

Departmental Disclosure Statement

Corrections Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Department of Corrections.

The Department of Corrections certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

13 February 2018

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Part One: General Policy Statement

The Corrections Amendment Bill 2018 includes a suite of amendments to the Corrections Act 2004 (the Act) designed to—

- improve the ability of the Department of Corrections (the department) to safely and humanely manage prisoners;
- improve prisoner discipline and safety;
- ensure the fair treatment of prisoners;

Consequential amendments to the Corrections Regulations 2005 (the regulations) are also required and will be made by separate regulations.

Overall, the Act and the regulations continue to provide a sound legislative framework for the corrections system. However, some areas need modernisation or greater clarity.

Segregation of prisoners at risk of self-harm

The Act currently provides for the management of prisoners who are, or may be, at risk of self-harm, under the segregation regime. However, this regime is not conducive to providing appropriate care and management of at-risk prisoners, or to responding quickly where a prisoner is at risk of self-harm.

The Bill introduces a comprehensive legislative framework, separate from the segregation regime, for the management of prisoners at risk of self-harm. It includes requirements relating to the assessment and observation of a prisoner, the development of an at-risk plan, and time for review of the prisoner's at-risk status.

Reviews of mother and baby placement decisions

The Chief Executive of the department has the statutory authority to approve a mother's request to have her child with her in prison. If that request is denied, or if the decision is made to end a placement, the mother has no statutory right to appeal against the decision.

The Bill introduces a statutory review process regarding decisions on the placement of prisoners and their babies in Mothers with Babies Units.

Definition of drug

Although psychoactive substances have adverse effects, it is not an offence to use them in prisons.

The Bill amends the definition of a drug to include psychoactive substances, as defined by the Psychoactive Substances Act 2013, making it a disciplinary offence to use them in prisons and allowing testing procedures to be used to obtain evidence of their use.

Use of Police jails

The department can detain surplus prisoners in Police jails under the operation of the Police. However, Police have insufficient personnel to operate Police jails at their full capacity.

To respond to short-term muster pressures, the Bill provides an authority for the Minister of Corrections to declare a Police jail, or parts of a Police jail, to be temporarily included in a corrections prison, operated by the department. Safeguards are included to limit the circumstances in which this regime can be established, place limits on the regime's duration, and impose a maximum period of detention for affected prisoners.

Using imaging technology searches to detect contraband on prisoners, staff, and visitors

The department is empowered to search prisoners, staff, and visitors to detect contraband. Scanner searches, which involve devices such as metal detectors, are the most common type of search. Detection technology is continually developing, and some overseas jurisdictions use imaging technology searches, which locate items concealed under the clothing and within the body by displaying an image on a screen. However, the Act does not currently authorise the use of imaging technology searches.

The Bill allows the department to use imaging technology, subject to some privacy safeguards, to search prisoners, staff, and visitors for contraband. Imaging technology searches will also be able to be used as a replacement for mandated strip searches of prisoners.

Use of mechanical restraints on prisoners being treated in hospital

When a prisoner receives hospital treatment outside prison, the continuous use of mechanical restraints may be necessary to prevent escapes and maintain public safety. However, the use of mechanical restraints, such as handcuffs, for more than 24 hours during a hospital visit is not expressly permitted in legislation.

The Bill amends the 24-hour time limit on the application of mechanical restraints so it does not apply to prisoners who have been temporarily moved to hospital.

Tattooing in prison

The Act and the regulations prescribe a disciplinary process for dealing with prisoners who behave in ways that do not result in criminal prosecution but are nonetheless disruptive, unsafe, inappropriate, or inconsistent with the good order and security of the prison. The practice of tattooing does not expressly fall within any offence provisions of the Act even though there are risks to prisoners' health, staff safety, gang management, and prisoner reintegration on release.

The Bill makes it a disciplinary offence for a prisoner to tattoo another prisoner or consent to receive a tattoo from another prisoner, or to tattoo themselves.

Writing letters in prison

Some prisoners are subject to court orders forbidding contact with certain persons, such as protection orders under the Domestic Violence Act 1995. If a prisoner's letter

to a protected person is read by prison staff, it is withheld. However, there is an anomaly that such a letter would, if delivered, constitute a criminal offence, but when intercepted would only amount to a disciplinary offence if it was offensive, threatening, abusive, or intimidating. Without any consequences, prisoners could continually attempt to write to a person protected by an order, causing distress if any letters were not intercepted.

The Bill makes it a disciplinary offence for a prisoner to attempt to have contact with someone if that contact would breach an order or a direction of any court.

Prisoner communication

Every prisoner is entitled to make at least 1 outgoing telephone call of up to 5 minutes' duration per week, but they must meet the cost of all calls they make. Charging for phone calls can be administratively complex and costly, and can affect a prisoner's ability to maintain family and social relationships.

The Bill gives the department flexibility about whether, and how, it charges for calls. It enables prisoners who make calls to be required to pay a flat fee instead of being charged for each call.

Prisoners' knowledge of disciplinary offences

To help maintain the good order of a prison, prisoners need to be aware of disciplinary provisions to understand how to conduct themselves appropriately. The Act requires that recently received prisoners be given, in writing, relevant information on the operation and rules of the prison, rules about authorised property, and the entitlements of prisoners. However, there is no requirement to provide information about disciplinary offences and, in practice, the induction process for new prisoners does not typically include this information.

The Bill introduces an obligation on the manager of a prison to provide newly admitted prisoners with information about disciplinary offences.

Cell sharing

Although it is recognised that single-cell accommodation can be preferable, research has shown that cell sharing is acceptable if properly managed. The regulations provide rules for cell sharing under the regulation-making power of the Act, subject to some exceptions.

The Bill includes a stand-alone provision in the Act that addresses the use of shared cells. Consequential amendments to the regulations will remove the preference for single-cell accommodation and impose new privacy and comfort requirements for shared cells.

Delegation of health centre managers' powers and functions

Under the Act, the powers and functions of a prison's health centre manager must be exercised in person. This creates practical difficulties when there is an urgent matter but the health centre manager is off site or off duty.

The Bill would ensure that only suitably qualified staff members make the relevant decisions by enabling delegation of the health centre manager's powers and functions to an employee of the department who is a nurse or medical practitioner.

Contact between detector dogs and people being searched

Drug, cellphone, and tobacco detector dogs play an important role in keeping contraband out of prisons. The Act has a strict requirement that a dog handler must prevent the dog from coming into contact with the person being searched. In practice, there can be inadvertent, but inconsequential, contact.

The Bill amends the provisions relating to dog handlers so they must take reasonable precautions to prevent dogs from coming into physical contact with a person being searched.

Placement of limit on prisoners' legitimate expectations

Because a prisoner's conditions within prison, such as activity options or standard of accommodation, could change over time, the regulations state that a prisoner does not have any legitimate expectations of having similar conditions or opportunities throughout their period of detention. Since this principle applies across a wide range of circumstances within the prison system, it is more appropriately located in the Act than in the regulations.

The Bill amends the Act to state that a prisoner does not have any legitimate expectations of having similar conditions or opportunities throughout their period of detention.

Prisoner's management plan

The Act requires a management plan to be devised for every prisoner sentenced to more than 2 months' imprisonment, or remanded for over 2 months, and specifies what such plans must cover. It does not state what form a management plan should take and whether a plan has to be a single document or may comprise information from a range of sources.

The Bill clarifies that a prisoner's management plan may comprise information recorded on 1 or more electronic or paper records, making clear it does not refer to a single record.

Use of chains and irons in prisons

The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) stipulate that chains and irons must not be used as restraints on prisoners. Although the department complies with the rule and does not use chains or irons on prisoners, the Act does not expressly exclude the use of chains and irons in prisons.

The Bill expressly prohibits the use of chains and irons on prisoners to align the law with the Nelson Mandela Rules.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p><i>Prisoner double-bunking: Perceptions and impacts</i>, The Department of Corrections, April 2012 (accessible at: http://www.corrections.govt.nz/_data/assets/pdf_file/0003/708195/Doublebunking_research_report_combined_phases_1_and_2.pdf).</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
N/A	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
Enhancing the Legislative Framework of the Corrections System, Department of Corrections, 1 February. This is available at http://www.treasury.govt.nz/publications/informationreleases/ris or http://www.corrections.govt.nz/resources/policy_and_legislation.html .	
2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	
The Regulatory Impact Statements above did not meet the threshold for needing an independent opinion on the quality of the regulatory impact assessment from the Regulatory Impact Assessment Team in the Treasury.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
N/A	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
N/A	

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
N/A	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
N/A	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

The principal Act specifies that one purpose of the correction system is to establish rules for operating corrections facilities based on the United Nations Standard Minimum Rules for the Treatment of Prisoners. Although not a treaty or a binding convention on the Crown, they are intended to set out what is generally good principle and practice.

Although the Department does not use chains or irons as restraints, the amendment to section 87(6) of the Act would expressly prohibit the use of chains and irons. This would make it explicit that the Department does not intend to use any mechanical restraint on prisoners that could be classified as chains or irons, and ensure consistency with the Standard Minimum Rules.

The Standard Minimum Rules indicate a preference against cell-sharing of two prisoners. The Bill does not change the Department's existing policy for use of shared cells, but does more clearly articulate the Department's ability to use cell-sharing in the Act. Consequential amendments to the Regulations will also outline specifications for the use of shared cells, such as prisoner suitability assessment, and health and safety requirements for those in shared cells.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Te Puni Kōkiri was consulted on the policy proposals in this Bill. Their comments did not indicate that any of the proposals are inconsistent with the principles of the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights	

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
Clause 32 amends section 146 by creating a criminal offence, with a maximum fine of \$2000, for photographing or other copying of an image resulting from imaging technology, or providing a photograph or copy to another person.	
The Bill also creates new disciplinary offences for prisoners relating to tattooing, writing letters, and psychoactive substances, however these are not under the auspice of a court or tribunal.	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
The Department consulted with the Ministry of Justice regarding the imaging technology provisions during the policy development and bill drafting stages. The inclusion of the criminal offence resulted from the need for safeguards to protect the privacy of those being scanned.	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
Clauses 91 and 92 of the Bill allow the Department to use imaging technology, which creates an image of the person being searched, to identify contraband concealed beneath clothing or internally by prisoners, staff and visitors.	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>The Department consulted the Office of the Privacy Commissioner regarding the imaging technology provisions during the policy development and bill drafting stages. This led to inclusion of legislative safeguards to protect the privacy of those being scanned by:</p> <ul style="list-style-type: none">• restricting the type of image that may be displayed• limiting the retention of an image for only as long as is necessary to determine the presence of contraband• prohibiting the photographing or other copying of the image, or providing such a photograph or copy to another person.	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>The following agencies and organisations were previously consulted in 2017 on the proposals and the Bill: The Ministry of Justice, Ministry of Social Development, Ministry of Health, Ministry for Women, Oranga Tamariki - Ministry for Children, The Treasury, New Zealand Police, and Te Puni Kōkiri.</p> <p>The Human Rights Commission and the Office of the Ombudsman were consulted on relevant provisions. The Privacy Commissioner was consulted on provisions relating to imaging technology.</p> <p>Substantive feedback sought the inclusion of: privacy safeguards to be introduced in relation to imaging technology searches; more stringent restrictions on the length of time a prisoner can be detained in a Police jail temporarily incorporated in a corrections facility; restriction on youth being housed in a Police jail used as a corrections facility; and protection of minimum entitlements in a Police jail used as a corrections facility. This feedback has been incorporated in the Bill.</p> <p>There has been no consultation with the public, the Corrections Association of New Zealand, or the Public Service Association.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
<p>There has been no formal testing of the Bill's provisions. However, many of the provisions, such as management of prisoners at risk of self-harm, use of mechanical restraints, use of imaging technology searches have either been developed in consultation with operational staff, or broadly represent current operational practice.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
N/A	

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
N/A	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
N/A	

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
N/A	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
N/A	

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
N/A	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
N/A	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
N/A	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
N/A	