

Regulatory Impact Statement:

Corrections Amendment Regulations 2017

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Department of Corrections.

It provides an analysis of options to enhance the legislative framework of the corrections system. In particular, it reviews options for amendments to Corrections Regulations 2005 (Regulations) to:

- better support the safe and humane administration of prisons;
- promote the reintegration of prisoners into the community on release;
- protect victims of crime from undue distress; and
- reduce legal risks to the Department of Corrections.

Analysis of each issue was informed by consideration of relevant information including, where appropriate, information from comparable jurisdictions. As the problems in these areas relate to the legislative regime, most interventions require an amendment to Regulations.

The Ministries of Health, Justice and Social Development, New Zealand Police, Te Puni Kōkiri, Ministry for Women, Treasury, Office of the Ombudsman, and Office of the Privacy Commissioner were consulted. The Department of the Prime Minister and Cabinet and State Services Commission were informed.

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Executive summary

- 1 An issue with the legislative framework has been identified as presenting barriers to the humane and effective management of prisons.

ISSUE

Improved access to pepper spray

Current Position:

Pepper spray may only be carried by officers in planned use of force situations, and therefore is not an option when dealing with incidents that arise spontaneously.

Proposal:

Enable Prison Directors to issue pepper spray to officers, subject to any conditions or restrictions imposed by the Chief Executive.

1. Improved access to pepper spray

Status quo and problem definition

- 2 Oleoresin capsicum spray, more generally known as “pepper spray”, is widely used by law enforcement agencies to subdue people who are behaving in a dangerous, violent, or combative manner. Pepper spray has been available to prison personnel since 2012, when it was rolled out nationally following a twelve month trial. Trained officers may employ it as a tactical option if the Prison Director reasonably believes it is, or will be, necessary to use force against a prisoner.
- 3 Under current Regulations, prison personnel are not permitted to carry pepper spray in the normal course of their duties. Pepper spray can only be assigned in anticipation of a planned use of force situation, such as extracting a prisoner from their cell. It must be promptly returned to storage when no longer needed, and cannot be carried outside the prison.
- 4 These provisions restrict the ability of trained personnel from using pepper spray in ‘spontaneous’ situations. In 2015/16 there were 17 serious assaults on staff and over 470 other assaults.¹ Analysis of a small sample of injury assaults on staff showed that the incidents unfolded over very short timeframes, and none involved a planned use of force.² In these circumstances, pepper spray could have been a useful tool to defuse the situation.

Objectives

- 5 The objectives of this proposal are to ensure that provisions relating to the carriage of pepper spray sufficiently improve the safety and security of prisons, in particular, through enhancing the ability of staff to respond to unanticipated events.

¹ *Annual Report of the Department of Corrections for the year ended 30 June 2016.*

² Department of Corrections, *Health and safety assessment prison staff assaults*, p3.

Options and impact analysis

Option 1

- 6 The preferred option is to provide corrections officers with improved access to pepper spray both in ‘planned’ use of force situations and ‘spontaneous’ situations, including escorts outside of prison. This would require amendments to the Regulations, and consequential amendments to the Arms Regulations 1992.
- 7 Under this proposal, the Prison Director would be able to authorise regular access to pepper spray for prison personnel trained in its use, subject to the conditions and restrictions of the Chief Executive. Generally, one officer per unit will carry pepper spray while on duty, but the policy would provide for flexibility in this approach.
- 8 There are some risks to extending the use of pepper spray. There are some health risks associated with pepper spray so its inclusion in everyday practice could increase the likelihood of health incidents. This risk is higher in spaces where the ventilation systems are not designed for rapid dispersal of chemical agents, such as in escort vehicles and some prison facilities. Other potential risks include:
 - pepper spray being used without reasonable cause;
 - canisters being taken by prisoners and used against staff or other prisoners;
 - adverse impact on relationships between staff and prisoners;
 - adverse impact on vulnerable groups, particularly prisoners with serious mental health issues; and
 - incidents involving members of the public, with attendant litigation and reputational issues.
- 9 Overall, pepper spray is a safe tactical option, with a low risk of injury compared with other means of force³. The risks identified above can be mitigated to a large extent by ensuring that staff receive appropriate training and guidance.

Option 2

- 10 Another option is to limit the use of pepper spray to the perimeters of prison land. This provides similar opportunities to option one, but pepper spray would not be available to staff escorting prisoners outside the prison.
- 11 This option provides the opportunity to remove some of the risks described in paragraph 8. Pepper spray would not be used in escort vehicles, so the health risks associated with air circulation would be reduced. There is also a reduced risk that pepper spray would also be a factor in any incidents involving members of the public.

³ According to data provided by the New Zealand Police, only 2.6% of incidents involving the use of pepper resulted in injury to the subject, a lower injury rate than for handcuffs, batons and “empty hand” force.

- 12 These risks were considered minor compared to the benefits of expanding access to pepper spray outside of prisons. Potentially, pepper spray would be useful as a tactical option in spontaneous incidents occurring during the escort of prisoners, for example, in a remote location where rapid police assistance is unlikely to be obtained.

Conclusions and recommendations

- 13 *Improved access to pepper spray* – Provide corrections officers with improved access to pepper spray both in ‘planned’ use of force situations and ‘spontaneous’ situations, including escorts outside of prison.

Implementation plan

- 14 The amendments, if made, will be implemented by the Department of Corrections through normal operational channels. There are no significant additional costs envisaged, and all implementation costs and risks will be managed within the Department’s baseline funding.
- 15 In general, the amendments require additional guidance and training for practitioners:
- a) *Improved access to pepper spray* – Guidance and, if necessary, additional training would be provided to staff to ensure the safe implementation of the new Regulations.

Monitoring, evaluation and review

- 16 The intention of these amendments is to make a number of improvements to the current legislative framework of the corrections system. This will contribute to achieving the Department’s outcomes of improving public safety, reducing reoffending and better public value. It is therefore not envisaged that there will be any change to departmental performance indicators and data collection, or a review process. Any improvements in efficiency and effectiveness in terms of staff time and consistency of process will be monitored in routine internal service improvement processes and internal audit.