

Regulatory Impact Statement

Removing Legislative Barriers to Effectiveness and Efficiency in Corrections - Paper 4: Additional Amendments to the Corrections Act and Regulations

Agency Disclosure Statement

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

It provides an analysis of options to remove legislative barriers to the effective and efficient operation of the corrections system. In particular, it reviews options including amendments to the Corrections Act 2004 (the Act) and the Corrections Regulations 2005 (the Regulations) relating to prison discipline, testing prisoners for alcohol and drugs, Visiting Justices, the humane restraint of prisoners, and delegations to managers of contract managed prisons.

Provisions in the Act and Regulations have been identified as barriers to the effective and efficient operation of the corrections system, and amendments are proposed. In relation to delegation of powers to managers of contract managed prisons, the identified legislative barrier is in the State Sector Act 1988, but the removal of this barrier can be effected by amending corrections legislation.

Because the problem relates to the legislative regime for the corrections system, any intervention requires amendment to the Act or Regulations.

Government agencies and the Office of the Ombudsmen were consulted about the options contained in this RIS. The District Court Judges and the Royal Federation of New Zealand Justices Associations were consulted about proposals affecting the role of Visiting Justices. Because this intervention includes amendments to primary legislation, the public will have an opportunity to comment on the proposals at Select Committee.

All of the policy options contained in this Regulatory Impact Statement will align with the Government Statement on Regulation.

Jane von Dadelszen, General Manager, Strategy, Policy, and Planning

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The Status Quo

- 1 Overall, the Corrections Act 2004 (the Act) and the Corrections Regulations 2005 (the Regulations) continue to provide a sound legislative framework for the corrections system.

The Problem

- 2 Some provisions have been identified as needing improvements to contribute to the effective and efficient operation of the system. These are:

Prison discipline

- 3 One of the disciplinary penalties faced by prisoners is loss of privileges for a specified period. A prisoner subject to this penalty automatically loses all the privileges listed for this purpose in the Regulations for the time period specified by the adjudicator. Changes in prison conditions, such as shorter unlock hours and widespread use of double bunking, have reduced the effectiveness of this penalty and made it more difficult to administer. For example, denying access to a TV is problematic where the prisoner is in a shared cell.

Testing prisoners for alcohol and drugs

Dilute urine samples

- 4 Some prisoners are repeatedly “water loading” (i.e., drinking large quantities of water 2-4 hours before a urine test, so as to produce a dilute sample). This undermines the integrity of the testing regime. Where a sample is dilute, the laboratory is unable to certify the test as positive, so the prisoner escapes punishment. It does not seem possible to avoid this problem by non-legislative means alone.

Independent analysis of urine samples

- 5 Prisoners who test positive for drugs or alcohol can request independent laboratory analysis of their urine sample, at the prisoner’s expense, and have 21 days to produce the results. Some prisoners say that they wish to have an independent analysis, but take no action. If the prisoner is close to release, this delay may be sufficient for them to avoid a disciplinary hearing.

Humane restraint of prisoners

- 6 The Department’s ability to use mechanical restraints in prisons in the most humane and effective manner is limited by the detailed policy prescription in the Regulations. In particular, there is:
 - a lack of clarity regarding the circumstances in which waist restraints may be used
 - over-specification with respect to handcuffs, so that the Department is unable to use safe and humane handcuffs that fall outside the specific descriptions

- undue restriction of the kinds of restraints that may be used on medical advice
- an unnecessary requirement to report the use of restraints to a Visiting Justice
- an unnecessary requirement for Visiting Justices to approve the application of a restraint beyond 24 hours – such an extension should only be sought to prevent a prisoner from self harming, so a medical officer is best placed to advise on this matter.

Powers of contract prison managers

- 7 The Act was amended in December 2009 to allow the Department to contract with a private provider for the management of a prison or prisons. It was envisaged that the person appointed by a contractor to manage a prison would have overall responsibility for the management of prisoners detained there. In order to discharge that responsibility, the manager needs to have powers delegated by the Chief Executive, including powers to temporarily release or remove a prisoner and to approve personal visitors for prisoners. An amendment is needed to enable this. Currently, the Chief Executive may delegate powers and functions to managers of prisons operated by the Department, but not to managers of contract prisons.

Objectives

- 8 The amendments proposed will contribute to achieving the Department of Corrections' outcomes of ensuring compliance with sentences and orders, and managing offenders safely and humanely, in a more effective and efficient manner.

Regulatory Impact Analysis

Option One: Non Regulatory Options

- 9 Consideration has been given to operational policies to manage the areas of concern. In most cases, the problem is linked to particular provisions in primary or secondary legislation. Therefore, it was not possible to identify non-regulatory options that would address the issue.
- 10 Non-regulatory options were identified in relation to the dilution of urine samples by prisoners:
- Manipulating the testing time – Moving the testing time to earlier in the morning has been trialled at two prisons. While there were initial reductions in the number of dilute samples at both prisons, at one of these sites, the prisoners appear to have adjusted by water loading earlier. Therefore, manipulating the testing time is only a partial and short-term solution to the problem of water loading.
 - Constant supervision of the prisoner before testing – This is not feasible because of the staff resources that would be required to implement it.

- Putting prisoners in “dry cells” before testing – There are only a few “dry cells” at each prison, and they have to be used for other high-priority purposes, including strip searching.
- 11 Problems with the status quo are outlined above. Retaining the status quo would only perpetuate the particular problems under consideration.

Option Two: Regulatory Options

- 12 Following a review of the current legislation and regulatory framework, the Department of Corrections has identified legislative amendments that are required to make the day-to-day management of prisoners more effective and efficient, in the areas outlined above. This is the preferred option for the Department of Corrections.
- 13 The key proposals are to:
- Make the loss of privileges a more effective and flexible penalty by extending the list of privileges that may be lost and enabling adjudicators to choose from that list.
 - Ensure the integrity of alcohol and drug testing by making it a disciplinary offence for prisoners to intentionally dilute their samples by “water loading”, and enable the collection and testing of hair samples where a valid urine sample is unlikely to be provided.
 - Prevent prisoners from unreasonably delaying drug-related disciplinary proceedings, by requiring them to pay for and dispatch a sample for independent analysis within 14 days, rather than just provide results within 21 days.
 - Enhance the Department’s ability to use safe and humane mechanical restraints, by expanding the list of authorised restraints and removing unnecessary prescription and restrictions.
 - Provide for the involvement of medical officers, rather than Visiting Justices, in decisions to use a mechanical restraint for more than 24 hours.
 - Empower a private provider contracted to manage a prison to authorise the temporary release or removal of prisoners, and to approve personal visitors to prisoners, enabling these powers to be delegated to the person employed as prison manager.
- 14 In developing these proposals, other potential amendments were considered in relation to prison discipline and the humane restraint of prisoners.
- 15 The forfeiture of privileges could be made a more severe penalty by including a complete loss of personal visits and phone calls, and the imposition of dietary restrictions. However, such changes would involve the loss of minimum entitlements, not privileges, and may adversely affect the health and welfare of prisoners. They may also be regarded as

disproportionately severe punishment, and therefore breach the New Zealand Bill of Rights Act 1990.

- 16 Another way to introduce safe and humane alternatives to the mechanical restraints currently authorised would be to empower the Chief Executive to approve restraints. This would speed up the approval process, giving the Department greater ability to respond quickly when it becomes desirable to introduce changes, for example, because a more humane restraint becomes available. The Department considers that this option has merit, but notes that it would remove safeguards that are inherent in a Cabinet approval process, including consultation with other Government agencies.

Financial impact

- 17 The proposals in the preferred option (Option Two) do not have significant financial implications.

Consultation

- 18 The Ministry of Justice, Ministry of Women's Affairs, Ministry of Foreign Affairs and Trade, Ministry of Health, New Zealand Police, Treasury, State Services Commission, Te Puni Kokiri and the Office of the Ombudsmen have been consulted. The Department of the Prime Minister and Cabinet has been informed. The Acting Chief District Court Judge and the Royal Federation of New Zealand Justices Associations were consulted regarding proposed changes to the role of Visiting Justices.
- 19 The public will have an opportunity to comment on the proposals when they are before a Select Committee.

Conclusion

- 20 The Department of Corrections prefers Option Two, which will involve amendments to the Act and Regulations.

Implementation

- 21 The amendments, if passed into law, 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.

Monitoring, Evaluation and Review

- 22 The intention of these amendments is to remove a number of legislative barriers to the effective operation of the corrections system. This will contribute to achieving the Department of Corrections outcomes of ensuring compliance with sentences and orders, and managing offenders safely and humanely. It is therefore not envisaged that there will be any change to departmental performance indicators and data collection, or a review process. Improvements in efficiency and effectiveness in terms of staff time

and consistency of process should ensue, and will be monitored in routine internal service improvement processes and internal audit.