

## **Regulatory Impact Statement**

### **Removing Legislative Barriers to Effectiveness and Efficiency in Corrections – Paper 3: Community Sentences and Orders**

#### *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 for miscellaneous amendments to the Bail, Sentencing and Parole Acts (the Acts) affecting home detention, and community sentences and orders. The proposed amendments are technical, or implement minor policy changes.

Barriers to the effective and efficient operation of the corrections system have been identified and clarification is required in operational procedure, either where the legislation is silent or unclear, or where it has been interpreted in unintended ways.

Because the problem relates to the legislative regime in the Acts, any intervention requires an amendment to those Acts.

Government agencies were consulted about the options contained in this RIS. No other external consultation was conducted. Because this intervention requires amendments to legislation, 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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[Date]

## **Appendix 2: Regulatory Impact Statement**

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

#### **The status quo**

- 1 The Sentencing Act 2002, Parole Act 2002, and to a lesser extent the Bail Act 2000, play a major role in governing the corrections system, particularly in relation to the administration of sentences and orders. Major reform of this legislation was undertaken in 2007.

#### **The problem**

- 2 A number of minor and technical problems in administering the changes introduced by legislative reform have been identified. Removing legislative barriers to the effective and efficient administration of sentences and orders will improve the operation of the corrections system.
- 3 Minor policy changes are required to the Sentencing Act 2002, Parole Act 2002, and Bail Act 2000, to improve the operation of home detention and community-based sentences, and electronic monitoring regimes under which offenders are managed.
- 4 Technical changes are required to the Sentencing Act 2002 and Parole Act 2002 to clarify operational procedure, either where the legislation is silent or unclear, or where it has been interpreted in unintended ways.

## **POLICY CHANGES**

### **Sentencing Act 2002**

#### *Pre-sentence reports for home detention or community detention*

- 5 Offenders are sometimes sentenced to home detention or community detention without assessment of home circumstances to ensure that the premises are suitable.

#### *Effect of a subsequent sentence of imprisonment on home detention*

- 6 Currently a sentence of home detention is cancelled following a subsequent sentence of imprisonment and courts cannot order that a sentence of home detention resume when an offender is released from a prison. A two-week period of imprisonment may cancel a home detention sentence of 12 months.

#### *Preventing the imposition of sentences incompatible with an existing sentence or order*

- 7 The court may impose home detention or a community-based sentence when it is incompatible with an existing sentence and does not always make it clear whether an existing community-based sentence is suspended, varied or cancelled when a new sentence is imposed.

*Align electronic monitoring conditions with the range of the monitoring equipment*

- 8 Offenders may go beyond the boundaries of electronic monitoring equipment without breaching their conditions because although they may stray from the electronic boundary they remain within the residence boundary. This makes it difficult to successfully prosecute breaches of conditions.

*Ensuring the integrity of community-based sentences*

- 9 Time continues to run on a community-based sentence after an application to vary or cancel the sentence is made. This means that offenders do not have their sentences adjusted to take into account periods of non-compliance. Courts may refuse to hear the application as the sentence cannot be varied or cancelled if it has ended by the time the offender appears before the court.

*Warrants to arrest to review a non-custodial sentence*

- 10 Court Registrars cannot issue a warrant to arrest to bring an offender before the court when there is an application by a probation officer to review a non-custodial sentence. This is inconsistent with the current powers of Court Registrars and inefficient given the increased range of non-custodial sentences.

**Parole Act 2002**

*Preparation of reports on suitability for residential restrictions*

- 11 Responsibility for preparing reports to the Parole Board on suitability for residential restrictions requires clarification. The current allocation of responsibility to probation officers does not cover the provision of information relating to the offender's behaviour in prison.

**Bail Act 2000**

*Preventing the imposition of EM bail conditions with an existing sentence or order*

- 12 Courts sometimes order electronically monitored bail (EM bail) for defendants who are already on electronically monitored regimes. Where a defendant is subject to two electronic monitoring regimes, it is unclear which regime should take precedence.

*Effect of appeals on a home detention sentence*

- 13 A sentence of home detention is suspended when an appeal is lodged by the defendant or the Crown.

## **TECHNICAL CHANGES**

### **Sentencing Act 2002**

*Remand pending hearing to vary or cancel sentences of home detention and community detention*

- 14 Relevant provisions are unclear whether, and in what circumstances, the court can arrest and remand an offender in custody when a residence is no longer available or suitable, and an alternative residence is not available.

*Length of community work sentences*

- 15 Uncertainty exists regarding the 400 hour limit on concurrent and substituted sentences of community work and offenders can accumulate large numbers of community work hours that require administering over several years.

*Reporting at the start of a deferred sentence of community work*

- 16 An offender sentenced to community work must report to a probation officer within 72 hours of the sentence being imposed. However, the legislation is silent on if, and when, an offender should report if the start of the sentence is deferred.

*Ensuring the integrity of home detention sentences*

- 17 Time ceases to run on a sentence of home detention when an application to vary or cancel the sentence is made. This disadvantages offenders who comply with their sentence and, for legitimate reasons, may apply to have their home detention sentence varied or cancelled.

*Ensuring the length of special release conditions does not exceed that of standard conditions*

- 18 Special release conditions currently may continue after standard conditions have expired. There is no ability to monitor special conditions in these circumstances.

### **Parole Act 2002**

*Discharge from parole conditions imposed for life*

- 19 Two sections of the Parole Act are contradictory. The restriction on the Parole Board's ability to vary or discharge standard conditions imposed for life requires clarification.

*Effect of a recall application on sentence calculation*

- 20 Sections 94(b) and 60(4) of the Parole Act 2002 are silent as to when time starts again on a sentence following a recall application being declined.

*Parole Board initiated interim recall orders*

- 21 Section 29B(5) (c) of the Parole Act created a new process for monitoring offender compliance with release conditions but the legislation is not clear about what follows an order being made.

*Restoration of victims' rights at Parole Board hearings*

- 22 Certain victims' rights have been unintentionally removed by the Parole Amendment Act 2007. Victims are no longer entitled to be provided with information about hearing processes or to access processes.

*Commencement of release conditions for extended supervision orders*

- 23 Extended supervision order (ESO) conditions do not come into force immediately if offenders are released early because their release date is on a non-release day.

*Suspension and reactivation of extended supervision orders*

- 24 An ESO is suspended while an offender is serving a prison sentence and is reactivated on the offender's release date. When an offender is released early because their release date is on a non-release day, ESO conditions do not apply until the statutory release date.

*Special release conditions for extended supervision orders*

- 25 Legislation is unclear about when the Parole Board has the power to impose special release conditions on an ESO. The Parole Board has interpreted the relevant provision as only allowing giving it power to impose special release conditions in limited circumstances.

**Objectives**

- 26 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.

**Regulatory Impact Analysis**

***Option One: Non Regulatory Options***

- 27 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. Problems arise with the administration of sentences and orders

because legislation is unclear or silent, or it has been interpreted in unintended ways.

- 28 Problems with the status quo are outlined above. The Department would continue to use its best endeavours to administer the corrections systems effectively and efficiently. However, retaining the status quo would only perpetuate the particular problems under consideration.

### ***Option Two: Regulatory Options***

- 29 Following a review of the current legislative and regulatory framework, the Department of Corrections has identified minor but worthwhile legislative amendments, which will make the day-to-day management of offenders, in all the areas outlined above, more effective and efficient. This is the preferred option for the Department of Corrections.

- 30 Minor policy changes are recommended to:

#### *Sentencing Act 2002*

- require pre-sentence reports before an offender is sentenced to home detention or community detention
- clarify the effect on home detention of a subsequent sentence of imprisonment
- prevent the imposition of non-custodial sentences that are inconsistent with an existing sentence or order
- align electronic monitoring conditions with the range of the monitoring equipment
- clarify when time should stop and start on community-based sentences during periods of non-compliance
- enable Court Registrars to issue arrest warrants in applications to review a non-custodial sentence

#### *Parole Act 2002*

- clarify the responsibility for preparing reports on suitability for residential restrictions

#### *Bail Act 2000*

- prevent the imposition of bail conditions that are inconsistent with an existing sentence or order
- enable home detention to continue pending an appeal

- 31 Technical changes are recommended to:

#### *Sentencing Act 2002*

- clarify processes for managing offenders on home detention or community detention when a residence is no longer available
- remove uncertainty regarding the length of concurrent sentences of community work
- determine when an offender should report to a probation officer when a community work sentence is deferred

- clarify when time should stop and start on home detention during periods of non-compliance
- ensure special release conditions on a short-term sentence of imprisonment do not apply beyond the expiry of standard conditions

#### *Parole Act 2002*

- clarify the powers to discharge offenders from parole conditions imposed for life
- clarify the effect of a recall application on sentence calculation
- clarify the process for Parole Board initiated recall orders
- restore victims' rights at Parole Board hearings
- eliminate gaps in extended supervision order provisions, which can result in short periods when offenders are not subject to appropriate conditions.

- 32 It is considered that the legislative proposals are consistent with the NZBORA and with international covenants to which New Zealand is a party.

### **Financial Impact**

- 33 The proposals in the preferred option (Option Two) do not have significant financial implications for the Department of Corrections and can be met from within baselines. The Ministry of Justice estimates that a policy change to the Sentencing Act 2002 will have financial implications. The proposal to clarify the *effect of a subsequent sentence of imprisonment on home detention* may require an additional \$200,000 of capital funding to update the Courts' Case Management System (CMS). This is dependent on clear and detailed requirements which are yet to be confirmed by the Department of Corrections. This level of funding cannot be met within current baselines. Any requirement for changes to CMS would need to be assessed against other Ministry of Justice priorities.

### **Consultation**

- 34 The Ministry of Justice, New Zealand Police, New Zealand Parole Board, Ministry of Women's Affairs, Treasury, State Services Commission and Te Puni Kōkiri have been consulted. The Department of the Prime Minister and Cabinet has been informed.
- 35 As any change to the Acts can only be given effect by legislation, the public will have an opportunity to comment on the proposals at Select Committee.

### **Conclusion**

- 36 The Department of Corrections prefers Option 2 that will amend the Sentencing Act 2002, Parole Act 2002, and the Bail Act 2000. 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**

- 37 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.