

**Hon Kelvin Davis**  
Minister of Corrections

Corrections Amendment Bill  
16 October 2019

These documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not be released if requested under the Official Information Act 1982. Where that is the case, the relevant section of the OIA has been noted.

<b>Documents</b>	<b>Comment</b>
<b>Corrections Amendment Bill: Supplementary Order Paper - Approval for Introduction</b> <i>Cabinet paper</i> Minister of Corrections	Some information has been withheld in accordance with the following sections of the OIA: <ul style="list-style-type: none"><li>• 9(2)(g)(i) - maintain the effective conduct of public affairs through the free and frank expression of opinions</li></ul>
<b>Corrections Amendment Bill: Supplementary Order Paper - Approval for Introduction</b> <i>Minute of Decision</i> Cabinet Legislative Committee	Released in full

In Confidence

Office of the Minister of Corrections  
Chair, Cabinet Legislation Committee

## **Corrections Amendment Bill: Supplementary Order Paper - Approval for Introduction**

### **Proposal**

1. This paper seeks Cabinet approval to table a Supplementary Order Paper (SOP) that amends the Corrections Amendment Bill (the Bill).

### **Background**

2. While the legislation governing the corrections system is generally working well, the Bill makes a number of improvements to:
  - 2.1. the safe, humane and fair management of people in custody
  - 2.2. prisoner discipline
  - 2.3. prison safety.
3. The Bill was introduced on 19 March 2018 and referred to the Justice Committee on 29 March 2018.
4. Some revisions to the Bill are desirable because:
  - 4.1. the Justice Committee were unable to reach agreement on changes recommended in the Departmental Report
  - 4.2. the commencement date of some provisions needs to be amended
  - 4.3. further analysis on strip search provisions in the Corrections Act (the Act) has been completed since the introduction of the Bill
  - 4.4. some changes are required to strengthen prisoner mail provisions in the Act following the attack on the Christchurch mosques
  - 4.5. minor or technical changes are necessary to ensure the Bill achieves its legal purpose.

### **Policy**

*Corrections Amendment Bill: Additional Policy Decisions for Inclusion in a Supplementary Order Paper*

5. On 21 August 2019, Cabinet Social Wellbeing Committee considered a paper titled, '*Corrections Amendment Bill: Additional Policy Decisions for Inclusion in a Supplementary Order Paper*' and agreed to develop a SOP that amends the Bill by:
  - 5.1. revising the proposal regarding prisoners vulnerable to self harm by requiring an individualised approach to strip searching that links search requirements to an individual's needs and risks as identified in their at-risk management plans
  - 5.2. requiring Corrections to tell mothers the reason(s) why an application to have a child placed in their custody has been declined, or why a placement has ended; and the process available to have a decision reconsidered
  - 5.3. requiring Corrections to provide information about complaints processes as part of the information to be given to recently received prisoners
  - 5.4. requiring Corrections to, as far as practicable, provide information upon reception to prison in a form that is accessible and appropriate to the prisoner's abilities and language
  - 5.5. clarifying that restraints can only be used for more than 24 hours if it is necessary to maintain public safety or prevent escape
  - 5.6. allowing Health Centre Managers to delegate their powers and functions to a 'registered health professional'
  - 5.7. requiring Health Centre Managers to consult a 'registered health professional' if the advice they are asked for is outside scope of their practice
  - 5.8. removing the proposal relating to the use of Police jails
  - 5.9. clarifying that Corrections staff have the power to require persons to remove outer clothing and accessories for all types of scanner searches, and to scan these items
  - 5.10. providing Corrections staff the power to refuse admission to a prison and ask individuals to leave a prison, if a person subject to a rub-down or scanner search refuses to remove outer clothing on the grounds that they have no clothing, or only underwear, underneath
  - 5.11. fixing an oversight of the Intelligence and Security Act 2017 by allowing intelligence and security agencies to retain recordings from prisoner phone calls only for as long as is required to enable that agency to perform any of its statutory functions
  - 5.12. clarifying and strengthening the safeguards for disclosing prisoner phone calls by removing the ability to do so through an exemption in the Privacy Act 1993
  - 5.13. amending search provisions to remove the current mandatory requirement to strip search all prisoners returning from an escorted outing

- 5.14. making minor or technical changes necessary to ensure the Bill achieves its legal purpose in the best possible way [SWC-19-MIN-0105] [CAB-19-MIN-0427].
6. The minor and technical changes made to the Bill are as follows:
  - 6.1. 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 clarifies that any fee is set by the Chief Executive of the Department of Corrections
  - 6.2. An original provision in the Bill introduces a statutory review process for decisions about the placement of mothers and the babies in Mothers and Babies Units. The SOP:
    - 6.2.1. 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.
    - 6.2.2. clarifies that, when reconsidering a decision, the Chief Executive must notify the prisoner in writing of the outcome of the reconsideration and the reasons for the outcome.
  - 6.3. 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 makes technical changes to ensure the Bill does not inadvertently change the definitions in that Act.

*Considering Changes to the Corrections System following the attack on Christchurch Mosques*

7. On 2 September 2019, Cabinet considered a paper titled '*Considering Changes to the Corrections System following the attack on Christchurch Mosques*' and agreed to develop an SOP that amends the Bill by:
  - 7.1. lowering the threshold for withholding mail under the section 108(1)(d) grounds by replacing wording in the clause from: '*it is correspondence that the manager believes on reasonable grounds is likely to*' cause one of the identified harms, to: '*the manager believes on reasonable grounds that the correspondence may, directly or indirectly,*' cause one of the identified harms
  - 7.2. authorising Corrections to withhold mail that may, directly or indirectly, promote or encourage hostility towards any group of people on the grounds set out in section 21 of the Human Rights Act 1993
  - 7.3. broaden section 108(1)(d)(i) to authorise withholding mail that threatens or intimidates any person (not just the recipient of mail sent by a prisoner)
  - 7.4. introduce additional considerations to section 104 that Corrections must take into account when managing prisoner mail that reference:

7.4.1. the interests of victims

7.4.2. the potential impacts of the written material on persons beyond the intended recipient, including the potential for sharing and publication of the material

7.4.3. the potential for messages to be disseminated through coded references [CAB-19-MIN-0443].

8. The changes agreed by Cabinet in the two papers have been incorporated into a single SOP.

### **Impact analysis**

#### *Corrections Amendment Bill: Additional Policy Decisions for Inclusion in a Supplementary Order Paper*

9. A Regulatory Impact Assessment (RIA) was prepared in accordance with the relevant requirements, and was considered by Cabinet when it agreed to the drafting of the Bill in 2018. The RIA was updated to reflect additional policy decisions, and was considered by Cabinet Social Wellbeing Committee on 21 August 2019 [SWC-19-MIN-0105] [CAB-19-MIN-0427].
10. Corrections confirms that it has complied with the principles of the Code of Good Regulatory Practice and the regulatory impact analysis requirements.

#### *Considering Changes to the Corrections System following the attack on Christchurch Mosques*

11. A second RIA was developed relating to the prisoner mail proposals and was considered by Cabinet when it agreed to progress with the amendments on 2 September 2019 [CAB-19-MIN-0443].

12. [REDACTED] 9(2)(g)(i) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

### **Compliance**

13. The SOP complies with:

13.1. the principles of the Treaty of Waitangi

13.2. the disclosure statement requirements

13.3. the principles and guidelines set out in the Privacy Act 1993

13.4. relevant international standards and obligations, including the United Nations' Nelson Mandela Rules relating to the treatment of prisoners

- 13.5. Legislation Guidelines, which are maintained by the Legislation Design and Advisory Committee.
14. The Attorney-General has instructed officials from the Ministry of Justice, with support from Crown Law, to vet the prisoner mail components of the SOP for consistency with the rights and freedoms contained within the Bill of Rights Act 1990.

### **Consultation**

#### *Corrections Amendment Bill: Additional Policy Decisions for Inclusion in a Supplementary Order Paper*

15. The following agencies and organisations were consulted on proposals contained in this SOP: The Ministry of Justice, Ministry of Social Development, Ministry of Health, Ministry for Women, Oranga Tamariki, The Treasury, New Zealand Police, New Zealand Security Intelligence Service, The Office for Disability Issues and Te Puni Kōkiri.
16. The Department of Prime Minister and Cabinet was also informed.
17. The Privacy Commissioner, the Office of the Ombudsman, and the Human Rights Commission were consulted prior to Cabinet approving policy decisions.
18. I also discussed the proposals with New Zealand First and the Green Party of Aotearoa New Zealand.

#### *Considering Changes to the Corrections System following the attack on Christchurch Mosques*

19. The following agencies and organisations were consulted on proposals contained in this SOP: The Ministry of Justice, The Treasury, New Zealand Police and Crown Law Office.
20. The Department of Prime Minister and Cabinet was also informed.
21. The Office of the Ombudsman and the Human Rights Commission were consulted prior to Cabinet approving policy decisions.

### **Binding on the Crown**

22. The SOP is binding on the Crown. The proposed amendments are not sufficiently significant or substantive to re-consider whether a review of the binding nature of the principal Act is warranted.

### **Allocation of decision making powers**

23. The Bill does not allocate decision making powers between the courts, the executive and tribunals.

## **Associated regulations**

24. The Bill, as introduced, includes consequential amendments to the Corrections Regulations 2005; however, no further amendments are needed through the SOP.

## **Other instruments**

25. The SOP does not include any provisions empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments.

## **Definition of Minister/department**

26. The SOP does not alter the definition of Minister, Department, or chief executive of a department from that established in the Act.

## **Commencement of legislation**

27. In the Bill as introduced, the commencement clause provided for two mechanisms by which different sections of the resulting Act would come into force. Some sections were specified as coming into force on the day after the date it receives Royal assent. Other sections came into force: (i) on a date as specified in an Order in Council; or (ii) after 6 months if there was no Order in Council in that time.
28. The SOP changes some commencement dates so the following clauses come into force by Order in Council, or on the date that is six months after the date that it receives Royal assent:
  - 28.1. clause 4(2) – Prisoners’ use of psychoactive substances
  - 28.2. clause 9 – Prisoner knowledge of disciplinary offences
  - 28.3. clauses 10, 12, 13, 14, 25(1), 31, 32, 33, 34, and 37 – Management and care of prisoners vulnerable to self-harm
  - 28.4. clauses 25(1AAA) and 25(1AAAB) – Strip searching of prisoners returning from escorted outings.
29. Additional lead-in time is required to ensure operational manuals and guidance is updated, and staff training is provided, before those provision commence.
30. The remaining provisions, including those relating to prisoner mail, will come into force the day after Royal assent.

## **Parliamentary stages**

31. The Bill holds a category three priority on the 2019 Legislation Programme (to be passed if possible in 2019) and passed its second reading on 30 April 2019.
32. I expect that the Bill will be considered by the Committee of the Whole House during the October 2019 sitting block.

33. I propose that the SOP is tabled prior to the Committee of the Whole House stage under Standing Order 306 so that it forms part of the Bill as enacted.

### **Proactive Release**

34. I intend to proactively release a copy of this Cabinet paper under the Official Information Act 1982, and within the 30 business days timeframe set out by Cabinet.

### **Recommendations**

The Minister of Corrections recommends that the Committee:

1. **note** that the Corrections Amendment Bill holds a category 3 priority (to be passed if possible in 2019) on the 2019 Legislation Programme;
2. **note** that the attached Supplementary Order Paper make amendments to the Corrections Amendment Bill;
3. **note** the attached departmental disclosure statement;
4. **agree** that the attached Supplementary Order Paper be released before the Committee of the Whole House stage of the Corrections Amendment Bill;
5. **note** that I intend to table the Supplementary Order Paper at the Committee of the Whole House stage.

Authorised for lodgement

Hon Kelvin Davis  
Minister of Corrections





# Cabinet Legislation Committee

## Minute of Decision

---

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

---

### Corrections Amendment Bill: Supplementary Order Paper

#### Portfolio                      Corrections

On 15 October 2019, the Cabinet Legislation Committee, having been authorised by Cabinet to have Power to Act [CAB-19-MIN-0532]:

- 1        **noted** that in:
  - 1.1      August 2019, the Cabinet Social Wellbeing Committee agreed to amendments to the Bill relating to: strip searching of prisoners vulnerable to self harm; review of mother and baby placement decisions; availability of information about complaints processes; use of mechanical restraints during hospital visits; powers and functions of Health Centre Managers; use of Police jails; search powers and denial of entry; the destruction of recordings and the disclosure of information; and strip searching following an escorted outing [SWC-19-MIN-0105];
  - 1.2      September 2019, Cabinet agreed to amend the Bill to amend the Corrections Act 2004 to give the Department of Corrections a power to withhold mail where the content is likely to promote or encourage hostility towards any group of persons on the grounds listed in section 21 of the Human Rights Act 1993 [CAB-19-MIN-0427];
- 2        **noted** that the Supplementary Order Paper to the Corrections Amendment Bill attached to the submission under LEG-19-SUB-0152 gives effect to the above decisions;
- 3        **noted** that the Corrections Amendment Bill holds a category 3 priority (to be passed if possible in 2019) on the 2019 Legislation Programme;
- 4        **agreed** that the Minister of Corrections release the Supplementary Order Paper to the Corrections Amendment Bill [PCO 18726-1/14.0] before the Bill's Committee of the Whole House stage.

Gerrard Carter  
Committee Secretary

---

**Hard-copy distribution: (see over)**

**Present:**

Rt Hon Winston Peters  
Hon Kelvin Davis  
Hon Andrew Little (Chair)  
Hon Stuart Nash  
Hon Iain Lees-Galloway  
Hon Tracey Martin  
Hon Kris Faafoi  
Hon Eugenie Sage

**Officials present from:**

Office of the Prime Minister  
Officials Committee for LEG

**Hard-copy distribution:**

Minister of Corrections