

**In Confidence**

Office of the Minister of Corrections

Cabinet Social Outcomes Committee

**Approval to make additional amendments to the Corrections Amendment Bill that is currently before the Justice Committee**

**Proposal**

- 1 This paper seeks Cabinet approval to make additional changes to the Corrections Amendment Bill (the Bill) in response to public submissions, as well as to achieve newly identified operational refinements and address minor drafting issues, and to support Government policy.

**Relation to government priorities**

- 2 The additional changes that have been identified since the Bill was introduced will better support frontline operations, improve prison safety, and provide better outcomes for the rehabilitation and reintegration of people in the corrections system.
- 3 Changes also include refining the Treaty of Waitangi provisions currently contained in the Bill to better align with Government policy around Treaty references in legislation. The Bill is attached as Appendix One.

**Executive Summary**

- 4 The Bill aims to improve rehabilitation and reintegration for prisoners, and safety for prisoners, staff, and the public. The Bill will enable best-practice operations by ensuring that the Corrections Act 2004 (the Act) is updated to respond to Corrections' changing environment. The Bill was introduced into the House of Representatives on 21 June 2023 and referred to the Justice Committee. Public submissions were open until 10 August 2023.
- 5 I seek Cabinet approval to make additional changes to the Bill in response to public submissions, as well as to achieve newly identified operational refinements, and to support Government policies. Despite being relatively minor changes, Cabinet approval is required as the changes relate to matters on which Cabinet has previously made related decisions, the changes impact the Act more widely, or they are new policy matters. These changes include:
  - 5.1 preventing delays to prisoner disciplinary processes, by amending the Bill to remove prisoners' ability to request a rehearing after a hearing has been held in their absence due to them refusing to attend
  - 5.2 expanding the use of body imaging searches (e.g. body scanners) in the Bill to enable body imaging searches to be used as an alternative to rub-down searches at any time and place in a prison

- 5.3 clarifying that prisoners identified as being at-risk of self-harm do not need to be strip-searched when they enter a cell designed for managing at-risk prisoners if they have been strip-searched immediately prior and a further search is not considered necessary
  - 5.4 introducing formal review periods for prisoners identified as being at risk of self-harm, or segregated from the mainstream population for medical oversight, to better ensure that such prisoners are not separated from the mainstream prison population for longer than is necessary (see regulatory impact statement in Appendix Two)
  - 5.5 9(2)(f)(iv) [REDACTED]
  - 5.6 9(2)(g)(i), 9(2)(f)(ii) [REDACTED]
  - 5.7 replacing all references to “non-lethal weapons” in the Corrections Act 2004 with “less-lethal weapons” to make it clearer that all weapons may have lethal consequences, which better complies with international and United Nations guidance.
- 6 Subject to Cabinet agreement, I recommend that these changes are proposed for inclusion in the Bill through the departmental report on the Bill that Corrections is required to provide to the Justice Committee in early April 2024. This process ensures the changes are made efficiently and makes the best use of Parliamentary Counsel Office (PCO) time.
- 7 In considering the departmental report, the Justice Committee will then determine whether to incorporate these changes through its standard deliberations. PCO would make any changes through the revision tracked version of the Bill before it is returned to the House.

**Background**

*The Corrections Amendment Bill was reinstated in the House on 6 December 2023*

- 8 On 19 December 2022, Cabinet made policy decisions for the Bill and on 12 June 2023, Cabinet agreed to introduce the Bill [CAB-22-MIN-0589, and CAB-23-MIN-0235 refer].
- 9 The Bill was introduced into the House on 21 June 2023, and was referred to the Justice Committee. The Bill was reinstated in the House on 6 December 2023 after lapsing when Parliament was dissolved on 8 September 2023, prior to the 2023 General Election.

## IN CONFIDENCE

*Cabinet recently approved the submission of an Amendment Paper to the Justice Committee regarding extending eligibility for offence-based rehabilitation programmes to remand prisoners*

- 10 On 13 December 2023, Cabinet agreed to achieve a 100-day commitment and extend eligibility for remand convicted prisoners to access offence-based rehabilitation programmes, and create stronger expectations that Corrections will deliver programmes to all remand prisoners [CAB-23-MIN-0491 refers]. The Amendment Paper approved by Cabinet on 19 February 2024, prior to being submitted to the Justice Committee for their consideration, gives effect to that policy decision.

### **I recommend Cabinet agrees to a number of changes to the Bill**

- 11 I seek Cabinet's agreement to make specific amendments to the Bill, in response to officials' consideration of the 40 public submissions on the Bill, as well as to support operational refinements and address minor drafting issues, and to support Government policy.
- 12 Subject to Cabinet agreement, the majority of these changes will be recommended to the Justice Committee through the departmental report that Corrections will provide to the committee in early April 2024. The proposed change to allow body imaging searches to be used as an alternative to rub-down searches at any time requires Cabinet approval. This is because Cabinet has previously made a specific decision on the matter [CAB-22-MIN-0589 refers].
- 13 The Justice Committee will determine whether to incorporate these changes through its standard deliberations. PCO will make any changes through the revision tracked version of the Bill before it is returned to the House. However, in the event that the Justice Committee does not progress these changes, I will look to include them in an Amendment Paper for Committee of the Whole House.

### **Summary of the changes for which I seek Cabinet approval**

*Preventing delays to prisoner disciplinary processes, by amending the Bill to remove prisoners' ability to request a rehearing after a hearing has been held in their absence due to them refusing to attend*

- 14 I recommend refining the current drafting of provisions in the Bill relating to disciplinary process hearings proceeding without the prisoner present, to remove the ability for prisoners to request a rehearing from Visiting Justices when the hearing proceeded without them. This change to the Bill will ensure a more effective and timely disciplinary process, as Visiting Justices will be able to effectively undertake their roles. It will also provide consistency across the disciplinary processes as no other Visiting Justice decisions have a right of appeal or right to a rehearing.
- 15 To mitigate any impacts on natural justice of this change, I recommend strengthening the rights of prisoners in the Bill when disciplinary hearings proceed without prisoners. I propose that the Bill be amended to require Corrections staff present to record the details of how and when the prisoner was given the opportunity to attend a hearing and has refused, and require a not-guilty plea to be entered by Corrections staff on the prisoner's behalf.

- 16 These changes were recommended by submitters and will help to ensure natural justice principles continue to be supported. I also consider any natural justice implications are further mitigated as the wider disciplinary process already enables prisoners to have recourse to the High Court through judicial review.

*Expanding the use of body imaging searches in the Bill to enable imaging searches to be used as an alternative to rub-down searches at any time*

- 17 I recommend amending the Bill to enable imaging technology searches (for example, body imaging scanners) to be used as an alternative to rub-down searches at any time in a prison. This change requires Cabinet agreement as Cabinet had previously agreed to enable the wider use of body imaging technology as a replacement for rub-down searches only upon re-entry to prison and that is how the Bill was drafted [SWC-22-MIN-0244 refers].

- 18 The scanners prevent contraband from entering prisons, and staff and prisoners have reported a preference for them as being more efficient and less invasive than a rub-down search. Scanners are currently only used in the areas where prisoners enter prison, and to limit the use of scanners to ensure radiation limits were not exceeded the original drafting proposed only extending the use of scanners in those entry points. Operationally, it has now been identified that scanners may be used in other areas of prisons in the future, and the Act should be future proofed to enable this. Concerns about limiting exposure to radiation can be addressed as Corrections' technology now has the capability to track the number of scans conducted on a prisoner, even if they are transferred to different prisons.

*Clarifying that prisoners at-risk of self-harm do not need to be strip-searched in certain circumstances to improve efficiency and balance privacy with security*

- 19 I recommend amending the Bill to clarify that prisoners who were assessed as at risk of self-harm ("at-risk prisoners") upon entry into prison do not need to be strip-searched when they enter an at-risk cell if they have already been recently strip-searched, and a corrections officer does not consider it necessary. This change will complement changes already in the Bill and described above in relation to the use of body imaging scanners. It also creates efficiencies for operational staff.
- 20 The Act currently requires prisoners to be strip-searched when they are first received into prison and for at-risk prisoners to be strip-searched when they enter an at-risk cell, until an at-risk management plan is established for them. This means that prisoners who are received into prison and immediately assessed as at-risk may be strip-searched twice in quick succession when it is not necessary. The proposed change eliminates the need for these unnecessary searches.

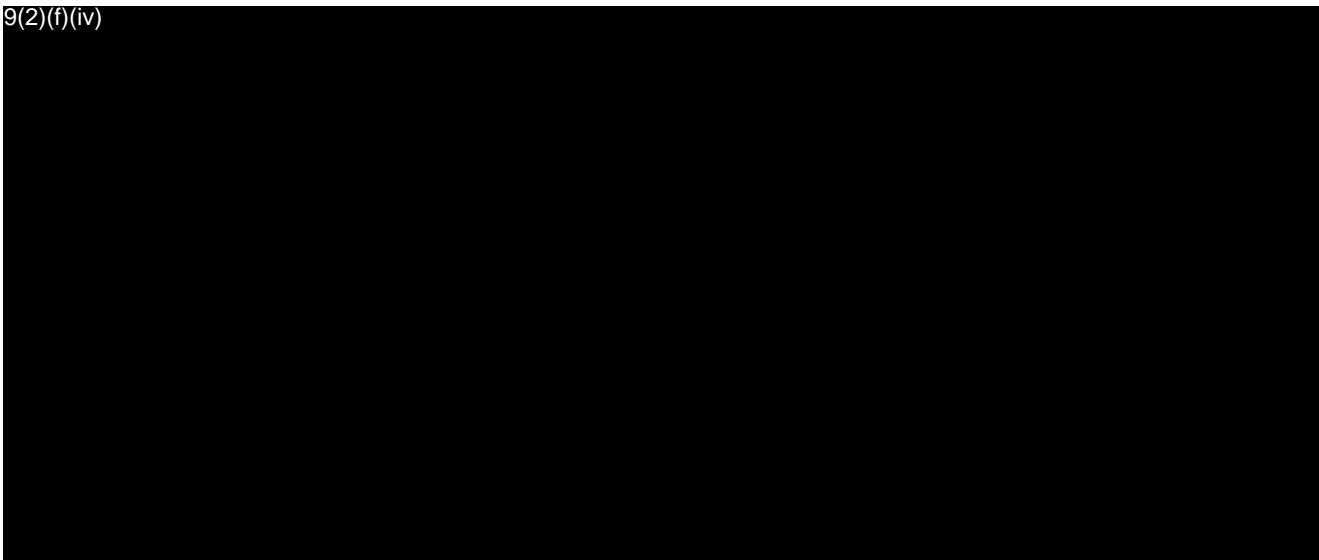
*Introducing formal review periods for prisoners under the at-risk regime or segregated for medical oversight, to provide greater protections for prisoners who are separated from the mainstream prison population*

- 21 I recommend that we make an additional policy decision to amend the Act through the Bill to require daily reviews of any decision to restrict or deny association for prisoners at-risk of self-harm and for prisoners segregated for the purposes of medical oversight. Operationally, these prisoners are checked daily by health and custodial

staff as part of managing their health and safety. However, there are currently no legislative timeframes for a review of the decision to segregate these prisoners, as there are for prisoners segregated for other reasons. The change we are proposing would not be a new task in the day of the staff overseeing these prisoners, and operational change is minimal as the review of the segregation status can be completed at the same time as staff conduct their daily check.

- 22 As this is a new policy that is not addressed by the Bill, Cabinet agreement is required. This legislative change was recommended by the Office of the Inspectorate in 2023 to provide greater protections for prisoners who are separated from the mainstream prison population. Making this amendment now supports a long-term phased approach to ensuring that prison staff are enabled to use segregation to support prisoner wellbeing and prison safety in ways that oversight entities such as the Inspectorate have confidence in.

9(2)(f)(iv)



9(2)(g)(i), 9(2)(f)(ii)



- 25 The Bill currently before the Justice Committee contains clauses relating to how Corrections delivers its core rehabilitation and reintegration functions guided by the Treaty. These proposals are expected to contribute to reduced reoffending and help improve public safety. 9(2)(g)(i), 9(2)(f)(ii)



26 9(2)(g)(i), 9(2)(f)(ii)



9(2)(g)(i), 9(2)(f)(ii)

27 9(2)(g)(i), 9(2)(f)(ii)

28 9(2)(g)(i), 9(2)(f)(ii)

29 9(2)(g)(i), 9(2)(f)(ii)

*Replacing all references to “non-lethal weapons” in the Bill and the Act with “less-lethal weapons”, to make it clearer that they could have lethal consequences*

30 I recommend amending the Bill to replace all references in the Bill and the Act to “non-lethal weapons” with “less-lethal weapons”. The term less-lethal clarifies that all weapons can sometimes be lethal. We propose this additional amendment now because in their submissions to the Justice Committee on the Bill the Human Rights Commission and Ombudsman both proposed this change. Their advice is informed by guidance the United Nations released in 2020.<sup>1</sup>

31 While this is a minor change, as it would impact the Act more widely, I believe it is appropriate to make this change through the Bill, as the Bill also makes other amendments aimed at enabling best practice in the authorisation and use of less-lethal weapons. This amendment will not have any operational impact and will not introduce any authority to use lethal force. There will also need to be consequential amendments to the Corrections Regulations 2005 to align with the updated terminology in the Act. This would occur as part of a package of amendments planned for late 2024, once the Bill is passed.

**Cost-of-living Implications**

32 There are no cost-of-living implications from this paper.

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<sup>1</sup> In 2020, following two years of research and consultation, the United Nations released guidance as to the use of less-lethal weapons in law enforcement. This guidance recommended using the terminology of “less-lethal” given that the use of any weapon can have fatal consequences.

### Financial Implications

- 33 If Cabinet agrees to these changes, there will be costs associated with operational changes to support implementation, such as updates to practice guidance and staff training. Corrections will meet these costs from within baselines.

### Impact Analysis

#### Regulatory Impact Statement

- 34 The proposal in recommendation 4 relating to review periods for prisoners segregated when at risk of self-harm or for mental health reasons is analysed in the Regulatory Impact Statement (RIS) attached to this paper in **Appendix One**. This RIS was evaluated by policy staff from Police and Corrections. The panel has assessed the RIS as partially meeting the quality assurance criteria. The panel noted there has been no consultation on the proposals and options. They noted there is limited data on the scale of the issue, which creates limitations on the analysis. The panel were of the view that the analysis could have been strengthened by considering a wider series of options to address the problem and support the stated objective of ensuring prisoners are not segregated or on “at-risk” for longer than necessary.
- 35 The Treasury’s Regulatory Impact Analysis team has determined that the proposals in recommendations 1-3, 5, and 7 are exempt from the requirement to provide a Regulatory Impact Statement on the grounds that they have no or only minor impacts on businesses, individuals, and not-for-profit entities. The proposal in recommendation 1 has also been addressed by existing impact analysis.
- 36 Cabinet’s impact analysis requirements apply to the proposed changes to the Treaty of Waitangi provisions, but there is no accompanying Regulatory Impact Statement and the Treasury has not exempted the proposal from the impact analysis requirements. Therefore, it does not meet Cabinet’s requirements for regulatory proposals. Treasury and Corrections have agreed that a regulatory impact statement will be completed before the Committee of the Whole House considers the Bill.
- 37 I note that a regulatory impact statement that met requirements and covered the Treaty provisions was considered by Cabinet in December 2022 when it approved the original policy intent. Updating that statement will form part of the regulatory analysis that is now under development. **9(2)(g)(i), 9(2)(f)(ii)**

### Climate Implications of Policy Assessment

- 38 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to these proposals as the threshold for significance is not met.

### Population Implications

- 39 The potential population impacts of my proposals are described in the table below.

**IN CONFIDENCE**

<b>Population group</b>	<b>How the proposal may affect this group</b>
Māori	<p>Māori are overrepresented in the corrections system, comprising 52 percent of people in prison as of January 2024 (and 68 percent of women in prison). Hence, the proposals summarised in this paper are more likely to impact Māori compared to the rest of the prison population.</p> <p><b>9(2)(g)(i), 9(2)(f)(ii)</b></p> <p>Strengthening the process for disciplinary hearings to proceed without prisoners and requiring evidence from corrections officers that prisoners have refused to attend their hearings will improve hearing wait times for Māori prisoners. This may positively impact their oranga/wellbeing, and ensure matters are resolved more swiftly.</p> <p>Fewer Māori would be subjected to invasive strip or rub-down searches if changes are made that allow for the wider use of imaging technology, and for imaging searches to be used as an alternative to rub-down searches at any time.</p> <p>Introducing statutory review periods for prisoners identified as being at-risk of self-harm, or those who have been segregated for medical oversight will positively impact and provide greater protections for Māori in prison.</p>
Women	<p>As of 23 January 2024, there are 600 women in prison. As noted, wāhine Māori are overrepresented among this group, and currently make up approximately 68 percent of women in prison.</p> <p>Changes to the disciplinary hearings process will prevent hearing delays for women prisoners, which may have a positive effect on their oranga/wellbeing.</p> <p>Fewer women would be subjected to invasive strip searches if changes allow for imaging searches to be used as an alternative to rub-down searches at any time. Women prisoners who are identified as at-risk of self-harm and suffer from mental health issues will be positively impacted by the clarification that at-risk prisoners do not need to be strip-searched when they enter an at-risk cell if they have already been strip-searched immediately prior and a further search is not considered necessary.</p> <p>Introducing formal review periods for at-risk prisoners or those who have been segregated for medical oversight will positively impact and provide greater protections for women prisoners.</p>
Disabled people, including people with mental illness or distress in prison	<p>Changes to disciplinary hearings will ensure disabled prisoners' cases are progressed through the hearings process quicker, which may have a positive impact on their mental health and wellbeing.</p> <p>Disabled prisoners would be subject to fewer strip searches as a result of changes to allow for imaging searches to be used as an alternative to rub-down searches at any time. This could positively impact prisoners who are suffering from mental illness, especially those who have suffered trauma and sexual abuse, or who are experiencing body dysphoria.</p> <p>The clarification that prisoners identified at-risk of self-harm do not need to be strip-searched when they enter an at-risk cell if they have already been strip-searched immediately prior, will positively impact prisoners who are suffering from mental illness as they will not be subject to unnecessary strip-searches.</p> <p>Introducing formal review periods for prisoners at-risk of self-harm or those who have been segregated for medical oversight will positively impact prisoners who are disabled and/or suffer from mental illness or distress and provide them greater protections.</p>
Young people	<p>As of 23 January 2024, there were 887 young adults (under 25-years-old) in prison. Māori youth are overrepresented among these groups, and currently make up 58.6 percent of young adults in prison.</p> <p>Changes to the disciplinary hearings process will prevent hearing delays for young prisoners and may have a positive effect on their wellbeing. Youth-</p>



	<p>specific considerations, such as a prisoner’s age, development, and rehabilitation needs will be taken into account, to ensure their right to a fair hearing. Safeguards will be in place to ensure young prisoners receive legal advice/support to navigate the implications of not attending a disciplinary hearing.</p> <p>Fewer young prisoners would be subjected to invasive strip searches if changes allow for the wider use of imaging technology, and for imaging searches to be used as an alternative to rub-down searches at any time.</p> <p>The change to introduce statutory review periods for prisoners who have been segregated for medical oversight or are being managed as they are at-risk of self-harm will positively impact young prisoners and provide them greater protections.</p>
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**Human Rights**

- 40 The proposal to replace all references to “non-lethal weapons” with “less-lethal weapons” will clarify that the use of these weapons can be lethal, as recommended by United Nations guidance issued in 2020. This proposal, alongside existing changes in the Bill, will align with sections 9 and 23(5) of the New Zealand Bill of Rights Act (NZBORA).
  
- 41 The proposals to strengthen the disciplinary processes in prison align with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), in particular, Rule 37.<sup>2</sup> The proposals are in line with section 27 of NZBORA, which guarantees the right to the observance of the principles of natural justice (i.e., the rule against bias and the right to a fair hearing).
  
- 42 Allowing body imaging scanners to be used as an alternative to rub-down searches at any time complies with human rights obligations under NZBORA, by ensuring that the least invasive and most proportionate search method is used. This proposal also aligns with the Bangkok Rules for the Treatment of Women Prisoners, in particular Rule 20, which states that alternative screening methods such as scans should replace invasive body searches. The proposal to clarify that prisoners at-risk of self-harm do not need to be strip-searched when they enter an at-risk cell if they have already been strip-searched upon reception to prison also complies with the above human rights obligations.
  
- 43 The proposal to require daily reviews of the decision to restrict or deny association for prisoners at-risk of self-harm and for prisoners segregated for the purposes of medical oversight aligns with NZBORA and Rules 43-45 of the Mandela Rules. This proposal creates clearer safeguards that the human rights of prisoners will be upheld because they will not be subject to restrictions for longer than is necessary as their management will be reviewed daily.

**Use of external resources**

- 44 No external resources were engaged as part of the preparation of the policy advice in this paper.

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<sup>2</sup> 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.

**Consultation**

45 The following government agencies and organisations have been consulted in the development of this paper: Crown Law Office, Ministry of Justice, New Zealand Police, Oranga Tamariki, Te Arawhiti, Department of the Prime Minister and Cabinet, Ministry of Health, and the Treasury.

46 9(2)(h) [Redacted]

47 With regard to the increased use of body scanners, Oranga Tamariki raised the importance of ensuring that operational guidance requires staff to consider potential health risks associated with exposing young people with pre-existing health issues to radiation and an invasive and uncomfortable process that infringes on their right to privacy. During the trials of the body imaging scanners in prisons, staff and prisoners reported that they found these scanners far less invasive than undertaking a rub-down or strip-search. However, during the implementation of these changes, Corrections will ensure that operational policies record the importance of considering pre-existing health issues prior to exposing prisoners to radiation.

**Proactive Release**

48 I will proactively release this Cabinet paper within 30 days of the final Cabinet decisions. Any information that may need to be withheld will be done so in line with the provisions of the Official Information Act 1982.

**Recommendations**

The Minister of Corrections recommends that the Committee agree to make the following changes to the Corrections Amendment Bill:

- 1 **agree** to remove from the Bill the ability for prisoners to request a rehearing from Visiting Justices when a disciplinary hearing proceeded without them, and to instead require corrections officers to provide evidence that the prisoner refused to attend a hearing, and for a not-guilty plea to be entered on the prisoner’s behalf;
- 2 **agree** to expand the use of body imaging searches in the Bill to enable body imaging searches in prisons to be used as an alternative to rub-down searches at any time, in order to enable scanners to be introduced more widely in prisons;
- 3 **agree** to clarify in the Bill that when a prisoner is segregated from the mainstream as at-risk of self-harm upon entry to prison that they do not need to be strip-searched in the specific circumstances where they have immediately prior to segregation been strip-searched, to improve efficiency and balance privacy with security;
- 4 **agree** to require daily reviews of the segregation status of prisoners segregated from the mainstream as they are at risk of self-harm or segregated for medical oversight, to

provide greater protections for prisoners who are separated from the mainstream prison population;

9(2)(f)(iv)

9(2)(g)(i), 9(2)(f)(ii)

- 7 **agree** to replace all references to “non-lethal weapons” in the Corrections Act 2004 with “less-lethal weapons,” to make it clearer that all weapons can have lethal consequences;
- 8 **note** that the Department of Corrections will include these Cabinet decisions in its departmental report for the Justice Committee;
- 9 **agree** to include these changes in an Amendment Paper for Committee of the Whole House if the Justice Committee does not progress these changes.

Authorised for lodgement

Hon Mark Mitchell

Minister of Corrections

**Appendix One: Corrections Amendment Bill**

**Appendix Two: Regulatory Impact Statement: Improving the management of prisoners subject to health-related segregation and at-risk regimes**