

Office of the Minister of Corrections

Cabinet Legislation Committee

Corrections Amendment Bill: Approval for Introduction

Proposal

- 1 I seek Cabinet's approval for the introduction of the Corrections Amendment Bill 2023 (the Bill) to improve safety, rehabilitation and reintegration outcomes, and support the Department of Corrections' (Corrections) strategic direction.

Policy

The Bill will enable best practice operations of the corrections system

- 2 The Bill gives effect to policy decisions made by Cabinet in December 2022 [SWC-22-MIN-0244 refers] and amends the Corrections Act 2004 (the Act) [rec 2].
- 3 The amendments are necessary to enable the legislative framework for the corrections system to adapt to changes in best practice and emerging issues. The Bill is guided by Corrections' strategy *Hōkai Rangī*.
- 4 The Bill includes six key areas for amendments to the Act that will:
 - 4.1 modernise and future-proof the Act to enable Corrections to monitor, collect, use, and disclose prisoner communications and information sources, where reasonably necessary for an intelligence purpose. An intelligence purpose is to identify risk and to deter and prevent harm, and to support the good order, safety, and security of prisons
 - 4.2 make the internal disciplinary process for prisoners timelier and more effective, to better ensure the safety and wellbeing of staff and prisoners. Changes include introducing an option for suspended penalties to encourage good behaviour, allowing hearings to proceed without the prisoner if they refuse to attend or are disruptive, and better enabling participants to attend hearings by remote access
 - 4.3 strengthen processes for the authorisation and use of non-lethal weapons on prisoners and ensure that non-lethal weapons cannot be used in cases of passive resistance unless there are reasonable grounds for believing there is an imminent threat of injury or harm. This will strengthen Corrections' transparency, accountability and alignment with international human rights guidance
 - 4.4 enable improved rehabilitation and reintegration outcomes for Māori under Corrections management in prisons and the community, and provide for the Crown's intention to give effect to the principles of Tiriti o Waitangi/the Treaty of Waitangi (Te Tiriti)

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- 4.5 enable limited mixing of remand accused and convicted prisoners for kaupapa Māori, religion, education, and therapeutic programmes to enable Corrections to design and implement innovative non-offence focused programmes and services that prioritise the interests of the prisoner, regardless of their conviction status, and
- 4.6 make miscellaneous amendments that are related to prison operations and are technical in nature, which:
 - 4.6.1 enable greater use of body imaging technology to improve prisoner wellbeing
 - 4.6.2 enable the use of body temperature scanners where there is a health risk that justifies their use
 - 4.6.3 move details about requirements for case management plans into regulations to enable best practice, and
 - 4.6.4 enable information sharing with Inland Revenue for tax purposes.
- 5 The Bill also includes some additional proposals that are minor and technical in nature and which largely clarify existing provisions in the Act. For example, the Bill removes sections 98(3)(b) and 98(6) from the Act, which state the situations in which a Corrections officer **may** strip search a prisoner. This section is unnecessary and causes confusion for staff about whether strip searches **must** be carried out in these situations or **may** be carried out. Section 98D in the Bill provides sufficient clarity about when strip searches may be carried out.

Additional amendments were identified during the Bill drafting stage

I have approved four additional amendments for inclusion in the Bill, using my delegated authority from Cabinet

- 6 In December 2022, Cabinet authorised me to make further decisions on minor and technical matters in line with the policy decisions agreed by Cabinet. In March 2023, I agreed to additional changes that were identified during drafting of the Bill to:
 - 6.1 slightly expand Corrections' ability to withhold harmful material sent by mail, including images, drawings or pictures, if these meet existing withholding criteria for communications contained in mail in the Act. This change aligns with other changes agreed to by Cabinet in December 2022, to enable Corrections to monitor prisoner communications and information for intelligence purposes, including to support public safety **[rec 4.1]**
 - 6.2 update references in the Act that currently refer to the repealed Evidence Amendment Act 1980, to confirm that all privileges provided for in subpart 8 of Part 2 of the Evidence Act 2006 are available to prisoners, despite prisoner communications being monitored **[rec 4.2]**

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- 6.3 update section 122 of the Act, which currently only refers to evidence obtained from monitoring phone calls, to apply to all forms of communication that Corrections will be able to monitor under the changes to these powers being made in the Bill **[rec 4.3]**, and
- 6.4 update existing provisions about the destruction of phone recordings by other agencies to ensure all prisoner information that is disclosed for intelligence purposes is retained and disposed of appropriately by Corrections and other intelligence agencies **[rec 4.4]**.

I seek your agreement to three minor changes made during drafting to the provisions to improve rehabilitation and reintegration outcomes for Māori

- 7 In December 2022, Cabinet agreed to add a requirement to the Corrections Act to enable families, whānau, iwi, and hapū to be involved in decisions made with respect to which prison people are accommodated in, where appropriate to do so [SWC-22-MIN-0244 refers].
- 8 In working on drafting to give effect to this decision, it was decided that the principles would state that 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 **[rec 5]**.
- 9 Cabinet also previously agreed to new principles for the Corrections Act, including one to promote the wellbeing of Māori and other people in the corrections system. I also seek your agreement for the drafting of this principle to state that promoting wellbeing includes the provision of mātauranga Māori **[rec 6]**.
- 10 I also note that Cabinet agreed that the Bill would require Corrections to provide health services that include kaupapa Māori approaches and health sector principles. This has been reflected in drafting by referencing health sector principles in the Pae Ora (Healthy Futures) Act 2022, which include kaupapa Māori approaches.
- 11 Following feedback from the Office of the Privacy Commissioner, officials have also removed caveats of 'so far as reasonably practicable' from requirements to dispose of images from imaging technology searches in section 92C, and I seek your agreement to this change **[rec 7]**.

I also seek your agreement to introduce the Bill without the artificial intelligence provisions that Cabinet agreed to in December 2022

- 12 I recommend that provisions relating to the use of artificial intelligence for intelligence purposes in prisons are not included in the Bill, in response to feedback from the Office of the Privacy Commissioner **[rec 8]**.
- 13 In December 2022, Cabinet agreed that the Bill would include provisions to allow the Minister of Corrections to authorise Corrections to use artificial intelligence technologies for intelligence purposes, if the Minister is satisfied

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that the potential benefits of using the technology outweigh the potential risks and that the use of the technology will not have a disproportionate impact on any one group.

- 14 The Office of the Privacy Commissioner provided feedback to officials during drafting that they did not recommend including these provisions in the Bill while work is ongoing to develop an all-of-government approach to the use of these technologies.
- 15 Corrections has no immediate plans for the use of artificial intelligence but could introduce these technologies operationally in future, and officials are monitoring what is happening with these technologies in prisons internationally. My officials will work with other agencies, including the Office of the Privacy Commissioner, if the use of artificial intelligence is considered for use in prisons in future **[rec 9]**.

An additional minor change regarding case management plans was identified during drafting

- 16 In December 2022, Cabinet agreed that the Corrections Act would be amended to specify that case management plans must be developed for every prisoner, with the detail of those plans to be set out in Regulations. Currently the Corrections Act requires every prisoner sentenced to imprisonment or remanded in custody for more than two months to have a case management plan made. As described in my Cabinet paper from December 2022, the policy change to move the detail of case management plans to Regulations enables best practice to be adapted over time.
- 17 During drafting, it was identified that it was not the policy intent to require a case management plan to be developed for every prisoner. This is because it is not practical or necessary for every prisoner to have a case management plan, particularly for people who are remanded in custody for a short period of time.
- 18 The Bill therefore now states that Regulations will be made specifying which classes of prisoner must have a case management plan developed and that Regulations will set out the detail of these plans. I seek your agreement to this minor amendment **[rec 10]**.

Drafting for gender diverse prisoners to choose the sex of the officer they are searched has been effected by linking to an existing process in the Corrections Regulations 2005 (the Regulations)

- 19 In December 2022, Cabinet agreed that gender diverse prisoners could nominate the sex of the officer to carry out or view a strip search, rub-down search, or imaging technology search of the prisoner. To give effect to this decision, drafting needed to define the group of prisoners who should be allowed to nominate the sex of the officer who searches them.
- 20 This has been achieved in the Bill by linking to an existing process in the Regulations for determining a prisoner's sex for the purpose of

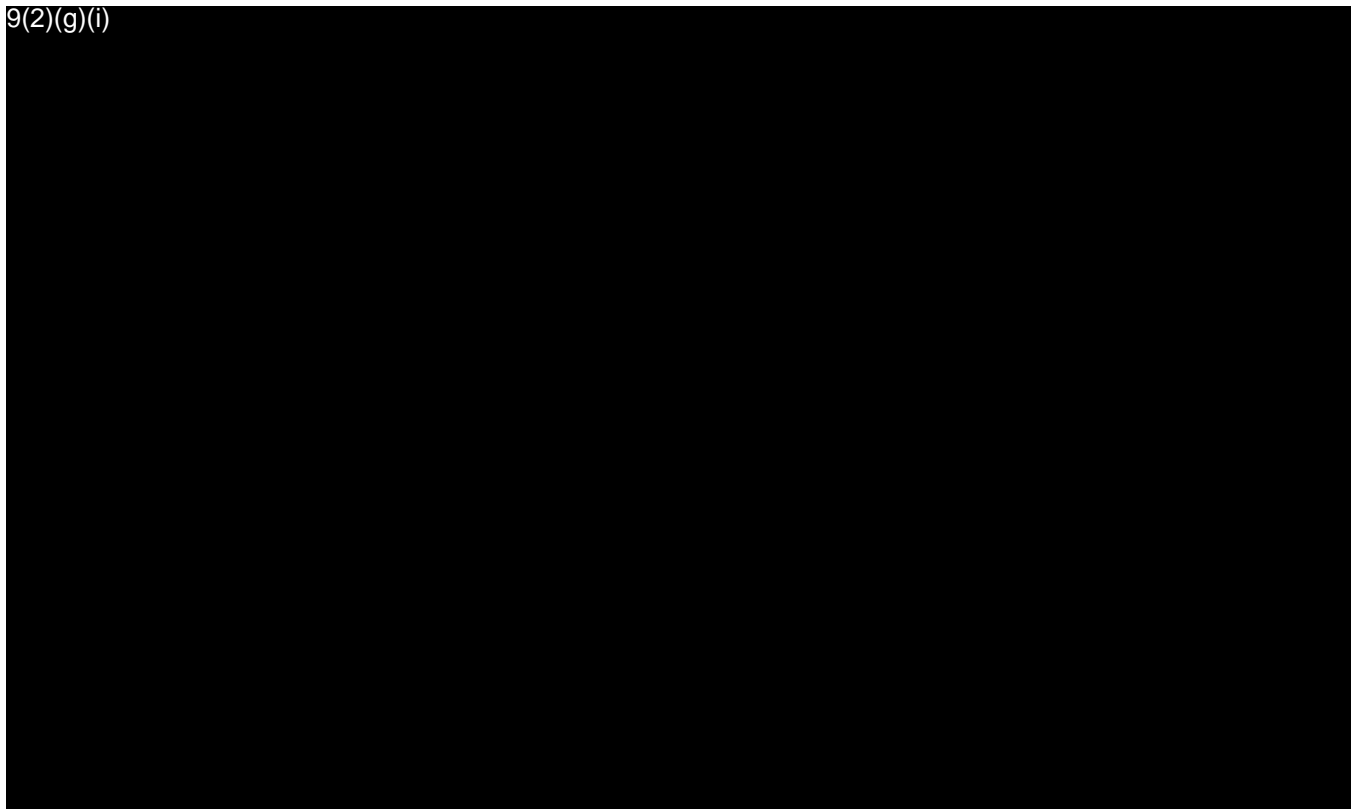
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accommodation. This process is about determining whether to place a person in a men's or women's prison and the process does not prevent Corrections from recognising a prisoner's gender identity.

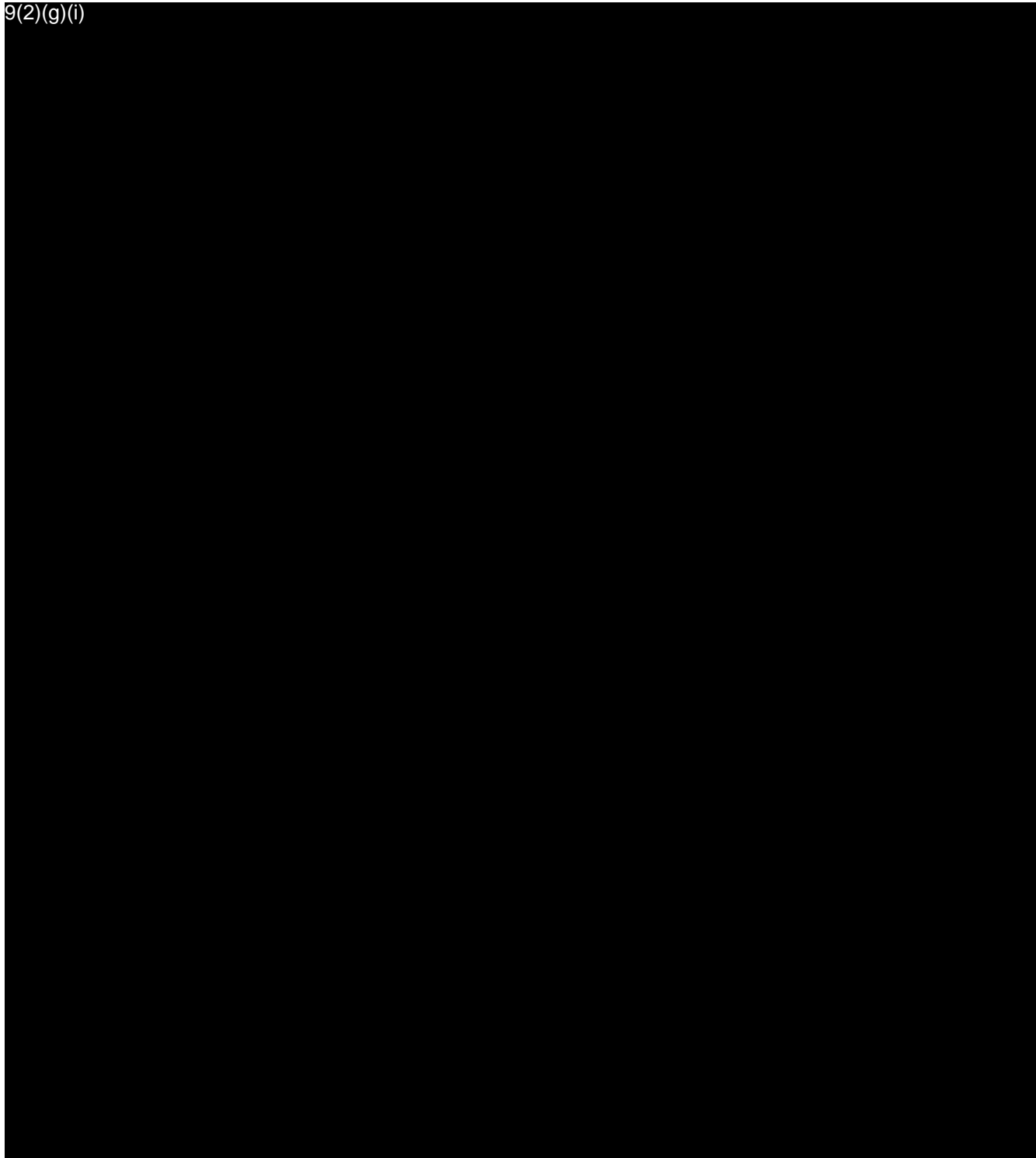
- 21 The Bill states that any prisoner who has undergone such a determination will be entitled to choose the sex of the officer who searches them. Not every gender diverse prisoner will have undergone a determination of sex for the purpose of accommodation, so this solution may increase the risk that some gender diverse people will be not offered the opportunity to choose the sex of the officer who searches them. My officials will consider ways of minimising this risk through implementation, for example by improving the process for staff to confirm a prisoner's gender when they are first received into prison.
- 22 By comparison, the Civil Aviation Act 2023 allows all people to reasonably request to be searched by a person of a specific sex. The option to allow all prisoners the ability to express a preference for the sex of the officer who searches them was considered during drafting. However, I consider the proposed drafting is the most pragmatic solution to minimise the risk of cisgender prisoners exploiting this legislative power for personal gratification.
- 23 Allowing every prisoner to express a preference for the sex of the officer who searches them would also place a significant burden on staff to make decisions every day about whether these requests are reasonable. Defining the group of prisoners who may choose the sex of the officer who searches them is therefore a more practical option.
- 24 I expect that this section of drafting may be further discussed at Select Committee stage and welcome the feedback that the Bill will receive from public submissions.

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Impact analysis

- 33 A Regulatory Impact Statement (RIS) was developed when policy decisions were sought from Cabinet in December 2022 and therefore a RIS was not prepared alongside this Cabinet paper [SWC-22-MIN-0244 refers].
- 34 A joint quality assurance panel made up of members from the Department of Corrections, Ministry of Justice, New Zealand Police, and Oranga Tamariki reviewed that RIS and assessed the majority of the RIS as **meeting** the Quality Assurance criteria. Two miscellaneous sections were assessed as

partially meeting the criteria, including the sections regarding the use of body temperature scanners and information sharing with Inland Revenue.

Compliance

Treaty of Waitangi

- 35 The Bill recognises and is consistent with the principles of Te Tiriti. My officials engaged with Māori in developing proposals in the Bill, including through hui with iwi and receiving written submissions from iwi, and Māori organisations and individuals.
- 36 The Bill creates new principles for the Corrections Act that are based on Te Tiriti principles, and imposes new legislative requirements on Corrections that are aimed at improving rehabilitation and reintegration outcomes for Māori. The proposed amendments are pragmatic and will support improved outcomes for Māori and all people in the corrections system and support the Crown to give effect to the principles of Te Tiriti.
- 37 Māori are overrepresented in the prison population and therefore the changes in this Bill are more likely to impact Māori compared to the rest of the prison population. I consider that the proposals for monitoring, collecting, using and disclosing information for intelligence purposes will positively impact the safety of people in prison and public safety. My officials engaged with iwi partners last year and feedback was that monitoring should only be targeted at high-risk individuals and only where reasonably necessary. The drafting reflects this feedback.
- 38 The changes to enable the limited mixing of accused and convicted prisoners will improve wellbeing for Māori in prison, including by supporting whānau in prison to maintain connections regardless of their conviction status, including by being able to mix to participate in programmes such as Māori Pathways.

Human rights

- 39 The Bill is being vetted for compliance with the New Zealand Bill of Rights Act 1990 (NZBORA).
- 40 Changes relating to monitoring, collecting, using and disclosing information for intelligence purposes include safeguards to minimise the impact they have on human rights, including the right to privacy and the right to be free from unreasonable search and seizure. These safeguards include:
- 40.1 a clearly defined purpose for the monitoring, collection, use and disclosure of information
 - 40.2 that monitoring, collection and use must be reasonably necessary for that purpose
 - 40.3 requiring approval from the chief executive to monitor in-person visits, and

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- 40.4 requirements to provide warnings to prisoners and people that communicate with prisoners that their communications may be monitored.
- 41 The provision for all prisoner calls to be able to be monitored is included in the Bill, as this is currently provided for in the Corrections Act and it is important that the Bill does not unintentionally limit Corrections' existing operational practice.
- 42 The recommended options to refine the disciplinary processes in prison will bring greater alignment with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Rule 37 requires that conduct constituting a disciplinary offence, the types and sanctions that may be imposed, and the authority competent to impose such sanctions be authorised by law or regulation of the competent administrative authority. The proposals are in line with section 27 of NZBORA, which guarantees the right to the observance of the principles of natural justice. Although disciplinary processes in prison are not criminal, the options were also guided by the International Covenant on Civil and Political Rights (ICCPR) requirements for criminal procedures.
- 43 The proposals to strengthen processes for the authorisation and use of non-lethal weapons in prisons will better align with sections 99 and 23(5)10 of NZBORA than the status quo. This will be achieved by ensuring that when the Minister approves non-lethal weapons, they are satisfied that the weapons are humane and the benefits outweigh the risks. This will happen during the process of Ministerial and Cabinet authorisation for any regulatory changes, requiring officials to provide comprehensive information and data to support the decision-making process.
- 44 The wider ability to use imaging technology in place of rub-down searches when a prisoner enters or re-enters prison complies with human rights obligations under section 21 and section 9 of NZBORA, by ensuring that the least invasive and most proportionate search method is used. This option also aligns with the Bangkok Rules for the Treatment of Women Prisoners, particularly Rule 20, which states that alternative screening methods such as scans should replace invasive body searches. This option also aligns with Article 16 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to prevent acts of cruel, inhumane or degrading treatment.
- 45 The use of body temperature scanners impacts the section 21 NZBORA right against unreasonable search and seizure. To minimise this impact, body temperature scans will only be enabled for use when there is a justified health risk, such as COVID-19. This ensures privacy is not unnecessarily breached.
- 46 Corrections understands the ICCPR and its obligation to keep remand accused and convicted prisoners separate. This is relevant to the proposal to enable the limited mixing of remand accused and convicted prisoners for kaupapa Māori, religion, education, and therapeutic programmes. Due to the limited nature of the mixing proposed, with remand accused and convicted

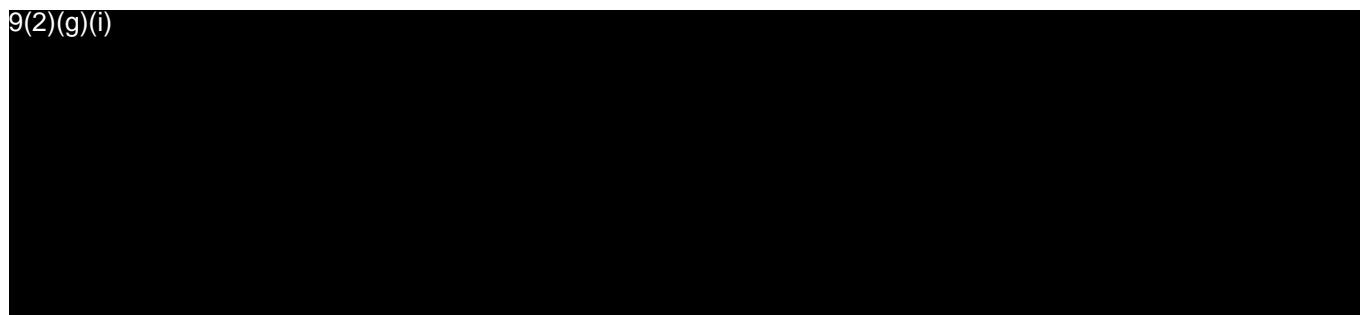
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prisoners being subjected to different treatment and the fact that remand accused prisoners would need to consent to the programme, this proposal would comply with the ICCPR.

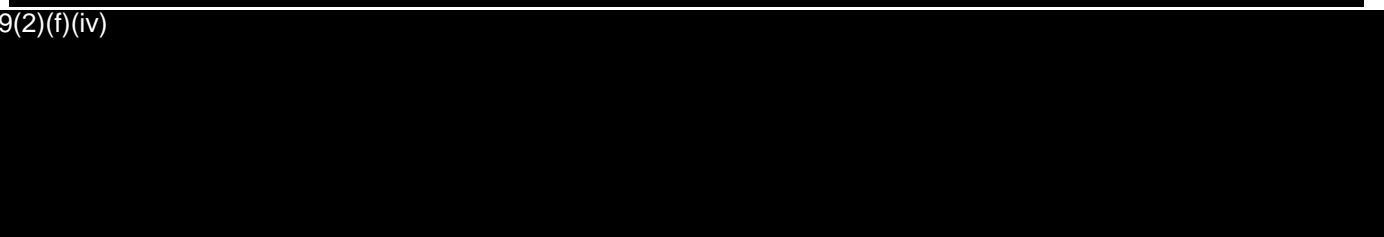
Privacy

- 47 In drafting the Bill, officials considered the principles and guidelines set out in the Privacy Act 2020. The proposals for monitoring prisoner communications and activities for intelligence purposes take into account information privacy principles. Although the proposals enable Corrections to collect more information, this will be for a lawful purpose and only where reasonably necessary, with monitoring targeted at the highest risk prisoners. Corrections will continue to take into account information privacy principles when implementing these proposals.
- 48 The proposal to expand situations where body imaging scanners may be used also involves greater collection of personal information. This proposal also takes information privacy principles into account, including by requiring images taken to be deleted within 24 hours and to only be viewed by corrections officers of the same sex as the prisoner, or of the sex nominated by the prisoner if they are gender diverse.
- 49 Corrections completed Privacy Impact Assessments (PIAs) for both of these proposals, which found impacts on some Information Privacy Principles and proposed mitigations. The Office of the Privacy Commissioner were consulted about these PIAs, at which point the Privacy Commissioner raised significant concerns and the need for further work. The PIAs have been updated to incorporate this feedback, and as advised, Corrections will continue to maintain the Privacy Impact Assessments as living documents and revise them as the proposals are implemented.
- 50 The Bill complies with the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 51 A disclosure statement for the Bill has been prepared noting the above and is attached to this paper.

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Consultation

- 54 In August 2022, Cabinet approved the release of a discussion document on options to improve outcomes in the corrections system [SWC-22-MIN-0137 refers]. Public consultation ran for six weeks over August and September 2022. Corrections proactively emailed over 500 partners and key stakeholders to inform them about consultation. 195 survey responses and 57 written submissions were received. My officials met with a variety of individuals and groups including iwi, the Office of the Ombudsman, and the Human Rights Commission. Engagement also occurred with prisoners at two sites. The Salvation Army's public submission also included views from people who have been in prison.
- 55 The following agencies and organisations were previously consulted on proposals contained in this Bill, and have been consulted on this paper and an earlier version of the draft Bill attached: Ministry of Justice, Ministry of Education, Ministry of Social Development, Ministry of Health, Ministry for Women, Ministry for Pacific Peoples, Ministry for Ethnic Communities, Ministry of Foreign Affairs and Trade, Oranga Tamariki, Te Arawhiti, New Zealand Customs Service, Public Service Commission, Crown Law Office, Office of the Privacy Commissioner, the Treasury, New Zealand Police, New Zealand Security Intelligence Service, Te Puni Kōkiri, Inland Revenue Department, and Department of Internal Affairs. The Department of Prime Minister and Cabinet was also informed.
- 56 The Office of the Ombudsman was consulted on the draft Bill and have indicated that the Chief Ombudsman may wish to make a public submission on the Bill when it is at select committee.
- 57 The Treaty Provisions Oversight Group and Crown Law, were consulted on the drafting of these provisions, and their feedback has been incorporated, as agreed by Cabinet in December 2022 [SWC-22-MIN-0244 refers].

Binding on the Crown

- 58 The Bill amends the Corrections Act 2004, which is binding on the Crown.

Creating new agencies or amending law relating to existing agencies.

- 59 No new agencies will be created by the Bill.

Allocation of decision-making powers

- 60 The Bill does not involve the allocation of decision-making powers between the executive, the courts, and tribunals.

Associated regulations

61 Amendments to the Corrections Regulations 2005 will be required to give effect to some of the proposals contained in the Bill. These will be passed in 2024 and will include:

61.1 regulations detailing what must be included in a prisoner's case management plan, and

61.2 regulations to enable the limited mixing of remand accused and convicted prisoners, for kaupapa Māori, education, religion and therapeutic programmes.

Other instruments

62 This Bill authorises the Governor-General to exempt a class of persons by Order in Council from having their communications with a prisoner monitored under subpart 4A (monitoring, collecting, using, and disclosing prisoner communications and information sources).

63 The Order in Council that exempts a class of people would be secondary legislation. This is consistent with current law for exemptions for monitoring of prisoner calls.

Definition of Minister/department

64 The Bill does not contain a definition of Minister, department (or equivalent government agency), or chief executive of a department (or equivalent position).

Commencement of legislation

65 The Bill's provisions, except sections 11, 12, 21, 20, 49 to 52, and 56 will come into force on the day after the date of Royal Assent.

66 Those sections related to case management plans will come into force on a date set by Order in Council, or 1 year after Royal Assent at the latest. This will enable these sections to come into force on the same date as new regulations that will be made containing requirements for case management plans.

Parliamentary stages

67 The Bill holds a category four priority on the 2023 Legislation Programme (to be referred to a Select Committee before the 2023 general election **[rec 11]**).

68 I propose that the Bill be introduced in the week of 12 June 2023 and referred to the Justice Select Committee for consideration.

Proactive Release

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

Recommendations

I recommend that the Committee:

- 1 **note** that in August 2022 Cabinet approved the release of the discussion document, Consultation on options to improve rehabilitation, reintegration, and safety outcomes for the corrections system [SWC-22-MIN-0137 refers];
- 2 **note** that following public consultation and further analysis, in December 2022, Cabinet invited the Minister of Corrections to issue drafting instructions to the Parliamentary Counsel Office to amend the Corrections Act 2004 to give effect to the decisions below, where Cabinet [SWC-22-MIN-0244 refers];

Modernise and future-proof the Corrections Act 2004 (the Act) to clarify Corrections' powers to monitor prisoner communications and activities for intelligence purposes

- 2.1 agreed to introduce specific provisions into the legislative framework that empower and restrict Corrections' ability to monitor, collect, use, and disclose different forms of prisoner communications and information sources for intelligence purposes when reasonably necessary, justified and proportionate, and to notify prisoners and people communicating with prisoners generally that such communications may be monitored, to support the good order and safety of prisons and public safety, including to allow for:
 - 2.1.1 the monitoring of, and the collection, use, and disclosure of information obtained from verbal communications, such as phone calls and video calling;
 - 2.1.2 the monitoring of, and the collection, use, and disclosure of information obtained from, written communications, such as mail and email;
 - 2.1.3 the monitoring of, and the collection, use and disclosure of information obtained from visual sources, such as images (including drawings and symbols) or video footage;
 - 2.1.4 the monitoring of, and the collection, use, and disclosure of information obtained from digital communications and information sources, such as internet services, open source information, incident reports, biometric information, and trust accounts;
 - 2.1.5 the monitoring of, and the collection, use, and disclosure of information obtained from in person visits, on a case-by-case

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basis, and only when the Chief Executive of Corrections (or a senior delegate) has been satisfied that it is reasonably necessary to support the good order and safety of prisons and improve public safety;

- 2.2 agreed to allow Corrections to disclose information collected from prisoner communications to other government employees for the purpose of translating information to decipher different or coded language that may have harmful messaging;
- 2.3 agreed to allow the Minister of Corrections (the Minister) to authorise Corrections to use technology such as Artificial Intelligence for the purpose of monitoring and collecting information from prisoner communications and activities, if the Minister is satisfied that the benefits of using the technology outweigh any risks, and that the use of the technology will not have a disproportionate impact on any one group as far as is reasonably practicable;
- 2.4 agreed to create a regulation making power for detail to be set out in the Corrections Regulations 2005 (the Regulations) about what the Minister must consider to be satisfied that the benefits of using technology such as Artificial Intelligence outweigh any risks;
- 2.5 agreed to:
 - 2.5.1 repeal the provision relating to recordings of phone calls to be destroyed after two years; and
 - 2.5.2 add new provisions that information collected to monitor prisoner activities and communications, and for an intelligence purpose as set out in paragraphs 2.1.1 to 2.1.5 above, may only be retained for as long as is reasonably necessary for the purpose it was collected, which will be supported by further detail in Corrections' operational disposal schedule that is developed with the Chief Archivist;
- 2.6 agreed to introduce provisions that provide grounds for disclosure of information collected from prisoner communications and information sources set out in paragraphs 2.1.1 to 2.1.5 above in circumstances modelled on existing disclosure provisions in the Act for mail and phone calls, to create consistency for how and when information is disclosed to particular agencies, such as the Police;
- 2.7 agreed to allow Corrections to use and disclose information collected from prisoner communications and information sources as set out in paragraphs 2.1.1 to 2.1.5 above for the purpose of complying with any enactment or rule of law, such as the Privacy Act 2020;

Ensuring the internal disciplinary process in prisons is effective

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- 2.8 agreed to specify that when an Adjudicator or Visiting Justice imposes a penalty for an offence against discipline, they may choose to suspend the penalty for up to three months if this is appropriate and in the interests of the person's rehabilitation and reintegration, and that if the person offends against discipline again during the suspended penalty period the initial penalty will be imposed;
- 2.9 agreed to exempt suspended penalties from the requirement that all penalties begin immediately after they have been imposed;
- 2.10 agreed to clarify that an appeal of a decision for which a suspended penalty has been imposed does not affect the suspension period;
- 2.11 agreed to allow Adjudicators and Visiting Justice's to decide to proceed with misconduct hearings and impose penalties without the accused being present if the person refuses to attend, or if an Adjudicator or Visiting Justice requires them to leave the hearing on the grounds of disruptive behaviour, and make associated changes to the Regulations;
- 2.12 agreed to require the Adjudicator or Visiting Justice to record in writing the rationale for the decision to proceed with the hearing without the accused person present;
- 2.13 agreed to allow a re-hearing to be requested by the prisoner concerned when the decision of a Visiting Justice at a hearing that proceeded without the accused person present is disputed, or if the Visiting Justice is satisfied that the accused person had a reasonable excuse for nonattendance that was not known at the time of the hearing, or it is in the interests of justice;
- 2.14 agreed to allow those attending a misconduct hearing to attend via remote access, if the Adjudicator or Visiting Justice considers this is not contrary to the interests of justice, but limit the use of audio-only links to only be used if it is not possible to facilitate a hearing in-person or via video link;
- 2.15 agreed to require the rationale for the decision to proceed with a misconduct hearing via remote access to be recorded in writing;
- 2.16 agreed to specify that inciting others in prison to commit an offence against discipline is an offence against discipline itself;

Supporting improved rehabilitation and reintegration outcomes for Māori

- 2.17 agreed to amend the Act to incorporate a reference to Te Tiriti o Waitangi/the Treaty of Waitangi;

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- 2.18 agreed to incorporate three new principles that are derived from principles of Te Tiriti o Waitangi/The Treaty of Waitangi that would, so far as reasonably practicable, support the Corrections system to provide for equitable outcomes for Māori, engage and work with Māori, and promote the wellbeing of Māori and other people;
- 2.19 agreed to add the following five additional requirements to the legislative framework:
- 2.19.1 to develop and maintain a strategy that is focused on improving outcomes for Māori in the corrections system, that would include an approach to monitor the strategy's outcomes;
 - 2.19.2 for prisoners at all sites, including Māori, to be able to access cultural activities, including through temporary release;
 - 2.19.3 to provide health services that include kaupapa Māori approaches and health sector principles, in order to improve outcomes for all people in prison;
 - 2.19.4 to provide mātauranga Māori as part of the provision of education programmes in prison;
 - 2.19.5 to enable families, whānau, iwi and hapū to be involved in decisions made with respect to which prison people are accommodated in, where appropriate to do so;
- 2.20 agreed that the amendments in paragraphs 2.17 to 2.19 above will be developed in consultation with the Treaty Provisions Oversight Group and Crown Law Office, and subject to appropriate caveats about being reasonable and practicable within the circumstances;

Enabling the mixing of remand accused and convicted prisoners, with the consent of the remand accused prisoner

- 2.21 agreed to amend the legislative framework to allow the limited mixing of remand accused and convicted prisoners for kaupapa Māori, education, religion and therapeutic programmes, with the consent of the remand accused person, and that mixing is enabled despite any international obligations;
- 2.22 agreed to make any necessary amendments to ensure the Act and the Regulations continue to clearly permit mixing of accused and convicted prisoners in Mothers with Babies Units and mixing of young people under 18 and adults;

Enabling greater use of body imaging technology

- 2.23 agreed:

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- 2.23.1 to remove the restriction that requires images produced as a result of an imaging technology search to avoid showing a clear image of the body beneath clothing and to obscure genitals, when this technology is used in place of a rub-down search of a prisoner, when that rub-down search is done upon re-entry to a prison (such as following temporary removal or release);
- 2.23.2 that the body imaging scan may only be used in place of a rub-down search where the prisoner consents;
- 2.24 agreed to require that any data collected during an imaging technology scan must be deleted so far as reasonably practicable within 24 hours;
- 2.25 agreed to enable a gender diverse prisoner to nominate whether a strip search, rub-down search, or an imaging technology search is conducted or viewed by a male or female officer;

Other miscellaneous amendments

- 2.26 agreed to specify that a scanner search may be used on any person entering a prison for the purpose of measuring their body temperature, where there is a necessary and justifiable health risk for their use and where approved by a prison manager (this would be voluntary for statutory and specified visitors who have rights to enter prisons) and that images taken by body temperature scanners would be deleted no more than one hour after they were taken;
- 2.27 agreed to specify in the Act that case management plans must be developed for every prisoner, with a Regulation making power for the detail of those plans;
- 2.28 agreed to specify in the Regulations that the detail of case management plans will include when they must be reviewed, and that a wellbeing plan is developed within one week of someone being received to prison, and that a rehabilitation plan for convicted people is to be developed within one month of them being received to prison;
- 2.29 agreed to allow Corrections to disclose prisoner information (with appropriate protections for people's privacy) to Inland Revenue on an ongoing basis for the purpose of complying with the tax system;

Minor and technical amendments

- 2.30 agreed to make the following five minor and technical amendments to the legislative framework:
 - 2.30.1 clarify that prison managers can refuse to issue authorised property to someone who has been assessed as at risk of

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self-harm, which may be appropriate in some situations to keep people safe;

- 2.30.2 clarify that a prisoner may be subject to ongoing assessments of their risk of self-harm regardless of whether they were assessed as being at risk of self-harm on reception into a prison;
- 2.30.3 clarify that prison managers have the power to deny or restrict associations for prisoners assessed as at-risk;
- 2.30.4 change the term 'management plan' used in section 51 of the Act to 'case management plan', to differentiate this term from other types of management plans referred to in legislation;
- 2.30.5 remove section 98(3)(b) and 98(6) from the Act, which set out situations in which a Corrections officer may strip search a prisoner, as this section is unnecessary and causes confusion about whether strip searches must be carried out in these situations;

Additional amendments were identified during drafting

- 3 **note** that in December 2022 Cabinet authorised the Minister of Corrections to make any further decisions on minor and technical matters in line with the policy decisions agreed above [SWC-22-MIN-0244 refers];
- 4 **note** that in March 2023 the Minister of Corrections agreed to the following four additional minor and technical amendments for inclusion in the Bill, using powers delegated by Cabinet referred to in paragraph 3 above;
 - 4.1 slightly expand Corrections' ability to withhold harmful material sent by mail, including images, drawings or pictures, if these meet existing withholding criteria for communications contained in mail in the Act;
 - 4.2 update references in the Act that currently refer to the repealed Evidence Amendment Act 1980, to confirm that all privileges provided for in subpart 8 of Part 2 of the Evidence Act 2006 are available to prisoners, despite prisoner communications being monitored;
 - 4.3 update section 122 of the Act to apply to all forms of communication that Corrections will be able to monitor under the changes to these powers being made in the Bill;
 - 4.4 update existing provisions about the destruction of phone recordings by other agencies to ensure all prisoner information that is disclosed for intelligence purposes is retained and disposed of appropriately by Corrections and other intelligence agencies;
- 5 **agree** that the Bill will state that it is a principle of the Act that the views of an offender's family, and of the hapū and iwi of a Māori offender may, where

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appropriate and so far as is reasonable and practicable, be taken into account in the decision about which prison the offender is detained in;

- 6 **agree** that the new principle for the corrections system to promote the wellbeing of Māori and others in the corrections system, will include through the provision of mātauranga Māori;
- 7 **agree** that the Corrections Amendment Bill 2023 will not include the caveat of 'so far as reasonably practicable' for the requirement to dispose of images from imaging technology searches (see recommendation 2.24 above) that Cabinet agreed to in December 2022 [SWC-22-MIN-0244 refers];
- 8 **agree** that the Corrections Amendment Bill 2023 not include specific drafting relating to the use of artificial intelligence (see recommendations 2.3 and 2.4 above) that Cabinet agreed to in December 2022 [SWC-22-MIN-0244 refers];
- 9 **note** that Corrections will continue to work with other agencies, including the Office of the Privacy Commissioner, on an all of government approach to the use of artificial intelligence technologies;
- 10 **agree** that the Bill will state that regulations will prescribe the classes of prisoners to whom the requirement to develop a case management plan applies and set out the detail of those plans;
- 11 **note** that the Corrections Amendment Bill 2023 holds a category four priority on the 2023 Legislation Programme;

I intend to introduce a Bill in June 2023

- 12 **approve** the Corrections Amendment Bill 2023 for introduction, subject to final approval of the government caucus, and sufficient support in the House of Representatives;
- 13 **agree** that the Bill be introduced in the week of 12 June 2023 and referred to the Justice Select Committee for consideration;
- 14 **note** that PCO will continue to make drafting changes to address outstanding matters and minor and technical amendments up until the Cabinet meeting on 12 June 2023; and
- 15 **agree** that PCO can continue to make minor and technical changes to the Corrections Amendment Bill 2023 up until its introduction.

Authorised for lodgement

Hon Kelvin Davis

Minister of Corrections

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