

BRIEFING: Copy of further advice on the Corrections Amendment Bill for the Justice Committee relating to Treaty of Waitangi provisions

To Hon Mark Mitchell, Minister of Corrections			
Date	24 April 2024	Deadline	30 April 2024
B number	B4731	Priority	High
Key contact	Emily Owen Director Policy, Research, & Performance 9(2)(a)	Second Contact	Dr Marian Horan Manager Legislative Policy 9(2)(a)

Purpose

This briefing provides you with a copy of our draft advice to the Justice Committee proposing the removal of the Treaty of Waitangi provisions from the Corrections Amendment Bill (the Bill), which will be provided to the Justice Committee on Tuesday 30 April for consideration on 2 May 2024, alongside the revision-tracked (RT) Bill (see **Appendix One**).

Key messages

Our advice to the Committee recommends removing the Bill's Treaty of Waitangi provisions

As agreed by Cabinet, the advice recommends clauses 6, 7, 8, 17, 18, and 19 of the Bill are removed [CAB-24-MIN-0131].

The advice states that Corrections remains committed to addressing the needs of and improving outcomes for Māori. Corrections is already working with Māori at an operational and a strategic level to build meaningful and purposeful relationships that will achieve the goals of the Bill's Treaty provisions, and will continue to do so, irrespective of legislation. This is because Māori are disproportionately represented in prison and improving their outcomes translates to increased public safety.

9(2)(g)(i)

The Committee requested advice on other matters in the Bill and we will be providing that at the same time

This includes advice on:

- addressing natural justice in the disciplinary process
- the cause of delays in the disciplinary process
- the consistency of 'less-lethal weapons' language across other statutes
- prisoner preference requirements when staff are required to under-take a rub-down search

The removal of the Treaty provisions and the additional advice will be considered alongside the RT Bill at the Committee's meeting on 2 May 2024

On 2 May 2024, the Committee will consider this advice and the first RT Bill which gives effect to the recommendations agreed in the departmental report when the Committee considered it on 11 April 2024. Provided the Committee agrees to the recommendations, they will then consider a new RT Bill alongside the draft select committee commentary on the Bill on 9 May 2024.

There may be other matters that arise that we will need to provide advice to the Committee on. We will provide your office with the final advice the Committee receives, as appropriate.

We consider the Bill is on track to be reported back to the House by 31 May 2024.

Recommendations

It is recommended that you:

1. **Note** that Corrections will be providing the attached advice to remove the Treaty of Waitangi provisions from the Corrections Amendment Bill to the Justice Committee on 30 April to be presented on 2 May 2024.

YES / NO

Sign-off



Hon Mark Mitchell

Minister of Corrections

Date signed: 30/04/2024



Emily Owen

Director Policy, Research, & Performance

Date signed: 24 / 04 / 2024

Appendices

- 1 All appendices referenced in this paper are listed below:

- Appendix One – Advice to Justice Committee on Treaty of Waitangi provisions in the Corrections Amendment Bill

Minister comments

30 April 2024

James Meager MP
Chairperson, Justice Committee
Parliament Buildings
WELLINGTON

Tēnā koe Mr Meager,

Advice on Treaty of Waitangi provisions in the Corrections Amendment Bill

- 1 The departmental report on the Corrections Amendment Bill (the Bill) included an analysis of public submissions in relation to the Bill's Treaty of Waitangi (Treaty) provisions and signalled that officials would be providing further advice on these provisions. This letter provides that advice.

Summary of the Treaty provisions currently in the Bill

- 2 The Bill currently includes a Treaty clause referring to provisions that provide for the Crown's intention to give effect to the principles of the Treaty in the corrections system. The provisions also include new principles relating to rehabilitation, reintegration, and engaging with Māori that would guide the corrections system to deliver practical outcomes to make improvements for Māori in Corrections' management. Alongside those provisions are specific requirements that include a Māori strategy and access to cultural activities and mātauranga Māori for prisoners.
- 3 These clauses are summarised in further detail in **Appendix One**.

Cabinet has directed the Treaty of Waitangi provisions be removed

- 4 This would see clauses 6, 7, 8, 17, 18, and 19 removed from the Bill.
- 5 Removing these provisions does not prevent Corrections from continuing to work alongside hapū and iwi to deliver culturally responsive rehabilitation, which is critical for improving outcomes for Māori who are overrepresented in the prison population at 50 percent, despite only forming approximately 16 percent of the general New Zealand population.

Corrections remains committed to working closely with Māori to continue strengthening our operations and improve outcomes for Māori as needed

- 6 At an operational and strategic level, Corrections is working with Māori to build meaningful and purposeful relationships in order to address the needs of Māori in the corrections system because they are overrepresented. This includes the Poari Hautū Māori group, a group of iwi representatives, who can help provide iwi views on various strategic and operational matters that arise.
- 7 Corrections is already working towards what is summarised in the Bill's Treaty provisions without such a legislative foundation. This includes relationships with iwi at a regional level, and relationships with mana whenua at different prison sites and in the community, including the Māori Pathways programmes at three sites; Northland Region Corrections Facility, Hawke's Bay Regional Prison, and Christchurch Women's Prison.

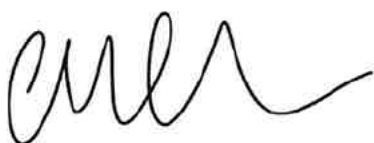
- 8 At Christchurch Women's Prison, Ngāi Tahu representatives are part of the governance board for the Te Mana Wahine project. The project is designing a range of interventions with local iwi, hapū, and mana whenua, and Māori providers.
- 9 As an example, one of the initiatives from the project is a 10-week group session guiding Māori prisoners to better understand Māoritanga to identify their goals and aspirations. This is facilitated by a Māori provider at the prison. In addition, at Northland Region Corrections Facility, Ngāti Rangi as mana whenua, have been integral in the ongoing design of rehabilitative practice at the prison. This includes support in rongoā, tikanga and kapa haka to build positive whānau relationships in the community.
- 10 Around the Corrections network, various other partnerships with iwi, hapū and Māori have resulted in a range of programmes and services being delivered in prisons and the community.
- 11 Tēnei Au, Tēnei Au is delivered by a provider endorsed by Ngāti Kahungunu at Hawke's Bay Regional Prison. Through this programme, Māori practitioners use Ngāti Kahungunu mātauranga as a treatment approach to heal intergenerational trauma.
- 12 In 2022/23, Corrections' Housing Support Services initiative continued to provide people with accommodation support in Lower Hutt. This included offering a 24-bed iwi-led service Te Whare Whakaruruhau o Raumanuka, in conjunction with Te Āti Awa and Ngāti Toa. The service received its first residents in August 2022.

Corrections also recognises the importance of access to culture and involving whānau in the management of prisoners

- 13 The Bill's Treaty provisions include ensuring involvement of whānau, hapū, and iwi, and access to cultural activities and mātauranga Māori. Corrections is already taking steps to implement such practices. While officials recommend removing the Bill's Treaty provisions, the Corrections Act 2004 already requires an offender's family to be, so far as is reasonable and practicable, recognised and involved in decision making.
- 14 Corrections is also contributing to improved rehabilitation and reintegration outcomes by delivering its programmes and services in a way that recognises how whakapapa can enhance and strengthen a sense of belonging and identify with the community. As part of this, cultural activities are provided to people in prison, for example, facilitating access to te reo Māori and tikanga Māori programmes.
- 15 Corrections also enables kaumatua to work in prisons as 'kaiwhakamana' who provide one-to-one support to prisoners and also involve whānau in aspects of sentence management, where appropriate. Corrections are increasing support for the provision of whānau and family wrap-around services. Access to these initiatives enhances supportive links that people have with their communities prior to release.

Recommendation 1

Officials recommend removing the Bill's Treaty of Waitangi provisions – clauses 6, 7, 8, 17, 18, and 19.



Emily Owen
Director Policy, Research & Performance

Appendix One – Treaty of Waitangi provisions in the Corrections Amendment Bill that are recommended to be removed

Clause 6 – principles guiding corrections system

- 1 The Corrections Act 2004 (the Act) currently includes several principles that guide the corrections system including such requirements as the maintenance of public safety being the paramount consideration in decisions about the management of persons under control or supervision, victims' interests being considered in decisions.
- 2 Clause 6 of the Bill proposes to include the following statements as principles into section 6 of the Act to help guide the corrections system:
 - (j) – equitable rehabilitation and reintegration outcomes for Māori offenders must be provided for so far as is reasonable and practicable
 - (k) – Māori must, as far as is reasonable and practicable, be engaged with on matters relating to rehabilitation and reintegration outcomes for Māori offenders, including engagement on a national, regional, and site level on the design, delivery, and monitoring of programmes and services
 - (l) – the views of an offender's family and of the hapu and iwi of a Māori offender may, where appropriate and so far as is reasonable and practicable, be taken into account in the decision about which prison the offender is detained in
 - (m) – the well-being of a Māori person, and all other persons, under control and supervision in the corrections system must be promoted, including by providing access to matauranga Māori
 - (n) – approaches to health care for prisoners in a prison must be guided by the health sector principles set out in section 7 of the Pae Ora (Healthy Futures) Act 2022 as far as is reasonable and practicable.
- 3 This clause is also referenced in clause 7 as (a).

Clause 7 – giving effect to the Treaty of Waitangi through the Bill

- 4 Clause 7 amends section 6A of the Act and is considered a descriptive Treaty clause, it inserts a new section to show how the legislation provides for the Crown's intention to give effect to the principles of the Treaty of Waitangi, this includes:
 - (a) – provides principles that guide the operational of the corrections system and support rehabilitation and reintegration of Māori offenders
 - (b) – provides for the chief executive's function of ensuring the development, maintenance, and implementation of a strategy that is focused on improving outcomes for Māori in the corrections system
 - (c) – provides for access, by prisoners who may be temporarily released from custody or temporarily removed from prison, to cultural activities
 - (d) – provides for access by prisoners to matauranga Māori
 - (e) – provides for access by Māori prisoners and other prisoners to cultural activities

Clause 8 – requiring a Māori Strategy to be in place

- 5 Clause 8 amends section 8 of the Act to create an additional function of the chief executive to ensure that a strategy that focused on improving outcomes for Māori is developed, maintained, and implemented.

Clause 17 – temporary release from custody or temporary removal from prison for cultural activities

- 6 Clause 17 amends section 62 of the Act to enable the chief executive to authorise a prisoner to be temporarily released from custody or temporarily removed from prison for the purpose of access cultural activities. This clause is also referenced in clause 7 as (c).

Clause 18 – information and education needs of prisoners to include mātauranga Māori

- 7 Clause 18 amends section 78 of the Act to provide for access by prisoners to mātauranga Māori, as far as is practicable. This clause is also referenced in clause 7 as (d).

Clause 19 – needs relating to particular cultures

- 8 Clause 19 amends section 80 of the Act to provide for access by prisoners to cultural activities, so far as is reasonable and practicable. This clause is also referenced in clause 7 as (e).