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Review of Preventive Detention and Post-Sentence Orders

Te Aka Matua o te Ture | Law Commission Wellington Aotearoa New Zealand
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Tēnā koe

Re: Public safety and serious offenders: A review of preventive detention and post-sentence orders

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) welcomes the opportunity to provide feedback on the Preferred Approach Paper as part of the review of preventive detention and post-sentence orders.

The RANZCP is the principal organisation representing the medical specialty of psychiatry in Aotearoa New Zealand and Australia and is responsible for training, educating, and representing psychiatrists. The RANZCP has over 8400 members, including more than 5900 qualified psychiatrists and is guided on policy matters by a range of expert committees. This submission has been prepared with advice from members of the Aotearoa New Zealand Faculty of Forensic Psychiatry, Te Kaunihera, the RANZCP's Māori Mental Health Committee, and Tu Te Akaaka Roa, the New Zealand National Committee.

Tu Te Akaaka Roa acknowledges the complex nature of preventive detention and the cross-sector implications of the legislation. We tautoko the increased focus on aligning the policy with human rights and equity, in particular the provision of appropriate services for tāngata Māori and those with disability, mental health issues, and complex behavioural conditions. We have provided comment on the recommendations relating to:

- The general principles of preventive detention,
- Preventive detention for individuals under Mental Health Act, or the Intellectual Disability Compulsory Care and Rehabilitation Act,
- Development of specialised preventive detention facilities, and
- Cultural considerations.

General principles

Indeterminate detention should only be considered when all less restrictive measures for managing that person's risk have been shown to be inadequate. Tu Te Akaaka Roa agrees that preventive measures should be imposed as post-sentence orders to ensure that risk assessments are undertaken closer to the time when the community may be exposed to the risk and after the offender had the opportunity to benefit from in-depth mental health and disability assessments and rehabilitative interventions.

Forensic mental health services and other social support services promote positive mental health and may significantly decrease a prisoner's risk of reoffending and the need for preventive measures to be imposed. [1, 2] However, this is only true if there is adequate access to such supports. Due to nationwide mental health workforce shortages, an increasing prison population, and the implementation of increasingly punitive measures, forensic services in Aotearoa New Zealand are unable to meet current demand, leaving many incarcerated New Zealanders without the necessary supports.

Recommendation: Any restriction of freedom must be matched with the provision of adequate interventions and resources to assist in rehabilitation/long-term care, and we recommend that this is reflected in the legislation.

Preventive Detention for individuals under Mental Health Act, or the Intellectual Disability Compulsory Care and Rehabilitation Act

Tu Te Akaaka Roa supports the suspension of preventive measures for those who become subject to the Mental Health Act, or the Intellectual Disability Compulsory Care and Rehabilitation Act. Individuals with psychiatric illness or intellectual disability must not be subject to punitive responses but instead be supported through high quality treatment and management that provides evidence-based, ethical pathways to recovery and development. However, engagement of probation and parole officers is essential to consider the necessity for ongoing conditions that fall outside the responsibilities of health professionals and ensure a coordinated approach to managing individuals' needs and addressing any risk factors that might arise.

Recommendation: We recommend the development of clear policies and guidance outlining the responsibilities and expectations for professionals caring for individuals in preventive detention who are under the Mental Health Act or Intellectual Disability Compulsory Care and Rehabilitation Act.

Development of Specialised Preventive Detention Facilities

We understand that the Law Commission's policy proposal largely reflects policies implemented in Germany over the past decade, including the development of specialised facilities for individuals subject to preventive detention. Tu Te Akaaka Roa supports this idea in theory. However, we raise concern regarding the resources required to implement the proposed changes in the context of Aotearoa New Zealand. In Germany, preventive detention facilities must provide psychosocial supports with the intention to rehabilitate the detainee. [3] This includes access to an individualised therapeutic programme that includes educational, psychological, and vocational support and active integration into the community. Similar facilities were already part of the infrastructure in Germany, typically utilised to promote prisoners' reintegration with the community towards the end of their sentence.

It is also important to note the shortcoming of preventive detention facilities in Germany, which are unable to effectively manage individuals with more complex physical or mental health needs, including elderly and disabled persons. [4-6] As a result, there has been an increasing number of referrals to forensic psychiatry services. [6, 7] Additionally, higher risk

individuals are often considered unsuitable for such facilities, meaning they are kept in prison. [5]

Recommendation: The development of such specialised preventive detention facilities in Aotearoa New Zealand merits further exploration but we recommend that further implementation planning is undertaken to consider their feasibility, the management of individuals considered to be of high-risk, as well as the resources required and the impact on forensic services. Resource planning must consider the ongoing mental health workforce shortages and any risks related to service demand or changes in responsibilities must be mitigated in advance of the proposed changes.

We highlight that access to the current range of opportunity for rehabilitation and reintegration available in Aotearoa New Zealand must remain accessible to individuals in preventive detention and welcome further discussion with relevant stakeholders on how this could be achieved.

Cultural Considerations

Tu Te Akaaka Roa appreciates the Law Commission's acknowledgment that the current legislation is not consistent with Te Tiriti o Waitangi and the recognition of whānau identity as a need. Further consideration of how the legislation can support whakapapa linkages would be beneficial.

We support the proposal to place tangata Māori subject to preventive detention within the care of a Māori group or a member of a Māori group. Ongoing partnership with iwi, hapū and whānau must be ensured to find mutually agreed options and solutions for any legislative or operational issues arising throughout the development and implementation of the new Act. However, we note that wider system change is necessary to achieve the intended outcomes and enable Māori to live in accordance with tikanga.

Recommendation: We advocate for the implementation of the proposed partnership with iwi, hapū and whānau Māori, and recommend that recognition of whakapapa linkages is extended beyond measures of preventive detention.

Thank you for the opportunity to provide feedback on the Preferred Approach Paper. If you have any questions regarding this letter, or require additional information, please contact Tu Te Akaaka Roa, the New Zealand National Office via nzoffice@ranzcp.org.

Ngā manaakitanga



Hiran Thabrew
Chair Tu Te Akaaka Roa

References

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