

# Regulatory Impact Statement:

## Corrections Amendment Regulations (No 2) 2017

### Agency Disclosure Statement

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

It provides an analysis of options to enhance the legislative framework of the corrections system. In particular, it reviews options for amendments to Corrections Regulations 2005 (Regulations) to:

- better support the safe and humane administration of prisons;
- promote the reintegration of prisoners into the community on release;
- protect victims of crime from undue distress; and
- reduce legal risks to the Department of Corrections.

Analysis of each issue was informed by consideration of relevant information including, where appropriate, information from comparable jurisdictions. As the problems in these areas relate to the legislative regime, most interventions require an amendment to Regulations.

The Ministries of Health, Justice and Social Development, New Zealand Police, Te Puni Kōkiri, Ministry for Women, Treasury, Office of the Ombudsman, and Office of the Privacy Commissioner were consulted. The Department of the Prime Minister and Cabinet and State Services Commission were informed.

Suzanne Kennedy  
Chief Policy Adviser  
Department of Corrections

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## Executive summary

- 1 Three issues with the legislative framework have been identified as presenting barriers to the humane and effective management of prisons. The issues listed below each have a separate problem definition and options analysis against the status quo.

#	ISSUE
1	<p><b>Mechanical restraints</b></p> <p><u>Current position:</u></p> <ul style="list-style-type: none"> <li>• Lack of clarity regarding the authority to use restraints on prisoners when hospitalised, and inadequate safeguards for the health and welfare of prisoners when restraints are applied in that situation.</li> </ul> <p><u>Proposal:</u></p> <ul style="list-style-type: none"> <li>• Clarify that restraints may be applied where this is a condition of a prisoner's temporary removal to hospital, and provide safeguards for the health and welfare of prisoners who are restrained while hospitalised.</li> </ul>
2	<p><b>Management of prison visitors</b></p> <p><u>Current Position:</u></p> <ul style="list-style-type: none"> <li>• The information that visitors are required to provide is not relevant to accompanying children, which limits the Department's ability to ensure the safety of children visiting prisoners.</li> <li>• Ambiguity regarding grounds for declining visit applications.</li> </ul> <p><u>Proposal:</u></p> <ul style="list-style-type: none"> <li>• Ability to obtain additional information on visitors, particularly children and young persons (as defined in the Children, Young Persons and Their Families Act 1989).</li> <li>• Set out grounds for declining visits, including ability to take into account nature of prisoner's convictions and outstanding charges.</li> <li>• Provide a review process where visits declined.</li> </ul>
3	<p><b>Purposes for temporary releases and removals</b></p> <p><u>Current Position:</u></p> <ul style="list-style-type: none"> <li>• Appropriate to grant temporary releases for broad reintegrative purposes, but this is not covered by current Regulations.</li> </ul> <p><u>Proposal:</u></p> <ul style="list-style-type: none"> <li>• In response to Smith/Traynor Inquiry recommendation, provide for temporary releases for broad reintegrative purposes not currently specified in Regulations.</li> </ul>

## 1. Mechanical restraints

### Status quo and problem definition

- 2 When a prisoner is escorted to a hospital, the escorting officers are often instructed to use mechanical restraints. The legal authority for such instructions is somewhat unclear, and this needs to be resolved. It is also important to ensure there are adequate safeguards applying to the use of restraints during hospital escorts, in particular, because hospitalisation can be for an extended period of time

## Objectives

- 3 The aim of this proposal is to enhance public safety, and the health and safety of prisoners, by better provision for the humane and effective use of restraints when prisoners are escorted to hospital.

## Options and impact analysis

### Option 1

- 4 The preferred option is to amend the Regulations with regard to the use of mechanical restraints during hospital escorts. The Regulations would specify that:
  - a) restraints may be applied if it is a condition of the prisoner's temporary removal from the prison;
  - b) escorting officers must ensure that the use of restraints does not adversely affect the prisoner's health or subject the prisoner to unnecessary discomfort, and must immediately remove a restraint where necessary for the prisoner to receive urgent medical treatment.

### Option 2

- 5 An alternative to the preferred option would be to have conditions and safeguards set out in Departmental guidelines rather than in the Regulations. However, limiting the use of restraints has an impact on human rights, and the LAC Guidelines<sup>1</sup> indicate that matters of that kind are more appropriately dealt with in regulations than in other forms of delegated legislation. Also, the Corrections Act 2004 contemplates that conditions or restrictions on the use of restraints will be in the Regulations.

## 2. Management of prison visitors

### Status quo and problem definition

- 6 In 2014 the Vulnerable Children Act was passed. The Act requires vetting for adults who work with children, and for some government agencies to have Child Protection Policies (CPP). In developing the CPP for the Department of Corrections, we identified barriers with existing Regulations which limit the Department's ability to implement improved procedures for managing prison visits, particularly where children are concerned.
- 7 Current Regulations provide for a pre-approval process for private visitors, including a requirement for the applicant to provide specified information if requested to do so, and power to decline the visit if they refuse or fail to provide this information. However, these provisions do not enable the Department to obtain information relating to accompanying children, or allow the Department to take into account all relevant information from prisoners, visitors, and government agencies when considering visit applications. It is also unclear whether the Department can lawfully decline visits that would be inappropriate, for example, based on the nature of the prisoner's convictions or active charges.

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<sup>1</sup> Legislation Advisory Committee *Guidelines on the process and content of legislation (2014)*, section 13.3.

- 8 Clear regulatory procedures will help ensure the Department can request and act on relevant information about visitors.
- 9 Pending regulatory change, the Department of Corrections has improved its procedures for managing visits by children. This interim solution requires private visitors under the age of 16 to be approved as visitors, with legal guardian consent. Approval will be determined after consideration by Internal Advisory Panels if the prisoner has convictions or charges for relevant sexual or violent offending against children.

## Objectives

- 10 The aim of the proposal is to improve safety in prisons, especially for child visitors, by making appropriate and effective use of information sharing and improving guidelines around the visit application process.

## Options and impact analysis

### *Option 1*

- 11 The preferred option is to amend Regulations to provide the Department with the ability to obtain additional information on visitors, particularly children and young persons (as defined in the Children, Young Persons and Their Families Act 1989); and to set out grounds for declining visits, including the ability to take into account the nature of the prisoner's convictions and outstanding charges.
- 12 For the purposes of Regulations on visits, an amendment to define "child visitor" would reference the definitions of a child and young person in the Children, Young Persons, and Their Families Act 1989. Currently those definitions cover anyone under the age of 17. This would ensure that if the primary legislation changes it will not be necessary to amend the Regulations – the Department will just have to update its procedures.
- 13 It is proposed to amend the Regulations so that visitors can be required to provide additional information or permissions. Visit applicants can be required to:
  - a) disclose their and the prisoner's relationship with any accompanying child;
  - b) obtain guardian consent for any child visitor
  - c) permit access to any relevant information held by government agencies involved with the welfare of children
  - d) state whether the prisoner has convictions or current charges for offences against the applicant or any accompanying child;
  - e) disclose any court order affecting a child visitor;
  - f) provide any other information that is necessary to assess the visit applications and ensure the safe management of visits.
- 14 Additionally, Regulations would be amended to clarify the Department's ability to manage visits, by providing that:

- a) visits may be declined for reasons that, with any necessary modifications, reflect current provisions for excluding or prohibiting visitors;
- b) the information obtained in the application process may be used to establish if there are grounds to decline the application; and
- c) the nature of a prisoner's convictions or active charges may be taken into account when determining visit applications.

15 Where an application is denied, visitors would have access to a review process.

#### **Option 2**

16 The implementation of the interim solution has significantly improved the management of prison visitors, and this could be continued without regulatory change.

17 However, this option does not address the core difficulty in obtaining relevant information needed to ensure the safety of visits, nor does the option mitigate the legal risks of declining applications.

### **3. Purposes for temporary releases and removals**

#### **Status quo and problem definition**

18 The Corrections Act<sup>2</sup> states that a prisoner may be temporarily released or removed for any purpose specified in Regulations, provided that the Chief Executive considers it will facilitate one or more of the following objectives:

- the rehabilitation of the prisoner and their successful reintegration into the community, whether through release to work (including self-employment), programmes, or otherwise;
- the compassionate or humane treatment of the prisoner or their family;
- furthering the interests of justice.

19 The Regulations<sup>3</sup> list a total of 23 purposes for which a prisoner may be temporarily released and 21 purposes for which a prisoner may be temporarily removed. There is considerable overlap between the two lists.

20 In response to one of the recommendations of the Traynor/Smith Government Inquiry, there has been an internal review of the Regulations “to ensure they accurately reflect the purposes for which temporary releases are granted, in particular the full range of reintegrative releases.”<sup>4</sup> The Department’s review concluded that current provisions were overly prescriptive and could be simplified to support professional decision making.

21 In the meantime, a number of operational changes have been implemented. These changes include:

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<sup>2</sup> Section 62

<sup>3</sup> Regulations 27 and 29

<sup>4</sup> *Government inquiry into matters concerning the escape of Phillip John Smith/Traynor*, August 2015.

- a) development of a decision-making framework to assist with the initial assessment;
- b) applications are considered by a multi-disciplinary advisory panel who provide advice to the decision maker from their areas of expertise;
- c) the Prison Director is now responsible for ensuring sponsors understand their responsibilities and for confirming how the release will be monitored. This process must be agreed to prior to the release being granted;
- d) staff are required to enquire whether a prisoner has a passport or any other travel documents before the release;
- e) a border alert is activated prior to any temporary release being approved; and
- f) GPS monitoring has become standard practice for all prisoners on temporary release.

## Objectives

- 22 The aim of the proposal is to improve the Department's ability to make appropriate decisions on temporary releases and removals, thereby enhancing management of prisoner reintegration without compromising public safety.

## Options and impact analysis

### *Option 1*

- 23 The preferred option is to replace the lengthy lists of purposes for temporary release and temporary removal with a single, much shorter list of broader purposes. The list would be refined during the policy approval and drafting processes, but would be based on the six purposes set out below:
- a) to maintain relationships with family members and friends, religious and/or community groups which are supportive of the prisoner's reintegration plan; or where there are compassionate grounds for maintaining the relationship.
  - b) to seek or undertake employment or vocational training (either directly with prospective employer, as self-employment or through an agency).
  - c) to obtain urgent medical, surgical, dental or childbirth-related treatment or assessment unavailable in prison; or to obtain non-urgent treatment or assessment that is supportive of reintegration.
  - d) to engage with relevant government agencies that will support wellbeing and reintegration of prisoners or family / close friend upon release.
  - e) to assist Police in relation to the prevention, investigation, detection and prosecution of offences.
  - f) to engage in an activity that supports rehabilitative or reintegrative goals of the prisoner, including the purchase of equipment or possessions prior to release.

- 24 The risks associated with this option primarily involve challenges to implementation, particularly concerning the consistency of the application process. Approval of temporary release applications remains low due to risk aversion, and the high-level nature of the proposed purposes means that eligibility is less clear-cut than in current Regulations.
- 25 However, regulatory reviews can be a driver for changing frontline practice to create a consistent and considered approach.

### Option 2

- 26 The Inquiry suggested additions to the Regulations to prevent any challenge to temporary release activities. This would provide that more general reintegration releases are legally sound.
- 27 This option was considered undesirable because the current list of purposes was already extensive and any addition could not be entirely future-proof.

## Consultation

- 28 The Ministries of Health, Justice and Social Development, New Zealand Police, Te Puni Kōkiri, Ministry for Women, Treasury, Office of the Ombudsman and Office of the Privacy Commissioner were consulted. The Department of the Prime Minister and Cabinet and State Services Commission were informed.

## Conclusions and recommendations

- 29 *Mechanical restraints* – Clarify that officers can be instructed to apply restraints when prisoners are removed to a hospital, and provide safeguards for the health and welfare of hospitalised prisoners who are subject to restraint.
- 30 *Management of prison visitors* – Provide the Department with the ability to obtain additional information on visitors, particularly children and young persons (as defined in the Children, Young Persons and Their Families Act 1989); and to set out grounds for declining visits, including the ability to take into account the nature of the prisoner's convictions and outstanding charges.
- 31 *Purposes for temporary releases and removals* – Reduce the list of purposes for temporary releases and removals from a large number of specific definitions to a smaller number of broader purposes.

## Implementation plan

- 32 The amendments, if made, 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's baseline funding.
- 33 In general, the amendments require additional guidance and training for practitioners:
- a) *Safeguards for mechanical restraints* – Ensure that staff are aware of the legal requirements to be met when using restraints on hospitalised prisoners.

- b) *Management of prison visitors* – Regulatory change as proposed in this paper is intended to explicitly allow for greater flexibility and wider consideration of relevant issues in determining approval and management of visits. This work will support the Department’s implementation plan for safer child visits.
- c) *Purposes for temporary releases and removals* – Guidance will need to be provided to those involved in the decision-making process, particularly Prison Directors and multi-disciplinary advisory panels.

## Monitoring, evaluation and review

- 34 The intention of these amendments is to make a number of improvements to the current legislative framework of the corrections system. This will contribute to achieving the Department’s outcomes of improving public safety, reducing reoffending and better public value. It is therefore not envisaged that there will be any change to departmental performance indicators and data collection, or a review process. Any improvements in efficiency and effectiveness in terms of staff time and consistency of process will be monitored in routine internal service improvement processes and internal audit.