

A vision for prison reform in New Zealand

by Gareth Sands

An overview

In 2011 Bill English described New Zealand's prison system as a moral and fiscal failure. He does, however, have grounds for such a statement given that New Zealand is seventh in terms incarceration rates of countries included in the Organisation for Economic Cooperation and Development (OECD) forum with our imprisonment rates also matching those of Albania, Botswana, Tunisia, Turkey, Kazakhstan, Mexico, Colombia and Chile. When measured as a discrete group, the position of Māori is much worse and whilst I agree with the sentiments of Mr English's claim, there are some attempts to address this through pockets of good work which should be acknowledged, however small. We are well positioned to draw valuable lessons from the current state of our prison system and to use this learning as a basis for revolution, reformation and restoration of the system. We all have an important part to play in the solution and in reversing the rising incarceration rates, the known and hidden violence, the record suicide rates as well as the failures and inadequacies of the current reducing reoffending agenda. In addressing the multiple issues associated with spiralling incarceration rates and related costs, it is important that politicians, practitioners, the public and prisoners understand this agenda and are constructively engaged in improvements. We must first ask questions as to how we have reached this position, why the position is worsening and, importantly, why we repeatedly fail to address the problem. We must challenge, test and validate answers given that the subject of imprisonment requires scrutiny, informed debate as well as wisdom and courage in its handling. Falling crime rates and rising prisoner numbers provide a complex contradiction in which there are no easy answers. However, much in this country (impact on Treasury, improved health, greater equality in education, prevention of cycles of deprivation and intergenerational criminality) is dependent upon us getting this agenda right whilst shallow and ill-informed answers remain unacceptable. This paper outlines just some of the challenges we face and presents a position which we can aspire to achieving.

Reformation, Restoration and Revolution

Over the past 20 years, I have had the enormous privilege of having worked in every type of prison in state and private sectors and across two jurisdictions. I have done so as a prison volunteer, a Corrections Officer and through the ranks to Prison Director and have had the honour of having managed five very different prisons including most recently Mt Eden Corrections Facility. This latest role has given me a unique insight into the working of New Zealand prisons, into the blockages of the system and, most importantly, into the system's enormous untapped potential. The system is bursting with good people who work with prisoners and offenders in prisons and the community each day and it is important to acknowledge the excellent work that they do. However, this work is undertaken within what is considered to be a broken system which sees their efforts and impact minimised. As we ignite staff engagement, capture and share ideas, promote positive trade union engagement and reference successful models and programmes already in use, we give staff public recognition and a voice for potential challenge and change. However, reshaping the future requires more and a complete reorder, restructure and renewal of our approach to the use of imprisonment is essential.

Where change appears impossible

We currently spend over \$110k per prisoner per year on incarcerating over 10,000 men, women and young people at any one time, imprisoning over 200 of every 100,000 New Zealanders, with Māori over-represented three-fold. We know that poverty, alcoholism, urbanisation and domestic abuse all contribute towards the current picture and that exposure to domestic violence as a child is one of the primary predictors of crime as an adult. It

is therefore important that we also question our individual obligations and explore what part we play as citizens in addressing the root causes and in transforming communities.

'We simply cannot solve problems by using the same kind of thinking we used when we created them'. Albert Einstein

A radically changed prison system and a vision of reform and rehabilitation in New Zealand might appear naïve and impossible. However, it is both possible and essential and requires a robust vision shared across all political parties regardless of conflicting ideologies. The double-mindedness in attempting to serve both 'tough on crime' and 'reducing reoffending' agendas creates confusion, instability and inefficiency in what is rapidly becoming an acceptable position of high levels of incarceration for this country. However, this position should be challenged through the appointment of skilful leaders and advisors who are both willing and able to radically challenge current thinking whilst navigating through the obvious challenges. Imprisonment is an agenda which should not be explained away with vague headlines for the sake of political convenience and accountability. Monitoring and transparency should replace any casual indifference and complacency. However uncomfortable, it is vital that we are clear about our current prison system and where we will end up if we fail to change our approach to sentencing and imprisonment. A focused and unwavering cross-party reform agenda will guarantee improvements whilst transparency and informed debate will increase understanding concerning reoffending and impact on families and communities. What is most exciting is that the current trend is reversible and the potential for change is significant.

Past position, public choices and policy change

As recently as 1986, New Zealand's prison population measured 80 prisoners per 100,000 of the population, a figure which today would match those of Switzerland, Germany, Netherlands, Denmark, Sweden and Japan in some of the lowest imprisonment rates in the world. New Zealand was once seen as a world leader and pioneer of progressive thinking in the field of reducing reoffending and restorative justice. There are several theories as to the reasons for the decline. For example, the 1999 referendum saw a Labour call to be tough on crime and tough on the causes of crime and the public were presented with the narrow options concerning the extent of the toughness. With no alternative offered, these options ignore evidence which shows that without an informed operating philosophy imprisonment neither serves as a deterrent nor as a tool to reduce reoffending.

The three strikes law added to this, a third conviction automatically triggering a maximum penalty with judges denied leniency and discretion in sentencing. This short-sighted and ineffective approach sees a blunt instrument used in creating pointless years of incarceration and a reinforcement of a culture of retribution and punishment which dominates much of our court and prison activity today. Added to these legislation changes, and those of extended supervision and public protection orders, are the ongoing struggles of the Department of Corrections to address its own-deep rooted systemic issues, meet the needs of a frustrated prisoner population and perform within financial targets, with reports indicating performance is dropping as costs rise.

Transparency and the impact of imprisonment

Get-tough policy and legislation has resulted in all allocated monies being spent on keeping pace with the exploding prisoner population. Prison regimes and unlock hours are reportedly unpredictable and frequently curtailed, programme provision appears sporadic, and unmet prisoner rehabilitation and treatment needs are widespread, the unmet need adding to repeat offending. Violence, reoffending and suicide rates are reportedly worsening and expectations concerning service delivery are unclear. Seemingly trapped, we appear fearful of making strategic and impactful changes and of taking considered risks in addressing declining performance. As prisoner numbers grow, we witness limited risk reduction strategies concerning future offending. These limited outcomes and the lack of impactful delivery is concerning given the \$1.5 billion annual spending, spending which

politicians appear willing to increase, all the time underestimating the lack of impact the current prison system is having. It is worth questioning the rationale of government strategy as, despite discerning the truth, those serving the Emperor did not speak up for fear of looking foolish or appearing unworthy of their positions. The road of public service is neither smooth nor straight yet “the whole art of government consists in the art of being honest” (Thomas Jefferson, 3rd US President). Therefore, when as public servants we shape policy and legislation and commit to a strategic vision for our prisons and communities, we must be future focused, safeguarding against blindly advising and nervously serving the ideologies of the government of the day. The recent publication of yet another report on how children known to Child Youth and Families feed into the prison system is alarming. Disturbing reports of widespread domestic violence across our nation are of obvious concern yet, when presented with opportunities to tackle these behaviours, we instead allow perpetrators of this violence to pass through chaotic custodial sentences unchallenged which in turn continues to impact families and communities and feed a rotating door prison system.

A need for strategy, questioning and challenge

Without an informed strategy of how this will be delivered, simply repeating the need to ‘reduce reoffending by 25% by 2017’ is futile. The contradiction of Treasury investment resulting in a deteriorating ‘reducing reoffending’ agenda alongside a prison expansion announcement is concerning whilst the limited political, public or media response is disturbing. Perhaps this limited response is rooted in confusing statistics and a lack of clarity as to the purpose of imprisonment in this country. However, this is not an agenda to be taken lightly and we must avoid using the topic of incarceration for political gain. In challenging policy and public perception, there are sometimes parallels with the Hans Christian Andersen tale of a vain and powerful Emperor who, in caring only about how others viewed him, hires two weavers who promise the finest clothes made from fabric invisible to anyone unfit to hold their position. The Emperor’s own ministers cannot see the clothes yet pretend otherwise for fear of appearing incompetent. The Emperor does the same and marches before his subjects wearing the finished suit with the crowd upholding the pretence for fear of appearing foolish. This much-loved story tells of a child in the crowd who, too young to appreciate the politics and sensitivities, shouts out and exposes the truth of the Emperor’s nakedness and, although the Emperor suspects the assertion to be true, he continues the pretence. This wonderful example of pluralistic ignorance reveals what can happen when *no one believes, but everyone believes that everyone else believes, and that although everyone is ignorant as to whether or not the Emperor is wearing clothes, they believe that everyone else is not ignorant*. Healthy questioning, constructive challenge and partnership working brings about change.

A true culture of rehabilitation

It is important that to work closely with communities and victims of crime in creating an understanding, expectation and assurance that sentences served are meaningful and impactful. Prisons should combine appropriate challenge of the offender with planned and staged opportunities for change. A transformed prison system must be underpinned by a true culture of rehabilitation combined with a clear plan for improvement. This will help prevent further neglect, damage and cost and avoid an indelible and potentially irreversible mark being placed on New Zealand’s reputation. In identifying risk, revisiting what works, realigning resources for maximum impact and reorganising prisons into multi-purpose sites promoting closeness to home, we will influence change. In revisiting who is coming into prison and further exploring real alternatives to custody we will keep abreast of the drivers of reoffending. In working with offenders before, during and after their sentences, served either in the community or in prison, we can begin to tackle these drivers and break established patterns of intergenerational offending. The excellent recent announcements from the Ministry of Social Development recognise this approach. Our health services often miss those on the margins of society, serving those in least need whilst

failing those who need them most. Therefore, moving resources from incarceration into health and prevention makes moral and fiscal sense and is a subject which also requires robust debate.

Joint political ownership and a prevention of reactive policy

Only with a future focus on prevention and rehabilitation as opposed to punishment and deterrence will we make a real and sustainable difference, with countries such as Norway and Sweden providing excellent examples of what is possible. High level political ownership in New Zealand should unite and align all political parties and agency agendas in achieving the same outcomes – a better, safer, productive, efficient, secure and healthy nation. This ensures a truly co-ordinated inter-agency approach which targets and tackles issues of addiction, mental health, poverty and other social factors with strategies of preventative and rehabilitative measures, targeting the issues crippling our prisons and many of our communities. We can create a future which promotes improved working with partners and children of offenders, which improves contact and prison visits on non-school days in support of whanau connection and uninterrupted childhood education. A future which embraces 'neighbourhood justice' principles, true engagement and a wraparound approach to crime prevention is important. We will benefit from avoiding reactive and sensationalist responses to crime and criminal activity and instead embrace balanced and evidence based preventative measures which target high risk youth and adults in avoiding custodial services where possible. This approach requires careful and considered handling of changes to legislation and a detailed impact assessment of policy and legislative change on real people and actual communities.

Youth strategies

The painfully blunt recent CYFs (2015) expert panel report (Investing in New Zealand's Children and their Families) highlights the need to prioritise our approach to preventing youth offending and explains that services must work with victims, families and communities to enable young people to take responsibility for their actions and address their full range of needs. This includes addressing adult behaviors in the family environment. Change is possible given the right leadership, vision and planning, eventually ensuring fewer and fewer young people are placed in secure youth justice residences. We would benefit from a skilfully crafted and carefully executed youth strategy which works with disenfranchised and marginalised youth in the community, and which prioritises diversion from custody as a default position. The recruitment and employment of youth into youth work, including those with criminal records, should be included in a custody diversion strategy as we transform youth custodial facilities into places of true education and training, of hope and inspiration, of mentoring and positive peer support, of actual community involvement and of creativity and personal exploration. This will enable the young New Zealanders held in these facilities to fulfil their potential and to begin to believe in alternatives to crime and custody. We should change the age of the Youth Court's jurisdiction to 18 and support young people in smaller, community-based settings or homes and through community engagement and the provision of attractive alternatives to gangs and other antisocial behavior. This approach should draw on national and international research in enhancing the excellent paid and voluntary work already undertaken by thousands of New Zealanders every day. Youth justice residences must also offer high quality therapeutic care with follow-up care which meets a full range of needs with youth offenders viewed as vulnerable young people, requiring investment and the removal of labels, in order to become included citizens, equipped in their own prevention from reoffending. With clear vision and targeted investment, our youth agenda will achieve excellent outcomes.

A policy of safe separation

Some offenders pose significant ongoing risk in prisons and in the community and should be managed accordingly. However, these are few in numbers and many prisoners do not actually return to prison after their first experience of custody. A future model should imprison first-time offenders separately and differently,

preventing prison becoming the norm, a place for gang recruitment, and steering these men and women away from the pressure and influence of repeat or prolific offenders. As recommended by United Nations working groups, a removal of immigration detainees from prisons should be prioritised, instead using suitable alternatives and sensibly reviewing individual risk. We would also benefit from independently reviewing policy on transgender prisoners and the application of legislation concerning the separation of guilty and not-guilty in our prisons, current methods of separation arguably crippling certain parts of the system unnecessarily.

Gangs: gang strategy and preventive action

Our knowledge of gangs must feature heavily in a reform agenda. Gangs have strategies based on recruitment, reward and entrapment and it is therefore essential that we achieve absolute clarity in a gang strategy which unites agencies and government departments in loosening the hold of gangs in our prisons and communities. Our prisons should not serve gangs during custody whilst release plans must ensure that returning to the gang pad is not the only accommodation option available. We should create gang exclusion zones in all prisons and establish gang free units as well as multiple gang exit opportunities. In isolating youth we invest in alternatives to gangs whilst working with iwi can ensure that the status and identity gained from gang membership is instead secured through whanau, hapu and iwi. The current prison agenda on gangs has witnessed significant investment with little impact or outcomes and this agenda must be urgently reviewed and relaunched if we are to offer tangible alternatives to gangs in the form of protection, addiction support, life and employment skills and education.

Public Safety and Protection: understanding the true meaning

Whilst used often, the terms 'Public Safety' and 'Public Protection' are frequently misunderstood and manipulated in creating a culture of fear and concern. These terms should be handled with care, replacing bland statements with announcements of desistance achieved through evidence based interventions and programmes of reform. Rather than being hindered by rare and high profile mistakes, we should promote creative, meaningful and rewarding opportunities for offenders in the community and challenge a risk-averse 'them' and 'us' rut which blocks housing and employment opportunities. We should allow a wider range of risk- assessed offenders to secure quality sustainable employment, an approach supported by the excellent Kim Workman in his paper 'Back to Churchill – An Old Vision for Prisoner Reintegration'. We should engage prisoners, community based offenders, families, victims, communities and employers in determining solutions which work for all parties, and secure housing solutions in which offenders have part-ownership, an approach which also combines employment, training, education and reward and recognition in breaking cycles of crime and deprivation. This is indeed a challenge which requires skilful thinking and carefully considered strategy. The need for public and victim assurance will always remain and we must ensure that victims of crime are supported with assurances that behaviours and risks of offenders are being addressed. The public are likely to seek a combination of punishment, public protection and rehabilitation as well as decent prison conditions, fair treatment of prisoners, transparency of prison performance and a clear understanding of the value and outcomes from the annual \$1.5 billion budget.

The media and other partners

Whilst it is essential that any vision for the future of prisons and reducing reoffending crosses political boundaries, it is also important that we avoid ideological beliefs overshadowing voices of reason and progressive policy. We should view people first and politics last with community and public responsibility placed ahead of uninformed public or media opinion. This fearless, transparent and progressive approach sees positive engagement with the media on issues that really matter as opposed to weekly good news stories. Whilst ensuring privacy and security, we should provide the media with unfettered access to prisons and to the challenges of working with offenders in custody and the community. The media should be trusted, respected and

treated as an important partner in communicating the principles of a just society and carefully and skilfully handling different public and political views embraced within our democratic society. We should also embrace community leaders, iwi, young people, academic leaders, think-tanks and other community representatives in our prisons in order to improve delivery, increase understanding and glean ideas for reform. The Police have successfully ventured into ground-breaking territory with their approach to managing offenders in the community and should be proud of their early achievements. Already impressive, the Police continue to improve their revised approaches to policing whilst accepting that they still have some distance to travel. Many non-governmental organisations are also making a real difference in addressing reoffending, and their achievements should be assessed and celebrated.

Confusing targets and reducing prison places

We should avoid confusing targets and move towards a model of delivery understood by politicians, the media, the public and prisoners. We should strive for sentencing reform, addressing need in custody and a greater diversion from custody itself, and consider the short-term abolition of confusing government targets on reducing reoffending. We should then cap prisoner places, initially reducing these to 7,000 with a subsequent year on year reduction of places over 20 years. Understanding the vested interests and political pressures, prison expansion plans should be immediately placed on hold with the necessity reviewed alongside the potential for significant reform. Treasury funds should then be diverted into community alternatives.

Prison closures: international models

The Netherlands has 50% fewer prisoners per capita than New Zealand, a 30% remand population and will see the closure of five prisons in the next few years as a result of a falling crime rate, shorter sentencing and a decline in more serious crimes. This good-to-have problem has lasted several years, having already closed eight prisons in 2009 and another 19 by 2014. Sweden, with its population of 9 million, has had a similar challenge with closures due to a high number of vacancies with prisoner numbers annually since 2004. The closures have been impacted by the Supreme Court's 2011 decision to reduce sentences for drug offences, a subject currently being debated in New Zealand. There are obvious cultural differences although we can draw many comparisons from these models and be inspired as to what is possible. We should create a healthy benchmark for the prisoner population. Australia currently imprisons 150 people per 100,000 of the population, UK 140, Canada 100, Switzerland 80, Germany 70 and Denmark 60 per 100,000. Since 1986, New Zealand has moved from imprisoning 80 prisoners per 100,000 to over 200, climbing 100 places in the highest imprisonment rankings. This list allows us to consider international best practice and innovation where possible and a rewriting of the prison map of New Zealand would see facilities operated only where they are needed, using multi-functional prison and community facilities and eventually diverting a possible \$500 million into community interventions, addiction services, employment and housing. We can reverse the current trends and reduce prisoner numbers by 75% over 20 years through a combination of leadership, legislation, investment and culture changes, all achieved as a result of successful alternatives to custody, a nationally owned reducing reoffending agenda, sustainable and subsidised employment opportunities, solid community supervision programmes and the targeting of socially excluded individuals and families.

Targets and ownership

The ownership of targets by senior public servants should be clearly defined if change is to be achieved and, where leaders are unable to deliver what is required, they should confidently step aside to be replaced by others who also demand and deliver exceptional public services, thus remaining transparent and accountable on all levels. Leaders must be courageous and empowered to take risks and to push boundaries and be given time and

space to achieve improvements. The introduction of truly independent scrutiny panels will ensure that delivery leads are held to account whilst change is supported and sponsored.

Summary

If we are to create a positive legacy concerning imprisonment in New Zealand, we require a joined-up inter-party government approach to reducing reoffending, and hold Ministers to account in ensuring that there is a clear commitment to working across portfolios and departments. Every dollar spent on prison and probation should be accounted for and provide maximum value for money. Reactive injections of money into prisons should be avoided at all costs and in holding Ministers to account, we must also ensure that a transparent and exemplary service is provided by government department leads. High levels of ownership and accountability are expected of senior public servants whilst a greater accountability of iwi in working with offenders in custody and in the community is essential. The absence of leaders fighting for incarcerated Māori and for a reversal of the rates of imprisonment is of concern. We should launch a prisoner placement plan which houses men and women in prisons closer to home. We also require a holistic approach to offender management which is based on skilful interaction, and the removal of barriers to change including reinforcement through labelling. We must stop labelling prisoners and offenders and encourage them to stop labelling themselves, important in better adopting a strengths-based approach. We must retain the belief in the ability of people to change and provide appropriate levels of constructive challenge, support and opportunity.

We should introduce external and independent community governance panels in our prisons and probation centres using contractual and service level agreement principles in driving delivery and change. We must also create an independent and externally appointed Chief Inspector of prisons role, removed from current reporting lines, with a schedule of thematic reviews, unannounced inspection, open reporting and shared best practice which informs strategic change. We should further encourage social enterprise inside prisons and beyond the walls, taking considered risks, granting free labour in the building of homes and giving those who are offence-free for sustained periods the opportunity to buy into the very homes that they helped to build. International models record the success of similar schemes and instead of using land and resource to build new prisons we should instead use resource to build homes and community facilities, encouraging men and women to become crime free through a sense of ownership, citizenship and accomplishment. Desistance research supports such an approach.

We should tackle violence and drugs through a decade long commitment to inter-agency working. There are exciting programmes through the Ministry of Social Development and the Auckland Drug Courts which provide evidence of success, a shift in thinking and a commitment to change. We should urgently review certain legislation, particularly around drugs, and provide structured follow-up services in the community where it matters, creating true end-to-end offender management. The odds are stacked against prisoners and it is vital that we support them in overcoming the odds, evidence again showing that such support works. Prisoners and offenders in the community should be given a voice whereby they communicate obstacles, issues, risks and temptations and discuss what works. With appropriate and robust checks, and with clear evidence of change, we should proactively recruit men and women with criminal records as employees and potential leaders within the criminal justice system, providing role models and hope for change.

We should publish a clear prisoner population needs analysis, a minimum and constructive regime across all prisons and ensure a challenge of any curtailment. We should commit to a suicide prevention strategy which reduces by 75% the number of suicides in prison and relaunch a solid reducing reoffending strategy with substance and which is subject to ongoing external scrutiny and support. We can reduce the prison population by 75% by 2036 through a year on year prisoner place reduction programme of 400 places per year, with clear alternatives to custody offered immediately and a reinvestment of current spends into targeted prison

programmes. We can drive and embed an improved inter-agency security intelligence agenda which manages risk and helps prevent the next victim whilst also establishing an external cutting-edge research agenda which promotes national and international best practice, and which encourages challenge and criticism. We should embrace an agenda of rehabilitation rather than a culture of command, control and punishment, creating greater normalisation inside our prisons whilst ensuring high levels of support post-release. As mentioned, we must place on hold any prison expansion programme and unite political parties, government departments and community groups on an agenda for change in the reduction of incarceration in New Zealand.