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Feedback on improvements to prison safety

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to provide feedback on the Department of Correction's (**the Department**) *Consultation on options to improve safety within prisons: Discussion document 2024* (**discussion document**). The discussion document proposes options to amend the Corrections Regulations 2005 (**regulations**) to improve prison safety.
- 1.2 This feedback has been prepared with input from the Law Society's Criminal Law Committee.¹

2 Proposed Options

Topic 1: Introduction of additional or new cell features when opening and closing cell doors for higher-risks prisoners

- 2.1 The discussion document notes that the proposed introduction of additional or new cell features when opening and closing cell doors responds to the risk that Corrections staff are more likely to be assaulted at these times.
- 2.2 The Law Society agrees that considering options to address the issue of Corrections staff being assaulted in the course of their job is worthwhile. However, we note that the proposed solution must strike a balance and ensure the competing considerations of prisoner safety and rights are upheld.

Option One

- 2.3 Increasing the number of visual aids in cells, such as bubble mirrors, does not appear to reduce the risk to Corrections staff of being assaulted. It therefore seems unlikely to be the option ultimately preferred.

¹ More information about this committee can be found on the Law Society's website: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/criminal-law-committee/>.

Option Two

- 2.4 Installing cameras in some cells, while partially addressing the problem, carries with it significant concerns about prisoner privacy and monitoring for reasons or purposes other than those for which the cameras would be installed. The Law Society would hesitate to recommend such an invasive measure, particularly as cameras do not address the problem in its entirety.
- 2.5 Given prison population pressures, which are likely to continue, this option also raises the risk of prisoners being placed in camera-monitored cells, where they pose no particular risk to prison staff. That is, just because an individual is in a maximum security or management unit, they do not necessarily pose a risk to staff, whether upon opening of a cell or otherwise. If this option proceeds, consideration should be given to developing policy and procedures that ensure, wherever possible, that:
- (a) a prisoner is not placed in a camera monitored cell unless there is a relevant security concern; or
 - (b) if, due to population pressures (for example) a prisoner is placed in a camera monitored cell and there are not relevant safety concerns requiring camera monitoring, cameras are switched off; and/or
 - (c) ensuring cameras are used only to monitor during relevant events, such as in advance of opening cell doors.
- 2.6 Policy and operational procedure should also encompass restrictions on viewing camera footage (live and recorded), and record keeping.
- 2.7 We note that Option Two states cameras '*could* be placed in areas that would protect prisoner privacy in hygiene areas of the cell' (emphasis added). The Law Society suggests that if placement of a camera in a way which protects privacy in hygiene areas is not possible in a particular cell, then it is not suitable for camera monitoring. The Chief Ombudsman has for some years now raised concerns about the use of cameras in a manner which violates the dignity and privacy of prisoners, particularly in areas where they undertake ablutions or get undressed.² This has been described by the Chief Ombudsman as a 'systemic failure.'³ Placement of cameras is also addressed below.
- 2.8 Any consideration of Option Two should take the above into account, as well as the potential use of privacy-enhancing technology.

Option Three

- 2.9 Whilst this option provides the most effective option for protection of Corrections staff, the Law Society considers it necessary to draw attention to some features of this option that require further consideration.
- 2.10 First, the use of restraints, or drop pins as they are described in the discussion document, would require caution when used with prisoners who have mental health issues or are at risk of self-harm. This is because the use of drop pins and being secured to a door may

² Office of the Ombudsman, *Kia Whaitake Making a Difference: Investigation into Ara Poutama Aotearoa Department of Corrections* (June 2023). Summarised at p. 72.

³ Above, n 2, pp 97 – 98.

exacerbate feelings of persecution, fear, or paranoia. An alternative risk may be if drop pins can be pulled out and potentially used as weapons. More information about the strength and security of fitting these to cell doors is needed before a full consideration of their pros and cons can be made.

- 2.11 Second, if they are to be used, drop pins should only be fitted to the most high-risk cells, and the mere fact of a cell being fitted with a drop pin should not determine whether they are used. As above, management of the prison population makes it likely some prisoners would be housed in cells with drop pins, despite posing no known risk to staff entering the cell. It would be inappropriate if this form of restraint is utilised simply on the basis that a prisoner is housed in a fitted cell.
- 2.12 Further, we consider that policy and operational procedure should be developed to guide decision-making on the routine use of a drop pin with a prisoner, accompanied by appropriate record keeping. As noted in the Discussion Document, these requirements could reflect those currently within the Corrections Regulations in respect of mechanical restraints. .

Topic 2: Provide greater transparency and clarity to Corrections use of cameras to monitor and record prisoner activities

- 2.13 Improvements to the transparency and clarity of prison practice are always a welcome step, particularly where related to intrusive measures such as CCTV monitoring of prisoner activities. While necessary at times, such measures are intrusive to prisoner privacy and improvements to transparency regarding their use is a positive move.
- 2.14 The Law Society agrees that cameras should not be used to monitor or record inside certain areas of Mothers with Babies units, feeding and bonding rooms, medical examination rooms, in view of a strip search, or in any cells except those used for prisoners who are at-risk of self-harm. These activities raise a greater expectation of privacy.

Option One

Whilst establishing clear parameters around where cameras cannot be placed, the Law Society does not consider this option to be fulsome enough to achieve the objective of greater clarity. Prescribing areas where cameras may *not* be placed is likely to result in unintentional or potentially exploitable gaps, as well as pose challenges for future changes to prison environments and prisoner activities.

Option Two

- 2.15 For the same reasons as with Option One, prescribing where cameras *can* be placed is also not a fulsome measure that would achieve the objective. It is possible that in certain circumstances a camera may be permissible but nonetheless inappropriately infringe prisoner privacy, and/or be unnecessary. This option would not account for, or provide sufficient safeguards to ensure, a tailored response.

Option Three

- 2.16 The Law Society prefers Option Three. This option would allow the approach to be tailored to what is happening in a unit at a specific time. This may change depending on factors such as who is housed there and the risk factors of those particular prisoners.

- 2.17 We also agree that extra regulations and obligations may be needed in areas where prisoners are 'vulnerable'.
- 2.18 The Law Society suggests that providing explicit parameters for the acceptable placement of cameras could complement this option. We recommend considering the implementation of all three options in some form to achieve the greatest transparency and clarity, and appropriate safeguards.

Topic 3: Improve prison safety by increasing Corrections' powers to manage funds held in prisoner trust accounts

- 2.19 The Law Society agrees that prisoner trust accounts need to be revisited. However, we note whichever option is chosen still needs to enable easy access for prisoners and their families.
- 2.20 The Law Society would support a combination of the options proposed. This would ensure prisoners are easily able to withdraw or transfer funds when required but would put in place options to block that access if concerns were raised. We would also support putting in place limits on what can be held in prisoner trust accounts to reduce the risks of intimidation, but allowing funds above the limit to be held elsewhere on the prisoner's behalf.
- 2.21 The Law Society would have concerns about enabling prison managers to restrict who prisoners can deposit funds to. For example, if this was limited to family members this may leave out organisations or people who are important in supporting the prisoner such as charitable or religious organisations. Such a discretionary approach poses a greater risk of arbitrarily restricting the autonomy of the prisoner, and potentially undermining a prisoner's family, whānau and support structures.

Topic 4: Increasing the use of security classifications for remand prisoners to determine their management, where practicable

- 2.22 The Law Society supports the aim of this proposal, as managing remand prisoners who are low risk with more restrictions than necessary is out of step with the requirements of the New Zealand Bill of Rights Act 1990 and the international rights instruments to which New Zealand is a party.

Option One

- 2.23 In the Law Society's view, assessment of remand prisoners to assign a security classification should be required. Option One is therefore our preference. We consider that there is a risk that if it is not a requirement to conduct the assessment, there will be variability and potential issues of timeliness of assessment across different sites.
- 2.24 We consider it is important that such an assessment occurs within a relatively short time of a prisoner's arrival at a prison. The Law Society suggests this should occur within seven days, not the fourteen indicated in the proposal.
- 2.25 The Law Society considers that reviewing a prisoner's assessment should also occur on a regular basis, as it will affect many aspects of prison life, including access to rehabilitation and visits. We further suggest that after the initial classification of a remand prisoner occurs, a review of the classification after one month may be

worthwhile as this will allow the prisoner time to adjust to prison life and initial apprehensions and uncertainty are likely to have settled. Following the one-month review, regular review approximately every three months should occur.

Topic 5: Updating provisions relating to prisoner haircuts and the growth and removal of facial hair to remove redundant requirements and lower the risk of these requirements impacting prison tensions

2.26 The Law Society agrees that updating the regulations relating to prisoner haircuts is appropriate.

Option Two

2.27 We prefer Option Two, as it would enable restrictions necessary for health and safety reasons. Further, it would provide clarity about what is and is not allowed and empower prisoners to raise concerns about any unjustified restriction on these rights. Clarity of expectations will assist in ensuring that prisoners can express aspects of their personality and individuality within the regimented confines of the prison environment (i.e. supports a prisoner's right to freedom of expression). This would likely improve prisoner mental and emotional wellbeing.

2.28 We note, however, that having the restrictions set out in regulations could make it difficult to adapt to future changes. Therefore, it would be best to express this in a way that allows for some future flexibility.

Topic 6: Ensuring that clothing worn by remand accused prisoners prioritises prison safety

2.29 The objective of improving remand prisoners' safety by setting procedures around clothing and footwear options that are acceptable in the prison environment is understandable, however implementation may be fraught. We consider that this proposal needs to carefully balance competing objectives, including allowing individual autonomy, particularly where the proposal relates to remand accused prisoners.

Option One

2.30 The Law Society does not agree with the blanket provision that a remand accused prisoner *must* wear prison-issued clothing if their clothing may impact prison or prisoner safety and security. We consider that this option does not take into account the competing requirements described above.

Option Two

2.31 The Law Society considers that of the three options, Option Two is the most workable. We suggest that a balance is needed between the prisoner wearing prison clothing and having the option to wear some of their own clothing (for example, their own footwear). We consider that the differences between remand accused prisoners and convicted prisoners mean that a more flexible regime is warranted for remand prisoners.

2.32 We acknowledge there may be an issue that needs to be addressed regarding 'high-value' items causing problems between inmates and consider that discretion could be used to allow prison management to remove such items where necessary.

- 2.33 Lastly, the Law Society considers that placing a blanket value limit on goods would not work well in practice but suggests that consideration could instead be given to not allowing particular high-fashion brands that are valued or favoured by some gangs.
- 2.34 It would be helpful to have clearer information and guidance available to give to families and whānau when a person is remanded in custody about what clothing the person can and cannot be provided with (i.e., what the family may bring into prison).

3 Next steps

- 3.1 We would be happy to answer any questions or discuss this feedback with the Department. Please feel free to get in touch via the Law Society's Law Reform & Advocacy Advisor, Shelly Musgrave (shelly.musgrave@lawsociety.org.nz).

Nāku noa, nā

A handwritten signature in black ink, appearing to read 'Jesse Savage', written in a cursive style.

Jesse Savage
Vice President