The government is recommending major changes to New Zealand’s sentencing and parole arrangements.

In response to recommendations made by the Law Commission in its report *Sentencing Guidelines and Parole Reform* (NZLC R94), the government has agreed that a Sentencing Council should be established in New Zealand to draft sentencing guidelines.

**WHAT IS A SENTENCING COUNCIL?**

Sentencing Councils or Commissions have been established in many like-minded jurisdictions: England and Wales, Scotland, Victoria, New South Wales, and over 20 American states. Broadly speaking, they are expert bodies established to assist with the development of sentencing policy. The way in which they do this varies, but often it includes drafting sentencing guidelines. This is what is recommended for the Council in New Zealand.

**WHAT ARE SENTENCING GUIDELINES?**

Sentencing guidelines give guidance to judges about the type and length of sentence. For example, they might recommend an imprisonment range for a type of offence, or describe the approach that should be taken by courts to an early guilty plea.

**WHY ARE THEY NEEDED?**

The Law Commission identified a number of problems with the current sentencing structure. These are fully described in its report.

At present, judges receive a small amount of guidance from Parliament (e.g. when Parliament alters the maximum penalty for an offence, or passes legislation such as the Sentencing Act 2002). They also receive guidance from the Court of Appeal, when it issues “ guideline judgments”.

However, sentencing practices are still inconsistent in New Zealand. Different courts — and even different judges — are sentencing inconsistently, particularly for offences of lesser seriousness being dealt with in the District Court. Research findings that confirm this are available on the Law Commission website: www.lawcom.govt.nz. This is perhaps because of the limited scope of the existing sentencing guidance. Neither Parliament nor the Court of Appeal can address the whole range of offending encountered daily by the courts.

Secondly, sentencing policy development is not transparent. It is largely left to judges — either sentencing judges or, at best, the Court of Appeal. The Court of Appeal is not a forum that can take full account of the views of every interested party. It issues its judgments in the context of a particular case, based upon submissions from prosecution and defence counsel. The public needs to have a greater voice in sentencing. Wider perspectives need to be considered. Having a Sentencing Council will make the system more responsive to everybody’s views.

Thirdly, the lack of a transparent policy makes the system unpredictable. Corrections’ resources cannot be effectively managed. When the government passes sentencing legislation, it must try to forecast the prison population and assess other likely impacts (e.g. the number of probation officers). However, it does this largely in the dark, because it cannot guess how judicial sentencing practice will change in response to the legislation.
HOW WILL THE COUNCIL WORK?

The Council will have a mix of judicial and non-judicial membership: five judges, including the Chair of the Parole Board; and five non-judicial members with relevant expertise (e.g. criminal justice, policing, the promotion of the welfare of victims of crime, the impact of the criminal justice system on Māori).

The Council will conduct its work publicly. 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 each of its draft guidelines. It will also be subject to the Official Information Act 1982.

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.

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

WHEN WILL IT HAPPEN?

Legislation is required to establish the Council. This will be introduced late in 2006.

The Council will be directed to begin its work by producing guidelines for offences that result in a significant number of prison sentences. This is a large task. It is expected to take a couple of years. Guidelines can therefore be expected to take effect from 2009.

HOW WILL IT HAPPEN?

Legislation to establish the Council will be passed in the usual way. The government has agreed that an “establishment unit” should be set up immediately, attached to the Law Commission. The unit will make a start on the work of drafting sentencing guidelines.

WHAT WILL IT COST?

The government has agreed that the Law Commission should receive interim funding for the establishment unit. A budget bid for the Council will be prepared in 2008. This will be informed by the experience of the establishment unit. Indicative costings for the ongoing operation of the Council are around $1.1m per annum.

MORE INFORMATION

The Law Commission report, and related publications, can be downloaded free of charge from the Commission website: www.lawcom.govt.nz.

Monitor the websites of the agencies concerned: the Law Commission, the Ministry of Justice, and the Department of Corrections.

Visit www.beehive.govt.nz to obtain the latest media releases and speeches from portfolio Ministers.