

June 2010

Private Prisons, Whare Oranga Ake and changes within Corrections – a dollar ‘3 ways’ for the Government?

New Zealand once again has the ability to contract out the management of its prisons. Alongside this has been the recent raising of some \$140 million of a public infrastructure bond, some of which will be used for a new prison for men at Wiri in South Auckland due by 2014. A Request for Proposal to operate the Auckland Central Remand Prison and Mt Eden has been tendered to four private prison contractors in the last few weeks to commence the management of this joint site in 2011.

To be applauded is the recent Budget provision for a somewhat new concept in New Zealand, long-advocated by Associate Minister of Corrections, Dr. Pita Sharples, to provide special facilities (**Whare Oranga Aneke**) for Maori offenders in the last stages of their imprisonment. This initiative is to be a stage of their reintegration to society and is facilitated with input from the community.

These changes, together with an almost total restructuring of the core parts of the Department of Corrections, represent a somewhat wholesale change to the “punishment” end of the criminal justice landscape by this Government.

What is the role of Government in the various stages of punishment, including imprisonment?

There are many who would advocate that the State should not delegate their duty of care for punishment to a private party. Imprisonment is a huge burden to the economy thus it is incumbent on the State to spend our taxes wisely, especially when other areas of welfare are crying out for more funding. The true test of the effectiveness of any remand prison should be the preservation of human dignity of a person in custody, who is innocent until proven guilty. If the remand process can be done more effectively by a private Company, in both a financial and moral sense, then we should not be displeased.

Operating a mainstream prison for sentenced prisoners brings other criteria to the fore. It is likely that a Key Performance Factor for the selected contractor will be based on effective containment, i.e. a demonstrated ability to minimise prison escapes, on the grounds of enhanced public safety. No doubt losing potential profit if one occurs! The requisite level of public safety is a subject that should be a policy which is debated in a public forum, yet this topic is rarely canvassed. Mitigating perceived risk always costs more in extra security measures, or reduced liberty and is in direct contrast with the intentions of **Whare Oranga Aneke**, where the plan is to maximise the number of low risk prisoners to reintegrate into society. The Government in these moves wants to have a dollar both, or maybe even 3 ways! When private operations invade public space such dilemmas come to the fore.

The main advantage of having private companies bid to operate some prisons is the transference of effective international practice that will benefit both the State and prisoners alike, perhaps even the families of prisoners who are often largely forgotten in the design and operation of most prisons.

NGOs can also participate in the overall bids and in this way New Zealand prisons could adopt new programmes and operational practices that would be much more difficult to bring into our State run prisons. Over time we must demand the comparison of both private and public operations side by side, with independent auditors, and determine if perhaps all of our prisons should be run either by private or perhaps by a coalition of NGOs?

Change is afoot but we must continue to ensure it yields a society with less crime.

*from Robin Gunston
National Director, Prison Fellowship New Zealand*

Parliament

2010 Budget

Repeal of Foreshore and Seabed Act

The Government has announced details of its agreement with the Maori Party on proposals to replace the Foreshore and Seabed Act 2004. National had agreed to a review of the Act as part of its Confidence and Supply agreement with the Maori Party.

The 2004 Act put the foreshore and seabed into Crown ownership, removing the right of Maori to have foreshore and seabed claims heard by the Courts. Under the proposed new law, no one will own the foreshore and seabed. Continued public access will be guaranteed, but iwi will have the right to claim customary title either through the Courts or in negotiation with the government. Iwi and hapu wanting to claim customary title to an area will have to show continuous and exclusive occupation of the area since 1840. If a claim for customary title is successful, iwi will not be able to sell the land or prevent public access. They will be able to block or initiate development and have the right to non-nationalised minerals, subject to the usual requirements of the Resource Management Act.

The Maori Party and the Iwi Leadership Group had been seeking some form of Maori ownership or joint ownership between iwi and the Crown but neither was accepted by the Government.

The proposed new law also introduces the concept of “universal recognition”, recognising the relationship of iwi and hapu to their local foreshore & seabed. This will require, for example, iwi involvement in conservation projects in their area.

The new law is yet to be drafted but the Attorney-General hopes to introduce it by August.

Whanau Ora “Expressions of Interest” called for

The Whanau Ora Governance Group has called for “Expressions of Interest” (EOI) from providers wanting to deliver services. The first round of EOI closes 7 July 2010 and will be limited to providers already providing whanau centred services, who have strong organisation capability and capacity and who are ready to participate in Whanau Ora immediately. A second round of Expressions of Interest will close 2 August for interested providers not yet ready to submit a EOI.

The Group is also calling for nominations to Regional Leadership Groups. The groups will initially be involved in helping select Whanau Ora providers for their region. Each group will have 3-7 community representatives appointed by the Minister Responsible for Whanau Ora, Tariana Turia, and three officials from Te Puni Kokiri, Ministry of Social Development and District Health Boards.

For more information, Expressions of Interest documents, and nomination forms for the Regional Leadership Groups, go to: www.tpk.govt.nz

Search and Surveillance Bill

The Search and Surveillance Bill, a Government Bill, has been before the Justice and Electoral committee since August 2009, but has just been sent back by the committee for redrafting. The Bill, in its current form, widens the range of offences for which communications can be intercepted, allows electronic applications for search warrants and substantially widens the range of state agencies who will have search and surveillance powers. It was based on a Law Commission report recommending a reform of the search and surveillance powers held by state agencies.

The select committee has already heard submissions on the original Bill and it is likely that they will limit submissions on the redrafted Bill to the amendments. In a press release the committee said people who have already made submissions will be contacted directly.

There has been considerable opposition to the Bill, including protests and a National Day of Action.

Accreditation of rest home auditors

By the end of 2010, auditors who check rest homes will have to be accredited to an agency approved by the Ministry of Health. This announcement is one of a number of changes introduced by the Government to improve the quality and safety of rest-home care. Other changes include:

- Publishing the results of rest-home audits on line.
- Unannounced and more stringent audits.
- Improving information sharing and management of complaints.

The Health select committee is currently considering the Auditor-General’s report on the effectiveness of rest-home checks.

Submissions requested

Making Tax Easier: Discussion document

The Government has issued a discussion document looking at possible reforms to the tax administration system to make it easier for individuals and businesses. Changes include:

- Making it possible for individuals to self-manage their tax payments and social assistance entitlements (e.g. Working for Families) by using a secure page on the Inland Revenue website.
- For employers’ and the not-for-profit sector tasks such as filing monthly PAYE schedules could be managed by software that automatically communicates with Inland Revenue. If proposals such as these are adopted it could mean that all businesses will be required to move to electronic filing.

The closing date for comments is 23 July 2010. Comments can be made online at www.ird.govt.nz/makingtaxeasier and a copy of the discussion paper can be found at www.taxpolicy.ird.govt.nz

Passed

Local Government (Auckland Law Reform) Bill

This is the last of the three Bills providing the new local government structure for Auckland. It makes changes to the general framework for local boards and existing council controlled organisations and makes provision for the transfer of staff and assets in to the new structure.

At the final committee stages of the Bill, it was divided into three—the Local Government (Tamaki Makarau Reorganisation) Amendment Act, the Local Government (Auckland Council) Amendment Act and the Local Government (Auckland Transitional Provisions) Act—and all have been passed. This brings to five the number of laws passed to enable local body elections in October this year to elect a new Council.

If you would like to more about the new Auckland Council and how it will work, you could do worse than read the New Zealand Herald’s “Idiots Guide to the Super City” on www.nzherald.co.nz It is very good!

Legislation Update

| Legislation | Stage and Progress | Impact |
|--|---|--|
| Child and Family Protection Bill | Government Bill. Introduced August 2009. Submissions close 1 April. Report due 11 August 2010. | Provides greater protections to children affected by domestic violence. |
| Crimes (Reasonable Parental Control and Correction) Amendment Bill | Members Bill (John Boscawen—ACT). Introduced 26 August. | Amends section 59 Crimes Act to allow parents to use a “light smack” to correct their children. |
| Education Amendment Bill | Government Bill. Passed (see page 4). | Bill to help identify unregistered teachers and reduce compliance costs of Police vetting. |
| Electoral (Administration) Amendment Bill | Government Bill. Passed (see page 4). | Establishes new Electoral Commissions responsible for electoral administration. |
| Electoral (Financial Reform and Advance Voting) Amendment Bill | Government Bill. Introduced 29 April. Submissions close 17 June 2010. Report due 6 November 2010. | |
| Electoral Referendum Bill | Government Bill. Submissions close 10 June. Report due 22 October 2010. | Provides framework for 2011 MMP referendum, including spending limits for those campaigning for and against electoral options. |
| Employment Relations (Rest and Meal Breaks) Amendment Bill | Government Bill. Submissions close 11 June. Report due 29 October 2010. | Maintains employees’ rights to reasonable breaks but within more flexible framework. |
| Fair Trading (Soliciting on Behalf of Charities) Bill | Members’ Bill (Amy Adams, National). Report was due 9 June, but now due 9 December 2010. | To provide transparency and public accountability to professional fundraisers. |
| Gambling Amendment Bill (No.2) | Labour Government Bill. Reported back. Second Reading 12 May. | Contains technical amendments to allow original Act (2003) to operate as intended. |
| Local Government Act 2002 Amendment Bill | Government Bill. Submissions closed 18 June. Report due 4 November. | Bill will require local authorities to focus on “core” activities, and have transparent and accountable decision-making processes |
| Local Government (Auckland Law Reform) Bill | Government Bill. Divided into three Bills in final stages. Passed (see page 2). | Last of three Bills implementing new local body structure for Auckland. |
| Patents Bill | Government Bill. Submissions closed. Reported back. Divided into two Bills at committee stages. | Updates New Zealand’s patents regime. |
| Public Health Bill | Labour Government Bill. Reported back from select committee. Reinstated. | Revises public health legislation including border protection and quarantine provisions. |
| Residential Tenancies Amendment Bill | Government Bill. Submissions closed. Reported back. | Reflects significant changes in the rental market since the 1986 Act. |
| Sale and Supply of Liquor and Liquor Enforcement Bill | Labour Government Bill. Reinstated. Submissions closed. Report was due 10 September, now due 1 October 2010. | Gives communities greater say in liquor licensing decisions, makes it an offence for adults to supply alcohol to minors without parental consent. |
| Sale of Liquor (Objections to Applications) Amendment Bill | Member’s Bill (George Hawkins). Submissions closed. Report was due 30 June, now due 30 September 2010. | Restricts the number of liquor outlets and makes wider provisions for objections to licenses. |
| Search and Surveillance Bill | Government Bill. Has been before Justice and Electoral committee since August 2009 - committee sent Bill back for redrafting May 2010 (see page 2). | Widens ranges of offences for which communications can be intercepted. |
| Sentencing and Parole Reform Bill | Government Bill. Passed (see page 4). | Introduces tougher parole laws. Bill also introduces “three strikes” policy for serious offences. |
| Social Assistance (Future Focus) Bill | Government Bill. Submissions closed 14 May. Report due 30 July 2010. | Introduces the government’s welfare reforms, with focus on breaking welfare dependency and on moving people from welfare benefits to paid work. Introduces work-testing for some DPB and sickness beneficiaries. |

Passed

Sentencing and Parole Reform Bill

This highly controversial Bill was finally passed late last month. The Bill, introduced in March 2009, fulfilled National's pre-election promises to strengthen parole laws, but also contained ACT's "three strikes" policy. Initially National, as part of their confidence and supply agreement with ACT, agreed only to support the three strikes part of the Bill through its first reading (to allow the Bill to go to select committee for submissions), but eventually supported it through all stages.

The three strikes part of the Bill introduces a graduated scale of offending for specified serious offences. For a first offence, offenders will be sentenced and eligible for parole, be sentenced with no parole for a second offence and receive a maximum sentence with no parole if convicted of a third offence. A late amendment requires Judges to warn first and second offenders of the consequences of reoffending.

A separate provision of the new law will allow Judges to order a person convicted of murder to be imprisoned for life, even if there is no history of violent offending, if the crime is considered serious enough. Under current law Judges must impose minimum terms for offenders jailed "for life".

It is not just the provisions of the Bill itself that are considered controversial; its passage through the parliamentary process was also unusual. After National agreed to support the three strikes part of the Bill, it was transferred from the Minister of Justice (Simon Power) to Police Minister Judith Collins, and it was sent back to select committee (Law Scene March 2010). Officials from the Ministry of Justice were prevented from making submissions to the select committee on the effect of changes to the Bill.

When first introduced, the Attorney-General advised that the Bill could breach the Bill of Rights, a view shared by the Ministry of Justice.

Education Amendment Bill

A Government Bill, this sets out new Police vetting procedures for staff in schools, including non-teaching staff and contractors. It introduces mandatory Police checking of all adult members of a household if children are enrolled for home-schooling. The Act also allows for information matching between the New Zealand Teachers' Council and the Ministry of Education payroll database to more easily identify unregistered teachers.

Electoral (Administration) Amendment Bill

A Government Bill, this establishes a new Electoral Commission. Up until now, electoral administration has been divided between three separate agencies—the Chief Electoral Officer, the existing Electoral Commission and the Chief Registrar of Electors. The new Electoral Commission will take over the functions of the current Commission and the Chief Electoral Officer from 1 October 2010, in time to administer the 2011 General Election and MMP referendum. The functions of the Chief Registrar of Electors will not be transferred to the new Commission until 1 October 2012 (under a separate Bill not yet introduced).

The transfer of electoral functions is being carried out in two stages to ensure there is no risk to the administration of the 2011 election.

News

Welfare Working Group

Monika Queisser, head of Social Policy for the Organisation for Economic Co-operation and Development (OECD), was in New Zealand last month to speak at a Forum organised by the Government's Welfare Working Group. While Ms Queisser agreed with the Group's focus on addressing the high rate of

single parents on benefits and the increasing number of people on an invalids benefits, she expressed concern at the level of child poverty in New Zealand.

In particular, she drew attention to the "generational difference" between the rate of elder poverty and child poverty. New Zealand has one of the OECD's lowest poverty rates for the elderly with just 2% of people over 65 living on less than half the median after tax income (the OECD average is 14%). In comparison, 15% of New Zealand children live in families receiving less than half the median after tax income (the OECD average is 12%). The gap between children and older people in New Zealand is the largest in 27 OECD countries.

Ms Queisser advocates the introduction of a universal child benefit, noting that OECD countries with low rates of child poverty usually have some form of universal benefit.

Vulnerability Report

The New Zealand Council for Christian Social Services has released its fifth Vulnerability report. The reports on economic and social hardship in New Zealand are based on information and data collected from government agencies and community organisations.

This report finds that although there was a small drop in unemployment in the March quarter, some parts of New Zealand society have been "disproportionately affected by the recession". More than 25% of young Maori and Pacific people are unemployed and most of these are not involved in any form of training or education. The report also finds that the shortage of state housing is becoming more apparent with the Category A waiting list (those with highest housing needs) increasing by 47% in the year to March 2010.

The report can be read at www.justiceandcompassion.org.nz

Website for young workers

The Department of Labour has launched a new website for young people. Called My First Job, the site contains information for young people about their rights and obligations as employees, information for employers (explaining for example how the new entrants' wage works) and even information for parents about how to help resolve employment problems.

The website can be found at www.dol.govt.nz/infozone/myfirstjob

New Zealand Federation of Voluntary Welfare Organisations

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