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Te Kāhui Ture o Aotearoa

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Ara Poutama Aotearoa | Department of Corrections
Wellington

By email: LegislationAmendments@corrections.govt.nz

Re: Options to achieve improved outcomes in the corrections system:

Discussion document 2022

1 Introduction

1.1 The New Zealand Law Society | Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to contribute to the Department of Corrections' (**Corrections'**) consultation on options to improve rehabilitation, reintegration, and safety outcomes in the corrections system (the **discussion document**).

1.2 This submission has been prepared with the assistance of the Law Society's Criminal Law Committee and Human Rights and Privacy Law Committee.[1]

2 Introductory section

Questions 1 and 2: Do you consider these criteria will enable us to assess the options for change? What else would you suggest as criteria? Would you also weight human rights more strongly than other criteria?

2.1 The Law Society supports the criteria that have been identified in the discussion document. It is appropriate that compliance with human rights obligations is given additional weight, particularly as these decisions will be affecting those who are not in a position to advocate for their own rights. However, as noted later in our submission, this rights-focused approach does not appear to have been consistently applied throughout the discussion document.

2.2 The Law Society would also support a specific criterion which measures whether the implemented change(s) achieve better results for those with mental health issues. It is well known that people with mental health issues are significantly overrepresented in our prison population, and that the status quo does not work for many of those in this group. This is a significant area of concern and one which should be more closely analysed as a part of any proposed law reform.

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1 More information regarding these committees is available on the Law Society's website: https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/

3 Section 1: Monitoring and gathering information on prison activity and communications for intelligence purposes to improve prison safety

Question 3: Do you think the problems identified about the monitoring, gathering and management of prisoner information and activities should be addressed?

3.1 This section of the discussion document proposes significant extensions to the current limits placed on the gathering, retaining, and sharing of intelligence permitted by the Corrections Act 2004 (the **Act**). It is important Corrections is able to implement its purpose of ensuring the safe and secure administration of custodial sentences. As such, the Law Society supports these issues being raised and considered. However, it is concerning that measures have been introduced as part of an omnibus consultation, as this risks them not receiving sufficient scrutiny.

Question 4: What is your preferred option to ensure Corrections gathers effective information from prisoner communications and activities?

3.2 The collection of 'intelligence' carries an inherent risk of misuse. It is generally gathered in secret, and individuals are not aware of what information is held about them. Accordingly, it is less open to scrutiny or challenges around its accuracy, unless and until the individual becomes aware of it due to it being used against them.

3.3 The Law Society accepts that extending the Act's monitoring powers to include video calling and internet-facilitated messaging could be a justified reaction to new forms of communication. However, any move to increase powers to enable monitoring of in-person visits raises clear privacy issues and needs to be more clearly justified with evidence. It is not clear on the material included in the discussion document how many incidents there have been where in-person meetings have been used to facilitate criminal or covert activity.

3.4 One of the guiding principles of the Act is that "contact between prisoners and their families must be encouraged and supported, so far as is reasonable and practicable and within the resources available, and to the extent that this contact is consistent with the maintenance of safety and security requirements."[2] Granting Corrections the power to monitor in-person visits could be a strong disincentive for many whānau and family members and other pro-social visitors to continue visits, out of concern for their own privacy, and may limit the benefit of any visits as a result. An environment of surveillance and monitoring can also run counter to fostering a relationship of trust and confidence which is key to supporting rehabilitation.

3.5 In the absence of further data or evidence to assess the scale of this issue, the Law Society considers that the status quo should remain (option 3). Failing this, the Law Society considers that if Corrections' monitoring powers were to be extended, this should be done via specific powers being added to the Act via legislative amendment. Given the potential for such powers to be misused, and the impact on the privacy of detainees and their visitors (most of whom are likely to be whānau), it is important that the powers are clearly expressed and subject to appropriate oversight, safeguards, and limitations.

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[2] Corrections Act 2004, s 6(1)(i)

Question 5: Should Corrections be able to use artificial intelligence to monitor prisoners' communications to keep prisoners, staff and the public safe?

3.6 In the Law Society's view, caution is needed around the proposal for using artificial intelligence to monitor and process phone calls, given the risks acknowledged, particularly in relation to the potential for this technology to have inbuild bias that may disproportionately impact Māori and other people of colour. That is a strong red flag given the already disproportionate representation of Māori and Pasifika in the prison population. While any amendments to the Act could include provisions targeted towards minimising this risk, any bias is likely to be unintentional and therefore not readily apparent.

3.7 It is difficult to reach a position on the use of artificial intelligence in the abstract, without a specific programme that can be assessed. However, on the information currently available, the Law Society does not consider there is sufficient justification for an amendment to the Act.

Question 6: What is your preferred option to ensure Corrections can process raw information effectively?

3.8 The Law Society's preferred option for addressing this issue is to extend the definition of 'eligible employee' to allow recruitment of other government staff members (option 2) – but only if supported by clear safeguards and memoranda of understanding for the protection and use of such information. As noted above, the nature of intelligence information is inherently susceptible to undetectable misuse, either in the gathering or in its use. The wider sharing of such information through this option carries greater risk.

3.9 Though it is posited as a separate option, this could also be done alongside an effort to hire more staff (option 1).

Question 7: What is your preferred option for Corrections' approach to retaining intelligence information?

3.10 The Law Society prefers the inclusion of clear legislative guidelines for the retention, management, and destruction of intelligence information (option 2). This is the option most likely to lead to the desired result of personal information not being unnecessarily collected and retained. The lack of close alignment with Police practice raised in the discussion document is of limited concern – Police have a different function to Corrections, and much of the information collected is subject to its own specific legislative requirements (for example, the retention of DNA samples under the Criminal Investigations (Bodily Samples) Act 1995).

3.11 If additional information gathering powers are provide to Corrections (as proposed in the discussion document), there should be a corresponding clearly defined basis for the collection, storage, use, sharing and destruction of this. It would also be preferable for the Act to be a 'one-stop shop' that manages the collection and retention of all forms of information by Corrections, rather than the status quo of this being split over multiple documents.

Question 8: How long should Corrections retain intelligence information?

3.12 Given the concerns raised above regarding the potential for misuse inherent in intelligence information, the Law Society considers that such information should be retained for as little time as is necessary. The 2-year period that currently applies to the retention of recorded phone calls from prisons is a good guideline. Any timeframes set out in legislation could also include provisions to extend this where there is sufficient reason, though these should similarly be restrictive and clearly defined.

3.13 The alternative raised in the discussion document of tying retention timeframes to sentence length would require careful thought regarding how this would apply to those on long sentences or sentences of life imprisonment. It is unlikely that permitting extended or indefinite retention would be justifiable.

Questions 9 and 10: Should Corrections be able to share intelligence information with other government agencies? What is your preferred option on how Corrections should compare and disclose intelligence information with and from other government agencies?

3.14 There is currently a high threshold before monitored phone calls and information collected from prisoners' mail can be shared with Police and other intelligence agencies under ss 110A and 117 of the Act, respectively. In the Law Society's view, this high threshold is justified, given the potential for privacy breaches and misuse of intelligence information referred to above. Were Correction's powers extended to allow monitoring of other modern forms of electronic communications, a similar information sharing threshold would be appropriate – in the Law Society's view, it is important that any power to share such communications are subject to the same safeguards and clearly prescribed.

3.15 In the Law Society's view, it is not apparent on the material provided why any wider disclosure or information sharing powers would be required in order to sufficiently assess risk and reduce the risk of harm.

Questions 11, 12 and 13: Have we captured all the costs and benefits accurately? Are there any other options to address these issues we should consider? What else do we need to think about when implementing these proposals?

3.16 The Law Society does not consider that there are further issues that need to be considered in relation to this section.

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

Questions 14 to 17: Do you agree that the birth certificate rule is a problem that should be addressed? What is your preferred option for ensuring prisoners are placed or managed in a way that supports identity, wellbeing, and safety? Have we captured all the costs and benefits accurately, are we missing anything? What else do we need to think about when implementing these proposals?

4.1 The Law Society supports option 2, which allows for Corrections to consider all relevant factors when determining whether to place a person in a male or female prison.

4.2 There have been some notable previous instances of transgender prisoners being placed in prisons which did not align with their nominated sex. This can cause significant trauma and safety issues for individuals involved. It also poses risks to Corrections, with compensation payments having previously been made where there have been missteps.

4.3 The recent changes to the Births, Deaths, Marriages and Relationships Registration Act will make it easier for people to amend their birth certificate to align with their gender. However, for many people coming to understand their gender identity is a journey, with an amendment to a person's birth certificate being one of the last steps. In the Law Society's view, the birth certificate rule (requiring that individuals be placed in the type of prison that matches what is on their birth certificate) is not the best approach. Being able to take into account other factors is more likely to lead to an appropriate placement for the particular individual.

5 Section 3: Increasing access to privacy and control over lighting in prison cells

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?

5.1 Yes. The Law Society agrees with the views in the discussion document that limiting access to privacy screening and control over lighting can cause undue stress and embarrassment to prisoners, does not support oranga, and can be degrading or dehumanising. Light exposure has also been considered a form of torture. While these limitations have understandably developed as a response to safety concerns, they are applied to every person in segregation or confinement, regardless of whether they are at risk of self-harm or violence.

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

5.2 It is noted in the discussion document that there is no evidence that privacy screens are a major risk factor for self-harm or violence, and that new technologies can safely allow access to light switches. The Law Society supports a regulatory change to allow access to privacy screens and lighting controls for people on mental health segregation (option 1), with Corrections retaining the ability to override this in cases where there is an established risk of self-harm or violence relevant to privacy screens or lighting controls.

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

5.3 For the same reasons, the Law Society supports prisoners on cell confinement having access to privacy screens and light switches, unless there is an established risk of self-harm or violence (option 1).

Question 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?

5.4 Such assessments are inherently difficult to make, and require a wide analysis of factors including assessing the likelihood of self-harm or violence occurring, how serious this would be if it eventuated, what options are available to address this risk, the potential impact on the individual at risk and others in the unit, among other things. In the Law Society's view, there is no single right way for this to be assessed, but it is important that any such discussions include specialist medical advice where available.

Questions 23 and 24: Have we captured all the costs and benefits accurately, are we missing anything? 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?

5.5 The Law Society does not consider that there are further issues that need to be considered in relation to this section.

6 Section 4: Refining disciplinary processes in prisons

Question 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?

6.1 It is overly simplistic to say that the delays in the hearing process are caused by the jurisdictional limitations placed on adjudicators. The starting point, which is not acknowledged in the discussion document, is that section 15 of the Act requires the Chief Executive to designate as many suitable employees of the department as hearing adjudicators as are required for the purposes of this Act. Delays in having disciplinary matters heard indicates this requirement is not being met.

6.2 The Law Society also notes that many of the jurisdictional limits placed on adjudicators appear to have been put in place for important reasons. Under the Act, Corrections has an obligation to ensure the fair treatment of persons under its control or supervision.[3] It is suggested that very few prisoners would consider an adjudicator drawn from the staff of a prison would be impartial when assessing the credibility of evidence given by other members of the staff of the same prison. While it may be suspected that some external adjudicators bring a degree of institutional bias to their tasks – consciously or unconsciously – the perception of institutional bias will be considerably increased where the adjudicator is based in the same institution as prison staff who are active participants in the hearing. Accordingly, while these restrictions that prevent internal adjudicators from hearing such cases can lead to delays, this is necessary to ensure the process is fair and reasonable.

Question 26: What is your preferred option for addressing delays to the hearing process?

6.3 The Law Society's preference is to address this issue via appointing further adjudicators and visiting justices and through greater use of AVL for disciplinary hearings (option 1).

[3] Corrections Act, s 6(1)(f)

6.4 As noted above, the Act requires that the Chief Executive designate as many suitable adjudicators as are required. If there are currently insufficient adjudicators, the Act requires that more be appointed. Accordingly, this should not be regarded as a new option to address these issues.

6.5 The suggestion that greater use be made of AVL is well worth further exploration, though the current legal position may not be as clear as is suggested in the discussion document. At page 27 it is stated that hearings occur in prisons and may be undertaken remotely if all parties agree. It is not clear this is correct, given that section 139 provides a relatively broad power allowing hearings and applications to be conducted or determined with 'all or any of the interested persons participating by way of video link, rather than being present in person'. The Act does not include any guidance on when this power should be used, but does not expressly require agreement from all parties.

6.6 Corrections could consider putting a proposal forward to amend the Act to provide further guidance and clarification on when video conferencing can be used, using the Courts (Remote Participation) Act 2010 as a model. It should be remembered that many prisoners may be far less knowledgeable about AVL technology, or capable of using it to good advantage. It would be wrong in principle to make it more difficult for a prisoner to present her or his case. It is also understood that at present it is difficult for the AVL facilities at most prisons to accommodate the various demands on them. There would need to be assurances that the technology was available and robust if its use is to significantly increase.

Questions 27 and 28: Do you think it is a problem that certain requirements for the hearing process are delaying hearings and appeals? What is your preferred option to provide a more effective disciplinary process?

6.7 Option 2 suggests three separate areas of legislative amendment to address delays in the hearing and appeal process.

6.8 For the reasons set out above in relation to the use of AVL in disciplinary hearings, the Law Society would support amendments to allow for greater flexibility in the use of technology in proceedings.

6.9 Option 2 also suggests amending the Act to allow hearings to proceed in the absence of the charged person in certain circumstances, including if the person refuses to attend or if the adjudicator or Visiting Justice considers that the person's behaviour is likely to disrupt proceedings.

6.10 Given the availability of carrying out trials in absentia under the Criminal Procedure Act 2011[4], there can be no objection to this being an available option when the person charged refuses to attend. However, the second part of the proposal, to allow hearings to proceed where the adjudicator or Visiting Justice considers that the charged person is likely to be disruptive, is more problematic. It is undesirable that the right to presence at a hearing should be abrogated on the basis of predicted rather than actual behaviour. In the Law Society's view, any exclusion on this basis should only be available where the charged person

[4] Criminal Procedure Act 2011, ss 119 and 122

has actually disrupted proceedings. This would be consistent with how disruptive defendants are dealt with in the criminal jurisdiction.[5]

6.11 Another option suggested is 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. Insufficient evidence has been produced to show that the current period contributes significantly to difficulties in the system. Given the difficulties many prisoners will face in getting legal advice as to whether there are proper grounds for an appeal, a shortening of the appeal period is undesirable.

Questions 29 and 30: 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? What is your preferred option to provide a more effective disciplinary process?

6.12 In the Law Society's view, the changes proposed under options 1 and 2 should not be seen as alternatives. While they have been broadly grouped into regulatory and non-regulatory responses, the choice should not be between these two options but looking to see what the best outcome is and how it can be achieved by both administrative and legislative change.

6.13 With that in mind, the Law Society provides the following comments in relation to the different aspects of each option:

(a) *Strengthening training for prosecutors/requiring prosecutors to be trained and have their competency assessed*: Strengthening the training for prosecutors and ensuring they are suitably trained and competent is likely to be beneficial, regardless of whether any other changes raised in the discussion document are made. It may be worth considering whether there should be official guidance on the conduct of prosecutions for prison discipline offences. Guidance might be derived from aspects of the Solicitor-General's prosecution guidelines, and from police prosecutor practice.

(b) *Referring criminal offences to Police*: This option has been largely framed around referring incidents where prisoners incite behaviour that endangers the security or good order of the prison to Police, provided these actions would also amount to an offence. It is, and should be, a matter for Corrections to decide whether to refer conduct which is an offence against discipline and also an offence under the Crimes Act 1961 or other statutes to the Police. It is then for Police to investigate and determine whether to bring a prosecution.

(c) *Making it an offence to incite others to commit any offence against discipline*: There seems no good reason why inciting another person to commit an offence against discipline should not itself be an offence. Consideration should be given to whether an equivalent to s 66 of the Crimes Act 1961 (which provides a legal basis for secondary party liability) should be added to the Act. We note that s 128(1)(k) already provides a limited form of party liability.

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5 Criminal Procedure Act 2011, s 117(2)

(d) *Allow for suspended penalties*: The suggestion to provide for the imposition of suspended sentences may have merit. However, further work would need to be done on how such a system would work – for example could they be used where a prisoner would be eligible for automatic release on parole during the period of suspension? If a suspended penalty was not available in those circumstances, would there be an appearance of unfairness that those prisoners were effectively more harshly treated? How would the system accommodate transfer between prisons of prisoners subject to suspended sentences?

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

6.14 While the *Setting the scene* section includes a part on human rights, there appears to be only passing consideration in the substantive parts of the discussion document to the rights that may be impacted by the various options put forward. By way of example, the proposal to extend the jurisdiction for adjudicators poses a clear risk of impinging on prisoners' rights to natural justice protected by section 27 of the New Zealand Bill of Rights Act 1990 (**NZBORA**), given the increased risk of bias in having a prison employee presiding over a disciplinary case. While the risk of bias is mentioned in the discussion document, this is not discussed in the context of a potential breach of a fundamental right. It is doubtful whether any reform options can or should be progressed until there has been a proper rights-focussed analysis.

6.15 It is also disappointing that there is no reference to issues of providing legal representation to prisoners facing disciplinary charges. In the Law Society's view, the discussion document would have been a good opportunity for that to be raised and discussed.

6.16 Regarding other matters that could be considered in order to improve the timeliness and efficiency in the disciplinary process, one area of potentially significant duplication of effort comes in the making of decisions as to whether the case will be heard by an adjudicator or a visiting justice. At present, the assumption is that all cases go to an adjudicator in the first instance. That adjudicator decides on the basis of the criteria in section 134 of the Act whether it should be heard by a Visiting Justice. The decision to transfer to a Visiting Justice may be made at any time up till the adjudicator has reached a verdict. The extent of significant "double-handling" of cases is not indicated in the discussion document, but it may be able to be established.

6.17 It may also be worth considering whether more radical changes to how the various disciplinary offences are managed are desirable. The current list of offences against discipline includes a mixture of serious offences and others posing, apparently, much lesser risk of disrupting prison discipline. One possibility may be to divide up the list of offences into two categories – level 1 which presumptively will be heard by an adjudicator and level 2 which will presumptively be heard by a Visiting Justice – with provisions included to depart from this presumption in appropriate circumstances (for example, the seriousness or complexity of the case, or a heightened risk of actual or perceived bias). Different maximum penalty levels could be attached to the different levels. This might also allow for better targeting of where legal representation should normally be permitted.

6.18 A less substantial change might be to deal with a concern about penalty levels by allowing cases decided by an adjudicator to go to a Visiting Justice for penalty only (as can currently occur with some convicted defendants going from the Youth Court to the District Court, or the District Court to the High Court) rather than, as appears to be the case now, having the adjudicator part-hear the case and then transfer it with the Justice having to fully rehear the whole matter.

6.19 Corrections could also consider developing a "Bench Book" equivalent (if one does not already exist) for adjudicators and Visiting Justices to address any perceived variations in the levels of penalties between institutions and/or individual adjudicators or Justices.

7 Section 5: Supporting improved rehabilitation and reintegration outcomes for Māori

Questions 33 to 38

7.1 It is well-known that Māori are overrepresented in the prison population (and in the justice system as a whole), and it is positive that Corrections recognises a focussed approach is required.

7.2 The Law Society is also encouraged that one of the commitments suggested in the discussion document is to improve processes to involve whānau, hapū and iwi in prison placement discussions. Ensuring prisoners are close to whānau and other supports can be of significant benefit to an individual's rehabilitation. We note that in recent times Corrections have relocated prisoners in order to address ongoing staffing issues. It is hoped that the preference for keeping prisoners close to their whānau support is being taken into account during this process.

7.3 The Law Society is not well placed to say what options would best address the needs of Māori. It is hoped that specialist cultural advisors have been engaged to provide feedback on this section.

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

Questions 39 to 40: 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? What is your preferred option to improve access to some critical services and programmes for remand accused people?

8.1 The Law Society considers that the limited access to services and programmes made available to remand accused is a significant problem and has advocated for this to be changed for some time. As recognised in the discussion document, remand accused currently make up a significant portion of the prison population, and this is expected to increase. It is also becoming more common for remand accused to remain in custody for longer periods of time, due to delays in matters reaching trial or resolution. In the Law Society's view, it is best for remand accused and society as a whole if this time can be used productively.

8.2 It is preferable that specialist programmes be made available for remand accused (option 2). Some programmes would likely be unsuitable to remand accused, due to the presumption of innocence making many offence-focused programmes inappropriate. The uncertainty of

how long remand accused will be in custody would also mean that longer-form programmes may be of less benefit.

8.3 Allowing remand accused to take part in programmes can also be an important steppingstone to accessing further rehabilitation. The Law Society has been advised by members of the profession that some providers of residential drug and alcohol rehabilitation are requiring that individuals in custody complete programmes that are available in prison before being offered a place in the programme.

8.4 While it is understood that this option would be resource-heavy, in the Law Society's view it is likely to have significant benefits.

8.5 If making remand accused-specific programmes available is cost-prohibitive, the Law Society considers that having suitable programmes with a mix of remand accused, remand convicted, and sentenced prisoners (option 1) is preferable to the status quo. As noted in the discussion document, Article 10 of the International Covenant on Civil and Political Rights requires that accused persons must be segregated from convicted persons and subject to separate treatment, except in exceptional circumstances. Having shared programmes and services would likely be inconsistent with this principle. However, Article 10 also notes that the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Therefore, a failure to provide programmes and services to remand accused is similarly inconsistent with the ICCPR.

8.6 A further option that could be considered is a hybrid of options 1 and 2, where remand accused-specific programmes are offered where available. Where this is not feasible, remand accused could be placed in suitable programmes alongside remand convicted and sentenced prisoners.

9 Section 7: Miscellaneous legislative and regulatory amendments

Questions 41 and 42: Do you think the Corrections Act should specifically authorise the use of body temperature scanners? What is your preferred option for the use of body temperature scanners?

9.1 The Law Society supports an amendment to allow for the use of body temperature scanners on entry to prisons for prisoners, staff, and visitors (option 3). There are obvious benefits to authorizing the use of body temperature scanners as evidenced by our experience with COVID-19. By their very nature, prisons are particularly susceptible to having diseases spread within its population, due to people being kept confined and often within close proximity. Legislative authorization would provide clarify and consistency on when the scanners can be used and for what purposes, thereby reducing the risk of non-compliance by prisoners, staff and visitors who allege that the use of such a device breaches their right against unreasonable searches.

Questions 43 and 44: Should imaging technology searches be able to be used in place of other search methods, such as strip searches? What is your preferred option for enabling imaging technology to be used more widely?

9.2 The Law Society supports greater use of imaging technology in place of strip searches. Strip searches are highly invasive. Imaging technology searches offer a less intrusive method of obtaining the same information and is preferable for that reason. It would be preferable for this technology to be able to blur the genitalia of the person (option 3). If that is not possible with currently available technology, the Law Society considers that the next most preferable option would be to amend the Regulations to 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 (option 2).

Questions 45 and 46: Do you think that the lack of flexibility in the legislation for case management plans is a problem? If you agree that more flexibility is required for case management plans, what is your preferred option?

9.3 A flexible approach is likely to be the best option to meet individual needs; however, flexibility inevitably also means an increase in administrative burdens. The current rigidity in the legislation may require some softening to allow for better outcomes in the form of well-prepared, in-depth, and up-to-date case management plans. In particular, the current firm timeline for completing the plan can cause issues where a prisoner's circumstances change. The Law Society would support amending the Act to give greater flexibility to how case management plans are prepared.

Question 47: Do you think requirements for case management plans are more appropriate in the Act or in the Regulations?

9.4 The requirements for case management plans should be set out in the Regulations as opposed to the Act, as that would allow for changes to be made much more efficiently.

Questions 48 to 50: Do you think the current requirement to review case management plans at 'regular intervals' is unclear and not responsive to individual needs? What is your preferred option for when case management plans should be reviewed? What other options for improving case management plans should we consider?

9.5 "Regular intervals" is ambiguous and does not provide any indication as to what an acceptable interval may be. While this provides flexibility, it is at the expense of clarity to prisoners.

9.6 In the Law Society's view, Option 2 is preferable as it ensures reviews take place once every 6 months at a minimum, and more frequently if there are material changes to a prisoner's circumstance. This strikes the right balance between ensuring the requirements are clear and plans are kept current, while also being adaptable in the event there is a material change that should be addressed in the plan.

9.7 The Law Society does not consider that there are other options for improving case management plans that should be considered.

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

9.8 So long as the information is shared for legitimate and specified purposes, there is no reason why an efficient information-sharing mechanism should not be established between Corrections and IRD. The Law Society considers this could be done via a Memorandum of Understanding, providing sufficient consultation is carried out to ensure there is compliance with key statutes (e.g. NZBORA, Privacy Act 2020). While putting in place an Approved Information Sharing Agreement may have a more robust assessment process, it is likely to be more labour intensive and less adaptable.

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

9.9 No, because certain adults can also be vulnerable and thus unsuitable to mix with young persons. The best interests of both parties should be taken into account, although the interests of the young person should take precedence. If there is any indication that mixing may have adverse consequences to any of the individuals involved (whether they be adults or young persons), then the preferable course of action is to keep them separate or find other suitable mixing arrangements.

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

9.10 The Law Society does not have any concerns to raise regarding these minor or technical amendments.

10 Next steps

10.1 We would be happy to discuss this feedback further, if that would be helpful. Please feel free to contact me via the Law Society's Law Reform & Advocacy Advisor, Dan Moore (dan.moore@lawsociety.org.nz).

Nāku noa, nā

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Vice-President