to reduce the number of MPs from 120 to 100. The number of constituency seats remains the same but the number of list seats is reduced by 20.

Submissions to the Justice & Electoral Select Committee have been called for but no closing date has yet been set.

Reported back

Judicature Amendment Bill

The Bill aimed to amend the Judicature Act 1908 to alleviate the workload pressures on the Court of Appeal and to increase access to the final appellate court, the Supreme Court of New Zealand.

The Justice & Electoral Select Committee recommended that a clause be repealed so that appeals may now be made to

the Supreme Court, and that they may be made following the normal rule that it is for the Supreme Court itself to grant leave to appeal. The Bill passed its second reading and now awaits committee stages.

Legal Services Amendment Bill

The Bill updates the financial thresholds for legal aid eligibility, revises the merits testing regime and updates debt management and other aspects of legal aid administration.

Main changes recommended include:

- taking into account the possible effect of criminal conviction on an applicant for legal aid, especially one facing criminal charges for the first time, because of the effects of a first conviction.
- Changes to ensure consistency and fairness in administration of legal aid to eligible people.
- Taking into account the resources of spouses or partners, depending on the nature of the relationship and whether or not they are living together.
- Encouraging private mediation as an alternative to costly litigation, and extending civil legal aid to cover costs of private mediation.
- Clarifying aspects of the legal aid repayment regime, including interest charges.
- Immunity from legal proceedings for Legal Aid Review Panel members.
- Regular review of payment rates to listed providers.

Passed

Lawyers and Conveyancers Bill

This replaces the Law Practitioners Act 1982, and ends the exclusive right of lawyers to carry out conveyancing (property sales) work by the creation of a new profession of licensed conveyancer.

Consumer protections include fidelity funds, professional indemnity insurance and controls over who may describe themselves as lawyers or law practitioners, along with the fundamental obligations of lawyers and conveyancers and a procedure to determine the professional rules governing them.

The Act creates an independent Legal Complaints Review Officer with the power to refer, overturn or substitute the decisions of the existing Standards Committees. The New Zealand Lawyers and Conveyancers Disciplinary Tribunal is established to deal with serious cases of misconduct.

Not passed

Treaty of Waitangi Principles Bill

Rodney Hide's Bill trying to require clarification of the term 'principles of the Treaty of Waitangi' in existing and future legislation was rejected at its first reading on 22 February.

NZ Public Health & Disability (Enhancement of Competition) Amendment Bill (Private Member's Bill, Heather Roy)

This removed Pharmac's exemption from the Commerce Act thus abolishing its monopoly on drug purchasing for public health system, and was negatived on its first reading.

LEGISLATION UPDATE

Legislation	Stage and Progress	Impact
Child Support Amendment Bill (No.4)	Before Social Services Select Committee; awaiting hearing of submissions.	Writes off late payment penalties for liable parents who resume child support contributions.
Children, Young Persons & Their Families Amendment (No. 2) Bill	Committee stage	Extends approved groups who can be guardians/custodians of children.
Children, Young Persons & Their Families Amendment (No. 4) Bill	Awaiting second reading. Amended by SOP 261.	Aims to improve youth justice processes, prevent persistent offending. CYFS may assign investigation and care to NGOs.
Coroners Bill	Justice & Electoral Select Committee report due 31 March	Reforms coronial system for effectiveness and better response to bereaved families.
Courts and Criminal Matters Bill	Awaiting third reading.	Deals with fines collection and civil enforcement; amends 9 Acts
Crimes (Abolition of force as justification for child discipline) Amendment Bill (Sue Bradford)	Awaiting Select Committee hearing of submissions.	Removes the use of 'reasonable force' as a defence against assault by a parent on their child.
Criminal Procedure Bill	Awaiting second reading	Omnibus bill to improve court efficiency, modify jury system, change double jeopardy rule.
Criminal Procedures & Instruments Bill	Introduced 22 June 2005. Awaiting first reading.	Introduces civil forfeiture regime for proceeds of crime.
Disabled Persons Employment Promotion (Repeal & Related Matters) Bill	Awaiting second reading.	Ensures people with disabilities in sheltered workshops have the same wage and employment rights as other workers.
Employment Relations Amendment Bill	Before Transport & Industrial Relations Select Committee; submissions close 21 April.	Protects employees in situations where contracts are sold/ transferred to new employer or contractor.
Employment Relations (Flexible Working Hours) Amendment Bill. Private Members' Bill, Sue Kedgley	Before Transport and Industrial Relations Committee. Report due 30 April.	Enables employees with young and dependent children to request part-time, flexible & reduced working hours.
Evidence Bill	Before Justice & Electoral Select Committee. Report due	Draws together common law and statutory provisions for evidence.
Human Rights (Gender Identity) Amendment Bill Private Members' Bill, Georgina Beyer	Awaiting first reading – postponed to 3 April 2006	Includes 'gender identity' as a prohibited grounds for discrimination.
Insolvency Law Reform Bill	Before Commerce Select Committee. Submissions close 7 April.	Modernises insolvency & personal bankruptcy law & liquidation options.
Legal Services Amendment Bill (No.2)	Awaiting second reading	Updates and extends eligibility for legal aid. See p.2.
Minimum Wages (Abolition of Age Discrimination) Amendment Bill. Private Members' Bill, Sue Bradford	Before Transport & Industrial Relations Select Committee; submissions close 21 April.	Abolishes discrimination on grounds of age in setting minimum wage rates, but allows apprentice & other exceptions.
New Zealand Day Bill Private Members' Bill, Peter Dunne	Before Justice and Electoral Committee. Report due 28/2/06	Replaces Waitangi Day with a New Zealand Day.
NZ Sign Language Bill	Awaiting committee stages.	Officially recognises NZ Sign Language.
Parental Leave & Employment Protection (Paid Parental Leave for Self-employed Persons) Amendment Bill	Before Transport & Industrial Relations Select Committee; report due 5 June 2006.	Extends parental leave provisions to self-employed people on similar conditions to employees.
Oaths Modernisation Bill	Before Government Administration Committee. Report 28/2/06	Modernises the language used in existing oaths.
Residential Tenancies Amendment Bill	Awaiting second reading.	Tidies up definition, property protection and period of notice provisions.

In force

Minimum Wage Order

From 27 March, the Minimum Wage Order 2006 increases the minimum hourly rate payable to adult workers from \$9.50 to \$10.25 per hour. The minimum wage for youth workers and trainees rises to \$8.20 per hour.

Benefit changes

On April 1, the following provisions come into effect.

- The Special Benefit is abolished, replaced by Temporary Additional Support (TAS). Those already receiving Special Benefits will continue under the old rules. Under TAS, in most cases the first \$20 of hardship must be met from personal resources. The maximum TAS is limited to 30 percent of weekly benefit payment, except for those with high disability costs. For those with disability costs over the maximum weekly disability allowance of \$49.48, the TAS maximum can increase by one-third of costs over \$49.48.
- Benefits and allowances increase by 3.16 percent. For example, a single unemployed person aged under 20 living at home gets an increase of \$3.56, to \$115.94 per week and a single unemployed person aged 20-24 will receive \$144.92. A married couple without children on the Unemployment Benefit get \$289.84. A single person over 18 receiving the Invalids' Benefit will get \$217.38 per week, a sole parent on the DPB with one child will receive \$249.10 and a single 25+ student living away from home will get \$173.92.
- Thresholds for the Community Services Card also rise. They now range from \$20,916 for a single person sharing accommodation to \$65,743 for a family of six people.
- The Working for Families package will not affect card entitlement, and families with children may also benefit from an increase in childcare rates.

Full details from www.workingforfamilies.govt.nz

News

Debt levels

More than 60,000 DPB beneficiaries are in debt to WINZ, according to figures released under the Official Information Act, and just over half of all working-age beneficiaries also owe WINZ money.

Those on the DPB are more in debt than other beneficiaries, however, with 59 percent of them owing a mean amount of \$502. Two-thirds were female, and 48 percent were Maori or Pacific Island people. Fewer than one in five had another source of income beyond the benefit, and over 6000 were not making any repayments.

'The really worrying situation is however that this is only part of the picture,' said Lindsay Mitchell, who has petitioned for a Parliamentary review of the DPB. 'Many of these people will also have money on credit cards, HP agreements and to loan sharks.'

Special benefit changes

The introduction of Temporary Additional Support (TAS) to replace the Special Benefit may result in severe cuts to hardship assistance, according to beneficiary advocates. The Benefit Advocates Federation of New Zealand advises that all people on welfare benefits who are struggling financially to meet their commitments should apply for the Special Benefit before 1 April, when TAS comes into effect.

Constitutional Arrangements Committee

Responding to the report of this Committee's inquiry to review New Zealand's existing constitutional arrangements, Government:

- agreed to give further consideration to the idea of establishing generic principles to guide future significant constitutional change;
- agreed that more should be done to improve civics and citizenship education in schools;
- said the proposal to set up an independent institute to foster better understanding and debate of New Zealand's constitutional arrangements 'raises a number of issues and... is unlikely to be the best mechanism to achieve these ends'.

Case Law

Court intervention in voluntary society actions

A request to the High Court for judicial review of a voluntary society's actions, brought by a member of the voluntary society, was unsuccessful. The case was brought by Hopper against the North Shore Aero Club challenging its refusal to allow him to base his home-built microlight aircraft at the society's home aerodrome.

The courts have been reluctant to intervene in voluntary society affairs for judicial review because the society's constitution is a contract among members, said the High Court judgement. Action for breach of contract is the usual remedy – the courts would intervene to ensure the rules and constitutions of voluntary associations are observed, but little further, other than membership issues or where a person's livelihood is involved.

The High Court ruled that the Society was under no legal obligation to give detailed reasons for its action. Like most voluntary organizations, it administered its affairs informally by committee. The member who objected to the decision could exercise all his rights in the Society, and try to persuade a majority to change its decision.