

**THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ASHLEY YOUTH
DETENTION CENTRE MET AT THE VOGEL BUILDING, AITKEN STREET,
WELLINGTON, NEW ZEALAND ON WEDNESDAY 23 MAY 2007.**

DISCUSSION WITH Ms SUSAN BIGGS, HUMAN RIGHTS COMMISSION, AND
Ms SYLVIA BELL, PRINCIPAL LEGAL AND POLICY ANALYST, YOUTH JUSTICE

(Again there is another witness, simply identified as 'Jessica')

Ms BELL - I am Sylvia Bell, I am the principle legal and policy analyst. Youth Justice is not an area I have a lot of experience in; it is just something that has impacted on some of the work I have done in relation to policy work.

Mrs JAMIESON - It is all interrelated isn't it, eventually?

Ms BELL - Yes.

JESSICA - My name is Jessica and I have been working as an administrator in policy analysis recently and just started working in the area of places of detention. Likewise, it is not an area of great expertise or anything of mine, but it is one that we have an increasing interest in.

Ms BIGGS - I am Susan Biggs; I am the manager of policy, relatively recently appointed in February as an acting position. You can probably tell by my accent I am Australian, so I am relatively new to the country as well.

We, as the Human Rights Commission, put in submissions when bills come to us about various very broad areas. So this is one area that we are very interested in. We put together a plan of action in 2004. There are some extracts of that in this information that I have given you. We did a status report and out of that came a plan of action. This here is a chapter from the status report which talks to you about the rights of people who are detained. So that is pretty much what we researched and developed and decided were some of the major issues in New Zealand. Out of that has come what we think should happen.

Mrs JAMIESON - Will you have input into any changes in the legislation coming up?

Ms BIGGS - We hope to. There is always a hope. With any piece of legislation that we need to have input into we do what we can with our limited capacity. As you would know, there is a bill at the moment called the Young Offenders (Serious Crimes) Bill, which we have put in a submission for. Do you know much about that bill?

Mrs JAMIESON - We have heard snippets from various people who have been involved and from different organisations and where they slot into it.

Ms BIGGS - Sylvia wrote the submission on that. So, Sylvia, do you want to talk a bit about what the bill says and what our response has been?

Ms BELL - It cause an immense furore at the time because it effectively criminalises the conduct of children from the ages of 10 and up to 14. We already have quite a low level of criminalisation of children. It also, as you will see, has the potential to subvert the restorative justice process that is part of the youth justice system here. When we gave the submission to the select committee two weeks ago, the MP who was responsible for the bill, Ron Marks, said that in fact he had given some thought to changes and in fact had agreed to changes to the bill before it was able to get to the committee stage, recognising that perhaps it might have been a bit extreme. But he is still concerned about what he sees as the increase in offending of young people and he believes something has to be done to deal with it.

There was a very good background paper prepared for the office of Commissioner of Children by a QC. I think if you look at that, it effectively sets out the background to why we think the bill should not proceed. I do not think it will in its current form.

Ms BIGGS - So that is what is happening at the moment in the environment. This bill is very much of concern to us because it goes against the international convention and also the fact that he is talking about making 10-year olds and 11-year olds as accountable for their actions as adults. It is quite outrageous, really. His definition of serious crime is a very low bar; in some cases 10- or 11-year olds could be more seriously dealt with by the courts than an adult who committed the same crime. So that is of concern and it also would be sidestepping the Youth Court as well. They are some of our concerns that are out there.

Ms BELL - I think the other thing that he was concerned about transpired during the hearing. Young people up until the age of 17, because they really could not be held accountable in the way adult offenders could, were acting with impunity. They knew consciously what they were doing and were deliberately misbehaving. Then when they turned 17 they behaved because they knew that then they would incur the full force of the law. He was quite adamant about that.

Mrs JAMIESON - Yes, it is a fine balance out there at times because we get the serial offenders and generational offenders and people are getting to the stage in Tasmania where they are just fed up. We will probably swing the other way and lose compassion if we don't watch it.

Ms BELL - I think the bill is a reflection of that here. We have had a number of really high profile cases where very young people were involved and it had a significant impact in terms of the public's view of how you treat young people. The unfortunate thing was that the day that the submissions for the bill closed there was a court hearing of a young man, I think he was 15 or 16, who had dropped a large chunk of concrete over a bridge and killed somebody in a car. It just coincided with the publicity around the bill.

Ms BIGGS - So that is one thing that is going on. The other thing I guess that we are working on at the moment is the OPCAT, the Optional Protocol for the Convention Against Torture, which New Zealand has relatively recently ratified. The Human Rights Commission has been nominated as the central national preventive mechanism. What that means is that we will be coordinating various other mechanisms whose role it will be to go into places of detention to prevent inhumane treatment and also to monitor whether

or not that is occurring. So we are yet to hold our first round table with the national preventive mechanisms to work out how this system might work because at the moment there is monitoring occurring in these organisations. There are around five, I think: the Office of the Children's Commissioner, the Ombudsman, grievance panels, the New Zealand Defence Force's monitoring group. So what we are wanting to do is meet with those people who are currently doing some sort of monitoring, working out what else we need to do to ensure that we are meeting the requirements of OPCAT. That will be held in June and we will also be meeting separately with those organisations. Out of that round table we are hoping to get some kind of system in place. We are quite excited about this. Jess has been working on it. New Zealand has been at the forefront with this optional protocol and we think that it has potential to have an impact on trying to prevent some of the offences.

Mrs JAMIESON - It is one of the advantages of having a small population, whereas in Australia we have this huge, vast space and getting resources out there is just not that easy. When you look at the Tasmanian scene, we are less than 500 000 people and yet we have a high rate of incarceration, and kids in remand who just sit there because we do not have the resources to deal with them. It makes you wonder what it is all about sometimes, it really does.

For years we have talked about prevention in every field - education, health, justice and all the rest of it - and yet we never seem to get our act together properly. Things just seem to be changing at long last.

Ms BIGGS - That's good.

Mrs JAMIESON - But it is one of these things that is politically driven of course and politicians are inclined to go from term to term.

Ms BIGGS - Every State has its own system, which I think is another complication we do not have here in New Zealand.

The idea is that these visits would be spot visits and in that way the detention facility will not know that somebody is coming and so will deter any behaviour that is unwarranted

JESSICA - We had quite a big research project and the action plans are looking at children in detention. Having this coordination role and a close relationship with the monitoring agencies should give us a much bigger opportunity to have first-hand look at how things are progressing since then. So it is quite exciting.

Ms BELL - It will be quite interesting seeing how OPCAT interacts with UNCROC, for example, because one of the aspects of being a small country is that we have a reservation to UNCROC that allows the mixing of youth and adult offenders and the reason is that there are just not the facilities. This has often been negatively commented on, particularly by the committee that monitors UNCROC, and how we should take steps to remove it. So how that will mesh with our obligations under OPCAT, I do not know.

Mrs JAMIESON - In Tasmania we only have the one youth detention centre as such, bearing in mind our population is less than 500 000. We have ages from 10 to 17-18, which is a bit of an unhealthy mix sometimes, and we can take girls into custody as well.

That has caused its own problems as well.

Ms BIGGS - So you have girls and boys in the same detention centre?

Mrs JAMIESON - Yes. Whilst they mix a little, mostly they have their own wing. But we are finding that the girls are becoming much more aggressive in their behaviour and some of the kids are really quite aggressive and vicious in what they are doing in the community as well. We do not have the gangs that you seem to have here in New Zealand, for example; that is not a problem. But we certainly have drug-related issues. What we just have to do, somehow or other, is get to some of those parents who are leading their children, as it were, into a life of crime. Until we get into the preventive mode more effectively, we might rehabilitate them but we send them right back to the same situation they have just come out of. We need much more interlinking between health and education systems as well as the police and the community and all the rest of them.

Ms BIGGS - Some of the other issues that were highlighted in our issues paper, apart from the mixing of children and adults, were also the amount of time that children were spending in police cells because there were not enough facilities or anywhere else to put them. They were spending up to a week in police cells, which is not acceptable.

Mrs JAMIESON - That is what we are looking at too, the high number of remandees who have not been charged as such and are sitting in there learning the art, shall we say, and then graduating. We need to have some other facility for that.

Ms BIGGS - We have had a high-profile case relatively recently of a young man who was being transported in a van; he was put in with an adult prisoner and murdered on the way to the prison. He was a 15 or 16-year old and the parents had thought about rough justice. He was not well behaved so we will get him to have a taste of what it is like, and then this happened.

Mrs JAMIESON - How do we sit within human rights in trying to reintroduce the brick wall, the metaphorical brick wall that kids used to have to bounce against. It seems that we have introduced all these nice, warm, fuzzy, touchy-feely, feel-good policies in all our systems. You are not allowed to put your arm around a kid and comfort them, for example. Many kids are reaching out for that because they are not getting it at home or whatever. So many are simply looking for the brick wall and that is one reason why they reoffend. That is what they keep telling me.

(Tape change - Part of Ms Biggs answer is missing)

Ms BIGGS - (Continued) put forward this bill would probably say that, yes, we need some more brick walls. In fact he said to us after the select committee, 'It's about rules and regulations and knowing how far you can push things and all of that sort of thing'. So I think that is an issue out there in the community. What we do about it is another thing.

Mrs JAMIESON - Yes. What we are finding, even in housing departments and things like that, is that kids are learning from the parents - they just ignore the rules and everybody else falls over backwards to try to relocate you, place you somewhere else or help you.

They are learning how to work the system. We have fewer and fewer taxpayers now too because of whatever is happening in their financial scenes. It is a really tricky one.

Ms BIGGS - That is certainly where that bill has come from and there is no doubt that is what is behind it. One of the things though that we feel people do is to undermine to some extent the restorative justice which is having quite a bit of success in New Zealand as I understand it. New Zealand has been to the forefront of that and it seems to be working to some extent. Is there much experience of that in Tasmania?

Mrs JAMIESON - That is included in our act but putting it into practice is an interesting one because, again, it is resource hungry and you have to have consistency in your staff approaches or groups of support and things like that. We have so many different supports that they need to be interlinked and all that and, again, they are resource hungry. But the basis of our legislation is certainly restorative, yes.

Ms BELL - People like the Children's Commissioner and the principal Youth Court judge, who are primarily involved in the area here, have made some of the comments that our system based on the restorative model and principle is excellent and when it is resourced enough to follow through and be carried out properly, is really effective. But it has fallen down on occasions because of issues such as resourcing, staff turnover and consistency and things like that.

The Child, Youth and Family Act is currently being looked at to see whether it can be strengthened and hopefully that will have some positive application.

Mrs JAMIESON - When it comes to child abuse do you have good systems here for assessing the physical needs of the kids, for example? I have just wondered whether or not some of our kids are becoming a problem because they are deaf, because they have been belted as kids or whatever, or because they have fallen off the skateboard and developed a bit of a behavioural problem and then the parents get busy with the hand and -

Ms BELL - That is an issue that is ongoing. I think it is recognised as a problem, how it is dealt with and how effective it is I don't know. A lot of the institutions and supporting structures are under-funded too and we have, for example, very poorly resourced mental health units for young people. One of the biggest problems in the mental health area is lack of services. For example, it is very difficult with disability services for people with kids with autism and all of those things that sort of cross over between Health and Justice - the mental health system generally and disability. It is just impossible at the moment but I think that is recognised. I think we are moving more and more into that area trained to deal with high complex needs of individuals and we could have the support in some cases of the Ministry of Health. The disability services provided are often terribly under resourced.

Mrs JAMIESON - We are facing the same sort of issues too.

Another area I have an interest in is getting back in the preventative stage to the in-utero stage. You can flag some people because of their generational involvement in crime but then we have the rights issue of course. Should we be pointing them out and making an issue of it? Do you have any comment to make about that? If we have little Jenny who

has come from a rather difficult background herself and is now pregnant, should we be able to intervene or help her, guide her in parenting and all the rest of it? Is there anything along those lines that we can look at?

Ms BELL - I know it has been identified as an issue and I am just trying to think who would be best equipped to discuss it with you.

We had an issue recently with twin babies who were murdered and there was a suggestion that it was generational families that were dysfunctional and had been for a long time. I think there was some initiative - do you remember?

Mrs JAMIESON - I heard about it, yes.

Ms BELL - But I don't know who would be the best to talk to about that.

Mrs JAMIESON - We have had some very interesting situations developing with grandparents having to take on the role of permanent parenting.

Ms BELL - We have had difficulties with that too, coming through our complaints system. What we find is that often grandparents who have taken on the role then find it difficult to access benefits.

Mrs JAMIESON - That's right. It is the same problem over our way.

We also have to acknowledge their own needs. They are ageing and getting appropriate resources and supports for them is just very challenging, and particularly if it is not just one child. We have just had one granny in Devonport, where I come from, who has come down from Queensland. She is the custodial grandparent of twins who are four years old and a six-year-old grandson from her other side of the family who is an ADHD, but there is also back in Queensland an eight-year-old girl, who is still living with the drug-addicted father whose wife had died, and she is the sister of the twins. This kid is at risk because she is living in a known drug-addicted family situation with various fellows coming in and we just cannot get anything shifting to get this kid out of there because she says she wants to stay with daddy.

Ms BIGGS - It is very difficult isn't it?

Mrs JAMIESON - Very difficult, apart from splitting the family. The father of the twins and the little one who is back in Queensland is threatening to kill the grandmother - his mother - and the twins if he can't have them back. Inadvertently our Centrelink, which is our social security group, gave him the address of the playschool the kids go to. So we have all these various issues happening out there and this poor grandmother is tearing her hair out. Yet when it comes to human rights you think gosh, where does a group like that stand?

Ms BIGGS - Absolutely.

Mrs JAMIESON - And who should be the prime organisation involved, for example? It is such a difficult one.

Ms BELL - I would be interested in knowing whether or not you have the same situation we have here. In fact it is not that we have a great increase in crime among young people, just a very small core group that is very dysfunctional. It is dealing with that group from all these different angles that is creating the problem.

Mrs JAMIESON - Yes, I would say it is the same over our way. The numbers themselves have not increased all that much, it is just the severity of the crimes and the fact that some of the kids are so much younger. We had a 15-year-old lad who raped an 87-year-old lady. It wasn't picked up for 12 months and another chap was accused of doing it because the old lady identified him because he was her gardener. It didn't go through the court system, it was a prima facie case. This poor lad ended up in jail for five days until his DNA cleared him. Then, of course, in the meantime this young kid went back and committed aggravated burglaries and what have you for 12 months and then raped a second old lady nearby and was eventually caught. But in the meantime, of course, the mud stuck to the first fellow.

Yet the perpetrator, who is now just about 18, spent 12 months on remand while they waited to get him sorted out - dear oh dear, it has been awful - and it has set the community on fire. It really has caused a negative reaction to the law and the human rights issue: we are being too soft and mushy and all that sort of thing and this kid will be out by Christmas time and the community is running scared, particularly old people.

Ms BIGGS - It is difficult isn't it? The whole balancing rights thing. We have done quite a bit of work around victims as well as I think I put in your pack one of the submissions we have done around the victims - how we recognise victims' problems and issues at the same time as understanding and dealing with the offenders' problems and issues.

Mrs JAMIESON - How you balance the two.

Ms BIGGS - How you balance the two. There is a lot of public conversation going on at the moment in New Zealand.

Mrs JAMIESON - How well are victims of crime supported within the human rights arena?

Ms BELL - There is a Victims of Crimes Act, which is designed to allow victims to have some input into the criminal process. How effective it is I don't know. People get quite punitive about criminals and keep saying that the Victims of Crimes Act doesn't work. I think it could be amended to be a bit more human rights friendly because there are gaps in it. But some of the demands that are being made in relation to victims' rights and in the name of victims' rights tend to overlook the rights of prisoners. We have to do the balancing act all the time and it has become quite problematic because we have a Prisoners' and Victims' Compensation Act here. Have you heard of that one?

Mrs JAMIESON - Yes, we have a similar sort of thing.

Ms BELL - That was initiated after there had been a situation in prison where a person had been very poorly treated and the courts awarded him compensation and, of course, the person who was his victim then said, 'He gets compensation after doing this horrific thing and I don't get anything.' It is a real problem the way that it is drafted and it is drafted with a sunset clause in the hope that they can think of some other way of dealing

with it. How effective the sunset clause will be I don't know. I think they will just push it out themselves.

What is interesting is people's attitude or the public's attitude towards prisoners. They often overlook the fact that sending them to prison is the punishment; it is sort of trite to say it but the assumption is that is the punishment, it is not a licence to treat people badly once you have locked them away. Trying to get that through is really quite difficult, particularly to some of the victims groups who can be quite loud about some of the things they feel happen to prisoners.

Mrs JAMIESON - Do you find that is flowing over into the youth area as well?

Ms BELL - Oh, yes. Very much so. Everything you have described in relation to young offenders I think we have the problem here and there is sort of a feeling that if you can lock them up it will all be resolved. You are quite right in fact what happens is the people just sit there and learn better behaviour.

We had this real problem because people with intellectual disability were often ending up in prisons and then, of course, they did learn some quite negative behaviours while they were there. It had no rehabilitative benefits. They have introduced this new act called the Intellectual Disability (Compulsory Care and Rehabilitation) Act, which has only been around for about two years. The idea is if people have an intellectual disability and they are charged with a crime then rather than being put in prison they are sent to a place where they can be rehabilitated. How effective it is in practice I don't know. It is very new so it will be interesting to see how -

Mrs JAMIESON - So would it be a halfway house type of thing or would they be treated from home?

Ms BELL - A combination of the two, from what I have seen. It is difficult because nobody really thought about things like what happens if they are technically out on bail and they do something that can cause the bail to be revoked. How does that relate to somebody who is on a rehabilitation order and is in a halfway house or in the community? Do you take them back to prison? What do you do with them? I think it is not bad legislation, it is just going through the teething phase at the moment.

Mrs JAMIESON - And it needs to be fairly intensively resourced too, I guess, like everything else?

Ms BELL - Yes.

Mrs JAMIESON - What about drugs from your point of view? We seem to be finding more youngsters getting into the drug scene, particularly now ice is hitting the streets. Cannabis is also prevalent, but alcohol is still our biggest problem. The fact that we have alcohol-based drinks available from supermarkets and alcohol-based food means that the taste is there and you are desensitising it. We also have a problem with our prescription drugs. We have kids as young as five going on Prozac. So we are setting up this culture of 'Take a pill and she's right, mate.' Is there anything there from your point of view?

Ms BIGGS - Pee is very big in New Zealand - do you have this drug called pee?

Mrs JAMIESON - Frequently in this cold weather.

Laughter.

Ms BIGGS - Not that kind of pee. It seems to be in the news a lot - young people taking pee - do you know what it is Sylvia?

Ms BELL - I think it might be the same as their ice.

Mrs JAMIESON - Ice is an amphetamine.

Mr BELL - Ice is a recreational drug, isn't it, that uses ephedrine.

Mrs JAMIESON - Okay, so it is amphetamine-based?

Ms BELL - Yes. It is an amphetamine-based drug that you can cook up and people do continue to do that. It is really bad and I think the difficulty comes when it is mixed with other drugs and with alcohol. It seems to be comparatively easily available.

Mrs JAMIESON - Apparently so, yes.

Ms BIGGS - And creating quite a lot of aggro.

Mrs JAMIESON - That's right it works in a very aggressive sort of way.

Ms BELL - Yes, and a lot of the crimes we have had have been really contentious and particularly vicious have been fuelled by pee; there is no doubt about that. What they do about it I don't know.

We have a very old Alcohol and Drug Addiction Act and it is quite difficult - it dates from 1969 and they keep on saying they are looking at it and are going to do something wonderful with it, but I think it is a real problem and it uses committal to treat people. I don't think it is particularly effective. What it tends to get is people who are long-term alcoholics. The pee issue is a real problem.

Ms BIGGS - We have a pretty ongoing television campaign at ALEC, the Government crown entity-sponsored organisation, that has been running quite an effective campaign. What they are saying is it is not how much you drink, it is how you drink, so it is those full-on sessions that people are having. There has been quite a bit of public debate about raising the age when you are allowed to drink. At the moment it is 18 and there is debate around whether that should go up or not. I don't think that is going to move.

Mrs JAMIESON - What about people with an acquired brain damage? They are a bit hard to pick sometimes.

Ms BELL - Acquired brain damage in terms of how they are treated?

Mrs JAMIESON - How they are treated? Yes. And how they are even assessed of course.

Ms BELL - Again, that is something that is really problematic in terms of the Mental Health Act because the argument is they don't fit easily within the act because in fact they are never going to get better and therefore that shouldn't be. Because the act has been re-defined - and that was 15 years ago - it talks about mental disorders, so the definition focuses on the consequences of a person's behaviour and brain damage can come into that. But because we have very limited numbers of in-patient beds now, there is a sort of reluctance and a tendency to try to treat people in the community. The suggestion is if you had somebody who has an acquired brain disorder they tend to need ongoing treatment in a hospital and we do not have the resources any more.

Mrs JAMIESON - That is a common factor.

Ms BELL - It is the institutionalisation thing which, again, is terribly affected by resourcing.

Mrs JAMIESON - Could there be a way of linking this back to the antenatal stage where you know you have a drug addicted mum, for example, and the possibility of having a brain damaged baby and seeing them through? Do you think there is a way that we can flag these cases under human rights and do something constructive with them at that antenatal stage? In other words, we are looking at prevention and how you resource a family to cope.

I will give you an example. We had a 15-year-old boy who got a 16-year-old girl pregnant. She was on the alcohol, he had been taking Ritalin for ADHD but he had got it from somebody else, he wasn't ordered it, and, of course, he went right off his trolley. So I rang the child protection people, flagged this couple as being a very real problem with a baby at risk. They had no accommodation and their families were at their wits end trying to cope with both the kids individually. The child protection people just said they did not have the resources to intervene and do anything - they would have to wait and see what the results were.

Now we have two kids who are still on the drugs and alcohol and what have you and a baby that is being neglected. It is below its birth weight and with a real chance of having problems later on as well. Do you think there is anything that can be done there at all? I am only flagging this.

Ms BELL - I don't know whether some of those extreme cases have developed in New Zealand. There have been attempts to take the baby away but that is usually after the baby is born rather than intervening during the pregnancy.

Mrs JAMIESON - I wasn't thinking so much of abortion or anything like that I was -

Ms BELL - This is after the baby was born?

Mrs JAMIESON - Yes, but flagging it right from the word go as being a problem or a possible problem, yes. That is partly because of the situation the parents were in - the mother in particular, of course. She was showing no willingness in giving up her old life and so you had a kid at risk right from the word go.

Ms BELL - Are you going to talk to CYF? They are the ones who deal with this and they would be able to tell you what programs they have in place.

Mrs JAMIESON - The short answer is yes.

Ms BELL - I was just thinking in terms of the way we would work as a human rights issue. I think Susan was talking about a human rights approach that we are starting to develop here to policy and legislation. Have you heard of that?

It is the UN approach which we picked up as part of the action plan that we promote now in New Zealand and it is designed to ensure that the most vulnerable groups have their human rights protected and, as Jessica said before, the most difficult part is the balancing. You veer on the side of the most vulnerable and you could easily argue I would think that the baby would be the most vulnerable in that situation.

Mrs JAMIESON - Yes.

Ms BIGGS - At the back of the submission you have there - the Young Offenders (Serious Crimes) Bill, the last page in appendix 2 - 'Six elements of the human rights approach' that Sylvia was talking about, and the one that she is referring to is 'Balancing rights'. Can you see that?

Ms BELL - What we are trying to do when we write our submissions now is to say, 'Well, look, if you start from the bottom up you get a genuine grasp of the issues there with people who you are trying to deal with, you are more likely to get effective policy', rather than trying to impose it from above, which is what has traditionally happened here of course.

Mrs JAMIESON - Oh yes, everywhere.

Ms BELL - So this methodology, if you will, that we are developing is based on that presumption.

Ms BIGGS - So what we would like to suggest to all government agencies is that when they are developing policy and legislation they take these elements into account if they want to ensure that there is a human rights approach to the legislation.

Mrs JAMIESON - That makes sense.

Ms BIGGS - We have a document here that is the Law Commission review of the whole of the justice system. You can usually download it from the Internet and there are a number of related publications.

Mrs JAMIESON - I think I might have a copy of that.

Ms BIGGS - Oh, good. That will give you a pretty good overview on that. Do you want to take the web site address in case you don't have it?

Mrs JAMIESON - Read it out and we will have it on tape.

Ms BIGGS - www.lawcom.govt.nz

Mrs JAMIESON - It is entitled Delivery of Justice for All, Report 85. Thank you very much for your time.

DISCUSSIONS CONCLUDED.