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**SENTENCING GUIDELINES AND  
PAROLE REFORM**

The Report of the Law Commission  
Remarks by Sir Geoffrey Palmer, President of  
the Commission, made at the release of the  
report

Beehive Banquet Hall  
15 August 2006, 10.30am

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Our report, *Sentencing Guidelines and Parole Reform*, is being released today. The reforms it recommends, that the Prime Minister has already summarised, are much needed for several reasons.

The first reason is that different courts – and even different judges – are sentencing inconsistently, particularly for offences of lesser seriousness being dealt with in the District Court. We received a lot of anecdotal feedback about inconsistent practices, which was confirmed by empirical research. Anyone who is interested can find that research on our website.

The second reason is that the policy as to the type and length of sentence for different offences is not informed by the range of perspective, experience and values that is required in this area. Judges are largely left to determine that policy themselves. It is no criticism of the judiciary to say that, while they should be free to impose the appropriate sentence in the individual case, they are not equipped to bring to bear the range of factors that need to be considered in determining the policy on which those sentences are based. The public needs to have a greater voice in sentencing policy, and so does Parliament.

Thirdly, punishment levels are not transparent. There is a great deal of misunderstanding about them and there is no process for debating them.

Fourthly, the lack of a transparent policy makes the system unpredictable. That means that the resources required for the prison system cannot be effectively planned for and managed. The fact is that, when the Government passes sentencing legislation, it must try to forecast the prison population and assess the likely impact on other aspects of the Corrections system. However, it does this largely in the dark. This is because it cannot predict how judicial sentencing practice will change in response to the legislation. Judicial discretion is important, but at present there is simply too little overall guidance as to the way in which it is to be exercised.

Finally, there is a need for more “truth in sentencing” in New Zealand. The present parole structure allows most prisoners to be considered for release after

they have served one third of the sentence imposed by the court. When someone is sentenced to 12 years, nobody knows whether they will serve all 12, or be out in four, or somewhere in between. In fact, prisoners do serve an average of 62 percent of the sentence imposed by the court. But the fact that they are eligible to be released much earlier is a source of frustration and anger amongst victims and other members of the community, and has been so for many years. We need to move to a system where the sentence imposed by the judge in court means what it says.

It is important to note that these problems with the sentencing and parole systems have existed in New Zealand for a very long time. They were not affected by the reforms brought about by the Sentencing and Parole Acts 2002. What we are proposing builds on the changes made in that legislation.

So how do we propose to fix the problems with the current system?

Turning first to parole, we recommend that parole should be retained. This is so, despite what I have just said about the importance of “truth in sentencing”. With parole, decisions can be made about when and how to release prisoners to minimise their risk of reoffending. Retaining parole is simply common sense, because every prisoner must eventually be released.

However, we are recommending substantial changes to parole that will promote “truth in sentencing” in two ways.

First, prisoners should not be eligible for parole until they have served two thirds of their sentence. When a criminal is sentenced, he or she will spend most of the sentence term behind bars. Prisoners sentenced to short terms of 12 months or less should serve their whole sentence. It may be appropriate for very dangerous prisoners to do so as well, but that will be a matter for the Parole Board.

Secondly, judges imposing sentence should always spell out both the full term of the sentence and the parole component, so that everyone – victims, the media and the general public - know exactly what the sentence means. For example, a judge imposing a six year sentence should spell out that the full term is six years and

that this means a minimum of four years in prison, and a further two years during which the offender may or may not be released on parole, depending upon the assessment of risk by the Parole Board.

In relation to sentencing, we recommend the establishment of a Sentencing Council whose primary task will be to draft sentencing and parole guidelines. The guidelines will chiefly address the type and length of sentence. They will help the Judges and they will simplify sentencing hearings in court. The guidelines might usefully be issued on the whole range of sentencing and parole matters – the way in which courts should approach an early guilty plea, for example, or best practice for the Parole Board in relation to risk assessment.

The guidelines are not intended to put judges into a straitjacket, or to turn sentencing into a mechanical exercise. It will be important to ensure that the guidelines are flexible enough to leave judges with the ability to do justice in the individual case. For that reason, we propose that judges will be able to depart from the guidelines whenever it is in the public interest to do so.

The Sentencing Council will make the system more responsive. It will also assist in improving public confidence in the system by providing accurate information about sentencing and parole practice.

We propose that the Council should have a mix of judicial and non-judicial membership - that is, five judges, including the Chair of the Parole Board, and five non-judicial members with relevant expertise. In addition, it will consult extensively with all interested parties. This will include, but will not be limited to, a requirement to call for public submissions on its draft guidelines.

The Council will be independent from the government, but Parliament will scrutinise the Council's guidelines. If Parliament is not happy with the guidelines, they will not proceed. The task involves important contributions from all three branches of our government – the Judiciary who carry out the task of sentencing individuals, the Parliament as the ultimate arbiter of the system and the Executive which provides the prisons and runs them.

The Council, in developing its guidelines, will consider all relevant matters. These will include the cost-effectiveness of particular sentencing options. As one facet of this, the Council will be expected to forecast the prison population impact of its guidelines.

Our proposed parole changes are predicted to increase the average time served by prisoners from 62 percent of their sentence to more than 80 percent. We have said in our report that, on average, sentences imposed by judges would have to be about 25 percent shorter as a result of the parole changes, if the length of time actually served was to be the same. I will say that again – a 25 percent reduction, on average, if the length of time served was to remain the same. It will be important that the public understand that a reduction of this sort would not necessarily mean a reduction in the actual punishment, since the amount of time being served by the prisoner might be exactly the same. If there is to be truth in sentencing, the sentence that the judge imposes in court must correspond more closely to the actual reality of punishment. Of course, whether such a reduction is appropriate, and whether sentence lengths for some offending might alter more than others, will be matters for the Council to determine when it drafts its guidelines. As with all other aspects of guidelines, the Council will make that determination in the light of public submissions.

All of these changes will increase public confidence that they can contribute to the development of sentencing policy, and that the sentences that are imposed will in fact be served.