

Regulatory Impact Statement

Removing Legislative Barriers to Effectiveness and Efficiency in Corrections - Paper 5: Further Legislative Change to Facilitate Prison Management

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Department of Corrections.

It provides an analysis of legislative options to facilitate the management of prisons, in particular prisons managed by private providers through contractual arrangements, through legislative measures.

Provisions in the Act and Regulations have been identified as limiting the potential for achievement of the policy goals for the contract management of prisons, and amendments are proposed. The particular legislative barrier identified is the inability of the Chief Executive to delegate functions to private providers of prison management services in the same manner as he or she can for prisons managed directly by the Department of Corrections (the Department). The identified legislative barrier is in the State Sector Act 1988, but the removal of this barrier can be effected by amending corrections legislation.

Options examined included consideration of non-legislative responses to the problem but it has been concluded that legislative change is needed to address the problem.

Because the problems relate to the legislative regime for the corrections system, any intervention requires amendment to the Act or Regulations.

Government agencies were consulted about the options contained in this RIS. Because this intervention includes amendments to primary legislation, the public will have an opportunity to comment on the proposals for amendment to the Act at Select Committee.

All of the policy proposals in this Regulatory Impact Statement will align with the Government Statement on Regulation.

Jane von Dadelszen, General Manager, Strategy, Policy and Planning

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The Status Quo

- 1 Overall the Corrections Act 2004 (the Act) and the Corrections Regulations 2005 (the Regulations) continue to provide a sound legislative framework for the corrections system.

The Problem

- 2 Some provisions have been identified as needing improvements to facilitate prison management and particularly to facilitate the contract management of prisons. These are:

Limits on the Chief Executive's power of delegation

- 3 Section 41 of the State Sector Act 1998 prevents the Chief Executive from delegating responsibilities to anyone other than their own employees. A prison management contract can not override those statutory limitations.
- 4 The Corrections Act was amended in December 2009 to allow the Department to contract with a private provider for the management of a prison or prisons. These amendments were predicated on policy goals of cost effectiveness and innovation in practice. It was intended that the person appointed by a contractor to manage a prison would have responsibility for all aspects of prisoner management, except where this was inconsistent with community safety or national prison management, or was not permitted by legislation.
- 5 To achieve the policy goals associated with contract management of prisons the private provider contracted to manage a prison needs to be able to exercise a number of statutory powers and authorities. There are currently some legislative impediments to their ability to do so.

Corrections Regulations 2005 – limits on authority

- 6 The following functions are established in the Regulations. There is no ability for the Chief Executive to delegate authority in relation to these functions to employees in contract managed prisons. This reduces clarity of authority and responsibility, requires additional administrative arrangements and creates unnecessary differences in management systems between prisons managed directly by the Department and those managed on contract by private providers.
- 7 *Regulations concerning security classification of prisoners* – Contract prison managers may not attribute security classifications to prisoners. Prisoners must have a security classification established following sentence. This is an essential step for prisoner management as it contributes to decisions about their placement and the regime under which they will be managed. A prisoner may request a review of a classification and this is currently undertaken on delegated authority from the Chief Executive by employees of the Prison Services who are not staff members of the prison.

- 8 *Regulations concerning prisoner segregation decisions* - There is provision in Regulations for cells that do not have those features and items to be approved for segregation purposes in some exceptional circumstances. This usually reflects the availability of cells meeting regulatory requirements and/or the best management of the prisoner concerned. This is currently delegated to Departmental employees.
- 9 *Regulations concerning mixing of young prisoners* – Regulations require young prisoners to be separated from older prisoners unless approval to mix is given on the basis that it is in the prisoner’s best interests. This is currently delegated to Departmental employees. A Ministerial direction was issued in August 2006 prohibiting the transportation of youth (under 18 years) in the same vehicle compartment
- 10 *Regulations concerning mixing of accused and other prisoners* - Mixing of accused and other prisoners is not permitted without specific approval and in exceptional circumstances. This recognises their different status and the different processes required for their management, including protecting the integrity of the court processes for accused prisoners. However, there are exceptional circumstances where mixing is the best means of managing prisoners because of matters such as proximity to courts or to avoid social isolation. This is currently delegated to Departmental employees.
- 11 *Regulations concerning places of medical examination* - A place in prisons besides a health centre can be approved as suitable for conducting medical examinations. This is currently delegated to Departmental employees.
- 12 *Regulations concerning approval of medical treatment* - Treatment being provided to an accused prisoner by a health provider who visits the prison, when that prisoner was receiving urgent treatment at the time of their reception, can be approved by a delegated Departmental employee.
- 13 *Regulations related to the duties of medical officers* - The duties of the medical officer as set out in the Regulations include the provision of advice to the Chief Executive, if required, on the equipment, supplies, facilities and personnel required to equip health centres and provide for the health needs of prisoners.

Prisoners entitlement to exercise

- 14 The Chief Ombudsmen recently determined that prisoners must receive their entitlement to at least one hour of exercise on days when they attend court. However, remand units operate on an 8 am – 5 pm unlock regime, with a lower staffing level outside those hours. If a prisoner is absent at court throughout the unlock period, assigning an officer to supervise that prisoner’s exercise is likely to mean that there are not enough staff to carry out other functions that are essential for the management of the unit.

Objectives

- 15 The amendments proposed will contribute to achieving the Department of Corrections’ outcomes of ensuring compliance with sentences and orders, and managing offenders safely and humanely, in a more effective and efficient manner.

Regulatory Impact Analysis

Option One: Non Regulatory Options

- 16 Consideration has been given to operational polices to manage the areas of concern. Administrative arrangements are being prepared to allow some decisions to be made by Departmental employees where legislation does not permit decisions to be made either directly by providers of contract prison management or delegation to their employees. However, this limits the achievement of policy goals associated with contract management of prisons in terms of independence, authority and responsibility to support innovation, service improvement and cost-effectiveness. Furthermore it introduces unnecessary complexity into decision making processes.

Option Two: specific amendments to primary legislation and regulations

- 17 Matters identified to date would involve a number of changes to primary legislation and regulations as they currently stand. Under this option as matters were identified in the future they would be addressed on the basis of specific amendment to the relevant Act or Regulations. This reflects the legislative framework that has been established for the contract management of prisons.

Option Three: one-off generic amendment in primary legislation and specific amendments to regulations

- 18 The Corrections Act could be amended to establish within it a generic capacity for the Chief Executive to delegate authority to the management and possibly any staff member of a contract prison as if that person were an employee of the Department of Corrections. This would overcome the current limitations in both the Corrections Act and the State Sector Act, except for matters arising from s10 of the Corrections Act whose provisions we want to retain. This, complemented by specific changes to Regulations, is the preferred option for the Department of Corrections.

Specific amendment to primary legislation

- 19 It is proposed to amend the Corrections Act to provide that, on days when a prisoner is temporarily released or removed from the prison, the prisoner is entitled to take at least one hour of physical exercise unless that is impracticable.

Financial Implications

- 20 The proposals in this paper do not have significant financial implications.

Consultation

- 21 The Ministry of Justice, Ministry of Women's Affairs, Ministry of Foreign Affairs and Trade, Ministry of Pacific Island Affairs, Ministry of Health, Ministry of Social Development, Police, Treasury, State Services Commission, and Te Puni Kokiri have been consulted. The Department of the Prime Minister and Cabinet has been informed.

Conclusion

- 22 The Department of Corrections prefers Option Three, which will involve amendment to the Act and Regulations.

Implementation

- 23 The amendments, if passed into law, will be implemented by the Department of Corrections through normal operational channels. There are no significant additional costs envisaged, and all implementation costs and risks will be managed within the Department.

Monitoring, Evaluation and Review

- 24 The intention of these amendments is to facilitate prison management and particularly the management of contract managed prisons. This will contribute to achieving the Department of Corrections outcomes of ensuring compliance with sentences and orders, and managing offenders safely and humanely. It is therefore not envisaged that there will be any change to departmental performance indicators and data collection, or a review process. Improvements in service delivery, effectiveness and innovation will be incorporated into the overall assessment of the achievement of the policy goals associated with contract management of prisons.