



Cabinet

Minute of Decision

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Pepper Spray and Mail Copying Corrections Amendments Regulations 2022

Portfolio Corrections

On 21 February 2022, following reference from the Cabinet Legislation Committee, Cabinet:

- 1 **noted** that 4 March 2020, the Cabinet Social Wellbeing Committee (SWC) agreed to:
 - 1.1 amend regulation 84 of the Corrections Regulations 2005 (the Regulations) to support the powers and duties in the Act (including reading, disclosing and withholding mail), to comply with other enactments and rules of law, and to copy mail with the consent of the person in Ara Poutama Aotearoa's care, which will allow copying:
 - 1.1.1 where the correspondence is between the person in Ara Poutama Aotearoa's care and Ara Poutama Aotearoa (which is already permitted in the Regulations);
 - 1.1.2 in order for an authorised person to read an item of correspondence in a copied form (under section 107 of the Act);
 - 1.1.3 in order to disclose information obtained from correspondence (under section 110A);
 - 1.1.4 in order to obtain legal advice to determine:
 - 1.1.4.1 whether there are sufficient grounds to withhold the correspondence under section 108(1);
 - 1.1.4.2 whether correspondence that is withheld under section 108(1) should be forwarded to an enforcement officer under section 108(2);
 - 1.1.4.3 whether mail can be disclosed for another purpose set out in the Act (including where there is a serious and imminent threat to public health and safety, where necessary for court proceedings, where authorised by the privacy commissioner, or to avoid prejudice to the maintenance of the law by a public sector agency – under section 110A(c));
 - 1.1.5 to comply with another enactment or rule of law (section 110A(c));

1.1.6 where the person in Ara Poutama Aotearoa's care consents to a copy being made;

1.2 amend the Regulations to require that any copies are destroyed once their purpose has been served (if there is no other applicable purpose);

[SWC-20-MIN-0007]

2 **noted** that on 20 October 2021, SWC agreed to amend the Corrections Regulations 2005 to:

2.1 explicitly define pepper spray delivery mechanisms by adding broad definitions that describe the key characteristics of the devices currently in use (MK-3, MK-9, and MK-9 with extension wand) and specify which mechanisms can be used in both spontaneous and planned use of force;

2.2 introduce the requirement that only the prison manager or acting prison manager may:

2.2.1 authorise the planned use of pepper spray;

2.2.2 authorise trained Corrections officers to use pepper spray in spontaneous use of force incidents at the discretion of the Corrections Officer;

2.3 state that non-lethal weapons may not be used when that use would represent a use of force that is more than reasonably necessary in the circumstances, in keeping with the Corrections Act 2004;

[SWC-21-MIN-0155]

3 **noted** that the Corrections Amendment Regulations 2022 will give effect to the decisions referred to in paragraphs 1 and 2 above;

4 **authorised** the submission to the Executive Council of the Corrections Amendment Regulations 2022 [PCO 24369/5.0];

5 **noted** that the Corrections Amendment Regulations 2022 come into force on 25 March 2022.

Michael Webster
Secretary of the Cabinet