

## **Regulatory Impact Statement**

### **Removing Legislative Barriers to Effectiveness and Efficiency in Corrections - Paper 2: Prisoner Management and Services**

#### **Agency disclosure statement**

This Regulatory Impact Statement 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), the Corrections Regulations 2005 (the Regulations), and the Courts Security Act 1999 in relation to prisoner management and services.

Provisions in the Acts that are barriers to the effective and efficient operation of the corrections system, particularly in relation to the management of prisoners have been identified, and amendments are proposed.

Because the problem largely relates to the legislative regime in the Acts, intervention requires an amendment to each Act and the Regulations.

Non-regulatory options were considered but dismissed as unworkable to address the problem of the Act requiring non-departmental medical officers to be responsible for maintaining the physical and mental health of prisoners to a satisfactory standard.

Government agencies were consulted about the options contained in this Regulatory Impact Statement. No other external consultation was conducted.

Because these interventions require an amendment to the Acts, 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.

David Gurney, Acting 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) and the Courts Security Act 1999 continue to provide a sound legislative framework for the management of prisoners within the corrections system.

## **The problem**

- 2 Some improvements in provisions in the Act and the Courts Security Act have been identified which would contribute to the effective and efficient operation of the system, particularly in relation to the management of prisoners. These are:

### *Prisoner Health Care*

- 3 Section 72 of the Regulations requires that the Chief Executive ensure that specific services and responsibilities meet the health needs of prisoners at any time. However, section 73 of the Regulations places responsibility for maintaining the physical and mental health of prisoners to a satisfactory standard on contracted medical officers and not on departmental employees. In addition, section 20 of the Act requires there must be one or more medical officers for every prison responsible for providing medical care and medical treatment to prisoners.
- 4 The Health Centre Manager has the central role in ensuring that the health care needs of prisoners are met. Health Centre Managers must ensure the day-to-day delivery of quality health services by medical officers, registered nurses and other health practitioners to prisoners in designated prison Health Centres, manage the implementation of Health Services policies and initiatives, and provide leadership to staff.
- 5 The existing requirements under the Act and the Regulations place contracted medical officers at the forefront in providing health services to prisoners. There is a poor fit between the legislative provisions and the actual organisation and operation of prison health services that has created inefficiencies, and that may make prison health services less effective.

### *Opening Prisoners' Mail*

- 6 Only members of the custodial staff may be authorised by the manager to open and read prisoner mail. This increases the risk that unauthorised items enter the prisons, while authorised items such as money for prisoners must then be returned to administrative staff to be accounted for and deposited in prisoners' trust accounts.

### *Prisoner Self-Employment*

- 7 There are currently no provisions in the Act that expressly provide for prisoners to be self-employed in prison or allow deductions to be made from monies earned by a prisoner from self-employment while they are in prison. Opportunities for prisoners to gain self-employment skills are not being realised.

### *Prisoners in Courts Custody – Courts Security Act 1999*

- 8 The relative responsibilities of court security officers, corrections officers, prison officers and security officers employed by a contractor are not clearly defined in the Courts Security Act 1999 thus creating the risk of confusion.

### **Objectives**

- 9 The amendments proposed will contribute to achieving the Department of Corrections outcomes of managing offenders safely and humanely and reducing re-offending.

### **Regulatory Impact Analysis**

#### ***Option one: non-regulatory options***

- 10 Consideration has been given to operational policies to manage the areas of concern. Non-regulatory options were considered to address the problem of the Act requiring that the chief executive of the Department of Corrections ensures that specific services and responsibilities meet the health needs of prisoners at any time, whilst contracted medical officers, and not departmental employees, are responsible for maintaining the physical and mental health of prisoners to a satisfactory standard.
- 11 Hiring medical practitioners as departmental employees instead of contracted medical officers would resolve the problem. However, it is extremely unlikely that medical practitioners would wish to become departmental employees. In addition, because most health matters can be dealt with within the nurses' scope of practice, it is more cost efficient to run a nurse-led service with medical and other health practitioners contracted to provide other care and treatment, and referrals being made to District Health Board health and mental health services when required.
- 12 Non-regulatory options were not considered for the other proposed amendments as the barriers to efficiency and effectiveness were identified as strictly regulatory in nature.
- 13 Problems with the status quo are outlined above. Retaining the status quo would only perpetuate the particular problem under consideration.

### ***Option two: regulatory options***

- 14 Following a review of the current legislative and regulatory framework the Department of Corrections has identified legislative amendments that will 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.
- 15 The key proposal is to improve the effectiveness and efficiency of the delivery of prisoner health services by giving prison Health Centre Managers employed by the Department of Corrections the statutory responsibility, currently ascribed to medical officers under contract, for maintaining the physical and mental health of prisoners to a satisfactory standard.
- 16 It is intended that the medical officer would continue to contribute to the health care and treatment of prisoners according to the medical practitioners' scope of practice and the requirements specified in the medical officer's contract. In addition, Health Centre Managers will continue to refer cases that are outside their scope of practice to medical officers and other health practitioners as appropriate.
- 17 It is also proposed to streamline the process for opening of prisoners' mail to reduce the chance of contraband entering prisons, to allow prisoners to gain self-employment skills, to allow prisoners with the third lowest security classification who have been granted parole to be considered for temporary release, and to limit court security officers' powers in respect of persons in the custody of corrections officers.
- 18 The proposal for the management of prisoner mail does appear to affect the rights of prisoners guaranteed by section 21 of the New Zealand Bill of Rights Act 1990. However, taking into consideration the need to control contraband in prisons, it is considered that the legislative proposals can be justified under section 5 of that Act and with international covenants to which New Zealand is a party.

### **Financial impact**

- 19 The proposals in the preferred option (Option Two) do not have significant financial implications.

### **Consultation**

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

## **Conclusion**

- 22 The Department of Corrections prefers Option 2 which will amend the Corrections Act 2004, and consequentially amend the Corrections Regulations 2005, and amend the Courts Security Act 1999.

## **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 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 managing offenders safely and humanely and reducing re-offending. 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.