



## MP for Te Tai Tokerau

Minister for Māori Crown Relations: Te Arawhiti

Associate Minister of Education

Minister of Corrections

Minister of Tourism

16 JUL 2019

Brodie Fraser

[fyi-request-10545-ba63259e@requests.fyi.org.nz](mailto:fyi-request-10545-ba63259e@requests.fyi.org.nz)

Tēnā koe Brodie

Thank you for email of 17 June 2019 to the Department of Corrections, requesting information on official advice I have received about the placement of transgender prisoners. Your email was transferred to my office on 19 June 2019 as the information to which your request relates is more closely connected to my portfolio as Minister of Corrections.

You requested:

*What, if any, official advice has been to the current Minister about the placement of transgender prisoners?*

I have received two briefings in the scope of your request:

- B3483 - Corrections' management of trans prisoners policy (18 December 2017)
- B3782 - Births, Deaths, Marriages, and Relationships Registration Bill and Corrections Regulations 2005 (27 November 2018).

Please see the first briefing (B3483) attached. You will note that some information has been withheld under section 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty. Furthermore, some information has also been withheld under 9(2)(a) to protect the privacy of natural persons, including that of deceased natural persons.

As you may be aware, the proposed Births, Deaths, Marriages, and Relationships Registration Bill has been deferred. Therefore, the second briefing (B3782) has been withheld under section 9(2)(f)(iv) to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials.

Further to the above two briefings, I received an update in my Weekly Report in March 2018. Please find this update attached.

I trust the information provided is of assistance. If you have any concerns with this response you may raise them with the Office of the Ombudsman. Contact details are: Office of the Ombudsman, PO Box 10152, Wellington 6143.

Nāku noa, nā

A handwritten signature in blue ink, appearing to read 'Kelvin Davis', written in a cursive style.

**Hon Kelvin Davis**  
Minister of Corrections

To: Hon Kelvin Davis, Minister of Corrections

## Corrections' management of trans<sup>1</sup> prisoners policy

Date	18 December 2017	Decision needed by	No decision required
B number	B3483	Priority	Medium

### Recommendations

**Note** the circumstances to date in progressing the implementation of the trans prisoner management policy.

**Note** the issues, risks and mitigations identified to facilitate the implementation of the trans prisoner management policy.

### Consultation

Justice  Social Development  Police  Health  Other:

Key comments: No consultations.

### Contacts for telephone discussion (if required)

Name	Position	Contact number	First contact
Rachel Leota	National Commissioner	s9(2)(a)	<input type="checkbox"/>
Richard Symonds	Manager Custodial Practice	s9(2)(a)	<input checked="" type="checkbox"/>

<sup>1</sup> In recognition of the diverse nature of the trans, genderqueer and gender non-conforming community, the generic word "trans" is used throughout this briefing and the new policy.

## Key messages

This briefing provides an update about the development of, and consultation on, the content of the new policy for the management of trans people in prison and current issues, risks and mitigations identified.

The policy objective is to improve the care, management and safety of trans people in prison. This will be achieved by being based on the principles that trans people in prison are managed in a way which:

- is individualised
- seeks to preserve their dignity, safety and privacy
- enables the maintenance of a person's gender identity
- is not dependent on the gender of person the prison usually houses.

## Current policy for managing trans prisoners

- 1 At any given time, Corrections is managing approximately 25 trans people in prison. In 2014, Corrections changed its approach to the placement of trans people in prison through regulatory amendment. Prior to the change, only trans people who had completed gender reassignment surgery were able to be placed in the prison of their gender identity as opposed to the prison of their assigned sex at birth.
- 2 There is one caveat on eligibility to apply in the Corrections Regulations 2005 (the Regulations), regulation 65B; a trans person cannot apply for a review of their placement if they are in custody for having committed a serious sexual offence against a person of their gender identity, or if they have been imprisoned for such an offence with a sentence expiry within seven years.
- 3 This change was not accompanied by any day-to-day policy on how trans people were managed in prison, whether they are in a prison which aligns with their gender identity or not. For example, trans prisoners are subject to rub down and strip searches, and drug testing procedures, dependent on whether they are held in a male or female prison; trans women in women's prisons are searched by female officers and trans women in a men's prison are searched by male officers.
- 4 Therefore, in March 2016 the Executive Leadership Team (ELT) approved an action plan to improve the Department's response to, and management of, trans people in prison.

## Corrections progress towards a new policy

- 5 In October 2016, the Executive Leadership Team approved the guidance developed in principle. The proposed guidelines took a principles-based approach and align Corrections' operational policies with comparable international jurisdictions and domestic government agencies, particularly the New Zealand Police and Customs.
- 6 The Department committed to undertaking consultation with a number of groups and individuals to ensure the new policy was appropriate and final approval of the guidance was to be sought following the consultation period.

*Consultation on the new policy for the management of trans people in prison*

- 7 Commitment was made to widely consult with stakeholders from the outset because the expertise in this area is held by trans people and advocates for LGBTIQ+ rights. External groups and individuals consulted with include those listed in the table attached as Appendix One.
- 8 The extensive consultation, both internally and externally, has been invaluable. The implementation of the policy has been delayed to enable this.
- 9 Concurrent public interest in Corrections' management of trans prisoners has noted our commitment to the development and implementation of the trans prisoner management policy. Approximately 23 requests for information have been received in 2017 regarding trans prisoners and custodial practices, in addition to individual Official Information Act requests.

*Current issues*

- 10 [Redacted] s9(2)(g)(i)
- 11 [Redacted] s9(2)(g)(i)
- 12 [Redacted] s9(2)(g)(i)
- 13 [Redacted] s9(2)(g)(i)

*Risks*

- 14 [Redacted] s9(2)(g)(i)
- 15 [Redacted] s9(2)(g)(i)

- 16 Delivery of training through a new web platform, instead of the more conventional methods used to date, may impact on staff engagement and ensuing practices.

#### *Mitigations*

- 17 Informed by external consultation, Corrections is confident legislative change is not required to implement the policy as proposed.

- 18 [REDACTED] s9(2)(g)(i)

- 19 Valuable feedback was also provided by custodial staff at four prison sites, some of which has been incorporated to inform the policy process detail.
- 20 Internal and external communications are intended to supplement the training package to be made available to all staff across the estate and will ensure centralised oversight and standardisation of the messaging provided.
- 21 Diversity training has commenced for over 900 staff across the Northern Region containing practical information around issues faced by the Rainbow/LGBTIQ+ community and how best to support and manage trans and Rainbow people on community sentences. The training will be delivered to all community corrections sites during October 2017 to April 2018. The designers and facilitators have offered to assist with training custodial staff and are an additional resource available to support staff to deliver the policy from implementation.
- 22 Considering the complexity of changes proposed to the management of trans prisoners, the policy will be considered as subject to change and continuous improvement as staff and stakeholders may identify opportunities to clarify and improve practice. To minimise any operational disruption, a practice review will be undertaken and completed within four months of the implementation that will include seeking feedback from custodial staff and trans prisoners.

#### **The new policy**

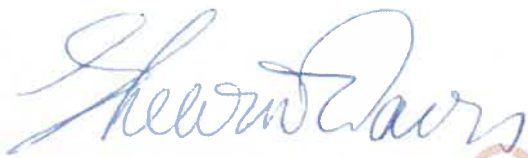
- 23 By actively working to address the issues and potential risks identified, Corrections intends to implement the policy in early 2018.
- 24 The guidelines incorporated into the operational policy require prison staff to create a support plan with the trans person which covers all areas of their management, among other process requirements. A table outlining the changes which will be introduced as a result of the new policy is attached as Appendix Two.

**Recommendations**

25 It is recommended that you:

- a) **Note** the circumstances to date in progressing the implementation of the trans prisoner management policy. YES/NO
- b) **Note** the issues, risks and mitigations identified to facilitate the implementation of the trans prisoner management policy. YES/NO

Rachel Leota  
Acting National Commissioner



Hon Kelvin Davis  
Minister of Corrections

Date signed:

25/11/18

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**Appendix One: External stakeholders consulted**

<ul style="list-style-type: none"> <li>• Letters to the Chief Executives of MoJ, NZ Police, Ministry of Social Development</li> <li>• Human Rights Commission</li> <li>• Chief Ombudsman</li> <li>• Pride Auckland Committee</li> <li>• Pride Wellington Committee</li> <li>• Auckland City Council Rainbow Communities Advisory Panel (face to face meeting on 7 August 2017)</li> <li>• s9(2)(a), Inspector, Diversity Liaison Coordinator, Counties Manukau, NZ Police</li> <li>• A number of community groups were contacted by letter with no response received</li> </ul>	<ul style="list-style-type: none"> <li>• s9(2)(a)</li> <li>• Contact on the Auckland Pride Committee and Auckland City Council Rainbow Communities Advisory Panel</li> <li>• s9(2)(a)</li> <li>• GenderBridge contact</li> <li>• Trans counsellor who has worked with other organisations on gender diversity training</li> <li>• s9(2)(a)</li> </ul>
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**Appendix Two: Changes to be introduced with the new policy**

Area of management	Current policy	New Policy
Names and pronouns	No specific guidance provided	Requires staff to ask the trans prisoner what their preferred name and pronouns are and use them in all communications and interactions. Provides guidance to assist them to legally change their name if they wish to.
Privacy of gender identity disclosures	No specific guidance provided	Staff are guided to advise the prisoner the Support Plan will be shared with others who work with them to ensure consistent management and potentially other staff in the Department who need to assist with their management. Staff are also advised that if a prisoner shares that they are trans with them, the information needs to be treated with sensitivity and consideration about who else needs this information in order to manage their safety and wellbeing.
Initial reception	Guidance provided about how to initiate process for trans person to apply to have their placement reviewed.	Direction is given for staff to confirm the warrant details are correct with the prisoner, including the sex/gender, and if they are trans to discuss their placement and review options. Staff are directed to advise the trans prisoner about the Support Planning process, discuss whether they would like to be kept apart from other prisoners and enter an alert on their electronic file.
Support Planning	Not required	A Principal Corrections Officer (PCO) is required to meet with the trans prisoner within 72 hours of the person's reception to discuss their management and support. The planning process is to be collaborative and a template for the agreed plan is provided, to be signed by the prisoner, the PCO and the Prison Director. Staff guided to encourage the trans prisoner's involvement if they are resistant to the process.
Cell accommodation	Trans prisoners are to be placed in single cell accommodation. This may be overridden by the Prison Director if two trans people with the same gender identity choose to be placed in a shared cell. The Prison Director must consider the suitability of the two trans people to be placed in the same cell	Status quo maintained. The intent of this guidance is to provide assurance that trans prisoner's safety is protected.

Area of management	Current policy	New Policy
Searching and urine testing	Trans prisoners searched (rubbed down and strip searched) and urine tested in accordance with the gender of person the prison they are in usually holds. For example, trans women in women's prisons are searched by female officers. Trans women in a men's prison are searched by male officers.	Trans prisoner will be asked to select their search preference and searched by the staff of the gender they choose. This will allow all trans prisoners to be searched in line with their gender identity. They are also able to change their selection at any time. This is the same practice as the NZ Police and Customs.
Association with other people in prison	No specific guidance provided	Staff guided to avoid restricting trans prisoner's association where possible. Staff guided to mitigate risk of trans prisoner being restricted from accessing rehabilitation and reintegration activities in attempts to protect their safety.
Personal items	No specific guidance provided	Staff provided guidance on personal items trans prisoner are likely to require (chest binders, taping, specific underwear, make up etc). Requirement that trans prisoner have the ability to appear as their gender identity and have access to items required. Items can be withheld if the Prison Director determines they are a risk to the safety and security of the prisoner or prisoners. Guidance provided that attempts must be made to mitigate those risks as removal of items can cause distress and place them at risk.
Escorts	All escorts take place in single cell vehicles and, therefore, trans people are escorted separately to others.	Status quo maintained. Additional guidance provided that trans prisoners may be escorted in a vehicle with others if determined as safe and appropriate in the circumstances. For example, they must not be prohibited from reintegrative temporary removals such as shopping trips from self-care units.
External support	No specific guidance provided	Guidance that discussion with trans prisoners should seek to understand support needs and link them with groups and individuals for support as requested.

### **Transgender Prisoner Management Policy**

As detailed in the briefing signed 25 January 2018, Corrections will be implementing the transgender prisoner management policy, effective 5 March 2018. The transgender training package was made available to Corrections staff online from the week starting 26 February 2018 and additional engagement was undertaken with the 11 prisons currently managing transgender prisoners to encourage familiarisation with the new policy and practices. With ongoing support for our staff, Corrections is confident the new policy will improve the care, management and safety of transgender people in prison.

Released under the  
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