

Supplementary Departmental Disclosure Statement

Corrections Amendment Bill

A supplementary departmental disclosure statement for a Bill the government is proposing to amend seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill in amended form.

It highlights material changes to previous disclosures relating to:

- 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.

The original disclosure statement for the Corrections Amendment Bill, dated 13 February 2018, can be found at this link

<http://disclosure.legislation.govt.nz/bill/government/2018/35/>.

This supplementary 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.

26 September 2019

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The Main Areas of Change to the Original Disclosures

This is a supplementary disclosure statement for the Corrections Amendment Bill.

A supplementary disclosure statement supplements the original disclosure statement for the Bill by reporting the additions and changes that would need to be made to the original disclosure statement to accurately reflect the Bill with the proposed government amendments incorporated.

The main areas of change to the original disclosure statement include:

- strip search of prisoners vulnerable to self harm
- mother and baby placement decisions
- use of mechanical restraints during hospital visits
- provision of information given to prisoners upon reception to a prison
- delegation of Health Centre Managers' powers and functions
- use of Police jails
- search procedures and denial of entry
- the disclosure and retention of recordings of prisoner phone calls
- strip search of prisoners returning from an escorted outing
- prisoner mail provisions
- minor or technical changes to ensure the Bill achieves its legal purpose

The majority of these changes were recommended by Corrections during the Select Committee process. However, as agreement could not be reached by the Justice Committee, the Bill remained unchanged for its second reading. The change to the strip search provisions for prisoners returning from an escorted outing, and changes to the mail provisions, were developed by officials after the Select Committee stage.

Part One: General Policy Statement

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

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

The Supplementary Order Paper (SOP) amends six of the original provisions contained in Corrections Amendment the Bill, includes four new provisions, and removes one original provision. It also makes minor and technical changes to the Bill to ensure it achieves its legal purpose.

Prisoners vulnerable to self harm

The Bill introduced a comprehensive legislative framework for the management of prisoners who are vulnerable to self harm. In order to detect an item that may be used to self harm, the Bill includes a standardised strip search approach where at-risk prisoners must undergo a strip search when first placed in an at-risk cell, or when returning to the at-risk area from another area of the prison.

A standardised approach may lead to some prisoners being strip searched multiple times per day as they can frequently leave an at-risk area as part of daily routine. Prisoners may experience distress or harm from these searches even though their individual risk or opportunity to conceal items may not warrant a search.

Since the introduction of the Bill, Corrections has made operational improvements to the model of care provided to people vulnerable of self harm, which would allow the use of an individualised approach to better consider an individual's history, circumstances and risk.

The SOP would improve the strip search provisions by introducing an individualised approach by linking search requirements to an individual's needs and risks as identified in their at-risk management plans. The revised provision would also provide protection from self harm through mandatory searching before an individual's current level of risk is known and a tailored at-risk management plan is developed.

Mother and baby placement decisions

The Bill introduces a statutory right for a prisoner to seek a reconsideration of a decision made regarding the placement of a child with their mother in prison.

However, there is no legislative requirement for the applicants to be told of the reason for the original decision and process of reconsideration. This could undermine a fair and robust process.

The SOP would amend the provisions relating to Mothers with Babies placement decisions to include a legislative requirement for mothers to be told a) the reason why an application to have a child placed in their custody has been declined, or why a

placement has ended, b) the process available to have a decision reconsidered and c) the outcome of any reconsideration and the reasons for the outcome. The SOP also clarifies that the new right to apply for a review only applies to the initial decision. If circumstances change, it will still be possible for a mother to make a new application.

Use of mechanical restraints during hospital visits

The Bill clarifies some legal ambiguity regarding the use of mechanical restraints on prisoners who stay in hospital longer than 24 hours. The purpose of continued use of mechanical restraints is to prevent escapes and maintain public safety.

However, the Bill does not make this purpose explicit.

The SOP would amend the mechanical restraints provision by clarifying that restraints can only be used for more than 24 hours on hospitalised prisoners if it is necessary to maintain public safety or prevent escape.

Provision of information given to prisoners upon reception to a prison

The Bill introduces a statutory requirement to provide prisoners with information about disciplinary offences on admission to prison. However, there is no such requirement for information about complaints processes. Nor is there an obligation to assist prisoners to understand the information provided to them on arrival.

As prisoners tend to have a higher level of illiteracy than the general population, and many also speak English as a second language, some may not be fully aware of relevant information or fully comprehend the information provided to them.

The SOP would amend the Bill to require information about complaints processes to be included as part of the information given to recently received prisoners, and that all information provided upon reception is in a form that is accessible and appropriate to the prisoner's abilities and language.

Delegation of Health Centre Managers' powers and functions

The Bill provides the authority for Health Centre Managers to delegate their powers and functions to a doctor or nurse. It also requires that if they are asked to provide advice that is outside their scope of practice, they must first consult with a doctor whose scope of practice covers the matter in question.

This is a relatively narrow set of professions and does not provide the flexibility to allow other health professions to be responsible where appropriate.

The SOP would amend the Bill to broaden the range of practitioners that a Health Centre Manager can delegate to, and seek advice from, to include 'registered health professional'. This would allow other professions, such as psychologists or psychotherapists, to be consulted with, or to have delegated authority to maintain the mental health of prisoners.

Use of Police jails

The Bill currently provides an authority for Corrections to declare spare capacity within a Police jail to be part of an already established Corrections prison.

The purpose of this proposal was to ensure Corrections could access additional capacity when there were short periods of extreme accommodation pressures. Since the Bill was introduced, the specific accommodation pressures have subsided due to a decline in the prison population and additional new builds.

The SOP would amend the Bill by removing all provisions relating to the use of Police jails.

Search procedures and denial of entry

The Bill provides Corrections with the power to request those subjected to an imaging technology search to remove any item of outer clothing and any accessories to help carry out the search. This power is already in place for rub-down searches. The purpose is to allow those items to be x-rayed separately, and to ensure a more effective search can be carried out without interference caused by heavy or bulky clothing.

However, there is no such power for other forms of searches, such as metal detectors. This creates inconsistency across different forms of searches and could prevent staff from determining whether there is an unauthorised item concealed within or below clothing.

The SOP would amend the Bill to provide the power to request a person to remove outer clothing and accessories for all forms of scanner searches, and scan the removed items.

It would also provide an explicit power to deny entry to a prison, or ask a person to leave, if a person refuses to comply with the request on the grounds that they have no clothing, or only underwear, underneath. This mitigates a potential loophole where someone attempts to circumvent the search procedures by claiming they have nothing on underneath if they are asked to remove outer clothing to determine the presence of unauthorised items. In such cases, to maintain the security of the prison, and the safety of staff, visitors, and prisoners, it is appropriate to refuse entry because Corrections cannot determine if an item has been concealed amongst clothing, shoes and accessories.

The disclosure and retention of recordings of prisoner phone calls

The Intelligence and Security Act 2017 made consequential amendments to the Act for the purpose of clarifying the legal authority, and protections, for Corrections to disclose recordings of prisoner calls to an intelligence and security agency.

However, the original intent of the changes is undermined because other parts of the Act are inconsistent with those provisions. This creates legal ambiguity as to which provisions take precedence.

The SOP implements the original intent of the Intelligence and Security Act by clarifying that intelligence and security agencies can retain recordings for as long as is required, to enable that agency to perform any of its statutory functions. It also clarifies and strengthens the safeguards for disclosing prisoner phone calls by removing the ability to do so through an exemption to the Privacy Act.

Strip search provisions for prisoners returning from an escorted outing

The Bill introduces a new provision by amending the strip search powers for prisoners returning from an escorted outing.

Prisoners can have escorted outings for a range of reasons including trips to receive medical treatment, attend a funeral or tangi, attend the birth of the prisoner's child, and to undertake rehabilitation activities.

The Act requires that a prisoner must be strip searched upon re-entry to prison from an escorted outing for the purpose of preventing unauthorised items entering a prison site.

The current requirements create scenarios where strip searches are undertaken when the risk of contraband entering prisons does not warrant such an approach because prisoners had limited or no opportunity to obtain unauthorised items. This may lead to unnecessary impact on a prisoner's dignity and wellbeing, particularly for those with existing mental health issues or who have been the victim of sexual violence.

The SOP would amend search powers so that prisoners returning from an escorted outing may be strip searched upon re-entry to the prison only if there is a valid reason. This would also align with other instances in the Act where a prisoner leaves prison, such as those who are on day release to attend work. In determining if there is a valid reason, officers would continue to consider such factors as a prisoner's history of possessing unauthorised items, and the particular circumstances that provide an opportunity for the prisoner to have an unauthorised item.

Strengthening prisoner mail provisions

While Corrections has a range of powers to withhold mail sent to and from prisoners, the attacks on the Christchurch mosques have raised questions about whether these are sufficient to address concerns about the distribution of material that seeks to incite or promote hostility against particular groups.

The SOP would amend the Bill to:

- lower the threshold that must be satisfied to withhold mail
- authorise Corrections to withhold mail that may directly or indirectly encourage or promote hostility towards any group of people on the grounds set out in section 21 of the Human Rights Act 1993
- broaden Corrections authority to withhold mail that threatens or intimidates any person (not just the recipient of mail sent by a prisoner)
- introduce additional considerations that prison managers must take into account when managing prisoner mail.

These changes will help to prevent:

- material that promotes or encourages hostility against particular groups being sent from prison and into the community (including publication online), from the community into prison, and between prisoners
- material that promotes or encourages hostility against particular groups contributing to violence in prison, putting the safety of prisoners and staff at risk
- people in prison and/or the community being radicalised

- individuals or groups in society being harmed and/or revictimised, including through material being sent and then subsequently published online.

Minor and technical changes

The SOP would also make the following minor and technical changes to the Bill.

An original provision in the Bill allows for prisons to charge prisoners a flat fee to use the telephone system, but was silent on who set the fee. The SOP would clarify that any fee is set by the Chief Executive of the Department of Corrections.

Definitions of a scanner search and an x-ray search in the Public Safety (Public Protection Orders) Act 2014 currently cross-refer to the definitions in the Corrections Act, which are being amended by this Bill. The SOP ensures that changes to the Corrections Act definitions in the Bill do not inadvertently impact the definitions in the Public Safety (Public Protection Orders) Act 2014.

The commencement clause provided two mechanisms for sections of the Act to come into force. Some sections were specified as coming into force on the day after the Bill receives Royal Assent. Other sections would come into force on a) a date specified in an Order in Council or b) after six months if there was no Order in Council in that time. The SOP would change the commencement date for a number of provisions to ensure Corrections is able to implement the changes immediately.

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?	NO
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Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>The original Regulatory Impact Assessment, Enhancing the Legislative Framework of the Corrections System, was revised in July 2019. This is available at http://www.treasury.govt.nz/publications/informationreleases/ris and http://www.corrections.govt.nz/resources/policy_and_legislation.html.</p> <p>Strengthening the Department of Corrections' Powers to Withhold Mail, The Department of Corrections, 23 August 2019.</p> <p>This is available at https://corrections.govt.nz/resources/policy_and_legislation/regulatory_impact_analysis_strengthening_powers_to_withhold_mail</p> <p>The analysis and advice in the Regulatory Impact Assessment was developed in two parts:</p> <ul style="list-style-type: none">• an initial assessment was developed between June and 15 August 2019• a revised version was developed between 21 and 23 August 2019.	

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?	NO
<p>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.</p>	

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
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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
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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

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be affected by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES

The expected benefits from proposals relating to a) prisoners vulnerable to self harm, b) mother and baby placement decisions, c) provision of information given to prisoners upon reception to a prison, and d) strengthening prisoner mail management are dependent on the extent to which there is compliance with new obligations.

Compared to the current Bill, the proposed changes to prisoners vulnerable to self harm are expected to decrease the number of strip searches undertaken. However, it is not possible to estimate the size of this decrease as it will depend on an individual's needs and risks. Fewer strip searches would reduce the overall distress and harm to those being searched, and the impact on those undertaking the search. The size of the benefits will depend on when staff consider there a need to strip search.

The revisions to mother and baby placement decisions, and provision of information given to prisoners upon reception, should better ensure that prisoners are aware and understand relevant information or decisions. The size of the benefit will partially depend on the extent to which staff comply with the new obligations. Guidance and operational procedures will be updated to mitigate the risk of non-compliance.

The provision for strip searching alters the obligation for staff to undertake strip searches following an escorted outing. In practice, shifting away from a mandatory requirement would decrease the number of strip searches undertaken, although it is not possible to estimate the size of this decrease. Fewer strip searches would reduce the overall distress and harm to those being searched, and the impact on those undertaking the search. Fewer searches would also likely reduce the amount of staff resourcing needed to process those returning from an escorted outing. The size of the benefits mentioned above will depend on how often staff consider there to be a valid reason to undertake a search.

The proposals relating to prisoner mail will alter the obligations for Corrections staff checking and withholding incoming and outgoing prisoner mail. Adding an additional ground to withhold mail and lowering the threshold that must be met to withhold mail could result in an increase in the number of individual pieces of mail that are withheld. However, it is not possible to estimate the exact size of this increase because of the absence of empirical information about the volumes of mail that are currently checked and withheld under the grounds set out in the Act.

The potential benefit of strengthened powers to withhold mail is that it may reduce or avoid harm to vulnerable individuals/groups in society.

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?
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The principal Act specifies that one purpose of the corrections 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.

Corrections considers that the proposals in the SOP are consistent with the Basic Principles of the Standard Minimum Rules, specifically Rule 50 and Rule 52 that relate to searches of prisoners and cells, Rule 54 and 55 that relate to providing information to and complaints by prisoners and Rule 58 that relates to prisoner communications with the outside world.

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?

Consideration has been given by officials to whether the proposals relating to prisoner mail are consistent with the Treaty of Waitangi.

Corrections consulted with Te Puni Kōkiri, who did not raise any specific inconsistencies with the principles of the Treaty of Waitangi.

Officials note that as Māori are significantly overrepresented in the prison system, changes that broaden the grounds/thresholds for withholding prisoner mail have the potential to impact the rights/opportunities of Māori and their whanau to send and receive mail into and out of prison.

However, these changes also have the potential to benefit Māori, as they seek to prevent harm to vulnerable groups within society, which include Māori, along with victims of crime (among whom Māori are significantly overrepresented).

In particular, the inclusion of a provision that allows the withholding of mail that directly or indirectly encourages or promotes hostility towards any group of people on the grounds set out in s 21 of the Human Rights Act could be seen as a measure by the Crown to protect Māori from those who would seek to incite hostility against Māori.

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 has been sought on the provisions relating to prisoner mail.

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)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO

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
The proposal regarding the disclosure and destruction of phone call recordings clarifies the powers and responsibilities of the Department and intelligence and security agencies.	
3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
The Privacy Commissioner was comfortable with the proposals in the SOP as they seek to clarify inconsistencies within the Corrections Act by implementing the original policy intent of the changes enacted through the Intelligence and Security Act.	

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>Corrections consulted on the proposals (excluding the prisoner mail proposals, which were developed at a later stage) in the SOP with the Ministry of Justice, Ministry of Social Development, Ministry of Health, Ministry for Women, Oranga Tamariki - Ministry for Children, The Treasury, New Zealand Police, New Zealand Security Intelligence Service, The Office for Disability Issues and Te Puni Kōkiri.</p> <p>The Privacy Commissioner, the Human Rights Commission and the Office the Ombudsmen were consulted, as well as the National Preventative Mechanisms under the Optional Protocol to the Convention against Torture, which comprise the Office of the Ombudsmen, the Office of the Children's Commissioner, the Independent Police Conduct Authority, the Inspector of Service Penal Establishments and the Human Rights Commission.</p> <p><i>Initial prisoner mail proposal developed between June and 15 August 2019</i></p> <p>The following agencies were consulted during the development of an initial proposal (the inclusion of an additional withholding ground): Ministry of Justice, New Zealand Police, Crown Law Office and Treasury.</p> <p>The Office of the Ombudsman and the Human Rights Commission were also consulted. The Office of the Ombudsman had no comment, and the Human Rights Commission advised that a Bill of Rights Act assessment should be obtained.</p> <p><i>Additional prisoner mail proposals developed between 21 and 23 August 2019</i></p> <p>Time constraints meant that it was not possible to fully consult with stakeholders on the additional changes that were developed between 21 and 23 August 2019. Formal comment was provided by Crown Law in response to a specific request for advice, and feedback was also sought from the Bill of Rights team at the Ministry of Justice.</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
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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
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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
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
The proposed amendments will not apply retrospectively, but will affect prisoners who were sentenced to prison prior to the enactment of the Bill.	

Strict liability or reversal of the 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

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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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?	YES
<p>The SOP would authorise Corrections staff to determine when a prisoner vulnerable to self harm must be strip searched for the purpose of detecting an item that may be used to self harm. This could impact a prisoner's right to be secure against unreasonable search as guaranteed under the Bill of Rights Act. However, Corrections considers this to be justifiable as:</p> <ul style="list-style-type: none"> • searches help ensure the security of the prison, and the safety of prisoners, staff and visitors by preventing contraband entering a site • fewer searches will take place as a result of a number of changes – as these increase the discretion to not search • the Act already requires that the power to use a strip search can only be exercised if it is determined that a strip search is the necessary type of search in the circumstances to detect an unauthorised item • the Act already has a broad principle that all searches are carried out with decency and sensitivity, and in a manner that provides the greatest degree of privacy and dignity • the Bill ensures the impact of decisions are understood by requiring relevant experts are consulted when developing the management plan that outlines such occasions. <p>The SOP would also create a power for Corrections staff to ask those being searched to remove outer clothing and accessories, and to deny entry to a prison. This could impact someone's right to be secure against unreasonable search, or the right to freedom of association, as guaranteed under the Bill of Rights Act. However, Corrections considers this to be justifiable as there are appropriate safeguards including that:</p> <ul style="list-style-type: none"> • the Act already has a broad principle that all searches are carried out with decency and sensitivity, and in a manner that provides the greatest degree of privacy and dignity • a visitor wishing to visit a prisoner can enter the prison as long as they comply with search procedures established in legislation, which are required to determine the presence of unauthorised items • the search provisions are broadly comparable to airport security who have similar safety and security concerns. <p>The SOP would amend the search powers so that prisoners returning from an escorted outing may be strip searched only if there is a valid reason.</p> <p>Moving from a mandatory to a 'valid reason' power requires Corrections staff to assess the circumstances when determining if a strip search is required. Processes and procedures for 'valid reason' searches are already in place for other situations and circumstances, such as those who are on day release to attend work.</p> <p>Response continued in the Appendix under the heading 'Significant decision-making powers – part four'.</p>	

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
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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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
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Appendix: Further Information Relating to Significant Legislative Features

Significant decision-making powers – part four

Amending prisoner mail provisions may engage rights affirmed under the Bill of Rights Act 1990, specifically:

- Section 14 – freedom of expression – some material which prisoners, and those who write to them, are able to send now may be withheld under the amended provisions
- Section 19 – freedom from discrimination – some groups may be more likely to have their mail withheld under the amended provisions where they are overrepresented within the prison population
- Section 21 – freedom from unreasonable search and seizure – the amended provisions may result in increased seizure of mail sent to and from prisoners.

However, Corrections considers the limitations may be justifiable:

- to ensure that Corrections upholds its responsibility to protect public safety (both domestically and internationally) and the safety of prisoners
- to ensure that views which seeks to promote or encourage hostility towards certain groups are not publicly amplified or glorified. This will help to ensure the safety and wellbeing of the community and people in prison – i.e. those who are likely to be the target of such views and people who have previously been subject to harm and may be re-victimised
- to protect victims from being re-traumatised generally.

We also note that all discretionary powers vested in prison managers must be exercised consistently with the New Zealand Bill of Rights Act 1990. Even if a prison manager believes that mail may directly or indirectly result in one of the harms identified in section 108(1)(d)¹, they must still consider right to freedom of expression of the sender and recipient.

The more likely it is that a piece of mail will result in one of the identified harms, the more likely a prison manager will be justified in withholding it. By the same token, the less likely that mail will result in one of the identified harms occurring, the less likely a prison manager will be justified in withholding it.

¹ These harms currently include threatening or intimidating, endangering the safety or welfare of any person, posing a threat to the security of the prison, promoting or encouraging the commission of an offence, prejudicing the maintenance of the law, and breaching an order or direction of any court.