



Cabinet Social Wellbeing Committee

Minute of Decision

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Amendments to the Corrections Legislative Framework: Improving Safety, Rehabilitation and Reintegration Outcomes

Portfolio Corrections

On 14 December 2022, the Cabinet Social Wellbeing Committee:

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

- 1 **agreed** to introduce a definition of 'intelligence purposes' into the Act that would enable the collection and assessment of prisoner information to prevent harm, identify risk, and detect, deter, and disrupt unlawful or harmful activities to support the purposes and functions of the corrections system;

- 2 **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 the monitoring of, and the collection, use, and disclosure of information obtained from verbal communications, such as phone calls and video calling;
 - 2.2 the monitoring of, and the collection, use, and disclosure of information obtained from, written communications, such as mail and email;
 - 2.3 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;
 - 2.4 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;
 - 2.5 the monitoring of, and the collection, use, and disclosure of information obtained from in person visits, on a case-by-case 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;

- 3 **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;
- 4 **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;
- 5 **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;
- 6 **agreed** to:
- 6.1 repeal the provision relating to recordings of phone calls to be destroyed after two years; and
- 6.2 add new provisions that information collected to monitor prisoner activities and communications, and for an intelligence purpose as set out in paragraphs 2.1 to 2.5 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;
- 7 **agreed** to introduce provisions that provide grounds for disclosure of information collected from prisoner communications and information sources set out in paragraphs 2.1 to 2.5 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 shared with particular agencies, such as the Police;
- 8 **agreed** to allow Corrections to use and disclose information collected from prisoner communications and information sources as set out in paragraphs 2.1 to 2.5 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

- 9 **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;
- 10 **agreed** to exempt suspended penalties from the requirement that all penalties begin immediately after they have been imposed;
- 11 **agreed** to clarify that an appeal of a decision for which a suspended penalty has been imposed does not affect the suspension period;
- 12 **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;

- 13 **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;
- 14 **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 non-attendance that was not known at the time of the hearing, or it is in the interests of justice;
- 15 **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;
- 16 **agreed** to require the rationale for the decision to proceed with a misconduct hearing via remote access to be recorded in writing;
- 17 **agreed** to specify that inciting others in prison to commit an offence against discipline is an offence against discipline itself;

Strengthening processes for the authorisation and use of non-lethal weapons on prisoners

- 18 **agreed** to amend the Act to clarify that when approving amendments to non-lethal weapons, in order for the Minister to be satisfied under section 85(3), they must sight and consider material relevant to the use of a non-lethal weapon that demonstrates compatibility with the humane treatment of prisoners and that the potential benefits outweigh the potential risks, which may include extracts from operational policies and manufacturers' instructions, among other information;
- 19 **agreed** to amend the Regulations to include information about the procedures that must be followed before, during, and after the use of each type of non-lethal weapon, that helps to ensure that they are used in a way that is compatible with the humane treatment of prisoners;
- 20 **agreed** that the legislative framework is updated to clarify that non-lethal weapons may not be used in cases of passive resistance unless staff have reasonable grounds for believing that there is an imminent threat of injury or harm to any person;

Supporting improved rehabilitation and reintegration outcomes for Māori

- 21 **agreed** to amend the Act to incorporate a reference to te Tiriti o Waitangi/the Treaty of Waitangi;
- 22 **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;
- 23 **agreed** to add the following five additional requirements to the legislative framework:
 - 23.1 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;
 - 23.2 for prisoners at all sites, including Māori, to be able to access cultural activities, including through temporary release;

- 23.3 to provide health services that include kaupapa Māori approaches and health sector principles, in order to improve outcomes for all people in prison;
- 23.4 to provide mātauranga Māori as part of the provision of education programmes in prison;
- 23.5 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;
- 24 **agreed** that the amendments in paragraphs 21 to 23 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

- 25 **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;
- 26 **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

- 27 **agreed**:
- 27.1 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)
- 27.2 that the body imaging scan may only be used in place of a rub-down search where the prisoner consents;
- 28 **agreed** to require that any data collected during an imaging technology scan must be deleted so far as reasonably practicable within 24 hours;
- 29 **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

- 30 **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;
- 31 **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;

- 32 **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;
- 33 **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

- 34 **agreed** to make the following five minor and technical amendments to the legislative framework:
- 34.1 clarify that prison managers can refuse to issue authorised property to someone who has been assessed as at risk of self-harm, which may be appropriate in some situations to keep people safe;
- 34.2 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;
- 34.3 clarify that prison managers have the power to deny or restrict associations for prisoners assessed as at-risk;
- 34.4 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;
- 34.5 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;
- 35 **invited** the Minister of Corrections to issue drafting instructions to the Parliamentary Counsel Office to amend the Corrections Act 2004 and Corrections Regulations 2005 to give effect to the above decisions;
- 36 **authorised** the Minister of Corrections to make any further decisions on minor and technical matters in line with the policy decisions agreed above.

Rachel Clarke
Committee Secretary

Present:

Rt Hon Jacinda Ardern
Hon Kelvin Davis
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Carmel Sepuloni (Chair)
Hon Andrew Little
Hon Peeni Henare
Hon Jan Tinetti
Hon Dr Ayesha Verrall
Hon Aupito William Sio
Hon Meka Whaitiri

Officials present from:

Office of the Prime Minister
Office of the Chair
Officials Committee for SWC