

Regulatory Impact Statement

Removing Legislative Barriers to Effectiveness and Efficiency in Corrections - Paper 1: Prison Security

Agency disclosure statement

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

It provides an analysis of options to remove legislative barriers to the effective and efficient operation of the corrections system. In particular, it reviews options including amendments to the Corrections Act 2004 (the Act) relating to authorised property, prisoner searching, and drug and alcohol testing.

Provisions in the Act that are barriers to the effective and efficient operation of the corrections system, particularly in relation to the maintenance of prison security have been identified, and amendments are proposed.

Because the problem relates to the legislative regime in the Act, any intervention requires an amendment to that Act.

Government agencies were consulted about the options contained in this RIS. No other external consultation was conducted. Because this intervention requires an amendment to the Act, the public will have an opportunity to comment on the proposals at Select Committee.

All of the policy options contained 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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Appendix 1: Regulatory Impact Statement

Status Quo and Problem Definition

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 improvement to contribute to the effective and efficient operation of the system. These are:

Prisoner property

- 3 Currently, the Regulations list items of property that prisoners can be issued with or are allowed to keep. In order to change items in the list it is necessary to make regulations amending Schedule 1. The Schedule can rapidly become obsolete due to rapid changes in technology. The Act needs to be changed to allow the Chief Executive of the Department of Corrections (the Chief Executive) to approve authorised property. This will reduce the timeframe for the approval of prisoner property by three months on average.

Drug testing threshold

- 4 The effectiveness of drug and alcohol testing in the deterrence and detection of drug and alcohol use by prisoners is limited by the high threshold conveyed by the phrase 'believes, on reasonable grounds, that the prisoner has committed a drug or alcohol related disciplinary offence'. The information on which a prison manager makes the decision to test is usually based on intelligence which can be anonymous or hearsay. The Act needs to change to reflect this reality.

Strip search provisions

- 5 The Department of Corrections has two sets of strip search provisions, one defined as routine (for example when the prisoner leaves or returns to prison) and one applied where there are 'reasonable grounds' for suspicion. The latter provides for a more rigorous and closely defined set of procedures to be followed. The Act needs to be amended in order to ensure that this is the only set of procedures used.
- 6 When a prisoner is believed to be concealing contraband, the prison manager's approval must be sought before a strip search can be conducted. This can introduce delay and uncertainty into the process, as this approval should only be waived if health and safety is endangered or security is prejudiced. The Act needs to be amended to enable a strip search to be conducted if an officer believes on reasonable grounds that a prisoner is in

possession of an unauthorised item, without having to obtain the prison manager's approval.

- 7 Strip searching should be mandatory at the point of greatest risk. Currently it is discretionary on return from an escorted absence when risk is high, but mandatory before transfer to another prison where risk is low. This problem cannot be resolved by non-legislative means. This can only be resolved through changes to s98.

Objectives

- 8 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

- 9 The only non-regulatory option is a continuation of the status quo. This is because the problems identified in the paper all stem from legislative provisions that impede effectiveness and efficiency in the corrections system.
- 10 Problems with the status quo are outlined above. The Department would continue to use its best endeavours to administer the corrections system effectively and efficiently. However, retaining the status quo would perpetuate the particular problems that have been identified.

Option Two: Regulatory Options

- 11 Following a review of the current legislative and regulatory framework the Department of Corrections has identified legislative amendments that are required to make the day-to-day management of prisoners, in all the areas outlined above, more effective and efficient. This is the preferred option for the Department of Corrections.
- 12 The key proposals are to:
 - empower the Chief Executive to declare items to be authorised property for prisoners, thus speeding up the approval process
 - ensure that prisoners may be tested for drugs or alcohol when there are reasonable grounds for suspicion
 - introduce a single, effective procedure for strip searching prisoners
 - remove the requirement to obtain a prison manager's prior approval before conducting certain strip searches, thus avoiding delays

- require all prisoners to be strip searched on return to a prison from an escorted absence, thus reducing the risk that they will bring in contraband.
- 13 It is acknowledged that two of these proposals involve some increase of risk, which had to be weighed against other considerations. Specifically:
- Authorised property - Moving away from Cabinet decision-making could involve increased risk. If an incorrect decision is made to authorise a particular item, there are risks that the item might be used in an assault or to facilitate an escape. On the other hand, there could be litigation risk if, for example, the Chief Executive declined to authorise religious items, as prisoners could claim that this breached their rights under the New Zealand Bill of Rights Act 1990 (BORA). However, all such risks are mitigated by the fact that there is a statutory framework for Chief Executive decision-making, and the existence of a robust complaints system for prisoners. It is considered that any residual increase in risk is small, and is outweighed by the benefits of a speedier decision-making process, giving the Department an improved ability to make changes to the authorised property regime when necessary.
 - “Reasonable grounds” strip searches - Removing the requirement to obtain a prison manager’s approval could increase the risk of unlawful searches being undertaken, with associated litigation risk for the Crown. However, corrections officers receive training on the law pertaining to searching, and the legislation will continue to require that the details of “reasonable grounds” strip searches must be promptly reported to the prison manager (s102(2)(a)), who must ensure that a record of that report is made and kept (s102(5)). These safeguards provide sufficient protection for prisoners, and minimise any increased litigation risk. Any residual increase in risk is considered to be small, and is outweighed by the benefits, including savings in staff time, from avoiding delays in carrying out strip searches.
- 14 Some of the proposals do appear to affect the rights of prisoners guaranteed by the New Zealand Bill of Rights Act 1990 (BORA). However, taking into consideration the need to control contraband in prisons, it is considered that the legislative proposals are consistent with the BORA and with international covenants to which New Zealand is a party.

Financial impact

- 15 The proposals in the preferred option (Option Two) do not have significant financial implications. The mandatory strip searching proposals are likely to result in a small increase in the total number of such searches. Any additional costs arising from this increase will be minor and can be met from within baselines.

Consultation

- 16 The Ministry of Justice, Ministry of Women's Affairs, Ministry of Foreign Affairs and Trade, Police, Treasury, State Services Commission and Te Puni Kōkiri have been consulted. The Department of the Prime Minister and Cabinet has been informed.
- 17 Te Puni Kōkiri has expressed objections to the proposal relating to strip searching without prior approval of the prison manager and requested that the following comment be inserted:

Before Te Puni Kōkiri can support the proposed changes in relation to manager's approval for "reasonable grounds" strip searches, Te Puni Kōkiri would like to see a more compelling case for the change, given the existing provision in section 98(4) of the Corrections Act 2004 for commencing a reasonable grounds strip search, without waiting for approval, if the Corrections Officer believes that delaying the search would endanger the health and safety of any person or prejudice the maintenance of security at the prison.

- 18 The public will have an opportunity to comment on the proposals when they are before a Select Committee.

Conclusion

- 19 The Department of Corrections prefers Option 2 that will amend the Corrections Act 2004, and consequentially amend the Corrections Regulations 2005.

Implementation

- 20 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

- 21 The intention of these amendments is to remove a number of legislative barriers to the effective operation of the corrections system. 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 efficiency and effectiveness in terms of staff time and consistency of process should ensue, and will be monitored in routine internal service improvement processes and internal audit.