

Justice Committee

Sentencing (Reform) Amendment Bill

October 2024

Improve the mental health of our communities

Royal Australian and New Zealand College of Psychiatrists submission

Sentencing (Reform) Amendment Bill

About the Royal Australian and New Zealand College of Psychiatrists

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) is a membership organisation that prepares doctors to be medical specialists in the field of psychiatry, supports and enhances clinical practice, advocates for people affected by mental illness and advises governments on mental health care. The RANZCP is the peak body representing psychiatrists in Aotearoa New Zealand and Australia and, as a bi-national college, has strong ties with associations in the Asia-Pacific region.

The RANZCP represents more than 8400 members, including more than 5900 qualified psychiatrists and is guided on policy matters by a range of expert committees including the Tu Te Akaaka Roa, the New Zealand National Committee, and several sub-committees, including the Faculty of Forensic Psychiatry. Psychiatrists are clinical leaders in the provision of mental health care in the community and use a range of evidence-based treatments to support a person in their journey of recovery.

Introduction

The RANZCP welcomes the opportunity to provide a submission to the Select Committee's public consultation on the Sentencing (Reform) Amendment Bill (the Bill). The recommendations contained within this submission are based on consultation with the RANZCP expert committees which is made up of psychiatrists with direct experience working in Adult Mental Health and Forensic Psychiatry. Due to the breadth of academic, clinical, and service delivery expertise of our members, the RANZCP is well positioned to provide advice on this issue.

Tu Te Akaaka Roa is disappointed at the decision to introduce further legislative changes aiming to create a more punitive justice system without addressing the existing challenges in Aotearoa New Zealand and the root causes of offending behaviour. We reiterate that these measures are fiscally irresponsible, are against national and international evidence, exacerbate inequities and may cause long-term harm to individual and our communities.

The Bill is fiscally irresponsible.

Aotearoa New Zealand's has one of the highest rates of imprisonment in the OECD and comparatively high re-offending rates with around 57% of people being reconvicted within two years following release from prison. [1] Together with other recent legislative changes, this Bill is projected to further increase the prison population while failing to address the root causes of a person's offending.

The Prime Minister's Chief Science Advisor described prisons as 'extremely expensive training grounds for further offending' and both Labour and National governments have previously recognised correctional facilities as a 'moral and fiscal failure'. [2-4] Yet, over the past 15 years, government resources have increasingly been directed towards punitive measures that promote incarceration, while funding for social support systems, including the health and education sectors, have received comparatively little support. [4] Importantly, more punitive measures, including sentencing reforms, have been shown to be ineffective for reducing crime rates or improving public safety and may even be counterproductive. [5, 6] On the contrary, investment in prevention and early intervention service rather than imprisonment may to be more cost effective than imprisonment and produce better long-term outcomes. [7, 8] By shifting away from punitive measures and towards social supports and rehabilitation, international jurisdictions such as Finland and Texas have successfully decreased incarceration rates without seeing an increase in crime rates. [4, 9]

Royal Australian and New Zealand College of Psychiatrists submission

Sentencing (Reform) Amendment Bill

The Bill leads to unjustified sentencing and exacerbates inequities.

The Bill undermines judges' ability to use their experience and discretion and take external factors into account, increasing the risk of a disproportionate, and unjustified consequences for New Zealanders in need of support. It is likely to disproportionately impact Māori, young people, and individuals living with mental health and addiction issues, intellectual disabilities and/or neurodevelopmental disorders.

Approximately 91% of incarcerated New Zealanders have a lifetime incidence of a mental health condition and incarcerated New Zealanders are significantly more likely have experienced trauma, adverse childhood events, intergenerational trauma, and psychosocial disadvantages, compared to the general population. [10-13] While not every individual with mental health challenges engages in criminal behaviour, the high prevalence of mental health and substance abuse issues across the prison population is both a precursor and consequence of the offending cycle and adequate support is needed to break the cycle of offending. Likewise, Māori are more likely to experience psychosocial disadvantages and poor mental health outcomes and remain overrepresented in the criminal justice system, making up around 52% of Aotearoa New Zealand's prison population. The Bill is likely to disproportionately impact Māori, and consequently exacerbate existing inequities and violate Te Tiriti o Waitangi.

Keeping tāngata whai ora with mental disorders incarcerated is not only unethical but also violates several legal statutes. [14, 15] Under the Corrections Act 2004, incarcerated New Zealanders have a right to receive healthcare that is reasonably equivalent to that of the general population. However, due to the increasing prison population, nationwide workforce shortages, and severe underfunding of forensic mental health services, this right is violated at increasing rates. Forensic services are stretched beyond capacity and unable to provide timely treatment to those who need it. Instead of adequate care, individuals are frequently held in solitary confinement and psychologically harmful conditions that breach human rights legislation and increase the need for forensic mental health services. [15] Tāngata Māori and individuals with mental and health and addiction issues are more likely to be subject to seclusion or mistreatment within the criminal justice, further exacerbating the existing challenges.

The Bill fails to prioritise the needs of victims.

While the Bill was introduced to better meet the needs of victims, longer sentences of imprisonment alone do not address the factors that result in people feeling unsafe. There is no evidence to suggest that more punitive sentencing will achieve a more positive outcome for those who have been victimised or ensure public safety. Instead, the proposed measures may contribute to mistrust by way of making the system's response slower, less effective, and more unjust. Without investment in adequate social supports, mental health services, education, and culturally appropriate rehabilitation services, we will see rates of victimisation and incarceration continue to rise.

We strongly urge the government to take on the advice provided by experts across the justice system, including The Ministry of Justice | Te Tāhū o Te Ture, Department of Corrections | Ara Poutama Aotearoa, the Chief Science Advisor, and the Chief Victim Advisor and reject the Bill. Instead of harsh and unjustified punishments, we must invest in mental health services and find evidence-informed alternatives to criminalisation that focus on prevention and psychosocial supports. If you have any further questions regarding this letter, please contact the New Zealand National Office - Tu Te Akaaka Roa.

References

1. Justice Mo. 2024 [
2. Prisons: 'moral and fiscal failure'? Otago Daily Times. 2011.
3. Fisher D. Prisons a 'moral and fiscal failure' Prime Minister Jacinda Ardern says. The New Zealand Herald. 2018.
4. Advisor OotPMsMCS. Using evidence to build a better justice system: The challenge of rising prison costs. 2018.
5. Crofts T, Delmage E, Janes L. Deterring Children From Crime Through Sentencing: Can It Be Justified? Youth Justice. 2023;23(2):182-200.
6. Durlauf SN, Nagin DS. The deterrent effect of imprisonment. Controlling crime: Strategies and tradeoffs: University of Chicago Press; 2010. p. 43-94.
7. Farrell G. Five tests for a theory of the crime drop. Crime Science. 2013;2(1):5.
8. Welsh B, Farrington D, Gowar B. Benefit-Cost Analysis of Crime Prevention Programs. Crime and Justice. 2015;44:000-.
9. Brooks B. From Tough Justice to Smart on Crime: Criminal Justice Lessons from the Lone Star State. Policy Quarterly. 2020;16(2).
10. Brinded PM, Simpson AI, Laidlaw TM, Fairley N, Malcolm F. Prevalence of psychiatric disorders in New Zealand prisons: a national study. Aust N Z J Psychiatry. 2001;35(2):166-73.
11. Sarigedik E, Naldemir IF, Karaman AK, Altinsoy HB. Intergenerational transmission of psychological trauma: A structural neuroimaging study. Psychiatry Research: Neuroimaging. 2022;326:111538.
12. Muscatell KA, Morelli SA, Falk EB, Way BM, Pfeifer JH, Galinsky AD, et al. Social status modulates neural activity in the mentalizing network. Neuroimage. 2012;60(3):1771-7.
13. McLaughlin KA, Weissman D, Bitrán D. Childhood adversity and neural development: A systematic review. Annual review of developmental psychology. 2019;1:277-312.
14. Monasterio E. It is unethical to incarcerate people with disabling mental disorders. Is it also unlawful? 2024. p. 9-14.
15. Monasterio E, Every-Palmer S, Norris J, Short J, Pillai K, Dean P, et al. Mentally ill people in our prisons are suffering human rights violations. The New Zealand Medical Journal (Online). 2020;133(1511):9-13.