

**In Confidence**

Office of the Minister of Corrections

Cabinet 100-Day Plan Committee

**Progressing the 100-day plan commitment to extend eligibility for offence-based rehabilitative programmes to remand convicted prisoners**

**Proposal**

- 1 This paper seeks agreement to amend the Corrections Act 2004 (the Act) to 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. These changes will be progressed through an Amendment Paper to the Corrections Amendment Bill (the Bill).

**Relation to government priorities**

- 2 Extending eligibility for remand prisoners to access offence-based rehabilitation programmes is a 100-day plan commitment of the government [CAB-23-MIN-0468 refers].

**Executive Summary**

- 3 The corrections system was designed to provide rehabilitation and reintegration to sentenced prisoners, to help reduce re-offending and improve public safety. However, there is now a higher proportion of prisoners who are on remand (not yet convicted of a crime or sentenced) and Corrections needs to adapt to provide increased support to these prisoners to improve public safety and rehabilitation outcomes.
- 4 There are two distinct categories of remand prisoners. Remand accused prisoners have not been convicted and have a right to be presumed innocent until proven guilty. Remand convicted prisoners have been convicted and are in custody awaiting sentencing. Prisoners do not always sit clearly in one category. For example, they may be remand accused for some offences, but remand convicted for others.
- 5 I seek Cabinet approval to amend the Act to create stronger expectations that Corrections will deliver programmes to all prisoners. This will include specifically enabling remand convicted prisoners to be provided with access to rehabilitation and reintegration support that is offence-based, which will impact approximately 1,360 prisoners. Remand accused prisoners will be provided with reintegration programmes and services and other non-offence-based support. The different approach is needed for remand accused prisoners as Corrections has an obligation to treat them as innocent until convicted and this change would be difficult to operationalise.
- 6 I recommend that this change is progressed through an Amendment Paper to the Corrections Amendment Bill, which was introduced to the House on 21 June 2023 by the previous Government and has been reinstated by the current Government.

- 7 These amendments would enable longer term changes to the design and delivery of programmes in prisons. There are significant operational considerations to be worked through in implementing this change, and work to optimise the delivery of programmes and services to deliver both greater efficiency and effectiveness will be achieved over a period of years. 9(2)(f)(iv)

## Background

*Corrections has historically designed its rehabilitation and reintegration to focus on sentenced prisoners*

- 8 The corrections legislative framework was designed to provide rehabilitation and reintegration to sentenced prisoners, to help reduce re-offending and improve public safety. The purpose and principles of the Act include the provision of rehabilitation and reintegration to offenders and the Act requires the Chief Executive to ensure, to the extent consistent with the resources available, that rehabilitative programmes are provided to sentenced prisoners who will benefit from the programmes.
- 9 In 2022-2023, Corrections spent \$346.6m in its appropriation, “Reoffending is Reduced”.

*The proportion of prisoners on remand has increased significantly since 2013*

- 10 There is now a higher proportion of remand prisoners and Corrections needs to adapt to provide increased support to remand prisoners to improve public safety and rehabilitation outcomes.
- 11 Remand accused prisoners are in prison awaiting trial and have not been convicted of an offence. Remand convicted prisoners have been convicted of an offence and are in prison awaiting sentencing. These prisoners may not necessarily be sentenced to imprisonment and could have a community-based sentence imposed, such as home detention.
- 12 Whether a person is remanded in custody is determined by the courts and Corrections does not control the size of the remand population that it manages.
- 13 As of 1 October 2023, the total number of remand prisoners was 3,858, comprising 43 percent of the total prison population of 8,893 prisoners. Of these remand prisoners, 65 percent were remand accused and 35 percent were remand convicted. This is an increase in remand numbers from 2013 when the remand population was approximately 19 percent. Remand figures for Māori are higher, currently 47 percent of Māori in prison are on remand.
- 14 Prisoners are spending longer on remand. This may be because cases are taking longer to progress through the courts. This means that when prisoners are sentenced, they have less time available to complete rehabilitative programmes before they finish their prison sentence. For example, the percentage of prisoners spending their entire sentence on remand has increased from 13 percent in 2017 to 23 percent in 2023. The median length of time people spend as remand accused has increased, from 19 days in

2015/16, to 25 days in 2022/23. The median length of time people spend as remand convicted has also increased, from 36 days in 2015/16, to 44 days in 2022/23.

*Legislation currently requires accused and convicted prisoners to be treated differently according to their conviction status*

- 15 Section 5 of the Corrections Act states that the Act and the Corrections Regulations 2005 are based, amongst other matters, on the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules). The Mandela Rules require remand accused prisoners who have not been convicted to be “presumed innocent and treated as such.” The Mandela Rules also state that “no measures shall be taken implying that re-education or rehabilitation is in any way appropriate to persons not convicted of any criminal offence.”
- 16 The right to the presumption of innocence is also present in section 25(c) of the New Zealand Bill of Rights Act 1990 (NZBORA), and in the International Covenant on Civil and Political Rights (ICCPR), which is a binding international agreement.
- 17 I consider that my proposals will comply with these requirements because only remand convicted prisoners will be eligible for offence-based programmes.

**The corrections system needs to adapt to this significant increase in the proportion of remand prisoners and the number of prisoners spending long periods on remand**

- 18 Rehabilitation programmes and other activities and services in prisons play a crucial role in reducing reoffending rates for prisoners and supporting successful reintegration into the community. Extending remand prisoners’ access to programmes will ultimately contribute to the purpose of the corrections system, which is to improve public safety and contribute to the maintenance of a just society.

**I recommend that the Corrections Act is amended to create stronger expectations for Corrections to deliver programmes for all prisoners and specifically enable remand convicted prisoners to access offence-focused rehabilitative programmes**

- 19 I seek Cabinet’s agreement to amend the purpose and principles and the enabling provisions in the Corrections Act to more clearly support Corrections to deliver programmes to all prisoners. This will include enabling remand convicted prisoners to be provided with access to rehabilitation and reintegration support, and a stronger expectation that remand accused prisoners will be provided with reintegration and other non-offence focused support.
- 20 This could involve, for example, amending the purpose and principles of the Act to clearly enable Corrections to provide remand accused prisoners with reintegration and non-offence focused support, and possible amendment to provisions, such as section 52 of the Act, to enable Corrections to provide offence-based programmes to remand convicted prisoners.

*These amendments would enable longer term changes to the design and delivery of programmes in prisons*

- 21 This change would enable approximately 1,360 remand convicted prisoners to be eligible for offence-based rehabilitative programmes. In the short-term I expect that

these legislative changes would enable a limited number of remand convicted prisoners to benefit from offence-based rehabilitative programmes as Corrections works to redesign its programmes and services. This might include prisoners who spend long periods on remand, including young adults (under 25 years of age) as this group of prisoners has high numbers on remand.

- 22 Offence-based programmes include, for example, special treatment units for sexual and violent offending. Remand accused prisoners would also benefit from increased provision of non-offence focused support. While non-offence programmes can be provided to remand accused prisoners now, the legislative changes will provide a stronger expectation on Corrections to ensure these are available to remand prisoners.
- 23 This change may also mean that programmes are more readily provided to remand prisoners who have previously been in prison on remand or on short sentences, but were not able to complete programmes. This might happen, for example, because when they were sentenced they were released immediately based on the time they had spent on remand. Such prisoners could use their time on remand to complete programmes they have previously not been able to access.
- 24 In the longer term, these changes will future proof the corrections legislative framework by supporting changes to the way programmes are designed and delivered in prisons.
- 25 In making changes in the coming years, Corrections will consider the characteristics of the remand population. While, as noted, remand prisoners are spending longer periods on remand and the proportion released on time-served is increasing, the majority of remand prisoners still spend short periods on remand. This means they may not have time to complete traditional rehabilitation programmes. Shorter interventions will need to be used. Corrections already has examples of effective short interventions and will consider what other changes are required. Remand prisoners who do not receive a sentence of imprisonment may not be able to complete a programme in the community that they have begun in prison, as not all programmes are offered in both prison and the community. Evidence shows that starting a programme and not completing it can increase risks of reoffending and that will also be factored into programme design and delivery.
- 26 It is also critical that prisoners are offered programmes at the right time for them, as treating them too early on in prison can lead to depletion of treatment gains over time. Prisoners must also be motivated and willing to engage in the programme for treatment to be effective. The decision as to what offence-based rehabilitative programmes a prisoner should participate in, and the timeframes that these programmes should be delivered in, is a matter of professional discretion for psychologists or case managers.
- 27 Corrections is working to address other operational barriers to implementing this change such as ongoing staffing shortages, including shortages of psychologists and programme facilitators. Significant infrastructure challenges also exist. For example, prisons that are predominantly for remand prisoners, such as Mount Eden Corrections Facility, do not have sufficient rooms where programmes can be run. Corrections is also reviewing all of its rehabilitation programmes to identify how to deliver more of

the most effective ones. This provides an opportunity to determine how to tailor the programmes for remand as well as sentenced prisoners.

9(2)(h)



**I propose that the Government's commitment to extend remand prisoners' access to offence-focused programmes is progressed through an Amendment Paper to the Corrections Amendment Bill**

*The Corrections Amendment Bill was introduced to the House on 21 June 2023 by the previous Government and has been reinstated by the current Government*

34 On 19 December 2022, Cabinet agreed to policy decisions for the Corrections Amendment Bill [CAB-22-MIN-0589 refers]. On 12 June 2023, Cabinet agreed to introduce the Bill [CAB-23-MIN-0235 refers].

- 35 The Bill was introduced on 21 June 2023 and referred to the Justice Select Committee. Public submissions were open until 10 August 2023 and 39 individuals and organisations provided submissions.
- 36 The Bill lapsed when Parliament was dissolved on 8 September 2023, prior to the 2023 General Election. The Bill was reinstated in the House on 6 December 2023.
- 37 **Appendix One** summarises the provisions in the Corrections Amendment Bill. The Bill currently includes provisions to give effect to Corrections Treaty of Waitangi obligations.
- 38 I seek your agreement to progress the legislative changes in recommendation 3 through an Amendment Paper to the Corrections Amendment Bill.

### **Cost-of-living Implications**

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

### **Financial Implications**

- 40 As noted in the 2022/23 financial year, Corrections reported spending \$346.6m in the Reoffending is Reduced appropriation. Corrections has recently commenced work to redesign rehabilitation pathways given population changes in recent years, including for those people on remand. This work to optimise the delivery of programmes and services to deliver both greater efficiency and effectiveness will be implemented over a period of years. 9(2)(f)(iv)

### **Legislative Implications**

- 41 I seek agreement to progress the changes in recommendation 3 to give effect to the Government's 100-day priority, through an Amendment Paper to the Corrections Amendment Bill.
- 42 Subject to Cabinet agreement, I will authorise Corrections to issue drafting instructions to the Parliamentary Counsel Office to draft an Amendment Paper.
- 43 Subject to Cabinet agreement to release the Amendment Paper in early 2024, I intend to write to the Justice Select Committee, asking them to consider the Amendment Paper alongside the Corrections Amendment Bill.
- 44 I intend to submit a bid for a Corrections Amendment Bill in the 2024 Legislation Programme for the Corrections portfolio.
- 45 I will bring a paper to Cabinet in early 2024 seeking agreement to additional changes that are needed to the Corrections Amendment Bill in response to public submissions and other matters as needed, including consideration of any amendments to the Treaty provisions currently included in the Bill to align with the Government's priorities around Treaty references in legislation.

## Impact Analysis

### Regulatory Impact Statement

- 46 The proposals in this paper are analysed in the Regulatory Impact Statement attached to this paper.
- 47 The requirement for quality assurance of RISs has been suspended for decisions relating to 100-Day Plan proposals taken within the 100 Days. However, a joint panel with members from the Department of Corrections and New Zealand Police has reviewed the regulatory impact statement and considers that it partially meets the Quality Assurance criteria. The statement is clear and relatively concise; however, the time constraints in which it was developed has impacted the ability of the agency to undertake consultation on the proposal. There is also limited evidence available to support the analysis and some of the risks associated with extending offence-based programmes to remand prisoners.
- 48 As this proposal has run a full quality assurance process, this will assist Treasury when assessing whether an exemption is appropriate for the 100 Day post-implementation requirements in future.

### Climate Implications of Policy Assessment

- 49 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

- 50 The potential population impacts of my proposals are set out in the table below.

<b>Population group</b>	<b>How the proposal may affect this group</b>
Māori	Māori are overrepresented in the prison population, comprising 52 percent of people in prison (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.  Māori have the highest rates of remand. Māori remand prisoners represent 47 percent of all Māori in prison.
Women	Women have higher rates of remand than the general prison population. The proportion of women remand prisoners is 55 percent of the total female prison population.
Disabled people, including people with mental illness or distress in prison	People in prison and serving community sentences often have complex needs, including high rates of mental illness and learning disabilities, with over 90 percent of people in the Corrections system being diagnosed with a mental illness or drug addiction at some point in their life. There are also high rates of people with neurological disabilities in prison, including Foetal Alcohol Spectrum Disorder. These proposals will ensure Corrections can provide appropriate support to these prisoners when they are on remand.
Young people	There are 841 young adults (under 25-years-old) in prison as at 1 October 2023. Of these, 177 are remand convicted and 296 are remand accused. Under-25-year-old remand prisoners make up 56 percent of all under-25s in prison. Of those

	<p>under 25, 59 percent identify as Māori, and Māori make up 63 percent of sentenced prisoners aged under 25.</p> <p>While the average length of time young people spend on remand was the same as the total average, young people are more likely to spend their entire sentence on remand. While the total percentage of prisoners spending their entire sentence on remand (released on time served) was 23 percent in 2022/23, this was 33 percent for young people.</p> <p>Additionally, while in 2022/23 the average period prisoners who were released on time served spent on remand was 184 days (this was not necessarily in one continuous period), this was 218 days for young people.</p> <p>Given the higher percentage of young people being released with time served, and the longer average period young people with time served are spending on remand, extending access to rehabilitation programmes to remand prisoners would benefit these young people.</p>
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## Human Rights

### *Proposals to extend remand convicted prisoners' access to offence-based rehabilitative programmes may engage some rights in NZBORA*

- 51 As discussed in paragraphs 15-16, remand accused prisoners have the right to a presumption of innocence. The recommended changes align with this right by extending access to offence-based rehabilitative programmes to remand convicted prisoners only, alongside sentenced prisoners.
- 52 There is a risk that sections 25(a), 25(c) and 25(d) of NZBORA could be engaged by remand convicted prisoners engaging in offence-based rehabilitation programmes, if participation in offence-based programmes impacts sentencing outcomes.<sup>1</sup> Sentencing outcomes could be higher if judges view participation in offence-based programmes as an admission of liability, but they could be lower if judges view this as a positive step to addressing offending behaviour. However, I consider these risks can be partially mitigated as decisions about which programmes prisoners participate in are made by experienced staff such as psychologists and case managers, and prisoners only participate in programmes where they consent and are motivated to participate.
- 53 The proposed changes will also ensure greater support to remand accused prisoners, as the Act will be amended to enable Corrections to provide remand accused prisoners with reintegration and other non-offence focused support.
- 54 Where remand prisoners are under-18 years old, rights such as Article 37(c) of the United Nations Convention on the Rights of the Child and section 25(i) of NZBORA may also be engaged.<sup>2</sup> I consider these proposals align with these rights as Corrections will be enabled to provide prisoners under-18 years old with relevant and

<sup>1</sup> Section 25(a) is the right to a fair and public hearing by an independent and impartial court. Section 25(c) is the right to be presumed innocent until proved guilty according to law. Section 25(d) is the right not to be compelled to be a witness or to confess guilt.

<sup>2</sup> Article 37(c) states that every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. Section 25(i) of NZBORA provides for children charged with an offence to be dealt with in a manner that takes account of the child's age.



appropriate support, where they are willing and motivated to participate in programmes.

**Use of external resources**

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

**Consultation**

56 The following government agencies have been consulted in the development of this paper and the discussion document: Ministry of Justice, New Zealand Police, Oranga Tamariki, Te Arawhiti, Crown Law Office, Ministry of Health, and the Treasury.

**Communications**

57 Following Cabinet approval of the Amendment Paper in early 2024, I intend to write to the Justice Select Committee to request that they consider the Amendment Paper alongside the Corrections Amendment Bill.

**Proactive Release**

58 I will proactively release this Cabinet paper 30 working days after final Cabinet decisions have been made to release the Amendment Paper. 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:

1 **note** that the Government reinstated the Corrections Amendment Bill on 6 December 2023 and it is currently before the Justice Select Committee for consideration;

*One additional change to the Bill that requires Cabinet approval relates to a 100-day plan commitment*

2 **note** that one of the Government’s 100-day plan commitments is to extend access to offence-based rehabilitation programmes to remand prisoners

3 **agree** to amend the Corrections Act 2004 to enable Corrections to deliver programmes to all prisoners, which will include enabling remand convicted prisoners to be provided with access to rehabilitation and reintegration support that is offence-based, and remand accused prisoners to be provided with reintegration and other non-offence based support;

4 9(2)(f)(iv) [Redacted]  
[Redacted]  
[Redacted]

**IN CONFIDENCE**

- 5 **invite** the Minister of Corrections to issue drafting instructions to the Parliamentary Counsel Office to draft an Amendment Paper giving effect to the decisions in recommendation 3;
- 6 **authorise** the Minister of Corrections to make further decisions on minor and technical matters, including any consequential amendments, in line with the policy decisions agreed by Cabinet.

Hon Mark Mitchell

Minister of Corrections

## Appendix One: Summary of the Corrections Amendment Bill

### *The most substantive provisions in the Corrections Amendment Bill would give Corrections new intelligence powers to monitor prisoner communications and information sources*

- Within its current powers under the Corrections Act, Corrections is limited in its ability to effectively monitor and use information obtained from the communications of people in prison. This means Corrections cannot accurately assess and respond to risks posed to the safety, security, and good order of prisons. With the emergence of new, more sophisticated gangs and domestic and transnational organised crime groups, risk from harmful activity in prison has increased.
- The Bill aims to address these issues by introducing specific provisions into the Act that will empower Corrections' ability to monitor, collect, use, and disclose different forms of prisoner communications and information sources for intelligence purposes. Safeguards would be put in place to ensure that certain information, such as health records, would be exempt from being monitored, and the monitoring, collection and use of information would be aimed at individuals who present a serious risk of harm to the good order, safety, and security of prisons, or to public safety.
- Other parts of the Bill include changes to:
  - **make the disciplinary process for prisoners timelier and more effective**, including by introducing the option of suspended penalties and enabling disciplinary hearings to proceed without the accused prisoner present in certain situations
  - **strengthen the ministerial authorisation process for the use of non-lethal weapons** in prisons to ensure that decision-makers receive adequate information, and clarify the limited situations in which non-lethal weapons can be used in response to passive resistance
  - **amend the principles of the Act to provide for equitable rehabilitation and reintegration outcomes for Māori** in Corrections' management in prisons and the community so far as is reasonable and practicable, as Māori are overrepresented in the corrections system
  - **enable the limited mixing of remand accused and convicted prisoners for specialist programmes** to enable innovation in our programme delivery, and
  - **make other miscellaneous changes to support the operation of prisons**. For example, by enabling greater use of body imaging technology for personal searches that are part of security measures in prisons, and enabling the use of body temperature scanners where there is a health risk that justifies their use (e.g. COVID-19).