

In Confidence

Office of the Minister of Corrections
Cabinet Social Outcomes Committee

Removing the Treaty of Waitangi provisions from the Corrections Amendment Bill

Proposal

- 1 This paper seeks Cabinet approval to remove Treaty of Waitangi (the Treaty) provisions that are currently in the Corrections Amendment Bill (the Bill).

Background to the Bill

- 2 The Bill aims to improve rehabilitation and reintegration for prisoners, and safety for prisoners, staff, and the public. The Bill will also enable best-practice operations by ensuring that the Act is updated to respond to Corrections' changing environment, which includes a higher proportion of individuals on remand for longer periods.

The Corrections Amendment Bill was reinstated in the House on 6 December 2023

- 3 On 19 December 2022, Cabinet made policy decisions for the Bill and on 12 June 2023, Cabinet agreed to introduce the Bill [CAB-22-MIN-0589 and CAB-23-MIN-0235 refer].
- 4 The Bill was introduced into the House of Representatives on 21 June 2023 and referred to the Justice Committee. Public submissions were open until 10 August 2023.

Cabinet recently approved the submission of an Amendment Paper to the Justice Committee regarding extending eligibility for offence-based rehabilitation programmes to remand prisoners

- 5 On 13 December 2023, Cabinet agreed to extend eligibility for remand convicted prisoners to access offence-based rehabilitation programmes, and create stronger expectations that Corrections will deliver programmes to all remand prisoners, giving effect to one of the 100-day commitments [CAB-23-MIN-0491 refers]. The Amendment Paper approved by Cabinet on 19 February 2024 was subsequently submitted to the Justice Committee for their consideration.

Additional amendments were agreed by Cabinet in March 2024

- 6 On 25 March 2024, Cabinet confirmed decisions made on 20 March 2024 by the Social Outcomes Committee to make additional changes to the Bill [CAB-24-MIN-0098.02 refers].

I propose to remove the Treaty provisions in the Bill and enable Corrections to focus its efforts on operational changes to improve outcomes for Māori as needed

- 7 The Bill currently includes a descriptive Treaty clause that refers to the provisions in the Act that provide for the Crown's intention to give effect to the principles of the Treaty in the corrections system. The new provisions referred to 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 its management. Alongside those provisions are specific requirements that include a Māori strategy and access to cultural activities and mātauranga Māori for prisoners.
- 8 I recommend that Cabinet agree to remove these provisions in their entirety. I will ask Corrections to continue to focus on operational changes to address the needs of Māori in prison, as that is where the biggest impacts can be made.
- 9 My recommendation would remove all of clauses 6, 7, and 8 in the Bill, and corresponding clauses 17, 18, 19. See Appendix One for a full list of all relevant provisions from the Bill that I propose to remove.
- 10 Subject to Cabinet agreement, these changes will be recommended to the Justice Committee through supplementary advice that Corrections will provide to the Committee in April 2024. This will enable Corrections to meet the scheduled 31 May 2024 report back of the Bill to the House of Representatives.
- 11 The Justice Committee will determine whether to incorporate these changes through its standard deliberations. Parliamentary Counsel Office (PCO) will make any changes through the revision tracked version of the Bill before it is returned to the House. However, in the event that the Justice Committee does not progress these changes, I will look to include them in an Amendment Paper for the Committee of the Whole House.

Corrections understands the importance of addressing the needs of Māori prisoners and has operational programmes underway to meet those needs

- 12 Over 50 percent of the total prison population identify as Māori, with this increasing to 68 percent for the women's population. Data also shows that Māori have higher reconviction rates upon release from prison.¹ As Māori represent the majority of those in custody, the requirement to ensure improved outcomes for them further decreases overall recidivism and therefore increases public safety.
- 13 Working with Māori to deliver culturally responsive rehabilitation is critical for improving outcomes. Corrections' current practice is to integrate mātauranga Māori alongside western psychological practice, and in doing so follow what has been established to be a key aspect of effective rehabilitation. It is also important to recognise that recidivism is a product of a wide range of individual and social factors, many of which sit outside the remit of the corrections system.

Possible implications from removing the Treaty provisions

¹ As an example, of all sentenced prisoners released from prison in 2021/2022, 36.2% of Māori were reconvicted within 12 months of release, compared to 19.9% of European prisoners and 16.4% of Pasifika.

- 14 Māori experts and iwi throughout the country were involved in the development of the draft Treaty provisions. Given the significant overrepresentation of Māori in the corrections system, officials consider it likely that there will be some concerns raised either directly with the department or with Ministers about the change in approach. I remain committed to working closely with Māori as does the department.

Cost-of-living implications

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

Financial implications

- 16 If Cabinet agrees to these changes, there will be costs associated with operational changes to support implementation, such as updates to practice guidance and staff training. Corrections will meet these costs from within baseline funding.

Impact analysis

Regulatory impact statement (RIS)

- 17 The Treasury's Regulatory Impact Analysis team has determined that the proposal to remove Treaty provisions from the Bill is exempt from the requirement to provide a Regulatory Impact Statement. The exemption is on the grounds that it has been addressed by existing impact analysis [CAB-22-MIN-0589 refers].²

Climate implications of policy assessment

- 18 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.

Use of external resources

- 19 No external resources were engaged as part of the preparation of the policy advice in this paper.

Consultation

- 20 No consultation has been undertaken on this paper. However, it is based on a paper that Corrections consulted the following agencies on: Crown Law, Ministry of Justice, New Zealand Police, Oranga Tamariki, Te Arawhiti, Department of Prime Minister and Cabinet, Ministry of Health, and the Treasury.

Proactive release

- 21 I will proactively release this Cabinet paper within 30 days of the final Cabinet decisions. Any information that may need to be withheld will be done so in line with the provisions of the Official Information Act 1982.

² https://www.corrections.govt.nz/__data/assets/pdf_file/0006/49551/RIS_Improving_rehabilitation_reintegration_and_safety_outcomes_in_the_Corrections_system.PDF

Recommendations

The Minister of Corrections recommends that the Committee agree to make the following changes to the Corrections Amendment Bill:

- 1 **agree** to remove the Treaty of Waitangi provisions in the Corrections Amendment Bill in their entirety including clauses 6, 7, and 8 and corresponding clauses 17, 18, 19.
- 2 **note** the intention is for the select committee process to be used to amend the Treaty of Waitangi provisions in the Corrections Amendment Bill and therefore advice on this matter needs to be provided to the Justice Committee by 16 April 2024 to enable the Bill to be reported to the House of Representatives as scheduled on 31 May 2024.
- 3 **agree** to include the Treaty of Waitangi changes in an Amendment Paper for Committee of the Whole House if the Justice Committee does not progress these changes.

Authorised for lodgement

Hon Mark Mitchell

Minister of Corrections

Appendix One: Extracts from the Corrections Amendment Bill covering Treaty of Waitangi provisions that I propose are removed from the Bill

Relevant clause of the Bill to be removed
Clause 6 of the Bill that I propose is removed would have inserted new principles to guide the Corrections system after section 6(1)(i) of the Corrections Act
After section 6(1)(i):
(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 hapū 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 mātauranga 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.
Clause 7 of Bill that I propose is removed would have created a new section 6A in the Corrections Act – Tiriti o Waitangi/Treaty of Waitangi
In order to provide for the Crown’s intention to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi,-
a) section 6(1)(j) to (n) provides principles that guide the operation of the corrections system and support rehabilitation and reintegration of Māori offenders
b) section 8(1)(ka) 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) section 62(2)(a)(ia) provides for access, by prisoners who may be temporarily released from custody or temporarily removed from prison, to cultural activities
d) section 78(1)(d) provides for access by prisoners to mātauranga Māori
e) section 80(2) provides for access by Māori prisoners and other prisoners to cultural activities.
Other clauses in the Bill that I propose are removed
Clause 8 – powers and functions of the chief executive
The chief executive has the following powers and functions:
(ka) ensuring that a strategy is developed, maintained, and implemented that-

- f) focuses on improving outcomes for Māori in the corrections system; and
- g) provides requirements for monitoring the outcomes

Clause 17 – temporary release from custody or temporary removal from prison

The chief executive may give authority for the temporary release from custody or temporary removal from prison of a prisoner to whom this section applies-

- (a) for any purpose specified in regulations made under this Act that the chief executive considers will facilitate the achievement of 1 or more of the following objectives
 - (ia) the prisoner’s access to cultural activities

Clause 18 – information and education needs of prisoners

A prisoner is entitled-

- (d) so far as is practicable, to access to mātauranga Māori

Clause 19 – needs relating to particular cultures

(2) Māori prisoners and other prisoners detained in a corrections prison must have access to cultural activities, so far as is reasonable and practicable, regardless of the corrections prison in which they are detained.