

Office of the Minister of Corrections
Cabinet Social Outcomes Committee

Public consultation on proposed changes to the Corrections Regulations 2005 to improve prison safety

Proposal

- 1 This paper seeks Cabinet agreement for public consultation to commence on a package of regulatory options to support the Department of Corrections (Corrections) to respond to its changing environment and improve safety in prisons.

Relation to government priorities

- 2 The Government is committed to restoring law and order. An effective and safe prison system supports this goal and enables better rehabilitation and reintegration outcomes, ultimately reducing reoffending and crime.

Executive Summary

- 3 The Corrections Act 2004 (the Corrections Act) and Corrections Regulations 2005 (the Regulations) provide clear and specific rules about the management of prisoners. This helps to protect prisoner's human rights, while providing clear direction for how Corrections should deliver rehabilitation and reintegration.
- 4 While custodial staff primarily focus on de-escalation techniques to minimise the risk of violence in prisons, at times the difficult nature of the prison environment and the complex needs of prisoners can lead to incidents of violence and aggression. Corrections reported that for the 2023/24 financial year there had been 827 assaults on staff, 1,341 prisoner on prisoner assaults, and 7,759 incidents where contraband was identified in prisons (equating to total contraband finds of 8,669).
- 5 As one of my priorities is staff safety, I seek to give Corrections more power to manage prisoners safely, while providing more transparency and accountability for prisoners and oversight entities such as the Ombudsman. This package of regulatory options is timely as it responds to recommendations from oversight entities and supports safe management of an increasing prison population, including the proportion of remand prisoners.
- 6 I ask your agreement for Corrections to release the attached discussion document to support a six-week targeted public consultation process that would include engagement with iwi and Māori groups, and key stakeholders.
- 7 The proposed changes to be consulted on would:

- 7.1 introduce additional or new cell features to support the safety of Corrections officers when opening and closing cell doors in prisons **[rec 2.1]**
- 7.2 give transparency and certainty to Corrections' use of cameras to monitor and record prisoner activities **[rec 2.2]**
- 7.3 improve prison safety by increasing and clarifying Corrections' powers to manage funds held for prisoners in prison trust accounts (PTAs) **[rec 2.3]**
- 7.4 increase the use of different security classifications for remand prisoners to determine safe management, where practicable, to ensure remand prisoners are managed no more restrictively than necessary, and to efficiently use prison resources **[rec 2.4]**
- 7.5 update provisions relating to prisoner haircuts and the growing and removal of facial hair to remove redundant requirements and lower the risk of these requirements impacting prison tensions **[rec 2.5]**, and
- 7.6 ensure that the clothing and footwear worn by remand accused prisoners prioritises prison safety **[rec 2.6]**.

Summary of consultation proposals in attached discussion document for which I seek Cabinet approval

Introduce additional or new cell features to support staff safety

- 8 I am proposing that my officials consult on potential options to better support staff safety and reduce assaults when Corrections officers open and close prison cell doors. Options include regulatory change enabling additional restraints called drop pins, and operational change to install further visual aids such as bubble mirrors or cameras, in some prison cells such as within management units and maximum security units.
- 9 Of the 864 assaults on staff in the 2022/2023 year, 10 assaults occurred while staff were opening cell doors, and seven took place when a prisoner was being returned to their cell. Assaults on staff can result in staff needing time off, which can negatively impact the prison's ability to manage other incidents, should they arise. While these numbers are low, no assault is acceptable. I aim to further reduce assaults as staff safety is one of my priorities.

Give transparency and certainty to Corrections' use of cameras

- 10 Corrections uses closed circuit television cameras (CCTV) and personal cameras worn by Corrections officers (body-worn cameras) extensively in all prisons. Cameras are key tools for maintaining prison safety by deterring inappropriate conduct, and monitoring and capturing incidents to enable staff to respond efficiently and inform any following investigations.

11 While the Corrections Act enables regulations to be made for the “visual recording” of prisoners, so far only one regulation exists and that relates to cameras that record areas where prisoners receive private visits.¹ The Regulations are silent on any further use of cameras within prisons.

12 I propose public consultation test options that would give certainty and transparency as to where and when cameras can be used, and consistency where relevant. Options include introducing provisions for where cameras can or cannot be used, having a general requirement about use where necessary and justified, and an additional provision to explicitly enable body-worn cameras.^{9(2)(h)}

13 The Chief Ombudsman has raised concerns about the “intrusive use of CCTV in prisons”. To address such concerns, these options include safeguards to protect prisoner privacy for when cameras are likely to record intimate visual footage of prisoners, such as when they are using the toilet.

Increase and clarify Corrections’ powers to manage funds held for prisoners in PTAs

14 Under the Corrections Act, Corrections is required to ensure that where money is deposited in a PTA for the benefit of that prisoner, that money must be held exclusively for that prisoner, and they must be able to use that money to buy items through the prison purchasing system.

15 A large volume of transactions take place in relation to PTAs. In 2022/2023, approximately \$16 million flowed in and out of PTAs through 334,851 transactions. This included almost \$12 million spent at the prison canteen on items such as deodorant and snack foods, and \$2.4 million sent by prisoners to people outside of prison.

16 The regulatory framework that supports the legislative requirements is outdated and negatively impacts prison and public safety. This has enabled prisoners and the public to use PTAs for transactions that have the potential to cause harm or compromise public, prison, and prisoner safety. For example, Corrections staff have identified transactions that appear to be the result of prisoner intimidation, such as where prisoners have large balances that are distributed to other prisoners,^{6(c)}

17 ^{6(c)}

¹ Section 202(b) of the Corrections Act 2004 enables regulations to be made regulating communication with, and the visual recording of, prisoners. Regulation 113 of the Corrections Regulations 2005 provides for the sound or visual recording of visits to a prisoner.

6(c)

- 18 To ensure prison and prisoner safety is less likely to be compromised, and that the PTA system is practical for staff members to manage, I propose consultation takes place on options to amend regulations that would:
- 18.1 clarify prison managers' powers to regulate withdrawals or stop or return deposits, such as where they indicate intimidation has taken place
 - 18.2 require the chief executive to set consistent standards across the prison network for PTA management, and
 - 18.3 enable PTA funds that exceed an approved balance limit to be set apart from funds that the prisoner can assess to make purchases, to lessen the risk of stand overs by reducing large balances.

Increase the use of different security classifications for remand prisoners

- 19 While Corrections must give all sentenced prisoners a security classification to support their appropriate management in high or low security units, there are currently no legislative or regulatory requirements to assign security classifications to remand prisoners who are in prison awaiting court processes.^{9(2)(h)}

- 20 Instead, Corrections makes operational decisions to manage remand prisoners as 'high security' by default, unless their risk is assessed through a remand management tool (RMT) that determines whether a prisoner needs a high or low level of supervision. Currently, prisons are using the RMT to classify approximately 60 percent of remand prisoners.
- 21 Data shows that when prisoners are sentenced and given a security classification, a large proportion are likely to be classified as low security. This suggests that Corrections' current management of remand prisoners as high security can be improved.² There is an opportunity for more remand prisoners to be assessed and classified so that prisoners' risk is more accurately identified and managed.
- 22 This is important as security classifications affect a prisoner's placement within a unit, and that in turn impacts their ability to move about the prison to participate in prison activities such as programmes and employment in prison industries. Therefore, an increase in remand prisoners being classified as low security would better support the Government's 100-day commitment to increase remand convicted prisoners access to these.

² For example, approximately 89 percent of women, if sentenced to prison, will be classified as low security.

- 23 I propose that Corrections consult on options to increase the use of security classifications for remand prisoners, either by requiring classification through Regulations, or by Corrections issuing operational guidance that recommends classification. To avoid classifying prisoners who are only in custody for short periods, classification is proposed after a specified timeframe of the individual arriving at prison, for example 14 days. Placement in lower security units would occur to the extent practicable, depending on available accommodation and other resources within the prison. I am aware that there may not always be low security prison units available at some prisons that manage remand prisoners.
- 24 Across the prison network, 75 percent of high security beds are being used to house prisoners on remand.³ As these options enable Corrections to manage remand prisoners more flexibly, they could support more efficient use of resources noting that Corrections often experiences pressure on high security prison units. Classification will also increase available data on the number of low security remand prisoners, to better support long-term infrastructure planning.

Update provisions relating to prisoner haircuts and facial hair

- 25 One of the recommendations from the Office of the Inspectorate's 2023 investigation into the Waikeria riot, which began 29 December 2020 and resulted in more than \$50 million of damage, was that Corrections "amend the Corrections Regulations to ensure the sections relating to haircuts for prisoners on remand are relevant and appropriate". The Waikeria riot demonstrated that these kinds of personal restrictions can have significant impacts on prison tensions. While access to haircuts was not the sole component, it was implicated in the start of the riot.
- 26 To ensure a timely response to the Inspectorate's recommendation, I propose to explore updating regulations relating to hair and facial hair to remove outdated provisions, such as processes that are no longer needed for witness identification. There is an opportunity to ensure provisions are not overly restrictive for prisoners and include more relevant requirements that accommodate cultural perspectives.
- 27 By amending the Regulations, I seek to reduce future opportunities for rules around prisoner haircuts and facial hair to contribute to prison tensions.

Ensure that the clothing and footwear worn by remand accused prisoners prioritises prison safety

- 28 In keeping with international guidance, the Regulations generally enable remand accused prisoners to wear their own clothing and footwear.

9(2)(b)(ii)

⁴ Despite the provision of prison clothing and

³ This figure is at 31 March 2024.

9(2)(b)(ii)

footwear, staff report incidents where wearing personal clothing and footwear, especially luxury items, can expose prisoners to intimidation from other prisoners, impacting prison safety.

- 29 To better support prison safety, I propose that my officials test options that either update the Regulations relating to when accused prisoners can or cannot wear their own clothing or footwear to make it clear that safety should be prioritised or update operational procedures relating to when prisoner clothing and footwear can be withheld.

I propose that Corrections begin public consultation on these options as soon as possible

- 30 The attached discussion document will be formally released on Corrections' website and form the basis of materials that are tailored for specific audiences. Corrections will also offer targeted engagement meetings with key stakeholders and partners during consultation.
- 31 Prior to public release, the discussion document may be edited and formatted, resulting in editorial changes to the attached version.

The approach to public consultation will aim to capture diverse perspectives

- 32 Corrections will discuss the proposals with key Māori and iwi groups, acknowledging that Māori are disproportionately affected by any changes in the justice sector and corrections system. The Human Rights Commission, the Office of the Ombudsman, the Privacy Commissioner, the Chief Victims Advisor, the Children's Commission, expert legal groups and prisoners, as well as other stakeholders will also be approached for feedback.

Next Steps

- 33 Depending on the outcomes of consultation, I intend to seek Cabinet approval on the policy intent of any changes to the Regulations by the end of 2024. This would enable new Regulations to be in place by early to mid-2025.

Cost-of-living Implications

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

Financial Implications

- 35 If Cabinet agrees to any of the changes in the future, there will be costs associated with implementation. We anticipate costs would be met through baselines and possible reprioritisation.

Further visual aids or restraints in cells could have fiscal implications for Vote Corrections

36 The discussion document seeks to test the regulatory authorisation of drop pins for limited use in cells that manage prisoners at higher risk of violence.

9(2)(b)(ii) [Redacted]

While this proposal would give Corrections the ability to lawfully use drop pins, their use would be targeted and respond to available budget.

37 The other option being consulted on as alternatives to drop pins would also have financial implications.

9(2)(b)(ii) [Redacted]

Amending the criteria for remand accused clothing could result in additional costs

38 9(2)(b)(ii) [Redacted]

options could result in more remand accused prisoners wearing prison issued clothing. It is difficult to estimate the potential cost of the options, as at this time most prisoners wear prison issued clothing, but it is expected to be a minor additional cost that impacts a small number of prisoners.

Impact Analysis

39 As requested by the Ministry for Regulation, the QA panel consisting of staff from the Department of Corrections, Ministry of Justice, and Ministry for Primary Industries, has reviewed the discussion document and determined that it contains sufficient impact analysis to support Cabinet's decision to release it. Therefore, a separate regulatory impact statement (RIS) is not required at this stage. A full RIS will be completed at a later stage to inform Cabinet's final decisions on this proposal.

Population Implications

40 The potential population impacts are described in the table below.

Population group	How the proposal may affect this group
Māori	Māori are overrepresented in the prison population, comprising approximately 52.4 percent of people in prison (64 percent of women in prison) as at 31 March 2024. Given the high proportion of Māori prisoners (60 percent) in management and maximum-security units, and that mechanical restraints are more likely to be used on Māori prisoners compared to the general prison population, Māori prisoners could be disproportionately impacted by the use of drop pins in cell doors.

⁵ Corrections has 481 operational cells within management units and maximum security units as at 31 March 2024.

9(2)(b)(ii) [Redacted]

Population group	How the proposal may affect this group
Women	<p>Of the 617 women in prison on 31 March 2024, wāhine Māori were overrepresented and make up approximately 64 percent of all women in prison. Remand prisoners make up approximately 56 percent of the women’s prison population and this is expected to increase.</p> <p>Data from 2023 showed that 89 percent of women on remand, if sentenced to prison, were classified as low security. Provided that accommodation in accordance with security classification were possible, the proposal to provide remand prisoners with security classifications could benefit low risk prisoners by way of fewer restrictions, supporting their access to activities. As Māori women account for 75 percent of the total women’s remand population, these changes are likely to positively impact Māori women.</p>
Young people	<p>As at 31 March 2024, there were 883 young adults (under 25-years-old) in prison, of which 57 percent were on remand. Given the proportion of youth that are on remand, the proposal to provide remand prisoners with security classifications could positively impact the management of many young people. Additionally, as Māori youth are overrepresented in those under 25 years (57 percent) this proposal could have a positive impact on Māori youth.</p>
Pacific people	<p>There are approximately 3,648 Pacific people in prison as of 31 March 2024. As at 31 March 2024, Pacific people made up 17 percent of all prisoners in management and maximum security units across the prison network. As mechanical restraints are shown to be more likely to be used on Māori and Pacific prisoners compared to the general prison population, Pacific prisoners could be disproportionately impacted by the use of drop pins in cell doors.</p>
Other ethnicities	<p>The proposal to include, in the Regulations or operational procedures, cultural and wellbeing considerations relating to hair would be likely to better support cultural perspectives than the current Regulations. For example, in Sikh culture men and women do not cut hair from any part of their body, as the cutting of hair is considered to be a sin.</p> <p>Some prisoners may wear specific types of clothing or footwear that are unable to be worn if there are changes to the regulations in relation to remand accused prisoners’ clothing and footwear, such as items of religious or cultural significance if they were found to undermine safety.</p>

Human Rights

- 41 While there are no immediate human rights implications arising from this paper as public consultation is only seeking feedback on policy options, there could be if Cabinet agrees to any of the changes in the future.
- 42 Options to insert further visual aids or cameras in prison cells to support staff safety may engage NZBORA rights regarding prisoners being treated with inherent dignity, as well as principles in the Privacy Act 2020 relating to the collection of personal information. Potential mitigations to this are discussed, such as only including these features in management or maximum-security cells. While giving transparency to Corrections’ use of cameras may also engage similar rights and privacy principles, as prisoners would know when their privacy is impacted, they are likely to better align with these rights and principles.
- 43 Rule 115 of the United Nations Standard Minimum Rules for the Treatment of Prisoners provides that remand accused prisoners should be able to wear clothing to differentiate them from convicted prisoners. This is relevant as the

discussion document contains options that could impact remand accused prisoner's ability to wear their own clothing.

Climate Implications of Policy Assessment

- 44 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Use of external resources

- 45 No external resources were use in the preparation of this policy advice.

Consultation

- 46 The following government agencies were provided an opportunity to give feedback on the Cabinet paper and discussion document during agency consultation: the Ministries of Justice, Social Development, Health, Women, Pacific Peoples, Ethnic Communities, Business, Innovation and Employment New Zealand Police, Oranga Tamariki–Ministry for Children, , Te Puni Kōkiri, Te Arawhiti, the Public Service Commission, Office of the Privacy Commissioner, the Department of the Prime Minister and Cabinet, the Crown Law Office and the Treasury.

Communications

- 47 My officials at Corrections will work with my office to issue communications informing the public and key stakeholders, including Māori, when public consultation begins.

Proactive Release

- 48 I will proactively release this Cabinet paper at the time the discussion document is published, to ensure the public have all the relevant information at the time of consultation. 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 **approve** public release of the discussion document 'Consultation on options to improve operations within prisons', to support a six-week public consultation process,
- 2 **agree** that the discussion document include options that:
 - 2.1 introduce additional or new cell features to support the safety of corrections officers when opening and closing cell doors in prisons,

- 2.2 give transparency and certainty to Corrections' use of cameras to monitor and record prisoner activities,
 - 2.3 improve prison safety by increasing and clarifying Corrections' powers to manage funds held for prisoners in prisoner trust accounts,
 - 2.4 increase the use of different security classifications for remand prisoners to determine safe management, where practicable, to ensure remand prisoners are managed no more restrictively than necessary, and to efficiently use prison resources,
 - 2.5 update provisions relating to prisoner haircuts and the growing and removal of facial hair to remove redundant requirements and lower the risk that these requirements impact prison tensions, and
 - 2.6 ensure that the clothing and footwear worn by remand accused prisoners prioritises prison safety.
- 3 **direct** the Department of Corrections to commence public consultation on options to improve safety within prisons as soon as the discussion document is published,
 - 4 **authorise** the Department of Corrections to approve minor changes arising from editing and formatting prior to public release of the discussion document,
 - 5 **note** that public consultation on the proposals in the discussion document will be open for six weeks, and
 - 6 **note** the public consultation process will include targeted meetings with key partners and stakeholders held by the Department of Corrections.

Authorised for lodgement

Hon Mark Mitchell

Minister of Corrections