

New Zealand Council for Civil Liberties Inc.
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Clerk of the Committee
Law and Order Committee
Select Committee Office
Parliament Buildings
Wellington

Kia ora,

Further Submission on the Sentencing and Parole Reform Bill

The New Zealand Council for Civil Liberties (NZCCL) appreciates the opportunity to make a written submission on the amended form of the Sentencing and Parole Reform Bill.

We are hoping there will be informed debate on the Bill at the Second Reading in the House. To assist this the NZCCL asks that the Attorney-General be asked to provide a further New Zealand Bill of Rights Act 1990 (BoRA) report on the Bill as it currently stands.

The Effect of the Change of Policy

The NZCCL has the following comments on the two changes in policy reflected in the Bill:

- On the change to the threshold for becoming subject to the serious violent offender (SVO) regime, we consider it is a backward step to have this lowered to conviction for a qualifying offence. We are concerned that this will greatly increase the numbers of people coming under the regime, without justification for doing so.
- On the change to make the penalty at the third serious violent offence the maximum sentence for the offence, this is preferable to life imprisonment, only because this reduces the inconsistency with the New Zealand Bill of Rights Act 1990 (BoRA).

Inconsistencies with the NZ Bill of Rights Act 1990

The NZCCL considers that the Bill's provisions are inconsistent with the BoRA as follows:

1. The punishment tariffs for subsequent offending are contrary to section 9 of the BoRA, which provides that everyone has the right not to be subjected to

disproportionately severe punishment. This is a concern with a mandatory sentence which takes the discretion away from the sentencing judge who has the facts of the particular case. There is the possibility that the acts which constitute the offence may have been on the less serious scale of offending. However, under the proposal the person must be sentenced to the maximum sentence for that offence, and the sentence must be served without parole. This regime, in our view, imposes disproportionately severe punishment.

2. Denial of eligibility for parole is, we consider, contrary to section 23(5) of the BoRA which provides that everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the person. The NZCCL's submission is that to treat a person as though they are not capable of genuine contrition and rehabilitation as a member of society is to fail to treat the person with humanity. It amounts to a denial of the person's inherent dignity of possessing the capacity to change for the better.

3. Increasing tariffs on penalties is contrary to section 26(2) of the BoRA which provides that no one who has been convicted of an offence is to be punished for it again. The effect of the tariff for subsequent offending is in effect further punishment for an action for which the person has already served their punishment.

Justification for Limitations on the Rights

The Council acknowledges that discouraging further offending and protecting society from dangerous people are well-meaning objectives. However we doubt that the measures can be shown to actually achieve these objectives. We question whether the limitations on the rights can be demonstrably justified.

In particular, the denial of eligibility for parole is an unnecessary and unhelpful response to re-offending. We stress that parole is an important measure for promoting rehabilitation, and a positive factor in prison management. Use of parole as a reward for good behaviour and genuine remorse, rather than continuing to punish, is more likely to motivate prisoners to reform.

Clearly it is important that a serious repeat violent offender who shows no sign of a change of heart and is intent on continuing to behave badly must remain in prison to serve their full sentence. The Council is aware that changes to the parole system to achieve this end have recently been made. We consider that a well supported and enforced parole system offers the best means to encourage rehabilitation by offenders. The prison community and the wider society is safer when previous offenders are motivated to rehabilitate.

Provision for statutory review of the SVO regime

The SVO regime is intended to make us safer. We think it is important that its full impacts are assessed after a reasonable period of operation. We suggest that five years is a reasonable period. Making the review a statutory requirement is a signal that such serious measures need to produce the intended result if they are to be continued. A statutory review will prompt the

government to undertake research on the effects. It should also prompt other concerned people to carry out studies so that we have the necessary information to decide whether continuing with the regime is really a good idea.

Recommendations

1. After weighing up the changes made to the original Bill, the NZCCL remains of the view that the Bill ought not to proceed.
2. If it is the Committee's decision to recommend the Bill proceed, the NZCCL asks that the Committee amend the Bill as follows:
 - a) return to the original provision that a qualifying sentence is the threshold for the serious violent offender regime, and
 - b) require a review of the effect of the legislation after it has been in force for 5 years.
3. The NZCCL recommends that the Committee ask the Attorney-General to provide a further BoRA report prior to the Bill's Second Reading.

Yours sincerely



Marion Sanson
for the New Zealand Council for Civil Liberties

Appendix – Objects of the New Zealand Council for Civil Liberties

- The objects of the New Zealand Council for Civil Liberties are to:
- (a) assist in the maintenance of civil liberties including freedom of speech and assembly;
 - (b) advance measures for the recovery and enlargement of civil liberties;
 - (c) encourage and support debate and dialogue within New Zealand on civil liberties; and
 - (d) educate and inform the people of New Zealand on issues and events arising from the application and operation of international and national treaties and legislation on human rights.