

BRIEFING: Refining the Treaty provisions in the Corrections Amendment Bill

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| To Hon Mark Mitchell, Minister of Corrections | | | |
| Date | 14 February 2024 | Deadline | 16 February 2024 |
| B number | B4690 | Priority | Medium |
| Key contact | Kerry-Leigh Dougall Deputy Chief Executive, Māori 9(2)(a) | Second Contact | Dr Marian Horan Manager, Legislative Policy 9(2)(a) |

Purpose

Further to B4671, this briefing recommends that you approve refining the Tiriti o Waitangi/Treaty of Waitangi provisions currently in the Corrections Amendment Bill (the Bill) that is before the House of Representatives, as described in **Appendix One**. This briefing also recommends that you agree to seek Cabinet's approval to the changes.

Key messages

Refining the Treaty provisions in the current Bill will focus Corrections' resources towards ensuring we have a long-term, sustained approach to improving outcomes for Māori

During the Corrections' officials meeting on 12 February 2024, you suggested the Treaty provisions be refined to ensure they are practical for operational staff and support Corrections to continue its work to improve the long-term outcomes for Māori we manage.

In response, **Appendix One** proposes that we retain the following clauses in the Bill:

- specific Corrections principles for rehabilitation and reintegration to guide the system and engage with Māori, and
- requirements for the chief executive to maintain a specific strategy to improve outcomes for Māori, which will support us to have a sustained focus on improvements.

These clauses are the most critical to achieving the original intent of the Treaty provisions, which is to ensure Corrections consistently focusses on improving outcomes for Māori. Technical experts and iwi partners supported the development of the legislative provisions and are, and will continue to be, critical partners in Corrections delivering rehabilitation and reintegration that meets the needs of Māori. The strategy provides an opportunity for Corrections to prioritise its activities to enable better outcomes for Māori.

In **Appendix One**, we have identified clauses in the current Bill to be removed. The provisions to be removed include, for example, requirements to take into account the views of an offender's family, hapū, and iwi; considering the wellbeing of Māori offenders; and a requirement for Corrections to provide access to mātauranga Māori. Where appropriate for our operational needs, the goals of the clauses being removed can be achieved through the specific strategy to improve outcomes for Māori.

Amending these provisions in a timely way will help ensure the Bill is passed as expected in 2024, and that staff and prisoners benefit from its safety and rehabilitation improvements

Over the past three years, Corrections' operational and policy staff have worked with the Parliamentary Counsel Office to develop complex provisions in the Bill that will give Corrections' staff more powers to monitor communications and gather intelligence from prisoners. These new powers will significantly help to keep staff, prisoners, and the public safe. This is highly valuable at a time when we are managing increasingly complex prisoners, including some who have transnational organised crime connections or extremist ideologies.

Any delay to the Bill means a delay in Corrections' staff accessing these new powers, as well as a delay in staff benefiting from other operational improvements in the Bill that are intended to support rehabilitation and prison safety.

These operational improvements include increased access to the use of body scanners to prevent contraband entering prisons, improved case management processes for prisoner management, and efficiencies in the disciplinary process that supports prison safety. The Bill also enables remand prisoners to mix with convicted and sentenced prisoners for some programmes as this will enable innovative, best practice to develop further.

As we briefed you in B4678, this Bill is also expected to incorporate an amendment that will extend eligibility for offence-based rehabilitation programmes to remand convicted prisoners. This is one of the Government's 100-day plan commitments.

Should you need further time to consider the Treaty provisions, rather than delay the Bill, it is preferable for Corrections that the Treaty provisions be removed from the current Bill 9(2)(f)(iv) [REDACTED] would mean that the operationally focused changes in the current Bill would be realised in 2024, and therefore benefit us sooner. 9(2)(f)(iv) [REDACTED]

We recommend any necessary amendments to the Bill be made through the departmental report to Select Committee

We can provide you with a draft Cabinet paper seeking agreement to the Treaty changes in the Bill to circulate for ministerial consultation in the week of 19 February 2024. We have proposed that the Cabinet paper also contains recommendations for other changes to the Corrections Amendment Bill that we have previously briefed you on [B4673 refers]. We propose Cabinet approve the amendments in March 2024. This will enable the amendments to be included in the departmental report that officials are scheduled to provide to the Justice Committee on 2 April 2024, which will support the Committee's report back to the House of Representatives by 31 May 2024.

| Recommendations | |
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| It is recommended that you: | |
| <p>a. Agree to amend the Treaty provisions in the Corrections Bill, as summarised in Appendix One, which would retain Treaty clauses in the Bill that:</p> <ul style="list-style-type: none"> state the Crown’s intention to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi by providing: <ul style="list-style-type: none"> “principles that guide the operation of the corrections system and support rehabilitation and reintegration of Māori offenders”, and “for the chief executive’s function of ensuring the development, maintenance, and implementation of a strategy that is focused on improving outcomes for Māori in the corrections system” (<i>clause 7 that creates new section 6A, 6A(a), 6A(b) and clause 8 that amends section 8 of the Act</i>) provide clear principles for the Corrections system including: <ul style="list-style-type: none"> “equitable rehabilitation and reintegration outcomes for Māori offenders must be provided for so far as is reasonable and practicable,” and that “Māori must, so far as is reasonable and practicable, be engaged with on matters relating to rehabilitation and reintegration outcomes for Māori offenders, including engagement on a national, regional, and site level on the design, delivery, and monitoring of programmes and services” (<i>clause 6 that creates new section 6(1)(j) and 6(1)(k)</i>) | 9(2)(g)(i), 9(2)(f)(ii) |
| <p>b. Agree that officials draft a Cabinet paper to achieve the changes described in Appendix One for the Cabinet Social Outcomes Committee in March 2024</p> | |
| <p>c. Note that the Cabinet paper will also include other proposed changes to the Bill [B4673 refers].</p> | YES/NO |

| Sign-off | |
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|  Hon Mark Mitchell Minister of Corrections Date signed: 20/02/2024 |  Kerry-Leigh Dougall Deputy Chief Executive Māori Date signed: 14 / 02 / 2024 |

Appendices

- All appendices referenced in this paper are outlined below:
 - Appendix One – Proposed amendments to Treaty provisions in the Corrections Amendment Bill

| Minister comments |
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Appendix One – Proposed amendments to Treaty provisions in the Corrections Amendment Bill

| Clause in Bill and mark up of suggested redactions |
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| Clause 6 of the Bill that will insert new principles to guide the Corrections system into section 6(1)(i) into the Corrections Act |
| <p>This clause would create new section 6(1)(j) “equitable rehabilitation and reintegration outcomes for Māori offenders must be provided for so far as is reasonable and practicable”</p> |
| <p>This clause would create new section 6(1)(k) “Māori must, so far as is reasonable and practicable, be engaged with on matters relating to rehabilitation and reintegration outcomes for Māori offenders, including engagement on a national, regional, and site level on the design, delivery, and monitoring of programmes and services”</p> |
| <p>This clause would create new section 6(1)(l) “the views of an offender’s family and of the hapū and iwi of a Māori offender may, where appropriate and so far as is reasonable and practicable, be taken into account in the decision about which prison the offender is detained in”</p> |
| <p>This clause would create new section 6(1)(m) “the well-being of Māori persons, and all other persons, under control and supervision in the corrections system must be promoted, including by providing access to mātauranga Māori”</p> |
| <p>This clause would create new section 6(1)(n) “approaches to health care for prisoners in a prison must be guided by the health sector principles set out in section 7 of the Pae Ora (Health Futures) Act 2022 as far as is reasonable and practicable”</p> |
| Clause 7 of Bill to insert new section 6A in the Corrections Act – Tiriti o Waitangi/Treaty of Waitangi |
| <p>In order to provide for the Crown’s intention to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi,-</p> <ul style="list-style-type: none"> a) section 6(1)(j) to (n) provides principles that guide the operation of the corrections system and support rehabilitation and reintegration of Māori offenders b) section 8(1)(ka) provides for the chief executive’s function of ensuring the development, maintenance, and implementation of a strategy that is focused on improving outcomes for Māori in the corrections system e) section 62(2)(a)(ia) provides for access, by prisoners who may be temporarily released from custody or temporarily removed from prison, to cultural activities d) section 78(1)(d) provides for access by prisoners to mātauranga Māori e) section 80(2) provides for access by Māori prisoners and other prisoners to cultural activities. |
| Other specific clauses in the Bill |
| <p>Clause 8 – powers and functions of the chief executive The chief executive has the following powers and functions: “(ka) ensuring that a strategy is developed, maintained, and implemented that-</p> <ul style="list-style-type: none"> (i) focuses on improving outcomes for Māori in the corrections system; and (ii) provides requirements for monitoring the outcomes” |
| <p>Clause 17 – temporary release from custody or temporary removal from prison The chief executive may give authority for the temporary release from custody or temporary removal from prison of a prisoner to whom this section applies-</p> |

~~(a) for any purpose specified in regulations made under this Act that the chief executive considers will facilitate the achievement of 1 or more of the following objectives
“(ia) the prisoner’s access to cultural activities”~~

Clause 18 – information and education needs of prisoners

~~A prisoner is entitled-~~

~~“(d) so far as is practicable, to access to mātauranga Māori”~~

Clause 19 – needs relating to particular cultures

~~“(2) Māori prisoners and other prisoners detained in a corrections prison must have access to cultural activities, so far as is reasonable and practicable, regardless of the corrections prison in which they are detained.”~~