

Office of the Minister of Corrections

Cabinet Social Wellbeing Committee

Improving safety and operational outcomes in prisons

Proposal

- 1 I seek Cabinet's agreement to amend the Corrections Regulations 2005 (the Regulations) to improve safety and operational outcomes in prisons.

Relation to government priorities

- 2 In our 2020 election manifesto, the Government committed to keeping communities safe, breaking the cycle of offending, tackling the root causes of crime, and reducing the overrepresentation of Māori in the criminal justice system. This ties closely with the legislative purpose of the corrections system and the Department of Corrections' (Corrections) strategic direction in *Hōkai Rangi*.

Executive Summary

- 3 Corrections has significant operational change underway to improve rehabilitation and safety outcomes and I propose amending the Regulations to further support these changes. This is in addition to the legislative proposals for a Corrections Amendment Bill that Cabinet agreed to in December 2022 [CAB-22-MIN-0589 refers].
- 4 The Regulations outline clear and specific rules about how people are managed in prison, based in part on our international obligations. The proposed changes amend specific regulatory provisions to enable better operational outcomes.
- 5 I seek Cabinet agreement to final policy decisions to amend the Regulations across five key areas:
 - increasing access to privacy and control over lighting in prison cells **[recs 1-2]**
 - supporting specialist officers working at height by enabling access to speed cuffs (rigid-bar handcuffs) **[rec 3]**
 - clarifying that mixing young and adult prisoners should only occur if it is in the young prisoner's best interests **[rec 4]**
 - ensuring the rehabilitation needs and wellbeing of gender diverse prisoners can be considered alongside prison safety when determining prison accommodation **[recs 5-10]**

9(2)(f)(iv)

- 6 I intend to discuss with the Attorney-General the possibility of sharing an exposure draft of the Amendment Regulations with the Office of the Ombudsman and the Human Rights Commission. This will include amendments to the regulatory framework for non-lethal weapons that Cabinet agreed to in December 2022 [rec 12, CAB-22-MIN-0589 refers]. I consider this would be advantageous as they have a demonstrated interest in supporting the humane treatment of prisoners, and their input could help ensure the Regulations are fit-for-purpose [rec 15].

Public consultation ran for six weeks over August and September 2022

- 7 On 8 August 2022, Cabinet authorised the release of a discussion document on a series of regulatory and non-regulatory options to improve outcomes in the corrections system [CAB-22-MIN-0299 refers].
- 8 To enhance consultation, Corrections proactively emailed over 500 individuals, organisations, and key stakeholders to inform them about consultation and to offer to meet with them. Corrections received 195 survey responses and 57 written submissions, most of which focused on proposed changes to the Corrections Act 2004 (the Act).
- 9 My officials met with a range of individuals and groups including iwi, Māori organisations, the Office of the Ombudsman, and the Human Rights Commission. They also met with a number of feminist groups who shared views on the placement of transgender women in women's prisons, which relates to one of the regulatory proposals in this paper.
- 10 The proposals were generally well supported during consultation. Feedback on each proposal is set out in detail below.

I propose five changes to the Regulations

Increasing access to privacy and control over lighting in prison cells

- 11 The Regulations set out the mandatory features for all types of prison cells. Most cell types give people access to privacy screens over hygiene areas, such as showers and toilets, and internal light switches (privacy features). However, schedules 2 and 6 of the Regulations prevent people who are on the punishment of cell confinement, or those segregated to assess or ensure their mental health, from accessing these privacy features.
- 12 These regulatory prohibitions impose higher safety requirements than are reasonably necessary and regularly attract criticism from the Chief Ombudsman who does not consider these restrictions commensurate with risk. For these reasons, I propose removing these regulatory prohibitions.

- 13 To give effect to this change, I propose amending the Regulations so that privacy features are available to all prisoners on cell confinement or on mental health segregation, unless staff consider there would be a serious overriding risk or safety concern in providing these features to a specific prisoner [rec 1].
- 14 Retrofitting these privacy features into cells is estimated to cost between \$800,000 to \$3 million, which will be covered by baseline funding as part of Corrections' 10 year capital plan. I understand it could take until 2027 to retrofit privacy features into these cells as structural work will be required across the prison network, with some of our prisons over 100 years old. For this reason, regulatory provisions may be needed to ensure Corrections and Serco (who operate Kohuora Auckland South Corrections Facility) continue to comply with the Regulations as they carry out the necessary infrastructure changes [rec 2].
- 15 During public consultation, Corrections heard that this change is consistent with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) and the New Zealand Bill of Rights Act 1990 (NZBORA). Respondents also commented that privacy is vital to retaining dignity.
- 16 While there was concern from some respondents that privacy features could result in staff not responding to incidents of self-harm, cell damage, or violence in a timely manner, I consider the benefits of the change outweigh the risks, on balance, as evidence does not suggest that incidents of self-harm take place behind privacy features.

Supporting specialist officers working at height by enabling access to speed cuffs

- 17 Over the past few years, Corrections has seen a number of high profile "at-height incidents" where prisoners move onto a prison roof or another elevated position. Recent experience shows that prisoners will stay at height for an extended period of time and use the opportunity to incite further unrest amongst other prisoners and damage prison property.
- 18 Corrections is expanding its capability to respond to these situations, with 6 staff members already trained to cordon, contain, and negotiate with prisoners at height as members of Specialist Height Teams.
- 19 The Regulations currently prevent the use of emergency handcuffs such as speed cuffs (rigid-bar handcuffs) where general use handcuffs are not available (see **Appendix One** for images of the two types of cuffs). In practice, this means that officers in Specialist Height Teams are not permitted to use speed cuffs while working to resolve at-height incidents because general use handcuffs will always be available to them. Specialist Height Teams might use speed cuffs, for example, when they are working at height and are several metres apart from each other. In circumstances where staff are isolated, it is important that staff can safely apply handcuffs on their own and with one hand.

- 20 I consider, however, that speed cuffs are a much more suitable tool than general use handcuffs to respond to at-height incidents because they can be used with one-hand, without support from other staff, and during one-on-one confrontations with prisoners. This supports best practice at height, where the challenges of the environment require staff to use particular techniques suited to that setting.
- 21 To enhance staff and prisoner safety, I propose amending the Regulations to enable speed cuffs to be used by staff with specialist training when working at height or in elevated positions **[rec 3]**.
- 22 I note that the rigid design of speed cuffs means prisoners may be more likely to experience injuries than if general use handcuffs were used. However, this risk will be mitigated by specific training on how to apply speed cuffs properly, using them on prisoners for a limited period of time before requiring them to be replaced with general use handcuffs as soon as practicable, and restricting their use to specialist staff.
- 23 Corrections has already assured me that Specialist Height Team members are recruited from top candidates within existing Advanced Control and Restraint units, who undergo refresher courses every three months. The use of speed cuffs would also be subject to requirements in the Department's use of force and mechanical restraints policies, which include further mitigations against the possibility of injury.
- 24 There is a relatively small cost associated with the introduction of speed cuffs for these teams (approximately \$22,500 for the equipment, plus training), which can be managed within baseline funding.
- 25 Unlike the other regulatory proposals in this paper, Corrections did not publicly consult on the introduction of speed cuffs for use by specialist staff because the options were developed more recently. However, a common theme from public consultation is that there should be measures in place to protect staff and prisoner safety, and that any powers that infringe more on prisoners' rights should be reserved for higher-risk prisoners and activities. My proposal meets this expectation. Speed cuffs are also already authorised for use in some circumstances by the legislative framework and officials will report to me within a year on the use of the speed cuffs.
- 26 This proposal was discussed with representatives of the Human Rights Commission and the Ombudsman who suggested that staff should have the discretion to continue to use general use handcuffs at height when appropriate, and that speed cuffs should be used for the minimum amount of time necessary.

Clarifying that mixing young and adult prisoners should only occur if it is in the young prisoner's best interests

- 27 Currently, the Regulations state that young prisoners (prisoners aged between 14 and 17) and adults must be kept separate in prisons. However, Corrections' chief executive may approve the mixing of young and adult prisoners if they are satisfied that it is in the best interests of the prisoners concerned.

- 28 I understand that the current wording in the Regulations does not align with the original policy intent for the Regulations or New Zealand's international obligations, particularly article 37(c) of the United Nations Convention on the Rights of the Child. Article 37(c) states that mixing of adult and young prisoners should only occur if it is in the young person's best interests. Separation is designed to protect more vulnerable young people, but sometimes mixing is necessary to ensure that young prisoners have social interaction with peers.
- 29 For this reason, I propose to amend the Regulations to clarify that mixing may only be approved if it is in the best interests of the young prisoner **[rec 4]**. This clarification would align the Regulations with the original policy intent, our international obligations, and existing operational practice that seeks to ensure young people have social support for programmes, education, employment, and recreational activities. This clarification will be relatively straightforward to implement. As well as amending the Regulations, operational policy, such as the Prison Operations Manual, will likely be amended to help provide greater clarity for staff.
- 30 During public consultation the majority of respondents submitting on this issue supported this clarification, often commenting that the young prisoner's best interests should be prioritised when deciding whether to mix young people with adults in prison. A common theme was that young people are particularly vulnerable due to their age, and that their needs should be protected as much as possible when considering mixing with adults.
- 31 A small number of submitters commented that the interests of all prisoners should be considered when deciding whether to mix. I agree that this is an important consideration, and I understand that adults' best interests will continue to be factored into mixing decisions and managed at an operational level. This is within the scope of the Regulations because the chief executive is not required to mix but has the option to do so. However, the key point remains that the Regulations should codify that young people's best interests are the primary consideration when these decisions are being made.

Ensuring the rehabilitation needs and wellbeing of gender diverse prisoners can be considered alongside prison safety when determining prison accommodation

- 32 Changes to the Births, Deaths, Marriages, and Relationships Registration Act 2021 (the BDMRR Act), which make it easier for people to change the sex marker on their birth certificate, come into force on 15 June 2023. I seek to ensure that the Corrections Regulations respond effectively to these changes so that Corrections can continue to support the wellbeing of gender diverse prisoners and the safety of all prisoners.
- 33 The Regulations currently state that if a prisoner supplies a birth certificate that records their sex as female or male, they *must* be accommodated in a prison that aligns with the sex on their birth certificate ("the birth certificate rule"). The New Zealand prison system separates prisoners into men's or women's prisons and gender diverse prisoners would be assigned to one of these types of prisons.

IN CONFIDENCE

34 To date, no prisoner has been accommodated in a particular prison as a direct result of the birth certificate rule. I understand that staff take a more holistic approach to managing gender diverse prisoners and consider a wide range of factors, as outlined in the Department of Correction's operational policy for managing transgender prisoners (see Appendix Two).

Problems relating to ensuring prisoner safety and wellbeing could be exacerbated by the BDMRR Act changes and the birth certificate rule is not aligned with the policy intent of those changes

35 Once the BDMRR Act changes come into effect in June 2023, they may exacerbate existing risks associated with the birth certificate rule as it will become easier for prisoners to change the sex marker on their birth certificate:

- The birth certificate rule is problematic as it could compel staff to accommodate a prisoner in a prison where there is a risk to their safety or the safety of other prisoners stemming from the gender diverse prisoner's offending history.
- As the birth certificate rule requires Corrections to accommodate a prisoner in a prison that aligns with the sex marker on their birth certificate, regardless of their offending history, Corrections may need to segregate the prisoner for extended periods of time. This is likely to impact their wellbeing and access to rehabilitation programmes.
- In addition, while the Regulations prohibit a prisoner from applying for a review of accommodation if they are serving a sentence for a serious sexual offence against a person of their nominated sex, the birth certificate rule overrides this.

36 The BDMRR Act changes also introduce two additional sex markers on birth certificates, 'a non-binary gender' and 'another gender' alongside male and female. The current birth certificate rule is not designed to be able to consider a birth certificate with these new sex markers as it was enacted when birth certificates only had two options, male or female. It is unclear how Corrections would respond to these new sex markers, as operationally Corrections can only accommodate prisoners in either a men's or women's prison.

37 On this basis, I seek to amend the birth certificate rule to enable Corrections to consider a prisoner's birth certificate, if it is provided by the prisoner, alongside other relevant factors when an initial determination of a prisoner's accommodation is required [recs 5-6]. I also propose requiring Corrections to consider a prisoner's birth certificate, where it is provided, during any review of that determination, alongside other relevant factors already stated in the Regulations [rec 7].


38 This change will provide Corrections with greater flexibility about how accommodation decisions are made, while respecting people's self-determination by ensuring birth certificates can be considered when Corrections' staff assign prisoners to male and female prisons. The changes will also ensure that once the BDMRR Act comes into effect in June 2023, prisoners who present birth

certificates with the new sex markers can be accommodated based on a range of factors to support their and other prisoners' rehabilitation and safety.

39 My proposed changes are in keeping with the intent of the BDMRR Act changes [rec 8]. In approving amendments to the BDMRR Act, Cabinet was informed that the birth certificate rule in the Corrections Regulations was "out of step with the intent that birth certificates should not be considered as conclusive evidence of a person's sex or gender" [SWC-21-SUB-0063 and CAB-21-SUB-0164 refer]. Cabinet was made aware that my officials would be reviewing the rule in light of the BDMRR Act changes.¹

40 I acknowledge that this is a complex issue and consider that on balance, the recommended approach best supports all prisoners in Corrections management. It will ensure that the wellbeing and safety of gender diverse, including transgender, prisoners can be considered alongside the safety of other prisoners when making placement decisions.

9(2)(g)(i)



9(2)(f)(iv)

43 In the interim, I consider it important to amend the birth certificate rule because keeping it in place could impact the safety of prisoners and the wellbeing and safety of prisoners who use the birth certificate rule. As noted, it is also not in keeping with the policy intent of the changes to the BDMRR Act that comes into effect in June 2023.

¹ See also the "Births, Deaths, Marriages, and Relationships Registration Bill Supplementary Order Paper Departmental Report," 11 October 2021, paras 29-33, 182-184.

Feedback from public consultation was largely supportive

44 Feedback from public consultation showed strong support for an approach that minimises the risk of gender diverse prisoners being segregated. Initially the Human Rights Commission supported keeping the birth certificate rule in place

9(2)(f)(iv)

However, the Human Rights Commission is prepared to support my proposed approach as an interim measure. This is on the basis that it would better support self-determination and wellbeing for more people in prison and enable a case-by-case approach to their management

9(2)(f)

9(2)(g)(i)

46 During public consultation, Corrections also heard from several groups that accommodation should be based on biological sex as assigned at birth, and that transgender women should not be placed in women's prisons for safety reasons. However, I consider that my preferred approach best balances the needs of all people in prison.

9(2)(f)(iv)

Next Steps

The timeline for these changes aligns with Corrections' operational needs

49 Subject to Cabinet agreement, I will authorise Corrections to issue drafting instructions to the Parliamentary Counsel Office to draft the changes to the regulations in 2023.

50 As agreed by Cabinet in December 2022, this drafting will include amendments to the procedures that must be followed, before, during and after the use of each type of non-lethal weapon to ensure that they are used in ways that are

compatible with the humane treatment of prisoners [rec 12, CAB-22-MIN-0589 refers]. I will discuss with the Attorney-General sharing the exposure draft of the regulations with the Ombudsman and the Human Rights Commission [rec 15]. These entities have a demonstrated interest in supporting the humane treatment of prisoners and have worked closely with Corrections on related regulatory changes in response to recent litigation.

Financial Implications

51 If Cabinet agrees to these changes, there will be costs associated with retrofitting privacy features into prison cells used for cell confinement and mental health segregation (estimated to be \$800,000 to \$3 million) and purchasing speed cuffs (estimated to be \$22,500). There will also be minor 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

52 A joint Quality Assurance panel with members from the Department of Corrections and New Zealand Police has reviewed the Regulatory Impact Statement and considers that it meets the Quality Assurance criteria.

53 The panel notes that the proposal to support specialist teams working at height by enabling the use of speed cuffs was not publicly consulted on. However, targeted consultation was carried out, including with the Corrections Association of New Zealand, the Public Service Association, the Human Rights Commission, and the Office of the Ombudsman. We therefore consider this sufficient to meet the Quality Assurance criteria.

54 The Treasury's Regulatory Impact Analysis team has granted an exemption for a Regulatory Impact Statement for the proposal that clarifies aspects of the mail copying provisions on the grounds that they have no or only minor impacts on businesses, individuals, and not-for-profit entities.

Population Implications

55 The potential population impacts are set out in the table below.

Population group	How the proposal may affect this group
Māori	<p>Disproportionate reoffending rates of Māori in the Corrections system was the key driver for the <i>Tu Mai Te Rangī!</i> report of the Waitangi Tribunal, in response to which <i>Hōkai Rangī</i> was developed.</p> <p>Māori are overrepresented in the prison population, comprising 53 percent of people in prison (65 percent of women in prison). Hence, the proposals outlined in this paper are more likely to impact on Māori compared to the rest of the population.</p> <p>Māori make up over half of those placed on cell confinement and just under half of people on segregation to assess or ensure their mental</p>

	<p>health. This means they are more likely to benefit from increased access to privacy features.</p> <p>Data shows that mechanical restraints are used more frequently against Māori than the general prison population. As such, it is possible that speed cuffs will be used more often on Māori, who may sustain injuries from their use. However, given at-height incidents are relatively rare and there will be tight parameters on the use of speed cuffs, they are unlikely to have a significant impact on Māori. The department's strategic direction, <i>Hōkai Rangi</i>, is supporting a shift in practice and policy that is intended to achieve change that will minimise disproportionate impacts on Māori in the long-term across the department's operations.</p>
<p>Women</p>	<p>There are 535 women in prison, as at 18 January 2023. Māori women are overrepresented among this number and make up approximately 65 percent of women in prison.</p> <p>The proposals for privacy features should better support the dignity of women in prison due to improved access to privacy.</p> <p>As women are rarely involved in at-height incidents, speed cuffs are less likely to have an impact on them.</p> <p>The majority of transgender people managed in prison are transgender women. The proposed change to the birth certificate rule will ensure that Corrections can consider a transgender woman's birth certificate, where provided, alongside other factors including safety and wellbeing, when deciding the best prison to accommodate them.</p>
<p>Disabled people, including people with mental illness or distress in prison</p>	<p>Over 90 percent of people in the corrections system have been diagnosed with a mental illness or drug addiction at some point in their life. There are also high rates of people with neurodisabilities in prison, including Foetal Alcohol Spectrum Disorder.</p> <p>Increasing access to privacy features for more people in custody should support disabled people by reducing harm and trauma from the current settings for people on cell confinement or segregated for mental health reasons.</p>
<p>Gender diverse, including transgender, non-binary, takatāpui and intersex people in prison</p>	<p>More people on cell confinement and mental health segregation will have access to privacy features, which should have a positive impact on mental health, particularly for gender diverse prisoners, including transgender and intersex, as submitters told us that bodily privacy is important.</p> <p>The proposed amendments to the birth certificate rule will enable the wellbeing and rehabilitation needs of gender diverse prisoners to be more holistically considered when accommodation decisions are made.</p>
<p>Young people</p>	<p>As of 18 January 2023, there is only one young person in prison, and typically there are no more than five young people in prison at any one time.</p> <p>The proposal clarifying when young people can mix with adults will ensure young people's best interests will continue to be the most important consideration when these decisions are made.</p> <p>The proposals enhancing access to privacy features should help support young people when they are in Corrections' care.</p>

	<p>Enabling access to speed cuffs for Specialist Height Teams could impact on young people if they are involved in at-height incidents. The risks of injuries for young people should be mitigated by tight controls in the Regulations, specialist training, and compliance with Corrections' internal use of force policies.</p>
Pacific people	<p>There are approximately 934 Pacific people in prison and approximately 3,160 Pacific people on sentences and orders in the community, as of 18 January 2023.</p> <p>The proposals for privacy barriers should better support Pacific people in prison due to improved access to privacy and dignity.</p> <p>Pacific people are disproportionately affected by the use of mechanical restraints compared to other demographic groups in prison. Hence, any injuries resulting from the use of speed cuffs may be more likely to impact on Pacific people if they are involved in at-height incidents.</p>
Ethnic communities	<p>As of 18 January 2023, less than 5 percent of people in prison are from ethnic communities.²</p> <p>The proposals in this paper should improve outcomes for these people in prison as they seek to improve outcomes in the corrections system.</p> <p>The proposal enabling use of speed cuffs is not expected to have a significant impact on prisoners from ethnic communities due to the restrictions around their use.</p>

Human Rights

56 Allowing prisoners on mental health segregation and cell confinement to have access to privacy features will better ensure that people are treated with humanity, respect, and dignity. This change aligns with the right not to be subjected to disproportionately cruel or degrading treatment or punishment in NZBORA, and as described in the United Nation's *Convention Against Torture and Other Cruel or Degrading Treatment and Punishment*, while the proposed safeguards should be proportionate to the risk that prisoners present.

57 Amending the birth certificate rule should further enable Corrections to support the wellbeing of gender diverse prisoners, as it minimises the risk that these prisoners will be managed in directed or protective segregation. By extension, this will enhance access to different programmes for gender diverse prisoners, which could have a positive impact on their rehabilitation and reintegration outcomes. This change should also help support gender fluidity and enable Corrections to facilitate changes in prison accommodation when required, which should go some way towards preserving the mana and dignity of gender diverse prisoners.

58 I consider the introduction of speed cuffs to support Specialist Height Teams to be consistent with rules 47 and 48 of the Mandela Rules because they will only

² The term ethnic communities includes people who identify their ethnicity as African, Asian, Continental European, Latin American or Middle Eastern.

be used in very limited circumstances and for a short period of time by highly trained staff.

59 Corrections will continue to comply with its international obligations, including the United Nations Convention on the Rights of the Child, by only mixing young and adult prisoners when it is assessed as being in the young prisoner's best interests.

Climate Implications of Policy Assessment

60 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.

Consultation

61 The following government agencies have been consulted in the development of this paper and the discussion document used for public consultation in 2022: the Ministries of Education, Justice, Social Development, Health, Women, Pacific Peoples, Ethnic Communities, and Foreign Affairs and Trade, the Department of Internal Affairs, Inland Revenue Department, the New Zealand Police, Oranga Tamariki—Ministry for Children, Te Puni Kōkiri, Te Arawhiti, New Zealand Customs Service, the Public Service Commission, Office of the Privacy Commissioner, the Department of the Prime Minister and Cabinet, the Crown Law Office, and the Treasury.

Proactive Release

62 I will proactively release this Cabinet paper after 30 working days. 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:

Increase access to privacy and control over lighting in prison cells

- 1 **agree** to amend the Correction Regulations 2005 to enable privacy screens and in-cell light switches to be included as the default features in cells for prisoners segregated to assess or ensure their mental health or those undergoing the penalty of cell confinement as the default, with the option to not provide these features where justified for safety reasons [paragraphs 11-13];
- 2 **agree** to introduce provisions in the Correction Regulations 2005 to support recommendation 1 and give the Department of Corrections and Serco sufficient time to phase in any necessary infrastructure changes across the prison network [paragraphs 11-14];

Support specialist officers working at height by enabling access to speed cuffs

- 3 **agree** to amend the Corrections Regulations 2005 to enable the use of speed cuffs (rigid-bar handcuffs) by specialist officers when general use handcuffs are not practicable when responding to at-height incidents [paragraphs 17-21];


Clarify that mixing young people with adults in prison should only occur if it is in the young prisoner's best interests

- 4 **agree** to amend the Corrections Regulations 2005 to clarify that Corrections may approve the mixing of young prisoners and adult prisoners only if it is in the best interests of the young prisoner [paragraphs 27-29];

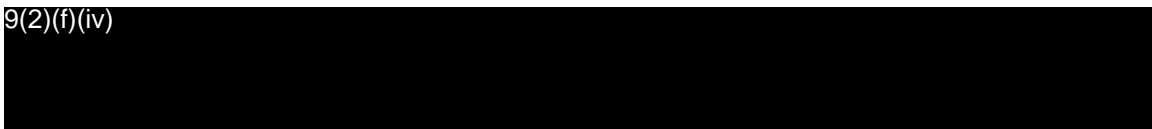
Ensure the needs and wellbeing of gender diverse prisoners can be considered alongside prison safety when determining prison accommodation

- 5 **agree** to amend the Corrections Regulations 2005 to ensure that decisions that determine whether a gender diverse prisoner is accommodated in a men's or women's prison are not based solely on a prisoner's birth certificate [paragraphs 32-37];
- 6 **agree** to amend the Corrections Regulations 2005 so that when the Department of Corrections is determining whether a gender diverse prisoner is accommodated in a men's or women's prison, they may consider a prisoner's birth certificate, if the prisoner provides it, alongside other relevant factors [paragraphs 32-37];
- 7 **agree** to amend the Corrections Regulations 2005 to ensure that when a review occurs under regulation 65C, the Department of Corrections' chief executive must consider the prisoner's birth certificate, if the prisoner provides it, alongside the other factors set out in regulation 65C(3) [paragraphs 32-37];
- 8 **note** that these amendments are in keeping with the intent of the Births, Deaths, Marriages, and Relationships Registration Act 2021, in that a birth certificate is not conclusive evidence of a person's sex or gender [paragraphs 39 and 43];

9(2)(f)(iv)



9(2)(f)(iv)



Next steps for drafting

- 12 **note** that Cabinet agreed in December 2022 to amendments to non-lethal weapons regulations to specify the procedures that must be followed before, during and after the use of such weapons [paragraph 50, CAB-22-MIN-0589 refers];
- 13 **invite** the Minister of Corrections to issue drafting instructions to the Parliamentary Counsel Office to amend the Corrections Regulations 2005 to give effect to these recommendations;
- 14 **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;
- 15 **agree** that an exposure draft of the Amendment Regulations can be shared with the Office of the Ombudsman and the Human Rights Commission, subject to the Attorney-General's agreement [paragraph 50].

Authorised for lodgement

Hon Kelvin Davis

Minister of Corrections

Appendix One – Images showing the differences between general use handcuffs and speed cuffs

General use handcuffs (chain link handcuffs)

These have a flexible chain between the cuffs.



Speed cuffs (rigid-bar handcuffs)

These handcuffs are rigid and designed with a solid bar between the cuffs.



Appendix Two – Extracts from the Department of Corrections operational transgender policy in the *Prisoner Operating Manual*

Transgender Policy

A trans person is someone whose gender identity (a person's internal sense of being a man or a woman or another gender) does not completely align with their biological sex. Gender identity is different from a person's sexuality.

The word '**trans**' is used through these guidelines to describe all people whose gender identity does not match their biological or birth sex. See this [directory of terms relating to gender identity](#).

The processes in this guidance are triggered when you become aware that a person subject to a community based sentence or order identifies as trans. This may happen where Corrections has recorded information that the person is trans, or where the person tells a probation officer they are trans.

Principles

Being trans is not a lifestyle and is not a choice. A person's ability to identify with a particular gender, or no gender, must be respected.

The principles of the guidance are that trans people are managed in a way which:

1. is individualised according to need
2. seeks to preserve their dignity, safety and privacy
3. enables the maintenance of a person's gender identity
4. appropriately addresses risk and maintains the integrity of the sentence / order while developing self-empowerment within the person.

Trans people's management will not depend on whether they have sought legal recognition of their gender identity or whether they have undergone medical steps, such as hormone treatment, or surgical procedures. Trans management is about treating the individual in line with the gender they feel is correct.

Privacy of gender identity disclosures

A trans person may not want the fact that they are trans to be disclosed to other staff. This may be the case if a person has made a preliminary disclosure to a trusted staff member and is early in their own recognition of their gender identity, or if they have undergone full medical transition. Any disclosure should be lead by the person themselves.

Staff must treat disclosures about gender identity with sensitivity and seek to protect the privacy of the disclosure. Consider who else needs to know that the person is trans in order to manage their safety, risk and wellbeing.

Induction

As part of the induction process, ask the person whether the information recorded on their court or release order, including their sex/gender, is correct.

Ask the trans person what their preferred name and preferred pronouns are (she/her, he/him, they/their and others). Use the preferred name and pronouns in all communications and interactions, including in file notes, offender plans and reports.

Record the discussion in a case note and alert in IOMS and let the person know you are going to do this. The case note or alert must include the preferred name, preferred pronouns and any other information that is critical for management of the sentence or order. The minimum level expected would include:

John SMITH has disclosed that she is transgender and uses the name Georgina SMITH. Please ensure all interactions reflect this and use female pronouns (she / her).

Name and Pronouns

If the trans person's preferred name is different to the name on their court or release order, and therefore different to the name that appears for them on IOMS, advise them that they can change their name legally if they want to. Provide them with the assistance they require through the [Department of Internal Affairs website](#).

If the trans person changes their name resulting in a name without an associated PRN, the normal processes to inform Police and generate a PRN must be followed. This is explained [here at I.02.04 of the Prison Operations Manual](#) and requires the completion of this [urgent request for police PRN after hours document](#). Further support can be obtained through the [CS Help Desk](#).

If the person has not legally changed their name, but has an established identity that expresses their gender identity, record their preferred name in IOMS. An established gender identity is different to a nickname or gang name which we would record but not select as a preferred identity.

Last Published: 16.08.2022 | Content owner: [Case Management and Probation Practice Team](#)