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Options to Achieve Improved Outcomes in the Corrections System: Discussion Document 2022

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Consultation on options to improve rehabilitation, reintegration, and safety outcomes in the corrections system

This discussion document sets out a package of options to provide improved rehabilitation, reintegration, and safety outcomes for the people Corrections manages. This includes operational options alongside possible amendments to the Corrections Act 2004 (the Act) and the Corrections Regulations 2005 (the Regulations). These proposals are split into three sections:

- **amending legislation to enable changes in operating practice**
- **supporting strategic shifts** that are taking place under Corrections departmental strategy, Hōkai Rangi, aimed at improving outcomes for all people in prison using te ao Māori approaches, and
- **miscellaneous amendments** that are more operational and technical

In each section, we set out the problem we are addressing, the outcome we are seeking and possible options for achieving this outcome. We also discuss the advantages and disadvantages and the costs and benefits of each option and how they could be implemented.

We are seeking your feedback on the options and the issues identified, and in each section you will find questions to respond to. You do not need to respond to all of the questions if you do not wish.

Written submissions can be emailed to LegislationAmendments@corrections.govt.nz and submissions are open until **Friday 23 September.** A survey is also available on the Corrections website that you may wish to respond to:

Note that the contents of submissions may be published on the Corrections website and released to the public if requested under the Official Information Act 1982. If you think there are grounds to withhold specific information in your submission from publication, please make this clear in your submission. Reasons that information can be withheld are set out in sections 6 and 9 of the Official Information Act and may include that the submission discloses personal information. We will take into account any requests to withhold information in submissions when responding to requests under the Official Information Act.

Summary of proposed changes

Amending legislation to enable changes in operating practice:

1. monitoring and gathering information on prison activity and communications for intelligence purposes to improve prison safety (pages 8-19)
2. ensuring people are assigned to male and female prisons by considering a range of factors (pages 19-22)
3. increasing access to privacy and control over lighting in prison cells (pages 22-26)
4. refining disciplinary processes in prisons (pages 26-36)

Supporting strategic shifts through operational and regulatory means:

5. supporting improved rehabilitation and reintegration outcomes for Māori (pages 37-41)
6. providing remand accused people with greater access to non-offence focused programmes and services (pages 41-45)

Miscellaneous amendments to legislation to assist day-to-day operations

7. make a series of miscellaneous amendments to solve a range of technical issues that will assist day-to-day operations:

    7.1 body temperature scanners (pages 46-47)

    7.2 enabling the use of imaging technology to replace strip searches (pages 47-48)

    7.3 case management plans (pages 49-51)

    7.4 information sharing with Inland Revenue (pages 51-52)

    7.5 mixing of young people and adults (pages 52-53)

    7.6 minor/technical changes (page 53)

Setting the scene

Who is the Department of Corrections and what do we do?

Ara Poutama Aotearoa[1]/the Department of Corrections (Corrections) is the organisation within the justice sector that administers prison and community sentences and orders, and assists in people's rehabilitation and reintegration into the community. Our purpose, outlined in section 5 of the Act[2], is to improve public safety and contribute to the maintenance of a just society by:

- ensuring sentences and orders are administered in a safe, secure, humane and effective manner
- providing corrections facilities that are operated in accordance with the Act and the Regulations that are based on, among other things, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)[3]
- assisting in the rehabilitation and reintegration of people into the community through the provision of programmes and other interventions, and
- providing information to the courts and the New Zealand Parole Board.

We have approximately 10,000 staff, and we work with approximately 7,728 people in prison and 26,883 people in the community as of 30 June 2022.

Corrections is responsible for 18 prisons[4] and corrections facilities across Aotearoa (15 for men and three for women) for people who have either been sentenced to a term of imprisonment, or have been remanded in custody while they wait for their case to be heard. While our prisons vary in size and specification, each of them operates under the same set of rules and must meet a certain standard that is set out in the Act and the Regulations. The proposals in this discussion document relate largely to prison procedures and how Corrections operates.

New Zealand's prison population peaked at 10,820 people in prison in March 2018. This has dropped to a population of approximately 7,728 as of 30 June 2022.

Corrections manages a wide variety of community-based sentences and orders, including people on parole and people on home detention. There are different pieces of legislation covering the management of these sentences and orders, which are not part of this consultation process. They include the Parole Act 2002, the Sentencing Act 2002, and the Bail Act 2000.

As of 30 June 2022, there were approximately:

- 7,630 people onsite in prison, of which 54% have Māori whakapapa.
- 427 women in prison, of which 67% have Māori whakapapa.
- 751 under-25-year olds in prison, of which 64% have Māori whakapapa.

The prison release Recidivism Index[5] for the 12-month follow-up period for 2019/20 was 24.0% re-imprisonment and 38.8% resentenced. These rates were higher for men (25.0% reimprisonment and 39.8% resentenced) than for women (14.2% reimprisonment and 29.7% resentenced). These rates were also higher for Māori (27.5% reimprisonment and 43.1% resentenced) than for New Zealand Europeans (20.5% reimprisonment and 35.6% resentenced).[6]

Corrections employs over 4,000 custodial staff, including management teams, over 200 registered psychologists, around 250 nurses, over 300 case managers, over 1,300 probation officers, and around 70 education tutors. Our staff work in challenging environments with complex people who have serious convictions, but many of whom also come into our management with significant learning, disability, mental health and addiction needs.[7] Corrections has a duty to provide health, education, rehabilitation and reintegration services to the people in its management, to reduce their risk of reoffending and increase oranga/wellbeing.

People in prison are known to have limited access to health care in their communities prior to entering prison and are therefore likely to have unmet health needs. Our research has shown that 91% of the people we manage will meet the criteria for a mental health and/or addiction diagnosis at some point in their lifetime.[8]

1. The name Ara Poutama Aotearoa was gifted to Corrections after extensive consultation with Māori communities and iwi. It refers to a pathway of excellence for those who are in Corrections' management, and conveys the responsibility that Corrections has to support and guide those in our management to reach Te Tihi o Manono, the point from which unlimited potential can be realised.
2. Corrections Act 2004, s 5 – Purpose of the Corrections system.
3. United Nations General Assembly, The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).
4. Auckland South Corrections Facility is privately operated by Serco.
5. The percentage of people under our management who are reconvicted within a given period of time (the follow-up period), and who receive either a prison sentence (re-imprisonment) or any Corrections-administered sentence (re-sentencing).
6. Department of Corrections Annual Report 2020/21, p.163.
7. Department of Corrections Annual Report 2020/21, p.63.
8. Department of Corrections Annual Report 2020/21, pp.7-8.

The Corrections Act sets the foundation and rules for the operation of prisons

The Corrections Act 2004 is Corrections' primary piece of legislation with any changes made by the House of Representatives. The Corrections Regulations 2005 (the Regulations) support the Act with more specific requirements relating to the Act. Regulations are approved by Cabinet.

Section 6 of the Act outlines a set of principles that guide the corrections system. The maintenance of public safety is the paramount consideration in decisions about the management of persons under Corrections or supervision.[9] Some of the other principles include:

- treating people fairly and not more restrictively than necessary
- taking into account the individual circumstances of people we manage
- involving the person's family in decision making and encouraging and supporting contact with their family[10]

Our legal framework is broader than the Corrections Act, the Parole Act, the Sentencing Act, the Bail Act, and associated regulations. Corrections must also adhere to New Zealand's human rights legislation and our international obligations.

There are also other pieces of legislation that impact on some of the issues outlined in this paper. These include the:

- Privacy Act 2020
- Official Information Act 1982
- Public Service Act 2020

We have considered the implications of these pieces of legislation when framing issues and developing options for change.

Domestic human rights settings

While New Zealand does not have a written constitution, there are some fundamental constitutional principles that need to be considered when thinking about any legislative or regulatory reform. These include how the state exercises power and the relationship between the state and individuals. These concepts are included in the New Zealand Bill of Rights Act 1990 (NZBORA) and the Human Rights Act 1993. Corrections must also operate in accordance with the Public Service Act 2020, which sets out public service principles and that the role of the public service includes supporting the Crown in its relationships with Māori.

It is important that other legislation is consistent with these pieces of legislation, particularly when the rights of an individual are affected, such as when they are detained in prison. That being said, NZBORA recognises that there are situations where limiting rights and freedoms may be appropriate if they can be justified in a free and democratic society.

In order to ensure we are giving appropriate consideration to the human rights implications of our proposed changes, when assessing our proposals against the status quo, we have weighted the human rights criteria more heavily than other assessment criteria.

Treaty of Waitangi/te Tiriti o Waitangi

In addition to the Crown's Article One right (or duty) to govern in the interests of all New Zealanders, the Treaty of Waitangi/te Tiriti o Waitangi (the treaty) creates a basis for protecting and acknowledging Māori rights and interests. The treaty establishes the respective rights and duties that define Māori/Crown relations.

Māori are overrepresented in New Zealand prisons and in reoffending rates, and in 2017, the Waitangi Tribunal found that Corrections has a particular need to better provide for Māori as part of meeting its treaty responsibilities.

9. Corrections Act 2004, s 6 – Principles guiding corrections system.
10. This is not an exhaustive list, but rather the most relevant to the changes proposed in this document. The full list can be found in section 6 of the Act.

Our international obligations

New Zealand is a signatory to several international instruments that have impacted how our corrections system has evolved and can influence any changes that are being considered.

These include the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) that set minimum standards for prison management and the treatment of people in prison.

The Nelson Mandela Rules are non-binding and acknowledge that legal frameworks vary between states. States "may adapt the application of the Rules in accordance with their domestic legal frameworks, as appropriate, bearing in mind the spirit and purposes of the Rules". While not legally binding in the same way as our domestic law, the Nelson Mandela Rules are specifically referenced in the Act as guiding how our system operates.

There are also several other international instruments New Zealand is party to that are important to note, as they are relevant to both the Act and Regulations and some proposals in this document. These include the:

- International Covenant on Civil and Political Rights (ICCPR) – this is a key treaty covering human rights and covers a range of protections including equality before the law, freedom from ill-treatment and arbitrary detention, and the right to life and human dignity. This is particularly relevant to section 6 in this document regarding mixing remand accused and convicted people in prison.
- United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) – establishes a universal framework of minimum standards for the survival, dignity and well-being of indigenous peoples.
- United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) – adopted by the United Nations General Assembly in 2010 to establish a set of standards for the specific needs and characteristics of women in a corrections system.
- United Nations Conventions on the Rights of the Child (UNCROC) – sets out specific children's rights, including in relation to detention and imprisonment. This is relevant to proposal 7.5 in this document regarding the mixing of young people and adults in prison.

Corrections is going through major change to support the outcomes of Hōkai Rangi

Hōkai Rangi, launched in 2019, was developed with Māori to address the overrepresentation of Māori in the corrections system.[12] Corrections acknowledges the work of our Māori partners who have provided significant kōrero, research and evidence towards improving the corrections system.

Hōkai Rangi is guided by the whakataukī *Kotahi anō te kaupapa; ko te oranga o te iwi* (there is only one purpose to our work; the wellness and wellbeing of people). A key focus of this change is about reducing harm to people in prison and shifting to an approach that is more responsive to the needs of the individual and their whānau, using te ao Māori approaches. This means we are innovating and finding alternative ways of doing things, in partnership, to achieve better rehabilitation outcomes for Māori and all people we manage. When we work in new ways to achieve those outcomes, our workforce and the public will be safer as a result.

Guided by this focus on wellbeing we are establishing new therapeutic models of care with mana whenua to develop new services informed by mātauranga Māori across the system. For example, the Waikeria redevelopment includes outreach delivered from a purpose-built 100-bed mental health unit called Te Wai o Pure. The new operating model was developed with mana whenua and the District Health Board and has a vision strongly focused on wellness and wellbeing, and a focus on individual care.

We are also establishing Māori Pathways programmes at three prison sites: Hawke's Bay Regional Prison, Northland Region Corrections Facility, and Christchurch Women's Prison. Māori Pathways programmes are co-designed with iwi, hapū, and whānau Māori and support the corrections system to be more effective by using kaupapa Māori and whānau-centred approaches to managing people in prison.

11. United Nations General Assembly, The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).
12. Ara Poutama Aotearoa/Department of Corrections, *Hōkai Rangi 2019 – 2024.*

How to read this document

This discussion document has three sections – the first section is about amending legislation to enable changes in operating practice, the second section deals with options that are aimed at supporting our strategic shift, and the third section discusses proposals to support day-to-day operations. Each section describes the current settings and identifies problems that should be addressed. This is followed by a series of proposals designed to rectify these problems, including discussion of the advantages and disadvantages of the proposals and the impact on different stakeholders.

We are using six criteria to analyse our options

We have analysed each of the options against six criteria, in comparison to the status quo. Some of the criteria should be given a higher weighting than others. For example, we are less likely to prefer an option that does not comply with our human rights obligations.

- **Complies with human rights obligations:** for example, rights contained in NZBORA, the Privacy Act, United Nations Declaration on the rights of Indigenous Peoples (UNDRIP), Nelson Mandela Rules, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). We have weighted this criterion more heavily than the other criteria, as these rights are binding on us in some cases.
- **Transparency and accountability:** so the option supports transparency and accountability in how we exercise our powers and operate as an organisation.
- **Practical to implement and responsive:** so the option can adapt to pressure and changes over time such as new technologies, allowing for innovation and shifts in best practice.
- **Contributes to better outcomes for Māori.**
- **Supports oranga/wellbeing of the people we manage:** so the option contributes to the increased wellbeing of people in prison.
- **Aligns with the purposes and principles of the Corrections Act:** the option is consistent with sections 5 and 6 of the Act[13] and allows us to uphold our purpose of public safety and contribute to the maintenance of a just society.

Where options are analysed below, the following symbols are used to compare the options to the status quo:

✓✓	Significantly better than the status quo
✓	Better than the status quo
○	No significant change compared to the status quo
✗	Worse than the status quo
✗✗	Significantly worse than the status quo

Questions about the criteria:

1. Do you consider these criteria will enable us to assess the options for change? If not, why not? What else would you suggest as criteria?
2. Would you also weight human rights more strongly than other criteria?

13. Corrections Act 2004, s 5 – Purpose of corrections system and s 6 – Principles guiding corrections system.

Amending legislation to enable changes in operating practice

1. *Monitoring and gathering information on prisoner activity and communications for intelligence purposes to improve safety*

We are proposing options for change to enable us to increase our monitoring of prisoner communications in light of risks from changing technology and evolving criminal patterns. These options would support the safety, security, and good order of prisons. Our proposed amendments to the Act would help ensure that when Corrections gathers information from prisoner activities and communications, we are transparent and able to be held accountable for the use of our intelligence powers. This is in keeping with good legislative practice and would support safety and human rights.

What is intelligence?

Intelligence is the product of an analytical process that evaluates information collected from diverse sources, integrates relevant information to form a clearer understanding of a problem or environment, and uses that understanding to advise decision makers on what action to take. Intelligence draws conclusions and inferences from facts and patterns. It anticipates future behaviours and identifies trends and risks.

In the Corrections context, this information stems from monitoring imprisoned peoples' communications to detect illegal and covert activity, or other activity that may threaten the safety and security of prisons. Being able to draw conclusions and inferences from this information allows us to reduce harm and keep people in prison and the wider community safe.

Context and status quo

Corrections can monitor some prisoner communications to gather information about people in our management, such as from mail and phone calls.[14] We use this information to build intelligence about criminal activity that prisoners are involved in and to identify any risks to the safety and security of prisons. This could include contraband introduction (e.g. drugs or harmful material), covert activity and violence, as well as activities that could harm the safety and good order of the prison. Staff authorised by a prison director[15] can open and read mail for the purpose of identifying harmful material that should be withheld. Since August 2019, for example, we have withheld around 14,500 pieces of mail. Corrections undertakes this work as part of its core purpose to deliver safety and contribute to the maintenance of a just society.

Corrections can disclose information to Police and other agencies from a prisoner phone call for various reasons.[16] Some of these reasons include: to avoid prejudice to the maintenance of law (preventing and detecting further offending), or when there are reasonable grounds to believe that disclosure is necessary to enable an intelligence and security agency to perform their functions under the Intelligence and Security Act 2017.

In addition, over the past six years, New Zealand has seen a major shift in the criminal landscape, which is reflected in the kind of activities that Corrections staff observe among prisoners. This includes:

- the development of new technologies that can be used to conduct criminal activity or other activity that may threaten the safety or security of prisons, and facilitate harm in the wider community
- expanding and diversifying organised crime networks, including an increase in threats from Transnational Organised Crime (TNOC)
- a rise in gang populations, including the emergence of new gangs such as Comancheros MC
- an increase in violent extremism, particularly Identity-Motivated Violent Extremism (IMVE)[17] and Faith-Motivated Violent Extremism (FMVE)[18]

14. For example, the Corrections Act 2004 provides for monitoring of mail in sections 103A -110C and phone calls in sections 111 – 122.
15. An authorised person is a person who has been authorised in writing by the prison manager to open and read mail.
16. Corrections Act 2004, s 117 – Authorised disclosure of information.
17. Identity-Motivated Violent Extremism (IMVE): promoting the use of violence to advance one's own perception of identity and/or denigrate others' perceived identities.
18. Faith-Motivated Violent Extremism (FMVE): promoting the use of violence to advance one's own spiritual or religious objectives.

This means Corrections has been adapting how much intelligence we gather from prisoner activities and communications so that we can keep our staff, people in prison, and the public safe.

As our monitoring is targeted and only focused on the highest risk individuals in prison and the good order and safety of prisons, we work with Police on matters to do with wider public safety. As Police are governed by the Search and Surveillance Act 2012, they have additional powers that Corrections does not have access to and does not need. This is because Police are ruled by principles to maintain public safety and prevent crime, while Corrections' core purpose relates to maintaining safety through the safe and secure management of sentences. For example, while Corrections is unable to monitor in person visits, Police can apply for a warrant that grants them the power to do so. This might occur in instances where there is reason to believe that crime is being commissioned or committed.

Problems relating to monitoring prisoner communications and information gathering

Problem 1.1: the Corrections Act no longer allows us to effectively monitor prisoner activity to keep people safe because technology and prisoner behaviour have changed

With the emergence of new, more sophisticated gangs, and domestic and transnational organised crime groups, there is an increased risk of illicit, covert or harmful activity that may threaten the safety and security of prisons that Corrections is unable to effectively monitor. This is because the Act was written at a time when digital technology was less common in our prisons. The variety of communication methods used to commit and facilitate crimes or other harmful activity has now developed to the point where Corrections staff do not have the power to gather information from prisoner activity as the Act does not enable it. As our prison system continues to modernise and we introduce new means of communications, such as video calling and internet access, we need the ability to continue to monitor higher risk prisoner activity and communications in order to keep people safe.

Furthermore, the Act does not specifically set out how Corrections can use information from available sources for intelligence purposes to form a picture of risk in prisons. For example, the Act is silent on whether Corrections can access open source information, the use of biometric data (such as tattoos that can show gang affiliation), or use items seized by custodial staff. These kinds of information sources could provide us with useful, actionable information when prisoners are undertaking or planning criminal activity or other activity that may threaten the safety and security of prisons.

We also know from the monitoring of phone calls that criminal or covert activity is often saved for in person visits. The Act does not specifically state we can monitor these visits, which creates a gap in our ability to detect risk. While this can be mitigated by Police imposing a warrant, this is limited by high thresholds, meaning that Police are unable to monitor all visits that could result in harm. For example, if someone in a visit passed a note ordering an assault on someone in prison or the community, this would not meet the threshold for a warrant, but would still result in harm. If we decide to amend the Act to enable us to monitor visits, then we would need to explicitly consider how information gathered from in person visits could be used for intelligence purposes so that our activity is transparent and there are appropriate safeguards and privacy considerations in place.

Problem 1.2: We do not always have the resources to process raw information from prisoner communications and activities

We are often unable to translate different languages and coded language from phone calls and mail because we do not always have the internal resources or expertise to do so. This is because the Act only allows an 'eligible employee' to assess information (i.e. a Corrections employee or a person or employee contracted by Corrections). To help mitigate these issues, we contract people with expertise from other government agencies, which can be inefficient and expensive. Ultimately, this means that it is more likely that people in prison can pass on harmful information more easily as we have limited access to specialist resources.

In addition, the Act does not enable technology to be used to improve our monitoring capability and ability to process raw information. For example, Artificial Intelligence (AI) technology can monitor phone calls without human intervention, which could save time and resources. There is an opportunity for the Act to more transparently define if, and how, Corrections can use a technology such as AI.

Problems relating to how prisoner information should be managed once it is collected to ensure we are in keeping with good legislative design

Currently, when we manage intelligence information, we follow security standards set by the Government Communications Security Bureau (GCSB). We also use provisions in the Public Records Act 2005 (PRA) for general information, and the Privacy Act 2020 when making decisions around sharing prisoner information.

If changes are made to modernise the Act to address problem 1.1, it would also be important for Corrections to lawfully assess this information and have a rationale for how we use, store, share and destroy this information. This includes safeguards and guidance in how we manage prisoner information to respect privacy.

As the problems outlined below deal with communication and information technology, any proposed solutions would consider Māori data sovereignty issues, including the location of the storage of information, and accountability to Māori from whom data is collected. We will also consider impacts on other vulnerable groups, such as women, Pacific people, disabled people, and young people.

Problem 1.3: in most cases, the Act does not specify how long intelligence information should be retained

The Act states that phone calls are to be destroyed after two years, but there is no reference to the destruction of other information. Corrections follows a disposal schedule at an operational level that requires the destruction of prisoner information within set timeframes, which aligns with the Public Records Act.

It may be more appropriate, however, for the Act to provide specific timeframes for how long each type of prisoner information can be stored. These should have a rationale for the length of time and be consistent where appropriate.

Problem 1.4: the Act does not include provisions to enable intelligence information from a variety of sources to be compared and disclosed

Corrections has limited ability to identify and manage risks of prisoner activity over time as we cannot cross reference information from different communication sources or cumulative time periods – for example from mail and phone communications, or a series of letters.

Such information cannot be shared and cross-referenced with other information from Police or intelligence agencies unless the information suggests an immediate criminal threat. This is the case even when information could act as the 'missing puzzle piece' in building an intelligence picture of potential risks to the safety and good order of a prison. There are some provisions related to disclosure of phone calls[19] and mail[20] , but the Act is silent on sharing or comparing other types of information from other communications sources, such as email or video calls. There is an opportunity to ensure there is a clear rationale for sharing information from different prisoner communications and information sources, as well as safeguards for prisoner privacy.

Question:

3. Do you think the problems identified about the monitoring, gathering and management of prisoner information and activities should be addressed? Please explain why.

Objective: to respond effectively to changing technology to reduce harm and support safety and good order in prisons

This includes ensuring that the Act is future proofed and able to support good operational practice and respond to change effectively, such as changes in technology. Any changes need to ensure we are in keeping with good legislative practice, including privacy considerations, while continuing to play an effective support role in the wider intelligence community, that is itself changing with increased threats from violent extremism, and domestic and transnational organised crime. Any changes also need to ensure that Corrections is able to comply with its existing purpose to improve public safety and contribute to the maintenance of a just society, by ensuring that sentences are administered in a safe, secure, humane, and effective manner.

19. Corrections Act 2004, s 117 – Authorised disclosure of information.
20. Corrections Act 2004, s 110A – Restrictions on disclosure of mail.

Options

The options presented here do not include many non-regulatory options, as changes to the legislation are needed to address the legislative gaps and outdated provisions within the Act that are identified above. In addition, guidance from the central government Legislation Design, and Advisory Committee (LDAC) on the creation or expansion of intelligence powers states that legislation should expressly enable activity and provide enforceable guidelines.[21]

Changes to the Act may also improve the transparency of our monitoring powers. This is important because these options work to achieve both improvements to safety and the right to privacy for people in prison. Safeguards in the Act may help ensure that we are accountable to the people in our management and the wider public.

Problem 1.1: the Corrections Act no longer allows us to effectively monitor prisoner activity to keep people safe because technology and prisoner behaviour have changed

Option 1: amend the Act to create specific powers and restrictions on those powers to gather information from prisoner communications and activities for intelligence purposes (regulatory option)

This option would create specific provisions in the Act to enable Corrections to use only specified sources of prisoner communication, such as verbal (phone calls, video calls), written (mail, email), digital (internet services, CCTV), personal (biometric info) and in-person visits for intelligence gathering. Monitoring of in-person visits would be limited and only take place in certain circumstances where there are appropriate safeguards and thresholds that justify the recording. For example, there could be a requirement for Corrections to have reasonable grounds to think that harmful activity will be discussed at an in-person visit.

This would not include communications with statutory visitors/lawyers, privileged information (such as from psychology or medical reports), unauthorised communications, and human sources (such as 'planting' people in prison to gather information).

Advantages

Compared to the status quo, this option would better support human rights, privacy and safety because there would be clearer powers authorising Corrections to access specific communication and information sources. Improving clarity in the Act should also help strengthen accountability as there will be enablers, as well as safeguards and restrictions in place. This would align with legislative guidance to have transparent, enforceable legislation when human rights may be impacted. Overall, this option would likely increase our oversight of harmful activity happening at Corrections sites, which would support us to better respond to risk and protect the safety and good order of prisons.

Disadvantages

This option would not be as responsive to technological change as option two, as the Act could become outdated due to further changes in communication technology. Specific provisions would also mean we have less flexibility in how we gather information from prisoner communications and activities (which can also be an advantageous safeguard).

Complies with human rights obligations	✓
Transparency and accountability	✓
Practical to implement and responsive	✓
Contributes to better outcomes for Māori	✓
Supports oranga/wellbeing of people we manage	✓
Aligns with the purposes and principles of the Corrections Act	✓✓

21. See Chapter 21 of the 'Legislative Guidelines', at http://www.ldac.org.nz/assets/documents/LDAC-Legislation-Guidelines-2021-edition.pdf.

OR

Option 2: amend the Act to create general powers and restrictions on those powers to gather information from prisoner communications and activities for intelligence purposes (regulatory option)

This option would amend the Act to clarify that Corrections can monitor all forms of communications and activities from people in prison for the purpose of gathering intelligence to support the good order and safety of prisons.

Advantages

This option should be more responsive to change than the status quo, as general provisions would give Corrections more flexibility in our monitoring abilities as technology and the management of prisons change. It would be practical to implement as guidance for staff will be standard for all monitoring activities. It should provide us with more oversight of harmful activity than we have now, which would improve our ability to detect risks and reduce harm in prisons.

Disadvantages

This option may not provide as much protection for human rights as the status quo and option one. According to LDAC guidance, general provisions are not recommended for intelligence provisions as transparency is critical when government activity could potentially breach people's rights.

Complies with human rights obligations	✗
Transparency and accountability	✗
Practical to implement and responsive	✓✓
Contributes to better outcomes for Māori	✓
Supports oranga/wellbeing of people we manage	✓
Aligns with the purposes and principles of the Corrections Act	✓

Questions:

4. What is your preferred option to ensure Corrections gathers effective information from prisoner communications and activities? Please explain why.

- Option 1: amend the Act to create specific powers and restrictions on those powers to gather information from prisoner communications and activities for intelligence purposes (regulatory option)
- Option 2: amend the Act to create general powers and restrictions on those powers to gather information from prisoner communications and activities for intelligence purposes (regulatory option)
- Option 3: status quo – the current provisions in the Corrections Act continue to apply

Problem 1.2: we do not always have the resources to process raw information from prisoner communications and activities

Option 1: increase resource by hiring more staff with specialist skills (non-regulatory option)

This option would address resourcing issues by hiring more staff who would process raw information such as coded language and a broad spectrum of languages.

Advantages

Increasing resources would allow Corrections to have more oversight of harmful activity than the status quo, by ensuring there are enough staff available with the capability to translate and process raw information.

Disadvantages

This option would require additional funding to hire and maintain staff with the right expertise when those skills are scarce and shared across government agencies. This means this option would be more difficult to implement than the status quo, and less effective than option two and three because our ability to process information would be dependent on staff resources at the time. If, for example, we did not have a staff member able to translate a particular language at the time, there is a risk that harmful information could enter our prisons.

Complies with human rights obligations	○
Transparency and accountability	○
Practical to implement and responsive	✗✗
Contributes to better outcomes for Māori	○
Supports oranga/wellbeing of people we manage	✓
Aligns with the purposes and principles of the Corrections Act	✓

AND/OR

Option 2: amend the Act to allow an 'eligible employee' to include other government employees (regulatory option)

This option would amend the Act to allow the current provisions stating that an 'eligible employee'[22] can review prisoner information and activities to also include government employees from other agencies. This would allow Corrections to disclose information that we do not have the resources to assess ourselves to other agencies, such as decoding a wide range of languages or codes.

Advantages

Improved access to resources for translation would improve our ability to identify information that can cause harm, which would help keep people safe. This would reduce the administrative burden of the current practice of entering into short-term contracts with external employees, typically from other government agencies, in order to share relevant information. The option should comply more with human rights obligations as the Act would be more explicit about our ability to share raw information.

Disadvantages

This option involves the potential to share raw information with more people, which may have more privacy implications than the status quo, as private information could be shared more widely. This would be mitigated by memoranda of understandings with other agencies that include safeguards to protect information, which will help us consider safety concerns and human rights.

Complies with human rights obligations	✓
Transparency and accountability	✓
Practical to implement and responsive	✓
Contributes to better outcomes for Māori	○
Supports oranga/wellbeing of people we manage	✓
Aligns with the purposes and principles of the Corrections Act	✓

22. An eligible employee means "a person who is an employee of the chief executive, an employee of a contractor, an employee of a contracted provider, or a contracted provider" (Corrections Act 2004, s 111 - Interpretation).

AND/OR

Option 3: amend the Act to enable technology to monitor communications (regulatory option)

This option would enable new technology, such as AI, to assist Corrections in monitoring communications and information within the prison context. This could include technology that can monitor phone calls for key words, voice recognition (to avoid the current process whereby we have three-way calls in place with Corrections listening to phone calls) or it could include decibel level detection (to identify raised voices on phone calls indicating stress). This option would improve resourcing as it requires less staff to monitor information compared with the current process of staff listening to calls.

Any amendments to the Act would include protections to minimise the potential for bias from the use of AI toward particular ethnic groups (e.g. Māori) and the impact on other human rights.

Advantages

Enabling technology would require fewer staff to monitor phone calls than the status quo, which would give staff an opportunity to undertake other work. This means staff resources can be focused on higher areas of risk, which could help reduce harm across our prisons and create an environment that better supports wellbeing.

Disadvantages

This option would be expensive to implement and would require some initial costs to enable all sites with this technology. There is also potential for bias to be present in this type of technology,[23] which may have a negative impact on Māori and Black, Indigenous and People of Colour (BIPOC). This could be mitigated through due diligence into available products, and trialling of products at individual sites before they are rolled out across the prison system.

Complies with human rights obligations	○
Transparency and accountability	✗
Practical to implement and responsive	✓
Contributes to better outcomes for Māori	✗
Supports oranga/wellbeing of people we manage	✓
Aligns with the purposes and principles of the Corrections Act	○

Questions:

5. Should Corrections be able to use artificial intelligence to monitor prisoners' communications to keep prisoners, staff and the public safe? Please explain why.
6. What is your preferred option to ensure Corrections can process raw information effectively? Please explain why.

- Option 1: increase resources by hiring more staff with specialist skills
- Option 2: amend the Act to allow an 'eligible employee' to include other government employees
- Option 3: amend the Act to enable technology to monitor communications
- Option 4: status quo – no change to how Corrections can process raw information

23. de Siles, E. L. (2021). ARTIFICIAL INTELLIGENCE BIAS AND DISCRIMINATION: WILL WE PULL THE ARC OF THE MORAL UNIVERSE TOWARDS JUSTICE? Journal of International and Comparative Law, 8(2), 513-543. Retrieved from https://www.proquest.com/scholarly-journals/artificial-intelligence-bias-discrimination-will/docview/2602113372/se-2?accountid=27016.

Problem 1.3: the Act does not specify how long intelligence information should be retained in most cases

Option 1: repeal the phone call provisions in the Act that require destruction of recorded calls after two years and use operational practices to align the destruction of all intelligence information collected about people in prison with external legislation (regulatory and non-regulatory option)

After repealing the phone call provisions in the Act, this option would see information held in line with the Public Records Act 2005 (PRA), which requires agencies to "create and maintain full and accurate records of its affairs, in accordance with normal, prudent business practice".[24]

This would mean there would be no time limit set out in the Act for how long information can be held (e.g. phone calls that have been recorded in prison). However, Corrections would continue following a strict disposal schedule at an operational level and destroy all prisoner information and intelligence on set timeframes. This option would align with the practices used at other agencies, with information and intelligence only kept for as long as it is required, in line with the principles in the Privacy Act. Any information that does not relate to a prisoner and the identified risk would be destroyed, for example, information relating to the family circumstances of a person in prison.

Advantages

This option would allow us to respond when standards across government change. It would also align with how we currently manage the information of people in our management, and the policies that other agencies follow. This is similar to the status quo, as the Act only has guidance on retaining phone calls. This option supports wellbeing more than option two, as it allows us to maintain intelligence information for a longer period. This means in cases where people return to prison we would still have relevant information to assess their risk.

Disadvantages

Without a strict legislative timeframe, there could be less transparency and accountability in how long Corrections retains prisoner information. This would be a slight change from the status quo, as the Act currently contains guidance retaining phone calls but is silent on how other intelligence information should be managed. This could result in information being retained longer than necessary. However, this could be mitigated by periodic reviews or by making the operational disposal schedule publicly available.

Complies with human rights obligations	○
Transparency and accountability	✓
Practical to implement and responsive	✓✓
Contributes to better outcomes for Māori	○
Supports oranga/wellbeing of people we manage	✓✓
Aligns with the purposes and principles of the Corrections Act	✓

OR

Option 2: amend the Act to specify that intelligence information should be destroyed within a set time period (e.g. two years, sentence lengths, or other defined period) (regulatory option)

This could align, for example, with the current phone call provisions that require recorded prisoner calls to be destroyed after two years, or the provisions could require destruction after the length of a person's sentence, or another defined period. This option would provide a rationale for the destruction of information and create more transparency around our ability to retain intelligence information relating to people in prison. Information that does not relate to the person and the identified risk would be destroyed, (e.g. information relating to a person's family circumstances).

24. Public Records Act 2005, s 17 - Requirement to create and maintain records.

Advantages

A clear legislative timeframe for disposing of all intelligence information held would enable greater transparency and accountability. Improved transparency would also make it easier for Corrections to comply with human rights commitments, such as the right to privacy, as people can be assured that Corrections is not retaining private information for longer than is required, as set out in the Act.

Disadvantages

This option does not align closely with other agencies' practices, such as Police, where it is standard to follow the guidelines set out in the PRA. This means this option is likely to be less responsive to changing government standards.

Complies with human rights obligations	○
Transparency and accountability	✓✓
Practical to implement and responsive	✓
Contributes to better outcomes for Māori	○
Supports oranga/wellbeing of people we manage	✓
Aligns with the purposes and principles of the Corrections Act	✓

Questions:

7. What is your preferred option for Corrections' approach to retaining intelligence information? Please explain why.

- Option 1: repeal the phone call provisions in the Act that require destruction of recorded calls after two years and use operational practices to align the destruction of all intelligence information collected about prisoners with external legislation (regulatory and non-regulatory option)
- Option 2: amend the Act to specify that intelligence information should be destroyed within a set time period (e.g. two years, sentences lengths, or other defined period) (regulatory option)
- Option 3: status quo – do not make any changes regarding how long Corrections holds intelligence information

8. How long should Corrections retain intelligence information? Please explain why.

Problem 1.4: the Act does not include provisions to enable intelligence information from a variety of sources to be compared and disclosed

Option 1: amend the Act to allow intelligence information from different sources to be cross-referenced (regulatory option)

This option would clarify that Corrections is able to compare and cross-reference information it gathers from different sources, such as mail and phone calls. This would also include cross-referencing our information with information we hold from other agencies, such as Police or NZSIS.

Advantages

When compared to the status quo, cross-referencing information will improve our ability to assess risk, which will make our prisons safer. Creating a safer environment will contribute to improved wellbeing for people in prison. The option allows us to be more transparent with our powers to compare information, which provides more accountability for how we use prisoner information.

Disadvantages

This option could increase the volume of information available. This could lead to higher workloads than the status quo, which could either impact the timeliness of assessments or the need for more resources to process information.

Complies with human rights obligations	○
Transparency and accountability	✓
Practical to implement and responsive	✓
Contributes to better outcomes for Māori	○
Supports oranga/wellbeing of people we manage	✓
Aligns with the purposes and principles of the Corrections Act	✓

AND

Option 2: amend the Act to expand the disclosure of information to all forms of communication and information sources (regulatory option)

This option would expand the current power under section 117 to allow the disclosure of information to specified agencies to apply for all forms of communication or information sources that Corrections monitors.

Advantages

Improvements to information sharing arrangements with other government agencies, such as Police, would allow Corrections and other government agencies to better assess risk and reduce harm as a wider range of information sources could be shared. Changes to the Act would also ensure we are transparent about our powers to disclose information, which better supports both safety and people's right to privacy.

Disadvantages

Sharing information more widely could give rise to more privacy concerns than the status quo, as a greater amount of information could be shared with other agencies. There would also be some initial resource implications from needing to create or amend information sharing agreements with relevant partners such as Police.

Complies with human rights obligations	○
Transparency and accountability	✓
Practical to implement and responsive	○
Contributes to better outcomes for Māori	○
Supports oranga/wellbeing of people we manage	✓
Aligns with the purposes and principles of the Corrections Act	✓

Questions:

9. Should Corrections be able to share intelligence information with other government agencies? (e.g. Corrections should be able to share intelligence information with New Zealand Police). Please explain why.
10. What is your preferred option on how Corrections should compare and disclose intelligence information with and from other government agencies? Please explain why.

- Option 1: amend the Act to allow intelligence information from different sources to be cross-referenced (regulatory option)
- Option 2: amend the Act to expand the disclosure of information to all forms of communication and information sources (regulatory option)
- Option 3: status quo – no change

What are the costs and benefits of the options compared to the status quo?

As the above options are designed to be a package of legislative changes, the costs and benefits will be similar across all options.

Further monitoring of prisoner communications and activities could impact on the privacy of people in prison, and there is potential for further criminal charges or disciplinary hearings being brought against people when harmful activity is identified. However, people in prison would likely be safer as Corrections could better detect threats and reduce long term harm. Corrections will progress changes through both a human rights and safety lens by conducting targeted monitoring of only the most high-risk individuals. Friends and whānau would be reassured that people in prison are safer, as harmful activity would be better detected.

Some friends, family and whānau may be uncomfortable with the increased monitoring of prisoner communications, which could influence how they interact with the people they know in prison. It is unclear how these changes could impact prisoners' ability to connect meaningfully with their families and friends, but this could be mitigated through targeted monitoring of only the most high-risk individuals.

There are also processes in place to ensure that any information is destroyed that is not relevant to the person in prison and their identified risk, including personal information about friends and whānau.

Further clarity around powers and restrictions would help improve staff's ability to detect threats and fulfil Corrections' purpose to improve public safety.

In terms of the impact on Corrections staff, individual workloads may increase as staff would have wider access to information and how that information could be used. In addition, increased monitoring could potentially have a negative impact on staff-prisoner relationships by reducing trust.

There may be some minor costs for other government agencies when providing expertise for translation when we do not have the capabilities ourselves. This will also provide more assurance to other agencies that we are effectively assessing risk and supporting the work of the wider intelligence sector. In addition, option 1 for problem 1.2 involves large, ongoing costs to hire and retain staff, which would have a financial impact on Corrections.

There would be no cost to the wider public, but there would be further assurance that Corrections is effectively managing the good order and safety of prisons and contributing to public safety.

The costs and benefits for these options will involve considerations of the right to privacy and the need to keep prisons safe. Corrections is aiming to progress options that will keep our prisons safe through improved monitoring, while safeguarding people's human rights through clear safeguards and restrictions.

Questions:

11. Have we captured all the costs and benefits accurately? Are we missing anything?
12. Are there any other options to address these issues we should consider?

How will the options be implemented and monitored?

Operational guidance would need to be updated for staff who work in the communication monitoring and information gathering space, and there would need to be more targeted training and information for custodial staff in prisons. The guidance would need to outline what is or is not allowed under the new legislation, and the process to follow for each type of communication. Guidance would also need to be updated for the appropriate storage and destruction of information. This may include new training for staff to operationalise the changes to the Act. There may also need to be subsequent changes to the Regulations.

Corrections may also look to establish a series of memorandum of understanding to support information sharing activities and for other government employees to undertake translation activities on our behalf.

An initial review of these changes would be done 12 months after implementation, where we would assess if the changes have been more effective in allowing Corrections to detect risk and reduce harm in prisons. This would determine whether further changes, either legislative or operational, are required to achieve our objectives.

Question:

13. What else do we need to think about when implementing these proposals?

2. *Ensuring people are assigned to male and female prisons by considering a range of factors*

The Regulations currently require Corrections to place people in male or female prisons in accordance with the sex on their birth certificate if it is presented. We consider it important to determine a person's prison placement based on a range of different factors. This is to help ensure that people are placed in a prison that both respects their gender identity and supports wellbeing and safety.

Terminology used in this section

Sex: this refers to the physical characteristics of a person as determined by their genitalia and chromosome composition. People are assigned a sex at birth (male, female, or intersex) based on these physical characteristics.

Gender: this describes a person's identity. Gender is a broad spectrum and is distinct from a person's assigned sex. People can identify with gender at any point on the spectrum or outside of it altogether. Examples of genders include (but are not limited to) male, female, tangata ira tāne/wahine, whakawāhine, transgender, non-binary, agender and genderqueer.

Intersex: this describes when a person is born with characteristics that are ambiguous in the context of the male/female binary. Intersex babies are typically assigned a sex and gender at birth and are often given surgery to make their bodies conform to that sex. Like anyone else, an intersex person may grow up to identify with a different gender than the sex they were assigned at birth.

Transgender: this refers to people whose gender identity does not match the sex they were assigned at birth. Transgender people often go through a process called 'transitioning' (which can include a social, legal or medical transition) but they do not need to undergo any form of transition to be transgender.

Non-binary: this refers to people whose gender cannot be defined within the margins of gender binary. Non-binary is an umbrella term that can be used by people of any genders that are not solely male or female.

Gender diverse: this is an umbrella term used for a varied range of gender identities, including culturally specific identities. This term also includes people who do not want to be defined by the constrictions of the gender binary.

Nominated sex: this term aligns with existing language in the Act and Regulations. It refers to a person's gender if different from the sex assigned to them at birth.

Determined sex: this refers to the sex determined in prison for the purposes of prison placement.

Context and status quo

Currently, New Zealand prisons operate using a binary form of gender, with the Regulations requiring people to be placed in either female or male prisons. Initial placement in prison typically reflects where the court warrant directs the person to go.

If someone's sex is unclear or it is uncertain where they should be placed when they arrive at prison, Corrections must determine their initial placement using all information available. However, this decision can be reviewed if the person disagrees with their initial placement.

As part of the review of the initial placement, Corrections must consider a range of different factors under Regulation 65C. This includes the wellbeing and safety of the person seeking a review and other people they may be placed with. Someone with a history of serious sexual offending against people of their nominated sex cannot have their initial placement reviewed.

The Regulations state that if someone presents their birth certificate, they must be placed in a prison that aligns with the sex on that birth certificate (the birth certificate rule).[25] The birth certificate rule also applies when they would normally be prohibited from having their initial placement reviewed under Regulation 65C.

The Births, Deaths, Marriages and Relationships Registration Act (BDMRR Act) changes will make it easier for people to amend the sex on their birth certificate

Changes to the BDMRR Act, which comes into force by mid-2023, will make it easier for people to amend their birth certificate to align with their gender. It does this by enabling people to self-identify the sex recorded on a birth certificate, which will be an easier and faster process than the current Family Court process.

Problem 2.1: the birth certificate rule means Corrections could be compelled to make prison placements without considering all relevant information

While the birth certificate rule has not yet been used, it is more likely to be invoked in the future as the process to amend birth certificates changes. We consider it important to determine a person's placement based on a range of different factors to help ensure people are placed in a prison that both respects their gender identity and supports safety and wellbeing.

The birth certificate rule could result in Corrections placing people in a prison that might not be in their best interests or support their wellbeing and safety. For example, to manage the possibility of harm to and from other people, it might be necessary to place someone on directed or protective segregation.

Objective: to ensure Corrections can place people in a male or female prison in a way that respects their gender identity and supports safety

Our key objective is to ensure people in prison have their gender identity recognised in prison placements, while supporting the safety and wellbeing of all people in prison.

Options

Option 1: revoke the birth certificate rule and add birth certificates as one of the several factors that may be considered if it is presented during placement decisions (regulatory option)

Under this option, a birth certificate may be considered alongside a range of other factors, such as the person's gender and the wellbeing and safety of the applicant and others in prison. This would mark a change from the status quo, which requires a person to be placed according to the sex on their birth certificate, if it is presented.[26]

Under this approach, a person would not be disadvantaged if they did not present their birth certificate. This is because other information, such as gender, can be considered in the prison placement decision.

This option would retain existing regulatory provisions that exclude someone accused or convicted of a serious sexual offence from applying for a review of their determined sex.

Advantages

This option would improve the existing placement process compared to the status quo, and supports decision making that considers all relevant factors, including safety. It would also ensure a person's gender continues to be respected, as their birth certificate can still be considered when determining placement. This option aligns with the intent of the BDMRR Act changes to support people to have their gender officially recognised.

25. Corrections Regulations 2005, reg 65(3) – Accommodation of male or female prisoners.
26. Corrections Regulations 2005, reg 65(3) – Accommodation of male or female prisoners.

Disadvantages

By removing the birth certificate rule, some transgender, intersex and gender diverse people would continue to be prohibited from changing prisons due to the nature of their previous offending, which could have a negative impact on their wellbeing.

Complies with human rights obligations	✓
Transparency and accountability	○
Practical to implement and responsive	✓
Contributes to better outcomes for Māori	○
Supports oranga/wellbeing of people we manage	✓
Aligns with the purposes and principles of the Corrections Act	✓

Option 2: status quo – keep the birth certificate rule in place and have an operational response to manage people when required (non-regulatory option)

Under this option, the birth certificate rule would still apply. If there was a possibility of harm to or from other people in the prison due to the placement, Corrections would manage this with an operational response. For example, it may be necessary for Corrections to place someone on directed or protective segregation.

Advantages

This option retains the birth certificate rule and would ensure people always have the ability to be placed in a prison that aligns with the sex stated on their birth certificate, including people previously prohibited from moving prisons due to the nature of their offending.

Disadvantages

In some circumstances, a person being placed in a prison according to the sex on their birth certificate would not support the wellbeing of the person, or the people they are placed with. In these circumstances, Corrections may need to use existing operational methods, such as protective or directed segregation, which may not support their wellbeing.

Some transgender, intersex and gender diverse people may also prefer to be placed in a prison of their sex given at birth due to safety reasons, and not based on the sex on their birth certificate.

Complies with human rights obligations	○
Transparency and accountability	○
Practical to implement and responsive	○
Contributes to better outcomes for Māori	○
Supports oranga/wellbeing of people we manage	○
Aligns with the purposes and principles of the Corrections Act	○

What are the costs and benefits of the options compared to the status quo?

Option 1 would ensure that a range of factors are considered when placing a person in a prison. This would continue to enable people to be placed in a manner that respects their gender identity and supports their safety.

Option 2 is likely to present operational challenges. Where people change prisons and there are questions about their wellbeing and safety or the impact on the wider prison population, Corrections may require extra resourcing to manage the situation.

How many people will these changes affect?

Corrections manages approximately 30-40 transgender, intersex and gender diverse people in prison at any one time. Due to this, we expect only a small number of placements would be affected by any change made to the way birth certificates impact prison assignments.

It is also unlikely that removing the birth certificate rule under option 1 would significantly change existing processes because the birth certificate rule is not commonly used. People are also already able to be assigned to prisons according to their self-identified gender and preference (subject to the sexual offending exclusion).

How will the options be implemented and monitored?

The different options would largely formalise current processes that are used to assign people to different prisons. However, there would need to be updated operational guidance for frontline staff.

Corrections would monitor the prison placement of transgender, intersex and gender diverse people in the year following any changes that are made. This information would be used to identify if there have been any differences in prison placement outcomes compared to previous years if changes are adopted.

A wider review is planned, but is outside the scope of this change

As these proposed changes raise questions about how decisions are made about the placement of transgender, intersex and gender diverse people in prison, Corrections plans to conduct a wider review of the Regulations and operational policy governing placement policy.

Questions:

14. Do you agree that the birth certificate rule is a problem that should be addressed? Please explain why.
15. What is your preferred option for ensuring prisoners are placed or managed in a way that supports identity, wellbeing, and safety? Please explain why.

- Option 1: revoke the birth certificate rule and add birth certificates as one of the several factors that may be considered when placing people in male or female prisons (regulatory option)
- Option 2: status quo – keep the birth certificate rule in place and have an operational response to manage people when required (non-regulatory option)

16. Have we captured all the costs and benefits accurately, are we missing anything?
17. What else do we need to think about when implementing these proposals?

3. *Increasing access to privacy and control over lighting in prison cells*

Currently the Regulations prohibit privacy screening and access to light switches in cells for people on the punishment of cell confinement or on mental health segregation. We are considering options to increase privacy and control over lighting for these people in a safe way.

Context and status quo

The Act and Regulations set out the features for all prison cells, such as lighting, windows, privacy, and access to fresh air. The Act also requires that we manage people no more restrictively than necessary. In most cells, people have access to privacy screens and internal light switches.[27] However, this is not the case for people placed on the punishment of cell confinement[28] and those segregated for mental health reasons.[29] The Regulations state that cells used to manage these people cannot have privacy screening or in-cell control of lighting.

Privacy screens in a cell and control over lighting can sometimes impact safety, as a person could use privacy screening or control over lighting to conceal activities such as creating weapons or self-harming.

Limiting access to these features is intended to give staff continuous visibility into people's cells and can be important to protect people's health, and to ensure the preservation of life. The current ban on in-cell light switches also reflects concerns around the risk of electric wiring being used for self-harm or to damage a cell.

People at risk of self-harm or suicide[30] are also placed in cells without privacy screening or in-cell light switches. We do not propose changes for people at-risk of self-harm, because of the overriding need to safeguard their wellbeing and safety. Unlike people on the punishment of cell confinement or mental health segregation, they can access privacy screens through the alternative accommodation clause already including in true regulations.[31]

27. A privacy screen refers to a physical screen that conceals parts of a prison cell to permit privacy. These are typically built around the hygiene area of a cell. Standard cells have in-cell access to light switches, which refers to the ability to turn lights on or off within a cell (with lights able to be overridden from outside cells for safety).
28. Cell confinement is imposed as a penalty for misconduct such as assaults towards staff or other people in prison. A period of cell confinement cannot by law exceed 7 days when imposed by a hearing adjudicator, (Corrections Act 2004, section 133(3)(c)) – Powers of hearing adjudicator in relation to offences against discipline) or 15 days when imposed by a visiting justice (Corrections Act 2004, section 137 (3)(c) – Powers of Visiting Justice in relation to offences by prisoners).
29. People who are at risk of self-harm are also placed in cells without privacy screens or in-cell light switches, but these cell types are outside the scope of this change.
30. Corrections Act 2004, section 61A – 61H – Prisoners at risk of self-harm. This is a comprehensive legislative framework that promotes best practice in the management of vulnerable people in prison by mandating a planned, multi-disciplinary approach. It also recognises that it is sometimes necessary to restrict or deny a vulnerable prisoner's opportunities to associate with other prisoners.
31. Corrections Act 2004, s 61B(a) – Initial steps that prison manager and health centre manager must take in respect of at-risk prisoner.

Giving people in prison more privacy supports their wellbeing and dignity

Limiting access to privacy screening or control over lighting can cause undue stress or embarrassment. The lack of privacy for hygiene areas and control over lighting may also not align with Corrections' focus on ensuring oranga. This focus is a critical part of new therapeutic models of care such as the Mana Whenua – Ahi Ka Model of Care developed for Waikeria.

In addition, limiting access to privacy and light switches also routinely attracts criticism from the Chief Ombudsman who considers the prohibitions amount to degrading treatment as they are not proportionate to risk. Changing these settings would be in keeping with the rights and freedoms in NZBORA.

Limiting access to privacy screens and control over lighting can support some people's wellbeing, where there are safety concerns such as risks of self-harm or violence. However, many people on cell confinement or mental health segregation do not require constant observation.

Problem 3.1: the Regulations prevent people segregated for mental health purposes from having privacy screens and in-cell light switches, even when it is safe to allow access

The prohibition on privacy screening and control over lighting is in place because people at risk of self-harm or suicide were previously placed under mental health segregation. In 2019, changes to the Act and Regulations separated out how Corrections manages people at risk of self-harm from those on mental health segregation.

This has meant that the prohibitions on privacy screens and control over lighting may no longer be justified. In addition, there is no clear evidence that privacy screens are a major risk factor for self-harm or violence for people on mental health segregation.

Problem 3.2: the Regulations prevent people on the penalty of cell confinement from having privacy screens and in-cell light switches, even when it is safe to do so

People are placed on cell confinement as a penalty for serious misbehaviour in prison. Due to a perception of potential risks of violence and/or self-harm for people on cell confinement, this group is prohibited from having privacy screens or in-cell access to light switches.

However, there is no evidence that privacy screens increase the risk of violence or self-harm for this group of people. People placed on cell confinement are also managed safely with privacy screens and in-cell access to light switches prior to, and after their time on cell confinement (which cannot exceed 15 days).

Question:

18. Do you think it is a problem that people on mental health segregation or on the punishment of cell confinement do not have privacy screens in their cells and access to in-cell light switches? Please explain why.

How many people will this change affect?

On average, there are 94 instances of people placed on mental health segregation each year.[32] There are a further 3,834 instances of people being placed on the punishment of cell confinement each year.[33]

Objectives: to improve wellbeing of people in prison in a safe way

We want to make sure that the wellbeing and needs of people in prison are supported in a safe way, that settings are equitable for all population groups, and are in keeping with the purpose and principles of the Act, and NZBORA.

Options to improve privacy requires regulatory change

We have developed two options to address these problems.[34] The wording in the Regulations explicitly prohibits privacy screens and in-cell access to light switches for people on mental health segregation or on the penalty of cell confinement. This means there are no non-regulatory options available to address these problems.

Removing the ban on in cell control of light-switches will also occur alongside changes to privacy screens

We have packaged changes to light switch settings alongside privacy screen changes, as this is a comparatively minor change. With changing technology, we can now safely remove the ban on in-cell access to light switches for these cells. Under any changes where the lighting is installed, staff would continue to be able to override control over light from the outside of the cell, ensuring clear cell visibility when needed.

32. Corrections Act 2004, s 60(1)(b) – Segregation for purpose of medical oversight.
33. Corrections Act 2004, s 133(3)(c)) – Powers of hearing adjudicator in relation to offences against discipline and s 137 (3)(c) – Powers of Visiting Justice in relation to offences by prisoners.
34. Note that proposed changes will only apply to the Corrections system, and not apply any changes to other New Zealand custodial settings, such as Police jails.

Problem 3.1: the Regulations prevent people segregated for mental health purposes from having privacy screens and in-cell light switches, even when it is safe to allow access

Option 1: regulatory change to allow access to privacy screens and in-cell light switches for all people on mental health segregation (regulatory option)

This option would change the Regulations so that people on mental health segregation would have access to light switches and privacy screens in their cell, including screening over hygiene areas. They would also have in-cell access to light switches. Staff could place people in cells without these features if they consider it could trigger self-harm or violence to staff, but this would be the exception.

Advantages

This option would help ensure people in prison are managed in a way that supports their needs, wellbeing and safety, as they would have more privacy and control over lighting. It also gives staff the option to place people in cells without these features when there are overriding safety risks.

Disadvantages

This approach could potentially increase the risk of an incident occurring in a cell compared to the status quo. For example, a person could potentially self-harm from behind a screen without detection by staff. Retrofitting privacy screens in some smaller cells in prison could also adversely impact their cell size.

Complies with human rights obligations	✓✓
Transparency and accountability	✓
Practical to implement and responsive	✓
Contributes to better outcomes for Māori	✓
Supports oranga/wellbeing of people we manage	✓
Aligns with the purposes and principles of the Corrections Act	✓

OR

Option 2: regulatory change to enable staff to give some people on mental health segregation access to privacy screens and in-cell light switches only where it is safe to do so (regulatory option)

This option would add an alternative accommodation option for mental health segregation in the Act to align with the "alternative accommodation"[35] clause for people at-risk of self-harm. This means that Corrections can provide them with privacy screening when it is considered safe to do so. Privacy screens would not be provided as the default.

Advantages

This option would align settings for people placed on mental health segregation with people at-risk of self-harm. This option would provide greater flexibility than the status quo. This would also support operational changes in the future design of prison cells as particular units or prisons increase their capability to safely manage people with increased privacy.

Disadvantages

Under this option, a person would need to be proven safe before they could be placed in a cell with these features. This could result in Corrections managing people more restrictively than necessary, because most people on mental health segregation would likely still be placed without privacy screening. As some people would not be placed in cells with privacy screening or in-cell access to light switches this option would not support wellbeing as much as option 1.

Complies with human rights obligations	○
Transparency and accountability	○
Practical to implement and responsive	✓
Contributes to better outcomes for Māori	✓
Supports oranga/wellbeing of people we manage	✓
Aligns with the purposes and principles of the Corrections Act	○

35. Corrections Act 2004, s 61B(a) – Initial steps that prison manager and health centre manager must take in respect of at-risk prisoner – "the prison manager must ensure that the prisoner is promptly placed in an at-risk cell or alternative accommodation that the prison manager considers adequate to protect the prisoner from self-harm".

Questions:

19. What is your preferred option for enabling access to privacy screens and in-cell light switches for prisoners on mental health segregation? Please explain why.

- Option 1: regulatory change to allow access to privacy screens and in-cell light switches for *all people* on mental health segregation (regulatory option)
- Option 2: regulatory change to enable staff to give some people on mental health segregation access to privacy screens and in-cell light switches only where it is safe to do so (regulatory option)
- Option 3: status quo – someone on mental health segregation does not have privacy screens and access to in-cell light switches.

Problem 3.2: the Regulations prevent people on the penalty of cell confinement from having privacy screens and in-cell light switches even when it is safe to do so

Option 1: regulatory change to allow access to privacy screens and in-cell light switches for all people on cell confinement (regulatory option)

This option would change the Regulations so that people on cell confinement would have access to light switches and privacy screens in their cell, including screening over hygiene areas. They would also have in-cell access to light switches. Staff could place people in cells without these features if they consider it could trigger self-harm or violence to staff, but this would be the exception.

Advantages

This option provides a more individualised approach as it would help ensure people in prison are managed in a way that supports their needs, wellbeing and safety by giving people more privacy and control over lighting. It also gives staff the option to place people in cells without these features if it is not safe.

Disadvantages

This option could potentially increase the risk of an incident occurring in a cell compared to the status quo. For example, a person could potentially be more likely to create a weapon from behind a screen or damage their cell without detection by staff. Retrofitting privacy screens in some smaller cells in prison could also adversely impact their cell size.

Complies with human rights obligations	✓✓
Transparency and accountability	✓
Practical to implement and responsive	✓
Contributes to better outcomes for Māori	✓
Supports oranga/wellbeing of people we manage	✓
Aligns with the purposes and principles of the Corrections Act	✓

OR

Option 2: regulatory change to enable staff to give some people on cell confinement access to privacy screens and in-cell light switches only where it is safe to do so (regulatory option)

This option would allow Corrections to provide people on cell confinement with privacy screening when it is considered safe to do so. Privacy screens would not be provided as a default.

Advantages

This option would provide greater flexibility than the status quo. It would also support operational changes in the future design of prison cells as particular units or prisons increase their capability to safely manage people with increased privacy.

Disadvantages

Under this option, a person would need to be proven safe before they could be placed with these features. This could result in Corrections managing people more restrictively than necessary because most people on cell confinement would likely still be placed without privacy screening. As some people would not be placed in cells with privacy screening or in-cell access to light switches this option would not support wellbeing as much as option 1.

Complies with human rights obligations	○
Transparency and accountability	○
Practical to implement and responsive	✓
Contributes to better outcomes for Māori	✓
Supports oranga/wellbeing of people we manage	✓
Aligns with the purposes and principles of the Corrections Act	○

Questions:

20. Should Corrections be able to provide prisoners on cell confinement with privacy screening and the ability to have in-cell control over lighting? Please explain why.
21. What is your preferred option for enabling access to privacy screens and in-cell light switches for prisoners on cell confinement? Please explain why.

- Option 1: regulatory change to allow access to privacy screens and in-cell light switches for *all people* on cell confinement (regulatory option)
- Option 2: regulatory change to enable staff to give some people on cell confinement access to privacy screens and in-cell light switches only where it is safe to do so (regulatory option)
- Option 3: status quo – someone on cell confinement does not have privacy screens and access to in-cell light switches

What are the costs and benefits of the options compared to the status quo?

To implement option 1, Corrections would need to retrofit privacy screens into some cells, which would be more expensive than option 2. Option 1 would also signal that future changes to prison infrastructure and new builds must include privacy screens and in-cell access to light switches.

Option 2 for both problems can be implemented relatively easily without significant changes in staffing or the need for significant retrofitting of privacy screens and lighting into prison cells. However, under these options, fewer people would have access to privacy screens and in-cell light switches, which could have a negative impact on wellbeing.

How will the options be implemented and monitored?

Corrections is conducting a feasibility study around where privacy screening can be integrated into cells used for cell confinement and mental health segregation. Once completed, changes to infrastructure would need to be implemented in phases. This would allow for any impact to operations to be manageable and allow time for appropriate staff training.

For some smaller or older cells, other technological solutions may be required instead of just privacy screens. This is because of the possible impacts on the size of the cell, or to address any safety issues that arise. Drafting of Regulations would reflect the range of technological options available.

Questions:

22. How should health and custodial staff making decisions about prisoners, such as whether to place someone mental health segregation, balance custodial priorities, such as prisoner safety, with health priorities?
23. Have we captured all the costs and benefits accurately, are we missing anything?
24. What else do we need to think about when enabling access to privacy screens and in-cell light switches for people on mental health segregation or on the punishment of cell confinement?

4. Refining disciplinary processes in prisons

Corrections' disciplinary processes are currently operating less effectively than they could be. As part of a Joint Action Plan with our unions to reduce violence and aggression in prisons, Corrections is exploring options to ensure disciplinary processes in prison manage offences in a transparent, consistent and timely way.

Terminology used in this section

Hearing Adjudicator (Adjudicator): a Corrections employee who has been appointed to hear and decide on the outcome of a misconduct hearing for people in prison.

Visiting Justice: any District Court Judge, or a Justice of the Peace, barrister or solicitor, who has been appointed by the Governor General to hear and decide misconduct hearings for people in prison.

Prosecution/prosecutor: a Corrections employee or employees tasked with proving that a person in prison has committed an offence against discipline.

Inspector: a person employed by the Office of the Inspectorate to oversee the Corrections system.[36]

36. A full list of powers and functions of inspectors is set out in section 29 and subpart 6 of Part 2 of the Act.

Context and status quo

The disciplinary process in prisons is set out in both the Act and Regulations

The Act and Regulations define what actions and behaviours represent misconduct by people in prison and set out Corrections' disciplinary processes.[37] While serious misconduct that constitutes a criminal offence can be referred to Police, an alternative internal process allows allegations of offences against discipline to be heard by an adjudicator or a Visiting Justice.

Disciplinary hearings are not criminal trials, they are an enforcement of prison rules, during which those charged with a breach of discipline have their case heard by an adjudicator or Visiting Justice.

The Act and Regulations define certain roles and who qualifies for these roles

Being an adjudicator is a voluntary position that is incorporated into the employee's other daily tasks. Adjudicators receive training and undergo an assessment to determine their competence to conduct disciplinary hearings. The employment of Visiting Justices is controlled and funded by the Ministry of Justice, with their disciplinary process training provided through the Royal Federation of New Zealand Justices' Association.

Prosecutors can be any staff member other than a prison director or staff member who is a witness at a hearing. Being a prosecutor is a full-time role that staff are seconded into, generally for a period of four years. Prosecutors generally receive training in Corrections legislation, hearing protocols and processes.

Adjudicators and Visiting Justices oversee a large number of allegations

In 2021, an average of 1,390 disciplinary charges were brought per month, totalling 16,684 charges for the year. The vast majority of these charges resulted in some form of penalty.

The internal disciplinary process

All offences against discipline defined in the Act can result in a disciplinary offence charge.

Misconduct reports are reviewed by a principal Corrections officer, and then assessed by a prosecutor who decides whether charges will proceed. The prosecutor then arranges a time for a hearing with an adjudicator, or Visiting Justice if required, allowing sufficient time for evidence to be gathered and a defence prepared, including consultation of legal advice if requested by the person charged.

An adjournment may be requested by the prosecutor or person charged and can only be granted by the adjudicator or Visiting Justice if all parties consent. Adjournment may be sought for a range of reasons, including insufficient time to prepare a defence, or unavailability of material witnesses.

The Act and Regulations set out timeframes for disciplinary hearing processes.[38]

Setting for hearings

Hearings occur in prisons and may be undertaken remotely if all parties agree.

The person charged can engage legal advice to prepare their defence and apply to have legal representation during the hearing.[39] However, legal representation must be approved by the adjudicator or Visiting Justice. If legal representation is permitted, the charges must be heard by a Visiting Justice. If approved, a person may also attend to support the charged person.

The person charged is required to be present during the hearing and the adjudicator or Visiting Justice must ensure the person charged understands and participates in the proceedings.

If the person charged does not plead guilty, the prosecuting officer calls evidence from sworn written or oral evidence. The person charged or their legal adviser is entitled to be heard, give evidence and to call and cross-examine witnesses.

Hearing decisions

Adjudicators can refer cases to be heard by Visiting Justices when they are complex, legal representation is permitted, or when the allegations may warrant a higher penalty than adjudicators have the power to impose.

After hearing all evidence, the adjudicator or Visiting Justice decides whether the case has been proved beyond reasonable doubt, and informs the person charged whether:

- they have been found guilty
- the charge has not been proved, and their case has been dismissed
- the hearing will not proceed and has been referred to an appropriate authority (e.g., Police).

Those found guilty are then provided an opportunity to 'plea in mitigation'.

37. Misconduct includes a range of offences against discipline including fighting, being absent from work or their cell without permission, giving or receiving tattoos, or damaging prison property.
38. Charges are expected to be laid immediately, and any charge not laid within seven days of the alleged offence is eligible to be dismissed by an inspector if requested. Similarly, hearings must take place within 14 days of the charge being laid unless an adjournment is granted, or 21 day if an adjournment is granted. When these timeframes are exceeded the person charged may apply to the inspector to have the charge dismissed.
39. Corrections is not responsible for a person's costs for legal advice or representation.

Penalties can be imposed on those found guilty of disciplinary offences

At the conclusion of the hearing the person charged is provided with a record of the hearing and decision which they sign, and an application form if they wish to appeal the outcome.

Adjudicators and Visiting Justices can impose a range of penalties including periods of cell confinement, loss of privileges or forfeiture of earnings. For certain offences, adjudicators and Visiting Justices can also order that a specific amount be withdrawn or withheld from a person's earnings.[40] Visiting Justices have powers to impose higher penalties than adjudicators.[41]

Any penalty of cell confinement or forfeiture of privilege takes effect immediately, except where there is an active appeal. The penalties imposed are not cumulative, cannot be deferred, and cannot include a suspended sentence.

Hearing outcomes can be appealed

The person charged has 14 days from the date of the hearing decision to lodge a completed appeal form with the prison director. Any penalty imposed is suspended until the appeal process is completed. Appeals are heard by Visiting Justices.

There are safeguards in the hearing process to help protect natural justice. If a person in prison is dissatisfied with the decision of an adjudicator, they can request the prison manager refer the decision to a Visiting Justice for appeal.[42]

Although there is no statutory right of appeal against the decision of a Visiting Justice, the decision can be the subject of judicial review proceedings in the High Court.

Corrections has a Joint Action Plan targeted at reducing violence and aggression in prisons

In May 2021, Corrections agreed to a Joint Action Plan on Reducing Violence and Aggression in Prisons (Joint Action Plan) with the unions representing custodial staff, the Public Service Association (PSA) and the Corrections Association of New Zealand (CANZ). One of the Joint Action Plan workstreams is about ensuring that people in prison are held responsible for their actions, such as assaults on staff members. Amending the disciplinary process may be one way to address violence and aggression in prison.

Issues have been identified with the disciplinary process

An internal review into the suitability of the current disciplinary process recommended refining several areas of the hearing process to ensure Corrections maintains the best balance between the safety and wellbeing of its staff and people in prison.

Under the status quo, some legislative and regulatory requirements of the hearing process are delaying a timely and effective resolution. A timely and effective resolution is important as it maintains faith in and the credibility of the disciplinary process for staff and people in prison by best ensuring accountability. This includes the need to refer certain cases to Visiting Justices, which generally results in longer wait times than for adjudicators. Some of the restrictions on how hearings must be conducted and the limited range of penalties available to adjudicators also contribute to long wait times.

Some operational improvements are already underway

As part of the Joint Action Plan, Corrections signed an updated Memorandum of Understanding with Police, which aims to enable faster decision-making by Police about whether they will prosecute offences. Because internal disciplinary hearings cannot be held until Police have decided whether to prosecute, this will help speed up Corrections' disciplinary processes as set out in the Act and Regulations.

Addressing the problems below will assist the delivery of the Joint Action Plan

In addition to operational improvements, the Joint Action Plan provides an opportunity to ensure the legislative framework is fit for purpose and that it supports clear, consistent, and timely processes for managing offences against discipline. Several specific problems have been identified below.

Problem 4.1: restrictions on the powers of adjudicators can delay hearings because it relies on cases being referred to Visiting Justices

Under the status quo, adjudicators have limited powers as they are restricted and guided in a number of ways by the Act and Regulations. At each site, an adjudicator can hear allegations of misconduct and impose an associated penalty. However, there are several restrictions that mean adjudicators must refer certain cases to an (external) adjudicator from a different site or a Visiting Justice (as set out below).

For hearings referred to external adjudicators, the high workloads at their own sites and the required time to travel to facilitate hearings at other sites, often means a timely hearing is not possible.

40. These personal earnings are limited to those received through Corrections' employment programmes whilst in prison.
41. For example, adjudicators can impose the forfeiture or postponement of privileges (e.g., loss of rights to television), for a period not exceeding 28 days, whereas a Visiting Justice can impose the forfeiture or postponement of privileges for a period not exceeding 3 months.
42. Corrections Act 2004, s 136(1) – Right to appeal to Visiting Justice against decision of hearing adjudicator.

Visiting Justices also have high workloads and limited availability, which can result in significant delays for a hearing. An expected increase in the number of Visiting Justices in late-2022 may resolve some of the delays.

Staff have indicated that when allegations are to be heard by a resident adjudicator, the hearing will generally happen within 10-12 days of the charge being issued. However, if the matters are referred to a Visiting Justice, the delay in hearing could be upwards of two months, depending on the site.

Adjudicators cannot hear charges relating to false allegations at their own site

It is an offence for a person in prison to make an allegation against any staff member, security officer, prisoner, or any other person lawfully in the prison, knowing that the allegation is false.[43]

Such a charge:

- can only be laid if the supervisor of that staff member or security officer gives his or her written approval to the laying of the charge
- can only be heard by a hearing adjudicator from another prison, or a Visiting Justice
- may not be laid until any investigation of the allegation by an inspector of Corrections, Ombudsman or other official agency has been completed.[44]

These requirements protect the site and people in prison by minimising the potential for bias in the process. However, adjudicators are trained to hear all cases impartially and this requirement can introduce unnecessary delays due to the difficulties in finding an available adjudicator from another site, or from needing to refer the case to a Visiting Justice.

Adjudicators cannot hear cases when people seek legal representation

People charged with offences may seek legal advice prior to their hearing and may request legal representation for their hearing. In consideration of this request the adjudicator or Visiting Justice must take into account considerations such as the seriousness of the alleged offence, the complexity of the issues and the capacity of the person to present their case effectively.[45]

If permission is granted for legal representation, the hearing must be conducted by a Visiting Justice.[46] This requirement can delay hearings, and may not be necessary provided that adjudicators are sufficiently trained to hear these cases. Importantly, adjudicators already have the power to refer cases to a Visiting Justice when they consider it would be more appropriate to do so.

Adjudicators must refer matters to a Visiting Justice when offences carry higher penalties

Currently, the range of penalties available to adjudicators is limited compared to Visiting Justices. Adjudicators can impose the following penalties:

- forfeiture or postponement of all or any privileges for any period not exceeding 28 days
- forfeiture of earnings for any period not exceeding 7 days
- confinement in a cell for any period not exceeding 7 days
- withdrawal or withholding a specified amount up to $100 from the earnings payable to a person in prison from work and earnings.[47]

Whereas Visiting Justices can impose higher penalties, such as:

- forfeiture or postponement of all or any privileges for any period not exceeding 3 months
- forfeiture of earnings for any period not exceeding 3 months
- confinement in a cell for any period not exceeding 15 days
- withdrawal or withholding a specified amount up to $500 from the earnings payable to a person in prison from work and earnings.[48]

Expanding the level of penalties available to adjudicators would increase the number of cases they can hear and reduce the need for Visiting Justices, which could reduce delays for more people awaiting a disciplinary hearing.

Problem 4.2: certain requirements for the hearing process are delaying hearings and appeals

Under the status quo, some of the specific requirements for the hearing process have been identified as causing delays to the timeliness of hearings and the effectiveness of the hearing process.

These issues are detailed below.

People can delay the hearing process by refusing to attend

Currently, any person charged with a disciplinary offence must be present at the misconduct hearing and examination.[49]

43. Corrections Act 2004, s 128(1)(j) – Offences by prisoner.
44. Corrections Act 2004, s 128(c) – Offences by prisoner.
45. Corrections Act 2004, s 135(2) – Applications for legal representation.
46. Corrections Act 2004, s 135(3) – Applications for legal representation.
47. Corrections Act 2004, s 133(3) and s 133(4)(c) – Powers of hearing adjudicator in relation to offences against discipline.
48. Corrections Act 2004, s 137(3) and s 137(4)(c) – Powers of Visiting Justice in relation to offences by prisoner.
49. Corrections Act 2004, s 133(2) – Powers of hearing adjudicator in relation to offences against discipline and Corrections Regulations 2005, sch 7(23) – Disciplinary proceedings.

As a result, people in prison can intentionally delay or prevent their hearing from taking place by refusing to attend.

These protocols do not align with the Criminal Procedure Act 2011 (CPA), which is separate to Corrections' disciplinary processes. The CPA allows a hearing, including a sentencing hearing to proceed without the defendant present.[50] However, the CPA provides specific safeguards to ensure a trial does not proceed if the defendant's absence would prejudice their defence, or if the court is satisfied that it would be contrary to the interests of justice to do so.[51]

In other jurisdictions, hearings can take place without the charged person present if they refuse to attend. In the United Kingdom, for example, hearings can continue without the person attending, if they refuse to attend or the adjudicator refuses to allow them to attend on the grounds of "disruptive behaviour or an ongoing dirty protest". In these instances, they are warned that a hearing will continue in their absence and, if the hearing continues without them, they will be informed of the outcome at the end of the hearing. The adjudicator must record why they proceeded with the hearing in the person's absence, including why it was just and fair.

If the person is unable to attend due to poor health, or court appearances, the adjudicator may open the hearing and adjourn it until the prisoner is available. Healthcare professionals may be asked to advise when the person is likely to be fit enough to attend, and the adjudicator should take this into account when deciding whether it would be fair to continue (natural justice). Any actions and reasons must be noted on the record of hearing.[52]

Allowing 14 days to appeal prevents hearings from being finalised in a timely manner

People in prison have the right to appeal against the findings and any penalty imposed by an adjudicator to a Visiting Justice.[53] They can appeal at the time of the hearing or no later than 14 days after the date of the decision.

An adjudicator who finds a person guilty of a disciplinary offence must promptly give them written notice of his or her right to request an appeal to a Visiting Justice.[54]

Where a person does not appeal at the time of the decision, they may begin the appeal process by requesting and completing the appeal paperwork from a Corrections Officer within the 14-day timeframe.

Prison staff report that most people appeal at the time of their hearing, lodge their appeal within one or two days, or do not appeal at all. However, a small number of appeals are made toward the end of the period, delaying processes.

Allowing up to 14 days for an appeal extends timeframes and prevents matters from being resolved in a timely fashion.

By comparison, the CPA requires that any application for leave to appeal a decision must be filed within 20 working days of the relevant decision.[55] However, disciplinary processes in prison are not criminal charges and may not require the same level of safeguards as the CPA.

Audio-visual links cannot be used routinely for hearings or determinations

Audio and audio-visual technology are essential for an effective and timely hearing process to continue when participants (such as Visiting Justices or lawyers) cannot access the site. This has become an increasingly common scenario during the COVID-19 pandemic and will continue to be a useful option into the future. To ensure remote access to hearings continues to be an option for Corrections it is essential that the most suitable technology can be adopted as it develops.

Currently, the Act allows any hearing or application to be conducted or determined with all or any of the interested persons participating via video link, rather than being present in person.[56]

Under the Epidemic Preparedness (COVID-19) Notice 2020, audio links can be used (if the participant cannot practically attend in person or via video link).[57] In this instance, audio link refers to facilities that enable audio communication between the interested persons.[58] In practice, this has often meant the use of telephone conferencing.

While audio links have been enabled by temporary time-limited COVID-19 legislation, there is no permanent provision to allow the everyday use of audio links once the Epidemic Notice expires.

Further, the use of 'video link' in the Act is not defined, which has inhibited innovation in the use of more suitable technologies for hearings as these are developed and become more widely available.

50. Criminal Procedure Act 2011, s 119 – Non-attendance of defendant charged with offence in category 1 – s 124 – Procedure when hearing proceeds in absence of defendant.
51. Criminal Procedure Act 2011, s 122 – Non-attendance of defendant at trial for offence in category 2, 3, or 4.
52. Her Majesty's Prison & Probation Service, *Prisoner Discipline Procedures (Adjudications)*, PSI 05/2018, re-issued 15 May 2021, p.24, paras 2.3-2.4
53. Corrections Act 2004, s 136 – Right to appeal to Visiting Justice against decision of hearing adjudicator.
54. Corrections Regulations 2005, sch 7(45) – Disciplinary proceedings.
55. Criminal Procedure Act 2011, s 220(2) – How to commence first appeal.
56. Corrections Act 2004, s 139 – Mode of hearing or reaching decisions.
57. Corrections Act 2004, s 139A(2) – Mode of hearing or reaching decisions.
58. Corrections Act 2004, s 139A(4) – Mode of hearing or reaching decisions.

Currently the wording of the Act is misaligned with the Regulations, which refers to the use of "telephone conference, electronic device, or video link" when defining the adjournment of disciplinary hearings.[59]

By comparison, there is somewhat greater technological flexibility exhibited in the wording of the Parole Act 2002, which permits attendance at hearings of the Board to include "in person or by way of remote access, such as by telephone, video, or Internet link."[60]

There are instances where remote access will not be appropriate, and the Courts (Remote Participation) Act 2010 provides a model that may ensure natural justice is not jeopardised in the process. For hearings to proceed remotely, a range of factors must be considered and, in substantive criminal matters, remote access cannot be used without the defendant's consent.

Problem 4.3: a lack of flexibility in the offences and penalties available, and a lack of consistency in the training of prosecutors, is limiting the effectiveness of the disciplinary process

A suitable range of defined and prosecutable offences are essential to an effective disciplinary process, as is a range of effective penalties and well-trained prosecutors. We have identified three gaps that could be addressed to ensure the disciplinary process encourages offence-free behaviour.

There is no option to suspend penalties as a way of supporting behavioural change

Currently, any penalty must start on the date it is imposed.[62] This requirement precludes the use of any suspended penalty, probation period, or 'good behaviour bond'. This could be considered short-sighted, as a suspended penalty may encourage sustained periods without breaches of discipline, particularly following minor offences or a person's first offence.

Sustained periods without breaches of discipline (incentivised by a suspended penalty) may better promote longer term offence-free behaviour than the implementation of more punitive penalties.

Some international jurisdictions do have the option of suspended penalties. In the United Kingdom, for example, Her Majesty's Prisons use 'suspended punishments', which allow punishments, other than cautions to be suspended for up to six months. If a person is found guilty of a further offence during the suspended period, then an adjudicator can impose the suspended punishment in full, activate part of the punishment, or extend the suspension period by up to a further six months.[63]

There is no specified offence for inciting others to commit an offence

Currently, it is an offence against discipline to behave in an offensive, threatening, abusive, or intimidating manner.[64] However, it is not an offence to incite or encourage other people in prison to behave in an offensive, threatening, abusive or intimidating manner.

There have been occasions where people have incited others to commit an offence. For example, instructing another person in prison to commit an assault. Under the current legislative framework, it is difficult to successfully charge people who incited this behaviour.

While it is an offence to "[combine] with other prisoners for a purpose that is likely to endanger the security or good order of the prison", this could be interpreted as relating to incidents where people in prison commit offences jointly, rather than where one person encourages or incites another.

By comparison, the Summary Offences Act 1981 more specifically details incitement, stating that "[e]very person is liable… who, in or within view of any public place, behaves, or incites or encourages any person to behave, in a riotous, offensive, threatening, insulting, or disorderly manner that is likely in the circumstances to cause violence against persons or property to start or continue."[65]

There is a lack of consistency in training for prosecutors

Currently, any staff member other than a prison director or a staff member who is a witness at a hearing can prosecute a disciplinary offence. In practice, most prosecutors will receive training in Corrections legislation, hearing protocols and processes. However, the training received can be inconsistent and staff members can begin working in a prosecutor role prior to having received formal training, as there are no specific requirements for prosecutors to be trained.

Prosecutors play a key role in hearings. They are responsible for collating evidence, presenting evidence on behalf of Corrections, and cross-examining any witnesses. Ensuring prosecutors are well-trained to carry out their role would support the effectiveness of the disciplinary process.

59. Corrections Regulations 2005, sch 7(43) and sch 7(44) – Disciplinary proceedings.
60. Parole Act 2002, s 118E – Attendance at hearings.
61. Courts (Remote Participation) Act 2010, s 5 – General criteria for allowing use of audio-visual links, s 6 – Additional criteria for allowing use of audio-visual links in criminal proceedings and s 9 – Use of audio-visual links in criminal substantive matters.
62. Corrections Act 2004, s 140(1)(a) – Commencement of penalties.
63. Her Majesty's Prison & Probation Service, *Prisoner Discipline Procedures (Adjudications)*, PSI 05/2018, re-issued 15 May 2021, p.38, para 2.68
64. S128(c) Corrections Act 2004, s 128(c) – Offences by prisoner.
65. Summary Offences Act 1981, s 3 – Disorderly behaviour.

There is an opportunity to make the training and assessment of prosecutors more consistent with that of adjudicators. Staff members working as adjudicators must be designated by the Chief Executive of Corrections to be an adjudicator, after receiving adequate training and undergoing an assessment to determine their competence.

Objective: to improve safety and wellbeing for staff and people in prison

Our objective is to maintain safety and wellbeing for staff and people in prison by ensuring people are held responsible for breaches of discipline in a timely and effective way that supports people to comply in the future while upholding their rights.

Options

Problem 4.1: limitations on the powers of adjudicators can delay hearings

Option 1: appointing more hearing adjudicators and Visiting Justices and greater use of AVL (non-regulatory option)

This option would be to train and appoint more adjudicators and Visiting Justices, and increase hearing hours within prisons where possible.

Greater use of audio or audio-visual links for hearings could also be used where possible, under the existing legislative settings. These changes would reduce delays for hearings by increasing the capacity of the system.

Cases would continue to be referred to external adjudicators or Visiting Justices when:

a) the cases involve hearing allegations referred to in section 128(1)(j) of the Act, when the alleged false allegation was made against a staff member of a prison or a security officer at the prison the adjudicator is employed.

b) legal representation is permitted.

c) an adjudicator deems that the alleged offence may warrant a higher penalty than they can impose.

Advantages

An increase in the number of adjudicators and Visiting Justices and hearing hours would likely reduce the frequency and magnitude of delays.

The greater use of audio or audio-video links for hearings could offer a reduction in some of the delays to hearings that currently result from travel time for external adjudicators attending hearings at multiple sites.

Disadvantages

Increasing the number of hearing hours would pull staff, including adjudicators, away from their other responsibilities on site and may increase staffing pressures in other areas. The number of Visiting Justices employed and the hours they work sits outside Corrections' control, although Corrections can work with the Ministry of Justice as the responsible agency.

There are already existing limitations on the use of audio or audio-visual links for hearings that would impact the effectiveness of this option if those changes are not also made (see problem 4.2).

Greater use of audio or audio-video links would not resolve the existing delays from waiting to be heard by external adjudicators or Visiting Justices, where these delays are the result of general availability and workload.

Complies with human rights obligations	○
Transparency and accountability	○
Practical to implement and responsive	✗
Contributes to better outcomes for Māori	○
Supports oranga/wellbeing of people we manage	✓
Aligns with the purposes and principles of the Corrections Act	✓

OR

Option 2: legislative amendment to extend the powers of adjudicators and reduce hearing delays (regulatory option)

Legislative requirements could be amended to further support operational changes that would expedite the current hearing process by reducing the number of referrals to external adjudicators or Visiting Justices.

These provisions could, for example, include:

a) enabling adjudicators to hear charges of false allegations at their site.

b) enabling adjudicators to hear cases where legal representation has been granted.

c) increasing the range of penalties available to adjudicators to impose, to reduce the number of referrals to Visiting Justices.

Under this option, adjudicators would still have the power to refer cases to Visiting Justices if they believed the charge warranted a higher penalty than they could impose, or because of the complexity of the issue. People in prison would still be able to appeal the outcome of a hearing to a Visiting Justice.

Under this option, the training provided to adjudicators could also be reviewed and updated if necessary, to ensure adjudicators are appropriately trained to hear these types of charges and impose higher penalties.

Advantages

These options would reduce the number of occasions where adjudicators must refer cases to external adjudicators or to Visiting Justices, which would allow charges to be resolved in a more timely and effective manner.

Disadvantages

Adjudicators hearing charges of false allegation at their own site creates a risk of bias and may reduce faith in the process for people in prison. There is a risk an adjudicator will impose higher penalties where they would previously have imposed lower penalties. There is also a risk that further appeals would arise from an adjudicator hearing a charge relating to false allegations at their own site, or an adjudicator imposing a higher sentence. There may be human rights implications that we will need to carefully consider, for example if longer penalties of cell confinement were to be more regularly imposed.

Complies with human rights obligations	○
Transparency and accountability	○
Practical to implement and responsive	✓
Contributes to better outcomes for Māori	○
Supports oranga/wellbeing of people we manage	✓
Aligns with the purposes and principles of the Corrections Act	✓

Questions:

25. Do you think it is a problem that adjudicators' limited powers are causing delays to the hearing process and that this problem should be addressed? Please explain why.
26. What is your preferred option for addressing delays to the hearing process? Please explain why.

- Option 1: appointing more hearing adjudicators and Visiting Justices and greater use of AVL (non-regulatory option)
- Option 2: legislative amendment to extend the powers of adjudicators and reduce hearing delays (regulatory option)
- Option 3: status quo – no change to the powers of adjudicators.

Problem 4.2: certain requirements for the hearing process are delaying hearings

Comment: We have discounted a non-regulatory option for reducing delays caused by people in prison refusing to attend hearings, as the only non-regulatory option would be the use of force to ensure attendance. The use of force is unlikely to encourage the required participation in proceedings, or improve wellbeing, and could lead to greater resistance and increased risk of harm to people in prison or staff.

There is also no non-regulatory option for increasing flexibility in the types of technology used to facilitate remote access for hearings, as alternative methods of holding hearings must be authorised in legislation.

Option 1: amend operational processes to close hearings and reopen them upon appeal

This option would amend operational processes about when cases are closed following the 14-day period without an appeal having been received. Cases could instead be closed after a shorter period of time, such as seven days, and reopened only if an appeal is subsequently received within the 14-day time period.

Option 2: legislative amendment to refine hearing requirements (regulatory option)

Regulatory options to minimise some of the delays to the current hearing process include:

a) amending the Act and Regulations to allow hearings to proceed in the absence of the charged person in some circumstances, including if the charged person refuses to attend or if the adjudicator or Visiting Justice considers the charged person's behaviour is likely to disrupt proceedings.

b) a reduction in the number of days in which a person can appeal the finding of their hearing or the imposed penalty, for example from 14 to seven days.

c) amending the Act to better allow for flexibility in the types of technology used to facilitate remote access for hearings now and into the future.

Advantages

Under this option, Corrections' disciplinary process would align more closely with practices used across the wider justice system and would support more timely hearings.

This option would help ensure Corrections' disciplinary process can continue to develop in line with technological advancements by better enabling the use of new tools suitable for the hearing process.

Disadvantages

Reducing the number of days to lodge an appeal may be seen to limit accessibility to a fair and just hearing. This may have human rights implications to consider and could leave Corrections' practices out of step with the wider justice system (e.g. the CPA allows 20 days). However, as disciplinary charges in prisons are not criminal charges, this response could be considered appropriate for the level of severity. Serious offences, such as assaults, are more likely to be referred to Police for charges to be taken.

This option could potentially attract more unmeritorious appeals as people have a shorter time to appeal decisions.

The use of audio and audio-visual technology to enable remote access to hearings for people in prison may prevent accurate reading of their body language and demeanour, which can be important for an adjudicator or Visiting Justice assessing someone's evidence. Flexibility in the types of technology able to be used will not resolve the issue if sites are not also sufficiently supplied.

Complies with human rights obligations	
Transparency and accountability	
Practical to implement and responsive	
Contributes to better outcomes for Māori	
Supports oranga/wellbeing of people we manage	
Aligns with the purposes and principles of the Corrections Act	

Questions:

27. Do you think it is a problem that certain requirements for the hearing process are delaying hearings and appeals? Please explain why.

28. What is your preferred option to provide a more effective disciplinary process? Please explain why.

- Option 1: amend operational processes to close hearings and reopen them upon appeal (non-regulatory option)
- Option 2: legislative amendment to refine hearing requirements (regulatory option)
- Option 3: status quo – no change to hearing requirements.

Problem 4.3: a lack of flexibility in the offences and penalties available, and a lack of consistency in the training of prosecutors, is limiting the effectiveness of the disciplinary process

Comment: There are no non-regulatory options that would allow adjudicators or Visiting Justices to suspend penalties, as the Act states that penalties must start as soon as they are imposed.

An option to give adjudicators the ability to use a proxy suspended penalty was discounted because it would be too much of an administrative burden. This option would have allowed adjudicators to announce an intended penalty without imposing it on a person, unless that person breached discipline again within a set period.

Option 1: refer incitement offences to Police and strengthen training for prosecutors (non-regulatory option)

An option to make operational changes could include ensuring incidents, where people incite behaviour that endangers the security or good order of the prison (including inciting behaviour of an offensive, threatening, abusive or intimidating manner) that are also offences under the Crimes Act 1961, are referred to Police.

Operational processes around training and assessing prosecutors could be strengthened. Operational guidance could more clearly state that staff members should not begin working in a prosecutor role until they have received adequate training for the role.

Advantages

In more serious cases, Police could prosecute these cases, which would be more effective than Corrections' internal disciplinary process. Operational improvements to training for prosecutors are already being made as part of the Violence and Aggression Action Plan. Further strengthening guidance and ensuring consistency for prosecutor training nationally could be built into this.

Disadvantages

There may be difficulties for Police to prosecute these offences, so any change may not have a significant impact. Further, investigation and prosecution of cases referred to Police is often slower than the Corrections disciplinary process. This makes a timely outcome less likely, which may not help the person in prison to understand the consequences of their actions.

There will be no legislative requirement for prosecutors to be trained or assessed, which means it would still be possible that some staff could begin work in a prosecutor role prior to receiving formal training, which may limit the effectiveness of hearings.

Complies with human rights obligations	○
Transparency and accountability	○
Practical to implement and responsive	✓
Contributes to better outcomes for Māori	○
Supports oranga/wellbeing of people we manage	○
Aligns with the purposes and principles of the Corrections Act	○

OR

Option 2: legislative change to expand offences that can be prosecuted, provide greater flexibility in available penalties, and require prosecutors to be trained and have their competency assessed (regulatory option)

This option would amend the Act to expand the number of offences that an adjudicator can prosecute and the range of penalties available to them. This option would involve:

a) providing adjudicators and Visiting Justices with the option to suspend the imposed penalty, for example by up to three or six months.

b) removing the need for a penalty to start immediately, if it has been suspended.

c) making it an offence to incite others to commit any offence against discipline.

This option would also amend the Regulations to require staff members to receive adequate training and have their competency assessed before they can begin working in a prosecutor role.

Advantages

The option of suspending penalties could be used to encourage sustained good behaviour where that is considered appropriate by the adjudicator or Visiting Justice, for example for first or minor offences.

The option to specify the incitement of a listed offence as an offence would provide prosecutors a more accurate allegation to pursue, and clarity for adjudicators and Visiting Justices as to the offence being prosecuted.

Requiring prosecutors to be trained and have their competency assessed would ensure greater consistency and would support effective hearing processes.

Disadvantages

There is a risk that proving cases of inciting offences will remain difficult, and the availability of suspended penalties may cause people in prison to think they have impunity for initial offences. There is also a risk that creating this new offence would result in a greater number of charges at sites, which would work against the objective of the other options proposed in this paper, which is to increase the timeliness and effectiveness of the disciplinary process.

Complies with human rights obligations	✓
Transparency and accountability	○
Practical to implement and responsive	✓✓
Contributes to better outcomes for Māori	✓
Supports oranga/wellbeing of people we manage	✓
Aligns with the purposes and principles of the Corrections Act	✓✓

Questions:

29. Do you think how offences and penalties are framed in the Act, and the lack of training required for prosecutors, compromises the effectiveness of the disciplinary process? Should this problem be addressed?
30. What is your preferred option to provide a more effective disciplinary process? Please explain why.

- Option 1: refer incitement offences to Police and strengthen training for prosecutors (non-regulatory option)
- Option 2: legislative amendment to expand offences that can be prosecuted, provide greater flexibility in available penalties and require prosecutors to be trained and have their competency assessed (regulatory option)
- Option 3: status quo – no change to offences or penalties.

What are the costs and benefits of the options compared to the status quo?

The non-regulatory options described would be easier to implement and unlikely to be more expensive, unless the use of Visiting Justice increases significantly. However, the non-regulatory options are less likely to substantively resolve the problems identified. If greater use of audio-visual links is practiced there may be less travel time and costs for adjudicators, Visiting Justices, and legal representation.

The regulatory options could enable faster and more efficient processing of many allegations. Enabling a greater number of allegations to be heard by an adjudicator rather than a Visiting Justice would reduce time and costs. Clarifying that inciting someone to commit a breach of discipline is an offence may also deter this behaviour. Both should help lead to improved outcomes for people in prison, their whānau and the wider public.

How will the options be implemented and monitored?

Implementation of both the non-regulatory and regulatory options would require updates to operational guidance and training for relevant staff. Practice guides and training would need to be updated for Visiting Justices in co-operation with the Royal Justice of the Peace Federation who carry out their training. The guidance for people in prison would also need to be updated to ensure they understand new processes.

Monitoring would be carried out as part of the continuation of the Joint Action Plan's efforts to refine the internal disciplinary process and ensure people in prison are held to account for their actions.

Questions:

31. Have we accurately identified the costs and benefits of these options?
32. What else should we consider when trying to refine the disciplinary process to be timelier and more effective?

5. Supporting improved rehabilitation and reintegration outcomes for Māori

Since the launch of Hōkai Rangi in 2019, Corrections has initiated a range of operational changes that improve rehabilitation and reintegration outcomes for Māori in the corrections system. We are seeking public input on what other changes could further improve outcomes for Māori as part of wider systemic change in the justice sector.

The approach taken in this section is strategic and options are not analysed in the same way as other sections

Because this is a more strategic issue than some of the other more operational issues presented in this document, we have not analysed the possible approaches against the same criteria. Our questions seek your views about the outcomes you wish to see and what you consider the best methods might be for achieving those outcomes.

Objective: to further improve outcomes for Māori in the corrections system

Our objective is to improve the rehabilitation and reintegration outcomes of Māori in the corrections system, and assist them and their whānau to achieve their full potential.

Improving people's wellbeing through access to culture, healthcare and education will ultimately contribute to improved rehabilitation and reintegration outcomes. This will help support Corrections' overall purpose of improving public safety, by contributing to a reduction in reoffending rates for people in prison and serving community sentences.

Context and status quo

Currently, Māori make up approximately 53%[66] of the total prison population and approximately 44%[67] of those serving home detention despite making up approximately 17% of the general population. Māori women are disproportionately represented even further, with approximately 52%[68] of women serving a sentence of home detention and 70%[69] of women on remand in custody have Māori whakapapa.

Hōkai Rangi was launched as our organisational strategy in 2019. Significant operational changes to improve outcomes for Māori in the corrections system are now underway or being developed.

These include, for example:

- the roll out of Māori Pathways programmes in three districts. The Māori Pathways programmes have been co-designed and are being co-governed with relevant iwi and hapū in those specific districts.
- development of a new 96-bed mental health unit, *Te Wai o Pure*, at Waikeria Prison. The new operating model was developed with mana whenua and the District Health Board, with a vision focused on wellness and wellbeing.
- the development of a kaupapa Māori health service for Corrections.
- commissioning of research on alternative, kaupapa Māori approaches to administering community sentences.
- implementing a cultural capability framework for Corrections staff.

We are confident that the changes underway and increased cultural responsivity will promote better outcomes for Māori in the corrections system, including for their whānau and communities, by reducing reoffending and providing better reintegration pathways. We are working to develop further measures so that we can better track these outcomes.

While we have made a solid start, it is going to take time to see significant change, and we need to explore other areas that could help us improve outcomes for Māori.

66. 4,099 people as at 22 July 2022.
67. 669 people as at 22 July 2022.
68. 128 wāhine as at 22 July 2022.
69. 157 wāhine as at 22 July 2022.

Issues relating to specific areas of rehabilitation and reintegration where Corrections needs to improve outcomes for Māori

Issue 5.1: working with Māori at a strategic and operational level to improve outcomes for Māori

At an operational and strategic leadership level, Corrections is already working with Māori to build meaningful and purposeful relationships. Working with Māori to design and deliver programmes and services that are informed by a te ao Māori world view is a more effective way to improve rehabilitation and reintegration outcomes for Māori. For example, a 2018 review found that cultural responsivity has a significant impact in making individuals more engaged with an intervention, and that "recent research suggests that culturally integrated correctional programmes may also directly promote desistance from crime through so-called 'protective factors'".[70] An example of this approach is the work taking place in some of our special treatment units and Te Tirohanga – Māori focus units. The Māori Pathways programmes have also been developed in three districts alongside local iwi, hapū and Māori service providers.

It is appropriate to consider options that will further support Corrections to work with Māori.

Issue 5.2: increased access to culture and involvement of whānau can improve outcomes for Māori in prison

Increasing opportunities for people to learn about and reconnect with their whakapapa, learn te reo Māori and tikanga Māori while in prison can improve wellbeing, confidence and self-identity and contribute to improved rehabilitation and reintegration outcomes. Connections with kaumātua and iwi leaders, and involving whānau in sentence management where appropriate, can also improve reintegration outcomes by increasing the supportive links that people have with their communities prior to release from prison.

Under the status quo, steps are being taken to facilitate increased provision of Māori culture in prisons through access to programmes and services. However, the availability and quality for these programmes and initiatives varies between sites and there is a need for Corrections to further resource this to achieve consistency and place-based focus.

Issue 5.3: Māori experience inequitable health outcomes

Māori have inequitable access to the determinants of health and wellbeing, including healthcare in New Zealand compared with other population groups, and subsequently experience poorer health outcomes than non-Māori.[71] People arriving into prison are more likely to suffer from significant health issues and Māori are also overrepresented in this regard.[72]

Corrections is required by the Act to provide healthcare that is 'reasonably equivalent' to the standard of healthcare available to the public. As part of *Hōkai Rangi*, Corrections is currently developing a kaupapa Māori health service. However, we are keen to explore further options that could support Corrections to pursue more equitable health outcomes for Māori in prison.

5.4: Māori experience inequitable educational outcomes

Māori have inequitable access to education and educational achievement compared with other population groups, and currently people in prison with Māori whakapapa are more likely to have limited literacy and numeracy skills. These are major obstacles for employment or further education opportunities outside of prison.

Corrections offers and facilitates literacy and numeracy programmes, industry training, drivers' licence training, vocational short courses, and facilitates self-directed learning and programmes funded by the Tertiary Education Commission (TEC).

Improving provisions for the educational needs of Māori through the educational programmes and services that are facilitated in prison can contribute to more equitable outcomes for Māori.

Questions:

33. Have we captured the issues accurately regarding specific areas where Corrections needs to improve outcomes for Māori?
34. Are there any other areas critical to rehabilitation and reintegration where you think Corrections needs to improve outcomes for Māori?

70. A. Hughes. Aotearoa New Zealand cultural interventions: Current issues and potential avenues. November 2018. *Practice: The New Zealand Corrections Journal.* A 2020 evaluation of a kaupapa Māori alcohol and other drug service, Te Ira Wāhine, also found that the programme was having a positive impact on wāhine inside prison and in the community. For example, of those women who were sentenced, three quarters had progressed to a low security classification since completing Te Ira Wāhine and there was a decline in misconducts across this group. (Hamilton, K and Morrison, B. *Te Ira Wāhine: Aromatawai.* March 2020).
71. The Waitangi Tribunal's report on stage one of the Wai2575 Health Services and Outcomes inquiry found that the Crown has breached the treaty by failing to design and administer the current primary health care system to actively address persistent Māori health inequities and by failing to give effect to the treaty's guarantee of tino rangatiratanga (autonomy, self-determination, sovereignty, self-government).
72. For example, 18 percent of Māori over 65 years of age in prison have been diagnosed with chronic obstructive pulmonary disease (COPD) compared to 11 percent of non-Māori/non Pasifika. For wāhine Māori in prison, 48 percent have an asthma diagnosis compared to 36 percent of non-Māori/non-Pasifika, and seven percent of tāne Māori in prison have a gout diagnosis compared to three percent of non-Māori/non-Pasifika.
73. In the 2020/21 financial year, Corrections spent $2.65m to fund intensive literacy and numeracy programmes, providing support to 1,182 people. Department of Corrections Annual Report 2020/21, p.67. Corrections also allocated up to $1.3m for general education programmes, including industry qualification training, vocational short courses, and self-directed learning.

Possible approaches

Significant changes are already occurring. The options below could further improve outcomes for Māori. These commitments could be made either operationally or by creating new legislative requirements.

Developing and maintaining relationships with Māori

Options to further strengthen Corrections' relationships with Māori could include making commitments to:

- to maintain a strategy that focuses on improving outcomes for Māori, and for this to be developed with Māori
- for the Chief Executive to set out how they will give effect to requirements in the Public Service Act to ensure the Corrections workforce and leadership has the capability to consider Māori perspectives, work with Māori and engage with Māori leadership
- to improve approaches to working with Māori by ensuring that particular views, such as those of wāhine and rangatahi, are being heard by Corrections
- to increase the number of programmes and services that are designed, developed and delivered by and with Māori.

Access to culture and whānau involvement

Options to increase access to culture and whānau involvement for people in prison could include making commitments to:

- consider how the role for kaumatua/iwi leadership at sites can be further supported
- improve processes to involve whānau, hapū or iwi in prison placement decisions
- ensure that cultural events and practices can qualify for temporary release from prison
- regularly review the provisions for cultural, religious and spiritual needs at all sites, to ensure the needs of Māori are being met.

Providing for Māori health needs

Options to better provide for Māori health needs could include making commitments to:

- involve whānau in the healthcare of people in prison (whether that healthcare is given in prison or offsite) where consent for this is provided
- recognise and implement disease prevention and health promotion as a core part of healthcare provided in prisons
- better recognise and provide for the particular health needs of groups such as wāhine and rangatahi Māori.

Providing for Māori education needs

Options to better provide for Māori education needs could include making commitments to:

- increase provision of mātauranga Māori subjects in prison
- include people's educational aspirations in their case management plans
- continue to work with providers in the education sector to increase access to education at all levels for people in prison.

Questions:

35. What do you think about the options for practical commitments proposed for each of the areas set out above?
36. Are there any other options for change in these areas that we should consider?

Treaty-specific principles to guide Corrections

Issue 5.1: There is no coherent statement of how the treaty and its principles, and the principles in the Corrections Act and the Public Service Act work together to guide Corrections

The purpose of the corrections system is to improve public safety and contribute to the maintenance of a just society by:

- ensuring that sentences and orders are administered in a safe, secure, humane and effective manner
- operating corrections facilities in accordance with the Corrections Act and Regulations, which are based amongst other things on the United Nations Standard Minimum Rules for the Treatment of Prisoners
- assisting in the rehabilitation and reintegration of offenders, through the provision of programmes and other interventions, and
- providing information to the courts and New Zealand Parole Board to assist them in decision-making.

The Corrections Act sets out principles that guide the corrections system, which include:

- the maintenance of public safety is the paramount consideration in decisions about managing people in the corrections system
- victims' interests must be considered in relation to the management of people in the corrections system
- the cultural background, ethnic identity and language of offenders should be taken into account when developing and providing interventions to assist in rehabilitation and reintegration, and in sentence planning and management
- offenders must be provided with access to restorative justice processes where appropriate
- an offender's family must be involved in decisions related to sentence management, rehabilitation and reintegration, and participation in programmes, services and activities
- the corrections system must ensure the fair treatment of people under control or supervision by providing information about the rules, obligations and entitlements that affect them, ensuring decisions are taken in a fair way and that people have access to a complaints procedure
- sentences and orders must not be administered more restrictively than necessary
- offenders must be given access to activities that may contribute to their rehabilitation and reintegration
- contact between prisoners and their families must be encouraged and supported, where this is consistent with maintaining safety and security requirements.

The Public Service Act 2020 also requires public service chief executives to support the Crown in its relationship with Māori by developing and maintaining the capability of the public service to engage with Māori and understand Māori perspectives.

Corrections has responsibilities under the treaty, but there is no coherent statement that sets out how the treaty and its principles, and the principles in the Corrections Act and the Public Service Act work together to guide Corrections' operations.[74]

Possible approaches

One possible approach would be to develop additional treaty-specific principles that could guide Corrections in how to consider its responsibilities under the Corrections Act, the Public Service Act and the treaty, in order to improve outcomes for Māori in the corrections system.

Question:

37. How could Corrections consider its responsibilities under the principles in the Corrections Act and Public Service Act alongside its responsibilities under the treaty, in order to improve outcomes for Māori in the corrections system?

What are the costs and benefits of the possible approaches compared to the status quo?

Benefits

The options would be expected to lead to improved rehabilitation and reintegration outcomes for Māori, which will have benefits for people in the corrections system, their whānau, hapū, iwi and communities. The changes will also support Corrections to meet its overall purpose of improving public safety.

Costs

There will be costs to implement the options, for example, through new guidance and training for staff about how treaty-specific principles will apply to their work.

Some of the options could increase demands on external providers who deliver services that are informed by mātauranga Maori and on iwi, hapū and Māori organisations to work with Corrections to design, develop and deliver more programmes and services.

The approaches could be implemented operationally or in legislation, with different advantages and disadvantages

The options set out in this section could all be implemented either through operational change, such as creating and amending operational policies, processes, guidance and training for staff, or by amending the Corrections Act to set out new requirements that Corrections must meet.

Operational change allows greater flexibility in how and when Corrections implements change. Operational policies and processes are also easier to review and amend in future, to ensure they remain in line with best practice.

Legislative change should only be used where justifiable. Legislation can also have unintended consequences; for example, broad provisions can be interpreted in unexpected ways by the courts. The effectiveness of legislation is therefore dependent on how well it is operationalised. If legislation is justified with a strong rationale, it will have to be accompanied by an implementation plan.

74. The Waitangi Tribunal, in *Tū Mai Te Rangi!*, made its findings after applying treaty principles it considered were relevant. These included: kāwanatanga and rangatiratanga, active protection, equity, and partnership and reciprocity.

Question:

38. How do you think that legislative change would help Corrections improve delivery of rehabilitation and reintegration services for Māori, in addition to updating and improving its training and operational policies and practices?

6. Providing more remand accused people with access to key non-offence focused programmes and services

Remand accused people in prison currently lack access to some critical programmes and services, as they can only be provided in separate streams to convicted people. The Regulations can limit access to these programmes, as they specifically prohibit mixing remand accused and convicted people in prison, except for in exceptional circumstances, such as natural disasters.

Terminology used in this section

Remand accused: this refers to someone who is remanded in custody while awaiting trial.

Remand convicted: this refers to someone who has been convicted and is remanded in custody awaiting sentencing.

Sentenced: this refers to someone who has been convicted and is serving a sentence of imprisonment.

Convicted: a term that includes both remand convicted and sentenced people in prison.

Context

Rehabilitation and other resources are concentrated on convicted people in prison

Corrections provides a range of different programmes and services for all people in prison to help assist rehabilitation and improve outcomes. This includes programmes designed to improve health, education and cultural outcomes. In 2020/21, for example:

- 1,180 people in prison started a core alcohol or other drug programme provided by Corrections
- 5,700 unique learning pathways conversations were held, leading to 1,182 people receiving intensive literacy and numeracy support in prison
- for the newly developed Māori Pathways programme, over 100 approaches are being trialled in three locations – Te Tai Tokerau, Hawke's Bay and Canterbury
- Hikitia (Waikeria Mental Health and Addiction Service) is also being developed for men in custody in the Central Region prisons who have complex mental health and addiction needs. This service expects to benefit approximately 2,000 people in prison annually.

These services vary across our prisons and are impacted by the size of a prison's population. For example, Arohata Prison currently has 89 prisoners, while Mt Eden Corrections Facility has 830. This means that it may not be practical to run programmes at some smaller sites.

A significant proportion of the prison population is comprised of remand accused people

As of 30 June 2022, New Zealand's onsite prison population is 7,630 with 3,058 of these being people on remand (40% of the population), and 2,101 of these being remand accused. This means that 28% of New Zealand's prison population are remand accused. Overall justice sector projections predict that the prison population will increase to around 8,000 (with approximately 50% on remand) by 2031.[75]

Public consultation during the Hāpaitia programme indicated that Māori need specifically designed services to improve outcomes. Because remand accused people are in prison for an indeterminate amount of time, it is not currently practical to run some programmes and services of this type in two streams, one for remand accused and one for convicted people. For example, a small number of Māori Pathway programmes for remand accused may not be able to function as they require a therapeutic community to be able to form over a period of months. As remand accused people often come and go from prison (with an average stay of 75 days), this means that should the programme be run separately for remand accused, it may not have the stable base it needs to provide therapeutic benefit, or the participant numbers it needs to function properly.

Problem 6: the regulatory ban on mixing remand accused and convicted people in prison contributes to remand accused people having more limited access to services and programmes

Remand accused people in prison are not currently able to access some opportunities because programmes are offered in a single stream

To achieve *Hōkai Rangi* priorities that focus on improving outcomes for people in the corrections system, we need to create more opportunities for remand accused people in prison to access some critical programmes and services such as kaupapa Māori, education, and alcohol and other drug programmes that are sometimes only available to convicted people.

75. Ministry of Justice, Justice Sector Projections 2021-2031.

We also want kaupapa Māori services to function in accordance with Māori principles. This is true for Māori Pathway programmes, such as those run at Hawke's Bay Regional Prison that are based on an agreement with each participant in which they agree to uphold the tikanga, kawa, and uara/values. This is also true for Hikitia (the Waikeria Mental Health and Addiction Service).

These new programmes may not be able to fully achieve their objectives under current regulatory settings that prevent the mixing of remand accused and convicted people. Two parallel therapeutic programmes would be required, and in some prison contexts with low numbers, remand accused people may not be able to participate. This is because the programme size would not support therapeutic outcomes and some remand accused participants may not be in prison for long enough.

The remand population is projected to increase, meaning that it is increasingly important to provide services to remand accused people

Ensuring treatment and support is available for remand accused people will become increasingly important as the number of remand accused people continues to rise, along with the time spent waiting for their case to be tried.[76]

Our Regulations and operations prevent mixing convicted and remand accused people in accordance with our international obligations

The Regulations preclude the mixing of remand accused and convicted people in prison, except in exceptional circumstances such as during an emergency, or where it may be necessary for health or welfare. This aligns with the presumption of innocence in NZBORA[77] and New Zealand's binding international obligation under the International Covenant on Civil and Political Rights (ICCPR)[78] and aspects of the non-binding Nelson Mandela Rules[79] (which are incorporated in the Act).[80]

To continue to comply with the ICCPR settings, remand accused and convicted people must have some separation in housing (for the purposes of living quarters, exercise, and eating), and be treated in a manner that distinguishes them from each other. We are considering what this might look like while still supporting therapeutic outcomes.

This could be done, for example, through the use of different clothing, access to phone calls, different unlock hours, or through other methods. This may, however, impact on therapeutic outcomes in some programmes where it is important that participants are equally involved.

Corrections has an opportunity to better reflect its obligations under the treaty, to align with the spirit of the Nelson Mandela Rules, and to reflect the aspirations of the UNDRIP

By removing the requirement in the Regulations to manage remand accused and convicted people separately, and backing this up with an amendment to the Act that clearly allows mixing in limited circumstances, we could significantly improve the wellbeing of remand accused people in prison. For example, this could improve access to some non-offence focused programmes and services. This could create a platform for longer term changes that are beneficial for remand accused and convicted people through the sharing of some programmes and services, while complying with international obligations for separation in aspects of management.

Removing the requirement for separation would also allow Corrections to better reflect the spirit of the Nelson Mandela Rules, that state that people in prison should have access to the same standards of healthcare available in the wider community.[81] The UNDRIP also states that indigenous people have the right to life, physical and mental integrity, liberty and security of person, and the right to practise and revitalise their cultural traditions and customs.[82] Mixing could contribute to achieving this by increasing opportunities for remand accused people to access some important services and programmes.

Based on modelling, demand for programmes would increase if this change is made. We do not expect increased demand to affect the ability of convicted people in prison to access these services as the numbers of remand accused people using these services is expected to be comparatively low.

Objective: to ensure that remand accused

76. Ministry of Justice, Justice Sector Projections 2021-2031.
77. New Zealand Bill of Rights Act 1990, s 25(c) – Minimum standards of criminal procedure.
78. International Covenant on Civil and Political Rights, art 10.
79. United Nations General Assembly, The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), rule 11.
80. Corrections Act 2004, s 5 – Purpose of the corrections system.
81. Corrections Act 2004, S75(1) Medical treatment and standard of health care; Declaration on the Rights of Indigenous Peoples, parts 7 and 11. https://legislation.govt.nz/act/public/2004/0050/latest/DLM296004.html United Nations General Assembly, The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), rule 24.1.
82. United Nations General Assembly, Declaration on the Rights of Indigenous Peoples, parts 7 and 11.

people can access necessary support

Our objective is to ensure that remand accused people can access necessary support while in prison, thereby improving outcomes for more people in prison.

Options:

We seek your views on options set out below, and for you to note a third that we have discounted.

Problem 6: the regulatory ban on mixing accused and convicted people in prison contributes to remand accused prisoners having more limited access to services and programmes

Note: We have not included an option that would allow full residential mixing of remand accused and convicted people in prison for kaupapa Māori, education, and therapeutic programmes, as this option would breach our agreements under the ICCPR to retain a degree of separation between the two groups.

Option 1: allow limited mixing for kaupapa Māori, education, and therapeutic programmes, with the consent of the remand accused person

This option would allow for limited mixing of remand accused with convicted people, with some aspects of programmes differentiating between the two groups. This mixing would only take place with the consent of the remand accused person.

We consider that mixing in this way does not treat remand accused people as if they are convicted, because accessing kaupapa Māori, education, therapeutic programmes, and particularly, healthcare, is a human right that is not affected by whether someone is accused or convicted.

Mixing would continue to be prohibited for any programme that is offence focused. Because of this, we do not consider this option conflicts with the presumption of innocence.[83] We also do not consider that this proposal conflicts with the right not to be subjected to degrading treatment, because mixing would only take place with the consent of the remand accused person.[84] Importantly, if they considered this treatment to be degrading, they could decline to participate.

Appropriate measures to safeguard remand accused people from being influenced by convicted people would be determined on a programme-by-programme basis, so that they can be tailored to each specific situation. This would include ensuring that the two groups are distinguished in some manner, as required by the ICCPR.

However, for some programmes, there may be therapeutic or cultural reasons for all people to be treated the same, including for example, wearing similar clothing. This may also require consequential changes to other regulations to achieve some exemptions.

This option may also require amendments to be made to the Act to ensure that the Regulations align closely.

Advantages

This option would provide flexibility to manage people as individuals so that their health and wellbeing needs are met according to best therapeutic practice. It would also be realistic to implement, as mixing can be designed so that it functions properly in a prison context and does not conflict with international agreements.

This could improve the effectiveness of some programmes as a smaller number of participants can impact the effectiveness of some programmes. It would provide improved access to programmes and services for remand accused people in prison and better align with Corrections' treaty obligations of active protection and partnership with Māori, the Nelson Mandela Rules, and the UNDRIP.

Overall, it is expected that people accessing these programmes would have better outcomes than if they were unable to participate. This is particularly the case for those that require access to therapeutic programmes to support their mental health or for drug or alcohol treatment.

Disadvantages

Decisions on which programmes could allow mixing would not be immediately transparent based on legislation, in comparison to the status quo. This is because only a sub-group of some critical programmes and services would be approved as suitable for limited mixing, subject to operational assessment.

As indicated above, for some of the programmes, it may be beneficial for all participants to be treated the same, such as by having similar clothing or being housed together. However, this is not possible under this option which means some participants may not get the full range of benefits from participating.

83. New Zealand Bill of Rights Act 1990, s 25(c) – Minimum standards of criminal procedure. This section sets out the everyone who is charged with a criminal offence is presumed innocent until proven guilty.
84. New Zealand Bill of Rights Act 1990, s 9 – Right not to be subjected to torture or cruel treatment.

Complies with human rights obligations	✓
Transparency and accountability	○
Practical to implement and responsive	✓
Contributes to better outcomes for Māori	✓✓
Supports oranga/wellbeing of people we manage	✓✓
Aligns with the purposes and principles of the Corrections Act	✓✓

OR

Option 2: provide a greater number of parallel programmes for remand accused people in prison (non-regulatory option)

This option would focus on providing more parallel programmes for remand accused people in prison. This would not require legislative change, but would need significantly more resources to be devoted to programmes and services to enable increased delivery. In some prisons, especially small ones, this may mean that programmes are not able to be run in a parallel manner.

Advantages

This option complies with international agreements that prohibit mixing and would increase access to programmes for remand accused people in prison.

This would mean that there is greater flexibility in how each of the programmes is managed, including people of the same class (remand accused or convicted) being able to cohabit residentially, subject to safety considerations such as gang affiliation, which may improve the efficacy of the programme.

Disadvantages

Overall, this option is likely to offer fewer benefits for Māori and remand accused people generally, as it may be too difficult to implement effectively across our network of prisons, particularly given their varying sizes. This is due to both the cost of increasing the numbers of programmes and facilities available across the network. It would also not be feasible to implement at our smaller sites, such as women's prisons.

Some programmes require a certain number of long-term participants to be effective, which may not be possible for those on remand as numbers fluctuate.

It may be possible to implement a hub model that could mean that some prisons cater for some programmes with people being placed in those prisons depending on their needs. However, for those on remand it could impact access to justice if placed a distance from the court where they are to be tried. It may also mean that they are placed away from whānau and community connections, which would further disadvantage them.

Complies with human rights obligations	✓✓
Transparency and accountability	✓
Practical to implement and responsive	✗✗
Contributes to better outcomes for Māori	✓
Supports oranga/wellbeing of people we manage	✓
Aligns with the purposes and principles of the Corrections Act	✓

What are the costs and benefits of the options compared to the status quo?

Because Option 1 mixes remand accused and convicted prisoners, it is likely to build both positive and negative relationships between the two groups. Depending on implementation, this could have a positive or negative effect on the remand accused person.

The two options would each have costs and benefits associated with them, such as a possibility of reduced access to services for convicted people if demand modelling is inaccurate. Increased numbers are likely to mean that some programmes would have greater therapeutic benefit if Option 1 was implemented, and there may be a decrease in risk if either option is implemented, as remand accused people would have better access to support. Whānau members of people in prison are also likely to benefit from an increase in access to programmes and services.

How will the options be implemented and monitored?

If we pursued Option 1, we would only mix convicted and accused people in limited settings when it is not possible to provide programmes and services in parallel streams. We would also plan to implement Option 1 in distinct

stages to ensure we have the right operational settings and support in place to protect vulnerable people and the delivery of mixing across the wider prison network for targeted programmes. We would also undertake assessments on access to programmes and supports to understand potential shifts in demand, as well as any potential risks or benefits associated with the relationships built between remand accused and convicted people. Interim reviews would also be undertaken following the implementation of each stage, to understand their overall impact.

Option 2 would be cost and labour intensive, as it would require more resources to ensure more parallel programmes are offered and delivered. This would require a case-by-case assessment of the viability for each programme. If the decision was made to proceed with planning or implementing parallel programmes, there would likely be significant logistical challenges, which would need to be worked through by operational staff.

Questions:

39. Do you think it is a problem that remand accused people have limited access to some critical services and programmes and that this should be addressed? Please explain why.

40. What is your preferred option to improve access to some critical services and programmes for remand accused people? Please explain why.

- Option 1: allow limited allow limited mixing for kaupapa Māori, education, and therapeutic programmes, with the consent of the remand accused person (regulatory option)
- Option 2: provide a greater number of parallel programmes for remand accused people in prison (non-regulatory option)
- Option 3: status quo – do not improve access to non-offence focused programmes and services for remand accused people

6.3. Have we captured all the costs and benefits accurately, are we missing anything?

6.4. What do you think Corrections needs to consider when implementing the proposed options?

6.5. Are there any other options to address these issues that we should consider?

Miscellaneous legislative and regulatory amendments

7. Operational and technical proposals

These proposals are more operational and technical and have been presented in a shorter form than the previous proposals, with less detail on the advantages and disadvantages of each proposal.

7.1 Body temperature scanners

We propose to implement a power in the Act that would allow Corrections to use body temperature scanners on prisoners, staff, and visitors to prisons. Corrections is currently using body temperature scanners on prisoners and staff during the COVID-19 pandemic to reduce the chance of disease being transmitted into a prison environment. This can only be justified in emergency situations under current provisions. If we want to have the option to use body temperature scanners in the future, there is no non-regulatory option available to achieve this outcome.

Problem 7.1: the current legislative authority for the use of body temperature scanners is unclear, and does not allow use beyond emergency circumstances

Corrections has used body temperature scanners on entry to prison sites during the COVID-19 pandemic to minimise the risk of infected people entering a prison. These scanners detect if your body temperature meets the threshold associated with a risk of carrying COVID-19.

Authority for the use of these scanners is based on two factors – that a body temperature scan is not considered to be a search, and that a prison manager can require prisoners, staff and visitors to undergo the scan based on different parts of the Act and Regulations.[85] For use on people in prison, the Act states that a scan must also be reasonably necessary.

Corrections considers there may be value in being able to use body temperature scanners throughout the COVID-19 pandemic, and in the future, to prevent disease from entering prison sites. Within prisons, disease spreads quickly and can have a serious impact on the health and wellbeing of people in prison and staff.

There needs to be clear authority in our legislation for Corrections to use these scans. At present, it is ambiguous whether a body temperature scan can be considered a search, which could affect Corrections' ability to continue using them.

Objective: to ensure we can continue to prevent disease from entering prisons to keep people in prison safe

This change is intended to ensure that Corrections can continue to support the health and wellbeing of people in prison.

Options

Because the Act includes specific provisions relating to scanner use on people entering prisons, there are no non-regulatory options that could achieve our objective. However, we have considered an option that would discontinue the use of these scanners at an operational level.

We have considered three options for how broadly a new legislative power should apply plus the option of discontinuing the use of body temperature scanners. Implementing a new statutory power does not mean body temperature scanners would always be used, but that the prison director would have the power to decide if they should be used.

Problem 7.1: the current legislative authority for the use of body temperature scanners is unclear, and does not allow use beyond emergency circumstances

Option 1: enable the use of body temperature scanners on entry to prison for prisoners (regulatory option)

This option would implement a statutory power in the Act to allow for the use of body temperature scanners on prisoners.

OR

Option 2: enable the use of body temperature scanners on entry to prison for prisoners, and staff (regulatory option)

This option would implement a statutory power in the Act to allow for the use of body temperature scanners on prisoners and staff.

OR

Option 3: enable the use of body temperature scanners on entry to prison for prisoners, staff, and visitors (regulatory option)

This option would implement a statutory power in the Act to allow for the use of body temperature scanners on prisoners, staff, and visitors.

85. Corrections Act 2004, s 12(b) – Powers and functions of prison managers, s 40 – Prisoners must obey lawful orders, s 83 – Use of force, s 128(1)(a) – Offences by prisoner and Corrections Regulations 2005, reg 101 – Denying approval of visitor or approving visitor subject to conditions or restrictions.

OR

Option 4: discontinue the use of body temperature scanners in Corrections' facilities (non-regulatory option)

This option would discontinue the use of body temperature scanners in Corrections' facilities once the high risk from the COVID-19 pandemic has reduced.

What are the costs and benefits of the options compared to the status quo?

Options 1 and 2 impact less on visitors that enter prisons. However, option 3 would provide the best protection for people in prison by enabling Corrections to identify any person entering a site who may be infectious. The first three options would ensure that Corrections' operations are in accordance with NZBORA by providing a specific legislative authorisation for the use of body temperature scanners.

Option 4 would see Corrections discontinuing the use of body temperature scanners once the risk from COVID-19 has reduced. This option would impact the least on the rights of people entering prisons, but also offers the least protection in future situations where it may be appropriate to use body temperature scanners to reduce the likelihood of disease entering prisons. This may also affect Corrections' responsibility to ensure the safe custody and welfare of prisoners, depending on the situation in the future.

Questions:

41. Do you think the Corrections Act should specifically authorise the use of body temperature scanners?
42. What is your preferred option for the use of body temperature scanners? Please explain why.

- Option 1: enable the use of body temperature scanners on entry to prison for prisoners (regulatory option)
- Option 2: enable the use of body temperature scanners on entry to prison for prisoners and staff (regulatory option)
- Option 3: enable the use of body temperature scanners on entry to prison for prisoners, staff, and visitors (regulatory option)
- Option 4: discontinue the use of body temperature scanners in Corrections' facilities (non-regulatory option)
- Option 5: status quo – keep the existing settings in place.

7.2. Enabling the use of imaging technology to replace strip searches

Corrections proposes to amend the Act to clarify that imaging technology searches can be used as a replacement for any strip search conducted in a prison, to reduce the number of strip searches conducted. This was the intention of previous amendments. However, clauses added to the Act have caused operational uncertainty, meaning that in many situations, strip searches have not been replaced with imaging technology searches.

Problem 7.2: restrictions on imaging technology searches are preventing their wider use in place of more invasive search methods to improve wellbeing

The Corrections Amendment Act 2019 introduced a specific power for Corrections to use imaging technology searches (a search that produces an image of the body) on people in prison. This change was intended to allow the imaging technology searches to replace more invasive searches, such as strip searches. Images can only be viewed by a Corrections Officer or constable of the same sex as the person being searched and may not be viewed by another person in prison.

However, this amendment introduced restrictions on the use of imaging technology searches that have meant they cannot be used in some situations. This is because the amendment required images of genitals and clear images of the body beneath clothing to be obscured when the imaging search was not being used as a replacement for a mandatory strip search.[86] This means that imaging technology searches are not currently used for strip searches that are not mandatory under legislation, due to confusion around the wording in s98(9) in the Act.[87]

Because current imaging technology is not capable of obscuring genitals, this restriction means that Corrections is also prevented from using imaging technology searches in situations where other, more invasive searches, other than a strip search, are used instead.

Objective: to ensure we best support the wellbeing of people in prison

This change is intended to ensure that Corrections can continue to keep prisons safe from contraband in the least invasive way possible, supporting the wellbeing of people in prison.

Options

Problem 7.2: restrictions on imaging technology searches are preventing their wider use in place of more invasive search methods to improve wellbeing

86. Corrections Act 2004, s 92C(1) – Particular matters relating to imaging technology searches, s 92D – Particular restrictions when imaging technology search used as alternative to strip search and s 98(9) – Search of prisoners and cells.
87. Corrections Act 2004, s 98(9) – Search of prisoners and cells.

Option 1: remove the restrictions requiring genitals to be blurred and to avoid producing a clear image of the body beneath clothing for people in prison (regulatory option)

This would allow for the use of imaging technology searches in the same way as other types of scanner searches, without current restrictions.[88] It would mean that some people would be more likely to have images of their bodies viewed without their genitals being blurred. However, current requirements for this to be done by a Corrections Officer of the same sex would still apply.

OR

Option 2: clarify that the restrictions requiring genitals to be blurred do not apply in any situation where an imaging technology search is used as an alternative to a strip search (regulatory option)

This option would mean that Corrections could avoid using strip searches more often, by enabling imaging technology searches to be reliably used as an alternative in all cases where a strip search would occur.

OR

Option 3: implement imaging technology operationally that can obscure clear images of the body beneath clothing while blurring genitals (non-regulatory option)

An imaging technology solution that could obscure clear images of the body beneath clothing and blur genitals is not currently available, so Corrections would need to procure a bespoke solution, which would make this option difficult to implement.

What are the costs and benefits of the options compared to the status quo?

Option 1 would introduce the most flexibility to use body imaging searches by removing the current requirement to blur genitals and avoid producing a clear image of the body. However, this option would increase the number of situations that people would have their images viewed by Corrections Officers without their genitals being blurred.

Option 2 would enable body imaging searches to be used in all cases where a more invasive strip search would otherwise be used, but it would retain the need to avoid producing a clear image of the body beneath clothing, and to blur genitals, in any other cases. This option also best aligns with the right against unreasonable search and seizure, as it provides specific situations in which imaging technology searches can be performed without these restrictions.[89] This is also relevant to the right to not to be subjected to degrading treatment.[90]

Option 3 is a non-regulatory option to increase Corrections' ability to use body imaging searches by implementing a method of blurring genitals. This option would require investment in new technology that is not currently available, so it would be difficult to implement.

Questions:

43. Should imaging technology searches be able to be used in place of other search methods, such as strip searches? Please explain why.

44. What is your preferred option for enabling imaging technology to be used more widely? Please explain why.

- Option 1: remove the restrictions requiring genitals to be blurred and to avoid producing a clear image of the body beneath clothing for people in prison (regulatory option)
- Option 2: clarify that the restrictions in requiring genitals to be blurred do not apply in any situation where an imaging technology search is used as an alternative to a strip search (regulatory option)
- Option 3: enable the use of body temperature scanners on entry to prison for prisoners, staff, and visitors (regulatory option)
- Option 4: status quo – keep the existing settings in place.

88. A scanner search includes any search of clothing or possessions using an electronic device (whether or not the device uses imaging technology) designed to identify the presence of unauthorised items that are concealed in a person's body, or beneath or within clothing or possessions. For example, Corrections uses handheld scanning technology to detect unauthorised items.
89. New Zealand Bill of Rights Act 1990, s 21 – Unreasonable search and seizure.
90. New Zealand Bill of Rights Act 1990, s 9 – Right not to be subjected to torture or cruel treatment.

7.3. Case management plans

Corrections proposes to make changes to prisoner case management plans to improve operational efficiency and ensure these plans can respond to improvements in best practice over time.

Our first proposal is to amend the requirement for case management plans to be developed for people sentenced to imprisonment or in custody on remand for two months or more, to instead allow for flexibility to address the needs of the prisoner where appropriate.

The second proposal is to amend the current requirement to review prisoner case management plans at regular intervals, to instead require that prisoner case management plans are reviewed when there has been a material change in the person's circumstance.

Finally, we are considering reflecting best practice by moving requirements for case management plans to the Regulations so that they can more efficiently be updated in the future.

These issues cannot be solved operationally, as they directly relate to the wording in the Corrections Act.

Problem 7.3.1: the legislative infrastructure for case management plans is outdated and out of sync with best practice

Case management plans contain a variety of information relevant to the management of people in prison, including ways of addressing offending behaviour and preventing reoffending, and planning for a person's release. These plans must be developed for people sentenced to imprisonment or in custody on remand for two months or more.

This does not reflect current operational needs and best practice. For example, some aspects relating to a person's release are best addressed within a week of being placed in a prison, such as the person's release location. However, other aspects of planning, such as programme participation for rehabilitation and reintegration, are better addressed within a month of a person being placed in a prison, to better allow them to settle into the prison environment, but the Act prevents this from happening.

We may also wish to address how case management plans should be specifically required to address the needs of particular groups, such as the needs of older people in prison and those with disabilities.

Problem 7.3.2: case management plan review timings are inconsistent and are causing unnecessary administrative load

The Act is also causing inefficiency and inconsistent practice as it requires case management plans to be reviewed at 'regular intervals'.

This is an unclear timeframe and implies that all case management plans should be reviewed with the same regularity. This is not responsive to individual needs and can cause some plans to be reviewed too infrequently, while others must be reviewed unnecessarily, which causes an administrative burden.

Question:

45. Do you think that the lack of flexibility in the legislation for case management plans is a problem? Please explain why.

Objective: to ensure case management plans are efficient and conducive to positive outcomes

Corrections wants to ensure the Act and Regulations are consistent with best practice case management planning for people in prison, and that the Act and Regulations enable best practice to evolve.

Options

Problem 7.3.1: the legislative infrastructure for case management plans is outdated and out of sync with best practice

Option 1: provide for a more flexible approach in the wording of the requirements for case management plans (regulatory option)

This option is to amend the Act to give staff more flexibility, by generally recognising that different aspects of planning such as release location, and in-depth exploration of rehabilitative and reintegrative opportunities, should not have set times for completion.

OR

Option 2: split case management plans into release plan and offender plan (regulatory option)

This option is to amend the Act so that Corrections staff would be required to create a release plan and an offender plan for all people in prison.

This option would formally outline the two plans, with the release plan being developed within a week of placement (including information such as release location), and the offender plan within a month of placement (including plans for addressing needs such as health and education).

What is the best fit, legislation or regulations?

We are also considering whether it is more appropriate to move the details for case management plans from the Act to the Regulations. This would mean that requirements can be updated more readily through regulation change processes as best practice changes.

What are the costs and benefits of the options compared to the status quo?

Option 1 would introduce a greater level of flexibility and would need to be supported by clear guidance and training to staff about completing different aspects of case management plans. Option 2 is more specific and provides more clarity about requirements for case management plans. However, this option is less efficient for staff and would not support the objective of enabling best practice to evolve as well as option 1. Moving requirements from the Act to the Regulations would take more time to implement and require changes to both legislation and regulations. However, it would mean that Regulations could be more easily amended in future as best practice evolves.

Questions:

46. If you agree that more flexibility is required for case management plans, what is your preferred option? Please explain why.

- Option 1: provide for a more flexible approach in the wording of the requirements for case management plans (regulatory option)
- Option 2: split case management plans into release plan and offender plan (regulatory option)
- Option 3: status quo – no changes to case management plans

47. Do you think requirements for case management plans are more appropriate in the Act or in the Regulations? Please explain why.

Problem 7.3.2: case management plan review timings are inconsistent and are causing unnecessary administrative load

Option 1: specify in the Act that case management plans must be reviewed every six months (regulatory option)

This option would require that case management plans be reviewed at least every six months.

OR

Option 2: align case management plan reviews with the requirements for reviews of security classification (regulatory option)

This option would require reviews to occur at least every six months or when there is a significant change in the prisoner's circumstances.

OR

Option 3: require reviews of case management plans when there is a material change in a prisoner's circumstances (regulatory option)

This requirement would align with the process for the ongoing assessment of self-harm by requiring reviews to be completed whenever there are material changes in the prisoner's circumstances that are relevant to their case management planning.

OR

Option 4: allow case managers to determine when reviews are necessary (regulatory option)

This option would provide guidance and allow case managers to determine when the review of a prisoner's case management plan is appropriate. Legislative change would still be necessary to implement this option.

What are the costs and benefits of the options compared to the status quo?

Option 1 would provide greater clarity than the status quo but would not provide the flexibility to ensure case management plans are reviewed when needed. Option 2 would ensure no more than six months pass without a plan being reviewed, while providing increased flexibility by allowing more frequent reviews if there were significant changes in a prisoner's circumstances. Option 3 would ensure reviews would be conducted when needed, and would avoid unnecessary reviews imposed by requirements relating to certain lengths of time. Option 4 would provide the most flexibility by allowing case managers to determine when reviews are necessary.

Questions:

48. Do you think the current requirement to review case management plans at 'regular intervals' is unclear and not responsive to individual needs? Please explain why.
49. What is your preferred option for when case management plans should be reviewed? Please explain why.

- Option 1: specify in the Act that case management plans must be reviewed every six months (regulatory option)
- Option 2: align case management plan reviews with the requirements for reviews of security classification (regulatory option)
- Option 3: require reviews of case management plans when there is a material change in a person's circumstances (regulatory option)
- Option 4: allow case managers to determine when reviews are necessary (regulatory option)
- Option 5: status quo – keep the existing settings in place
- Option 6: other – please specify

50. What other options for improving case management plans should we consider? *For example, should there be requirements for case management plans to specifically address the needs of particular groups of people such as older people and those with disabilities?*

7.4. Information sharing with Inland Revenue

Corrections proposes to either implement an information sharing power in the Act to allow for a Memorandum of Understanding to be developed with Inland Revenue, or to develop an Approved Information Sharing Agreement (AISA) with Inland Revenue. This change is needed because Inland Revenue requires ongoing access to information held by Corrections for a number of purposes, and this cannot continue to be facilitated under provisions of the Tax Administration Act 1994.

Problem 7.4: Inland Revenue requires ongoing access to information held by Corrections that cannot be properly facilitated under existing provisions

Inland Revenue uses information provided by Corrections to pause child support repayments for people when they are in prison for more than 13 weeks, to detect fraud and organised crime, and to ensure people in prison with student loans are not being incorrectly identified as residing overseas.

This is currently done using requests under the Tax Administration Act, that allow the Commissioner of Inland Revenue to request information relevant to the administration or enforcement of an Inland Revenue Act.

Inland Revenue and Corrections have agreed that the Tax Administration Act was not intended to be used for this purpose on an ongoing basis. The Privacy Commissioner has also indicated strong support for the establishment of a formal information sharing agreement between Inland Revenue and Corrections. The intention is that an agreement of this kind would allow information that is already being shared to be done so in a more appropriate manner.

Objective: to enable resilient information sharing to promote positive outcomes for people in prison

We want to continue sharing relevant information with Inland Revenue in a way that is legal and protects the privacy of people in prison.

Options

Problem 7.4: Inland Revenue requires ongoing access to information held by Corrections, that cannot be properly facilitated under existing provisions

Option 1: implement an AISA with Inland Revenue (non-regulatory option)

An AISA does not require changes to legislation and is approved by Cabinet following an in-depth assessment process, that would also assess NZBORA and Privacy Act implications, and would be required to be developed with support from the Privacy Commission.

OR

Option 2: implement an information disclosure power within the Corrections Act including appropriate protections for people's privacy, and seek a Memorandum of Understanding (MOU) between Inland Revenue and Corrections (regulatory option)

Adding an information disclosure power to the Act would provide an ongoing ability for Corrections to legally share information with other agencies if needed. An MOU would then set out how the exchange of information will work in practice. To disclose information to any other agency in the future, a further MOU would need to be developed.

What are the costs and benefits of the options compared to the status quo?

Option 1 could take more time to implement than Option 2 as it requires proving through a cost-benefit analysis, that an AISA would positively impact the delivery of public services, followed by an Order in Council process. Based on previous experiences of introducing an AISA, this option is likely to take two years to implement, which would delay the realisation of the benefits from the proposal and Inland Revenue's identification of non-compliant activity.

Establishing an MOU could be more practical than establishing an AISA. It still protects the privacy of information. As this option provides a proven legislative power that would enable information sharing agreements to be established in the future, we do not consider it would have any implications under NZBORA or the Privacy Act.

Questions:

51. Should there be a stronger information sharing mechanism between Corrections and Inland Revenue?
52. What is your preferred option for enabling ongoing information sharing between Corrections and Inland Revenue? Please explain why.

- Option 1: implement an AISA with Inland Revenue (non-regulatory option)
- Option 2: implement an information disclosure power within the Corrections Act including appropriate protections for people's privacy, and seek a Memorandum of Understanding (MOU) between Inland Revenue and Corrections (regulatory option)
- Option 3: status quo – continue to rely on the Tax Administration Act to exchange information with Inland Revenue
- Option 4: other – please specify.

7.5. Mixing of young people and adults

Corrections proposes to amend the Regulations governing the mixing of young people (for this purpose aged under 18 years) and adults in prison, to clarify that mixing can only occur when it is in the best interests of the young person. This was the original policy intent of the regulation. However, the Regulations currently require that the best interests of all people involved are considered.

Context

The Regulations state that young people (under the age of 18) and adults (aged 18 and over) must be kept separate in prison, but there is the ability to mix if the Chief Executive believes that it is in the best interests of the people concerned.[91] This is intended to protect the age and vulnerability of the young person and aligns with the Nelson Mandela Rules[92] and the United Nations Convention on the Rights of the Child.[93]

Since changes to the Oranga Tamariki Act in 2019 expanded the youth jurisdiction to include individuals aged 17, there have been no more than five people under 18-years old in prison at any one time. Between January and July 2022, two people under-18 have been in our custody.

If someone aged under 18 is placed in Corrections' custody without mixing, they would need to be segregated to be separated from adults. This would provide very limited opportunities for contact with people other than staff, and for participation in programmes, employment, and other activities. For this reason, mixing is often considered to be in the best interests of the young person. Decision-making to implement mixing in these circumstances is made operationally.

Most young people that enter prison are managed in youth units that accommodate people under the age of 20.

Problem 7.5: mixing decisions should be based on the best interests of the young person

The original policy intent of these Regulations was to allow the mixing of these groups when it was in the best interests of the young person involved. However, a literal interpretation of the Regulations could mean that Corrections is required to demonstrate that mixing is also in the best interests of the adults concerned. Not only is this not the original intent of the Regulations, it also does not align with our international obligations.

91. Corrections Regulations 2005, reg 179 – Young and adult prisoners to be kept apart and reg 180 – Chief Executive may approve mixing of young and adult prisoners.
92. United Nations General Assembly, The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), rule 11(d) "young prisoners shall be kept separate form adults".
93. United Nations General Assembly, Convention on the Rights of the Child, art 37(c). Article 37(c) states "Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so..."

Objective: to realise the original policy intent of the Regulation, and to align with best practice

We intend to ensure that young people, and their wellbeing, are at the centre of our decision making.

Option

Problem 7.5: clarify that only the young person's interests are taken into account when deciding on whether to mix them with adults in prison (regulatory option)

This option means that it would be clear in the Regulations that young people in prison would only be mixed with adults if it is in young person's best interests.

Question:

53. Should the Regulations specify only young people's best interests should be taken into account when deciding whether to mix them with adults? Please explain why.

7.6. We are also making five minor or technical changes

The following proposed amendments are minor and technical changes that are intended to clarify and simplify sections of the Corrections Act, in keeping with our regulatory stewardship responsibilities.

Problem 7.6.1: property issued if a person is at risk of self-harm

It is not clear under the Act that prison managers can refuse to issue authorised property to a person in prison when they have been assessed as at risk of self-harm.[94] This may be appropriate in some situations to ensure the person is kept safe.

We would like to clarify the wording so that it is clear prison managers can refuse to issue authorised property to someone who has been assessed as at risk of self-harm.

Problem 7.6.2: reassessing a person at-risk of self-harm

The Act provides for the ongoing assessment of risk of self-harm, but it is not clear that a reassessment can take place even if an initial assessment was not carried out. This section would benefit from clarification to ensure a reassessment can take place.[95]

Problem 7.6.3: power to deny or restrict a person's opportunity to associate, if set out in an at-risk management plan

The Act requires a management plan to be established for at-risk prisoners. The content of this management plan sets out any restrictions on the opportunity of the person to associate with others. While the Act states that opportunities to associate with others must not be denied or restricted except in accordance with the Act, it would benefit from clarification that the prison manager can deny or restrict association for prisoners when this is included in their at-risk management plan.[96]

Problem 7.6.4: interpretation of the term 'management plan'

The term 'management plan' used in the Act to refer to what are operationally called 'case management plans', is confusing for operational staff because 'management plan' is a term also used in other operational contexts, such as for a plan that aims to address specific behavioural issues in individual prisoners. This term could be changed to differentiate case management plans from other types of management plans.[97]

Problem 7.6.5: removing redundant clauses

The Act provides specific situations where a Corrections officer may strip search a prisoner. These are not needed as a Corrections officer already has the power to strip search a prisoner if they have reasonable grounds to believe they are concealing an unauthorised item. This would clarify operationally that a strip search can only be conducted when a Corrections Officer has reasonable grounds to believe that a person in prison is concealing an unauthorised item.[98]

This would also mean that all strip searches will require the approval of a manager, except when the delay involved in obtaining that approval would endanger the health or safety of any person or affect the maintenance of security at the prison.

Question:

54. Do you have feedback on any of the five minor/ technical amendments proposed?

94. Corrections Act 2004, s 34(4)(a) – Detention of prisoners and s 49(2) – Prisoners must be assessed on reception and have needs addressed.
95. Corrections Act 2004, s 61A – Ongoing assessment for risk of self-harm and s 49(2) – Prisoners must be assessed on reception and have needs addressed.
96. Corrections Act 2004, s 61D – At-risk management plan established, s 61E – Content of at-risk management plan and s 57 – Denial or restriction of prisoner's opportunity to associate with other prisoners.
97. Corrections Act 2004, s 51 – Management plans.
98. Corrections Act 2004, s 98 – Search of prisoners and cells.

Next steps

Corrections welcomes your feedback on this discussion document. The questions posed throughout this document are summarised in Appendix 1. You do not have to answer all the questions. To ensure your point of view is clearly understood, please explain your rationale and where appropriate, you may wish to provide supporting evidence.

Timeframes

This consultation starts on 15 August and ends on 23 September.

When the consultation period has ended, we will analyse all the submissions. These will be used to inform decisions about the proposals set out in this document.

How to provide feedback

There are two ways you can make a submission:

- Via the survey available on the Corrections website
- By providing a written submission to LegislationAmendments@corrections.govt.nz

Submissions close at 5pm, 23 September 2022.

Publishing and releasing submissions

All or part of any written comments (including names of submitters) may be published on the Corrections website, corrections.govt.nz. Unless you clearly specify otherwise in your submission, Corrections will consider that you have consented to website posting of both your submission and your name.

Contents of submissions may be released to the public under the Official Information Act 1982 following requests to Corrections. Please advise if you have any objection to the release of any information contained in your submission and, in particular, which part(s) you consider should be withheld, together with the reason(s) for withholding the information. We will take into account all such objections when responding to requests for copies of, and information on, submissions to this document under the Official Information Act.

The Privacy Act 2020 applies certain principles about the collection, use and disclosure of information about individuals by various agencies, including Corrections. It governs access by individuals to information about themselves held by agencies. Any personal information you supply to Corrections in the course of making a submission will be used by Corrections only in relation to the matters covered by this document. Please clearly indicate in your submission if you do not wish your name to be included in any summary of submissions that Corrections may publish.

If you have any questions or want more information about the proposed amendments or the submission process, please email:

LegislationAmendments@corrections.govt.nz.

What happens next

After Corrections has analysed submissions and feedback received, we will provide the Minister of Corrections with advice on the next steps, including any final recommendations.

Depending on the outcomes of consultation, there may be changes to the Corrections Act and Regulations. Changes to the Act would need to be progressed through a Corrections Amendment Bill and stakeholders would have a chance to provide additional feedback during the Select Committee process.

Appendix One: Summary of proposed changes and questions for feedback

Questions about the criteria:

- Do you consider these criteria will enable us to assess the options for change? Should we consider other criteria? Please explain why.
- Would you also weigh human rights more strongly than other criteria? Please explain why.

1. Monitoring and gathering information on prison activity and communications for intelligence purposes to improve prison safety

1.1. Do you think the problems identified about the monitoring, gathering and management of prisoner information and activities should be addressed? Please explain why.

1.2. What is your preferred option to ensure Corrections gathers effective information from prisoner communications and activity? Please explain why.

- Option 1: amend the Act to create specific powers and restrictions on those powers to gather information from prisoner communications and activities for intelligence purposes (regulatory option)
- Option 2: amend the Act to create general powers and restrictions on those powers to gather information from prisoner communications and activities for intelligence purposes (regulatory option)
- Option 3: status quo – the current provisions in the Corrections Act continue to apply

1.3. Should Corrections be able to use artificial intelligence to monitor prisoners' communications to keep prisoners, staff and the public safe? Please explain why.

1.4. What is your preferred option to ensure Corrections can process raw information effectively? Please explain why.

- Option 1: increase resource by hiring more staff with specialist skills
- Option 2: amend the Act to allow an 'eligible employee' to include other government employees
- Option 3: amend the Act to enable technology to monitor information
- Option 4: status quo – no change to how Corrections can process raw information

1.5. What is your preferred option for Corrections' approach to retaining intelligence information? Please explain why.

- Option 1: repeal the phone call provisions in the Act that require destruction of recorded calls after two years and use operational practices to align the destruction of all intelligence information collected about prisoners with external legislation (regulatory and non-regulatory option)
- Option 2: amend the Act to specify that intelligence information should be destroyed within a set time period (e.g. two years, sentence lengths, or other defined period) (regulatory option)
- Option 3: status quo – do not make any changes regarding how long Corrections holds intelligence information

1.6. How long should Corrections retain intelligence information? Please explain why.

1.7. Should Corrections be able to share intelligence information with other government agencies? (e.g. Corrections should be able to share intelligence information with New Zealand Police). Please explain why.

1.8. What is your preferred option on how Corrections should compare and disclose intelligence information with and from other government agencies? Please explain why.

- Option 1: amend the Act to allow intelligence information from different sources to be cross-referenced (regulatory option)
- Option 2: amend the Act to expand the disclosure of information to all forms of communication and information sources (regulatory option)
- Option 3: status quo – no change.

1.9. Have we captured all the costs and benefits accurately? Are we missing anything?

1.10. Are there any other options to address these issues we should consider?

1.11. What else do we need to think about when implementing these proposals?

2. Ensuring people are assigned to male and female prisons by considering a range of factors

2.1. Do you agree that the birth certificate rule is a problem that should be addressed? Please explain why.

2.2. What is your preferred option for ensuring prisoners are placed or managed in a way that supports identity, wellbeing, and safety? Please explain why.

- Option 1: revoke the birth certificate rule and add birth certificates as one of the several factors that may be considered when placing people in male or female prisons (regulatory option).
- Option 2: status quo – keep the birth certificate rule in place and have an operational response to manage people when required (non-regulatory option)

2.3. Have we captured all the costs and benefits accurately? Are we missing anything?

2.4. What else do we need to think about when implementing these proposals?

3. Increasing access to privacy and control over lighting in prison cells

3.1. Do you think it is a problem that people on mental health segregation or on the punishment of cell confinement do not have privacy screens in their cells and access to in-cell light switches? Please explain why.

3.2. What is your preferred option for enabling access to privacy screens and in-cell light switches for prisoners on mental health segregation? Please explain why.

- Option 1: regulatory change to allow access to privacy screens and in-cell light switches for all people on mental health segregation (regulatory option).
- Option 2: regulatory change to enable staff to give some people on mental health segregation access to privacy screens and in-cell light switches only where it is safe to do so (regulatory option)
- Option 3: status quo – someone on mental health segregation does not have privacy screens and access to in-cell light switches.

3.3. Should Corrections be able to provide prisoners on cell confinement with privacy screening and the ability to have in-cell control over lighting? Please explain why.

3.4. What is your preferred option for enabling access to privacy screens and in-cell light switches for prisoners on cell confinement? Please explain why.

- Option 1: regulatory change to allow access to privacy screens and in-cell light switches for all people on cell confinement (regulatory option).
- Option 2: regulatory change to enable staff to give some people on cell confinement access to privacy screens and in-cell light switches only where it is safe to do so (regulatory option).
- Option 3: status quo – someone on cell confinement does not have privacy screens and access to in-cell light switches.

3.5. How should health and custodial staff making decisions about prisoners, such as whether to place someone mental health segregation, balance custodial priorities, such as prisoner safety, with health priorities?

3.6. Have we captured all the costs and benefits accurately? Are we missing anything?

3.7. What else do we need to think about when enabling access to privacy screens and in-cell light switches for people on mental health segregation or on the punishment of cell confinement?

4. Refining disciplinary processes in prisons

4.1. Do you think it is a problem that adjudicators' limited powers are causing delays to the hearing process and that this problem should be addressed? Please explain why.

4.2. What is your preferred option for addressing delays to the hearing process? Please explain why.

- Option 1: Appointing more hearing adjudicators and Visiting Justices and greater use of AVL (non-regulatory option)
- Option 2: legislative amendment to extend the powers of adjudicators and reduce hearing delays (regulatory option)
- Option 3: status quo – no change to the powers of adjudicators.

4.3. Do you think it is a problem that certain requirements for the hearing process are delaying hearings and appeals? Please explain why.

4.4. What is your preferred option to provide a more effective disciplinary process? Please explain why.

- Option 1: amend operational processes to close hearings and reopen them upon appeal (non-regulatory option)
- Option 2: Legislative amendment to refine hearing requirements (regulatory option)
- Option 3: status quo – no change to hearing requirements.

4.5. Do you think how offences and penalties are framed in the Act, and the lack of training required for prosecutors, compromises the effectiveness of the disciplinary process? Should this problem be addressed?

4.6. What is your preferred option to provide a more effective disciplinary process? Please explain why.

- Option 1: refer incitement offences to Police and strengthen training for prosecutors (non-regulatory option)
- Option 2: legislative amendment to expand offences that can be prosecuted, provide greater flexibility in available penalties and require prosecutors to be trained and have their competency assessed (regulatory option)
- Option 3: status quo – no change to offences or penalties.

4.7. Have we accurately identified the costs and benefits of these options?

4.8. What else should we consider when trying to refine the disciplinary process to be timelier and more effective?

5. Supporting improved rehabilitation and reintegration outcomes for Māori

5.1. Have we captured the issues accurately regarding specific areas where Corrections needs to improve outcomes for Māori?

5.2. Are there any other areas critical to rehabilitation and reintegration where you think Corrections needs to improve outcomes for Māori?

5.3. What do you think about the options for practical commitments proposed for each of the areas set out above?

5.4. Are there any other options for change in these areas that we should consider?

5.5. How could Corrections consider its responsibilities under the principles in the Corrections Act and Public Service Act alongside its responsibilities under the treaty, in order to improve outcomes for Māori in the corrections system?

5.6. How do you think that legislative change would help Corrections improve delivery of rehabilitation and reintegration services for Māori, in addition to updating and improving its training and operational policies and practices?

6. Providing remand accused people with greater access to non-offence focused programmes and services

6.1. Do you think it is a problem that remand accused people have limited access to some critical services and programmes and that this should be addressed? Please explain why.

6.2. What is your preferred option to improve access to some critical services and programmes for remand accused people? Please explain why.

- Option 1: allow limited allow limited mixing for kaupapa Māori, education, and therapeutic programmes, with the consent of the remand accused person (regulatory option)
- Option 2: provide a greater number of parallel programmes for remand accused people in prison (non-regulatory option)
- Option 3: status quo – do not improve access to non-offence focused programmes and services for remand accused people

6.3. Have we captured all the costs and benefits accurately? Are we missing anything?

6.4. What do you think Corrections needs to consider when implementing the proposed options?

6.5. Are there any other options to address these issues that we should consider?

7. Miscellaneous legislative and regulatory amendments

Body temperature scanners

7.1.1. Do you think the Corrections Act should specifically authorise the use of body temperature scanners?

7.1.2. What is your preferred option for the use of body temperature scanners? Please explain why.

- Option 1: enable the use of body temperature scanners on entry to prison for prisoners (regulatory option)
- Option 2: enable the use of body temperature scanners on entry to prison for prisoners and staff (regulatory option)
- Option 3: enable the use of body temperature scanners on entry to prison for prisoners, staff, and visitors (regulatory option)
- Option 4: discontinue the use of body temperature scanners in Corrections' facilities (non-regulatory option)
- Option 5: status quo – keep the existing settings in place

Enabling the use of imaging technology to replace strip searches

7.2.1. Should imaging technology searches be able to be used in place of other search methods, such as strip searches? Please explain why.

7.2.2. What is your preferred option for enabling imaging technology to be used more widely? Please explain why.

- Option 1: remove the restrictions requiring genitals to be blurred and to avoid producing a clear image of the body beneath clothing for people in prison (regulatory option)
- Option 2: clarify that the restrictions in requiring genitals to be blurred do not apply in any situation where an imaging technology search is used as an alternative to a strip search (regulatory option)
- Option 3: enable the use of body temperature scanners on entry to prison for prisoners, staff, and visitors (regulatory option)
- Option 4: status quo – keep the existing settings in place

Case management plans

7.3.1. Do you think that the lack of flexibility in the legislation for case management plans is a problem? Please explain why.

7.3.2. What is your preferred option for creating more flexibility in the requirements for case management plans? Please explain why.

- Option 1: provide for a more flexible approach in the wording of the requirements for case management plans (regulatory option)
- Option 2: split case management plans into release plan and offender plan (non-regulatory option)
- Option 3: status quo – no changes to case management plans

7.3.3. Do you think requirements for case management plans are more appropriate in the Act or in Regulations? Please explain why.

7.3.4. Do you think the current requirement to review case management plans at 'regular intervals' is unclear and not responsive to individual needs? Please explain why.

7.3.5. What is your preferred option for when case management plans should be reviewed? Please explain why.

- Option 1: specify in the Act that case management plans must be reviewed every six months (regulatory option)
- Option 2: align case management plan reviews with the requirements for reviews of security classification (regulatory option)
- Option 3: require reviews of case management plans when there is a material change in a person's circumstances (regulatory option)
- Option 4: allow case managers to determine when reviews are necessary (regulatory option)
- Option 5: status quo – keep the existing settings in place
- Option 6: other – please specify

7.3.6. What other options for improving case management plans should we consider? For example, should there be requirements for case management plans to specifically address the needs of particular groups of people such as older people and those with disabilities?

Information sharing with Inland Revenue

7.4.1. Should there be a stronger information sharing mechanism between Corrections and Inland Revenue?

7.4.2. What is your preferred option for enabling ongoing information sharing between Corrections and Inland Revenue? Please explain why.

- Option 1: implement an AISA with Inland Revenue (non-regulatory option)
- Option 2: implement an information disclosure power within the Corrections Act including appropriate protections for people's privacy, and seek a Memorandum of Understanding (MOU) between Inland Revenue and Corrections (regulatory option)
- Option 3: status quo – continue to rely on the Tax Administration Act to exchange information with Inland Revenue
- Option 4: other – please specify

Mixing of young people and adults

7.5.1. Should the Regulations specify only young people's best interests should be taken into account when deciding whether to mix them with adults? Please explain why.

Minor/technical changes

7.6.1. Do you have feedback on any of the four minor/technical amendments proposed?

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