New Zealand Law Society
Te Kāhui Ture o Aotearoa

Corrections Amendment Bill - Amendment Paper 17

Submission of the New Zealand Law Society Te Kāhui Ture o Aotearoa

20 March 2024

1 Introduction

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on Amendment Paper No 17 (**Amendment Paper**) of the Corrections Amendment Bill (**Bill**).

1.2 The Law Society has previously made a submission on the Corrections Amendment Bill.[1]

1.3 This supplementary submission has been prepared with input from the Law Society's Criminal Law Committee,[2] and focusses on the proposal to provide for "a new framework to enable rehabilitative programmes to also be delivered to prisoners in custody awaiting sentence".[3] This submission does not offer further feedback on the proposals contained in the Bill as introduced.

2 General comments

2.1 Regulation 186 of the Corrections Regulations 2005 requires accused prisoners and convicted prisoners to be kept separate in prison, as far as is practicable, unless there are exceptional circumstances. There may be no mixing of accused and other prisoners. This is consistent with New Zealand's international obligations[4] and domestic rights protections.[5]

2.2 However, as noted in the Regulatory Impact Statement[6] to the Amendment Paper, there are a greater number of prisoners placed on remand awaiting trial and/or sentence, for longer periods. This means that more prisoners are released immediately upon sentencing, due to time served, and do not have the opportunity to receive rehabilitation or other interventions that may reduce the likelihood of re-offending. The Law Society agrees this is unsatisfactory. It is important that accused prisoners have access to therapeutic and non-offence-based programmes, including education.

2.3 We note the Bill correctly takes the view that accused prisoners cannot be required to take part in any rehabilitative programmes while on remand.

Practical difficulties are likely

2.4 The Law Society notes the significant practical difficulties that may arise, both in ensuring programmes are adequately staffed, and in ensuring that remand prisoners in provincial facilities (e.g. Otago Corrections Facility) can participate effectively given the constraints of travel to other centres for trial or pre-trial hearings which may consume

1 A copy of that submission is available on the Law Society's website: https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/law-reform-submissions/bills/.

2 More information about that Committee can be found on the Law Society's website: https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/criminal-law-committee/.

3 Explanatory Note of the Amendment Paper.

4 Article 10 of the International Covenant on Civil and Political Rights and Rule 112 the United Nations Standard Minimum Rules for the Treatment of Prisoners, as referred to in section 5(1)(b) of the Corrections Act 2004.

5 Typically understood as a corollary of the presumption of innocence, protected and affirmed by section 25(c) of the New Zealand Bill of Rights Act 1990.

6 Paras 4 – 6.

entire days. There may be issues arising from the inability of some correctional facilities to provide effective programmes to both accused and convicted prisoners on remand awaiting sentence, and we note that the unequal treatment of prisoners - irrespective of status – is, in principle, wrong.

Clause 11A – Remand prisoners awaiting sentence

2.5 Clause 11A proposes to allow the Department to provide rehabilitative programmes to prisoners who are on remand awaiting sentence. The Law Society agrees it would be beneficial for many of these prisoners to be able to access rehabilitative programmes, including offence-based programmes, as early as possible.

2.6 However, where a convicted prisoner on remand has successfully participated (or is participating) in an offence-based programme(s) (or indeed any rehabilitative programmes), it is not clear whether this is a matter to which a sentencing judge *must*, rather than simply may, have regard.[7] It would appear logical that satisfactory completion (or commencement) of such programmes while on remand awaiting sentence should be considered as relevant to sentencing.

Clause 6(1) – exclusion of offence-based programmes

2.7 The Amendment Paper excludes accused prisoners from offence-based programmes, even on an "opt-in" basis. The Law Society suggests there may be insufficient analysis of this issue, given that accused persons who do seek to change anti-social behaviours should be assisted and encouraged to do so at the earliest possible time. There is also a risk that this categorisation may prove imprecise, moving programmes only marginally offence-based out of the reach of accused prisoners.

2.8 This exclusion is premised on the basis that participation might require disclosure by the prisoner of self-incriminatory material. The Law Society agrees the privilege against self-incrimination is a right that must be carefully guarded, however should these amendments prove beneficial to prisoners and prisoner-outcomes, consideration could be given to whether adequate safeguards could allow access to offence-based programmes. For example, the risk is only realised if statements made in the course of the programme can be admitted in evidence. Making such statements inadmissible might be one way of resolving the issue. We acknowledge this could raise other concerns, and so the suggestion here is that this may warrant later, fuller policy consideration.

David Campbell
Vice President

7 Sections 9(2) (mitigating factors that must be taken into account) and 9(4) other factors may be taken into account) of the Sentencing Act 2002.