



Office of Hon Louise Upston

Minister of Corrections
Associate Minister of Education

Associate Minister for Primary Industries
Associate Minister for Tertiary Education,
Skills and Employment

14 AUG 2017

Mark Hanna
No Pride In Prisons
fyi-request-6192-26897dc6@requests.fyi.org.nz

Dear Mr Hanna

I refer to your email of 11 July 2017, requesting information regarding the Corrections Amendment Regulations 2017.

Your request has been considered in accordance with the provisions of the Official Information Act 1982 (OIA).

You have asked for all advice given to the Minister of Corrections regarding the Corrections Amendment Regulations 2017. I have identified two briefings which fall within the scope of your request as follows:

- Briefing B3171 – *Corrections Amendment Regulations: Policy Approval* dated 15 February 2017, which includes the following appendices;
 - Talking Points
 - Updated Speaking Notes for SOC (Cabinet Social Policy Committee).
 - Regulatory Impact Statement
 - Corrections Amendment Regulations 2016
- Briefing B3297 – *Lodging the Cabinet Legislation Committee Paper: Corrections Amendment Regulations 2017*, dated 16 May 2017, which includes the following appendices;
 - Corrections Amendment Regulations 2017 Approval for Gazetting
 - Corrections Amendment Regulations 2017

I am partially releasing briefing B3171 and briefing B3297. Some information is withheld under section 9(2)(f)(iv) of the OIA, to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials; under section 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions; under section 9(2)(i) to enable a Minister of the Crown or any department or organisation holding the information to carry out, without prejudice or disadvantage, commercial activities; and under 9(2)(j) of the OIA, to enable a Minister of the Crown or any department or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).

I do not believe there are any considerations under section 9(1) of the OIA rendering it desirable in the public interest to make the information available which outweigh the reasons for withholding.

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.

Sincerely

A handwritten signature in black ink, appearing to be 'Louise Upston', written in a cursive style.

Hon Louise Upston
Minister of Corrections



15 February 2017

B3171 ✓

Minister of Corrections

Corrections Amendment Regulations: Policy Approval

Purpose

- 1 This briefing outlines proposed amendments to the Corrections Regulations 2005 and seeks your approval to submit the attached Cabinet paper for consideration by the Cabinet Social Policy Committee, with the attached Regulatory Impact Statement.

Background

- 2 The Corrections Regulations 2005 (the Regulations) are a secondary legislative instrument enabled by the Corrections Act 2004 (the Act). The Regulations provide operational detail for the management of corrections sites and systems, the powers and functions of corrections employees, ensuring the safe custody of prisoners, and any other matters covered by the Corrections Act.
- 3 It is occasionally necessary to amend the Regulations to implement new policy or to remove ambiguities. The Regulations were most recently amended by the Department in February 2014 to provide for safer and more appropriate management of transgender prisoners. Since then, the Department has developed additional proposals for amendments to the Regulations relating to:
 - 1 the carriage of pepper spray by custodial prison staff

- 4 In September 2016, we provided the former Minister of Corrections with a draft Cabinet paper and Regulatory Impact Statement (RIS) detailing these proposals. Since then, we have undertaken consultation on the proposed amendments with relevant government agencies.

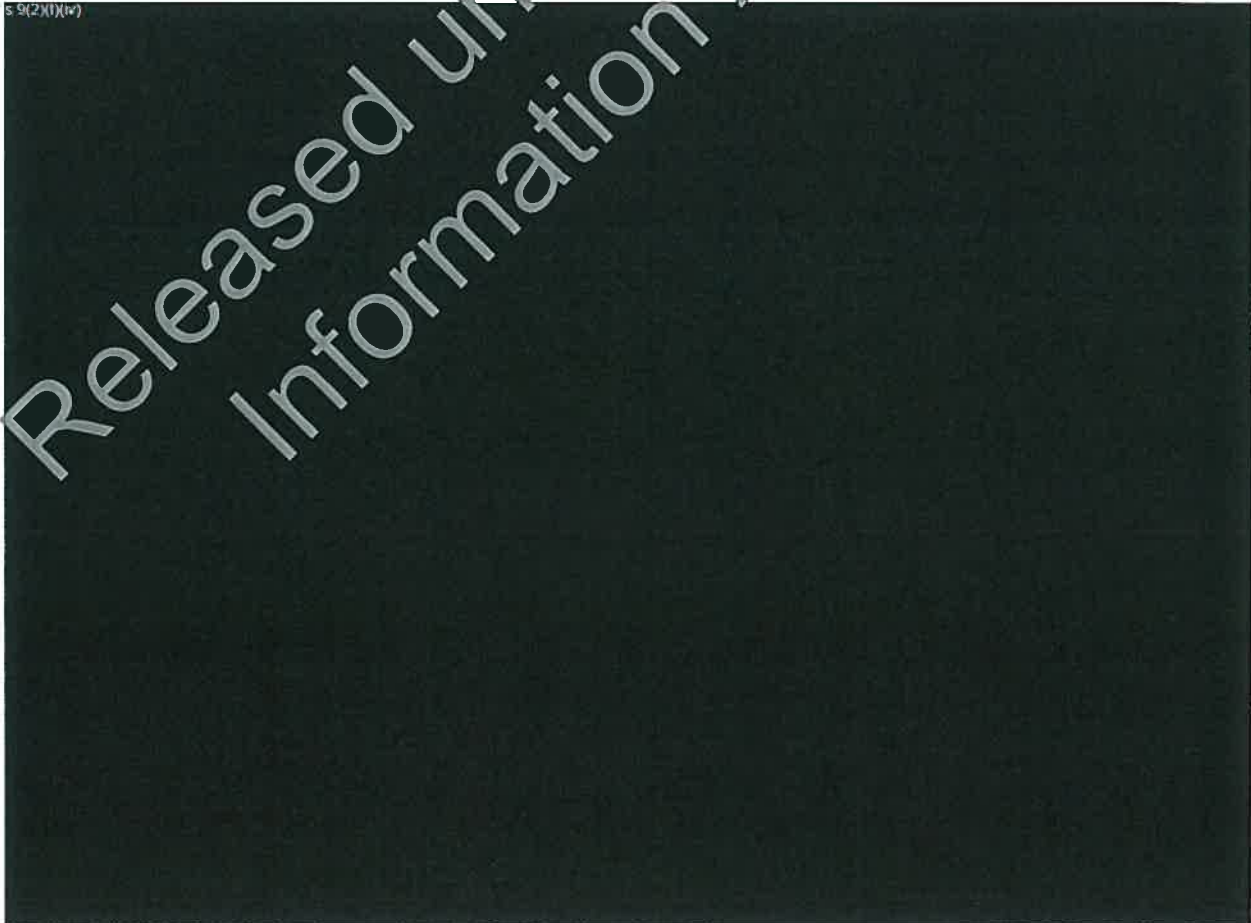
Overview of the proposed changes to Regulations

- 5 This is an overview of the issues and proposed changes to the Regulations. More detailed analysis is provided in the attached Cabinet paper and Regulatory Impact Statement.

Pepper spray

- 6 Pepper spray has been available to prison staff as a tactical option since the end of 2012. Pepper spray may only be issued by the Prison Director if they reasonably believe that it is or will be necessary to use force against a prisoner. Only trained staff are able to carry the spray, and it cannot be carried as part of normal duties, or outside a prison.
- 7 The Department now considers that this policy is too restrictive. Some injuries to staff occur as a result of spontaneous incidents, and current controls on the use of pepper spray mean that this is not an option to deal with these incidents. The Department proposes that Prison Directors be able to issue pepper spray to trained officers, including those who are escorting prisoners outside a prison.
- 8 Pepper spray can pose significant health and safety risks in some situations, and these risks were considered prior to the introduction of pepper spray in 2012. Any potential additional risk from the proposed changes can be mitigated to a large degree by the Chief Executive's proposed ability to impose conditions on the carriage and use of pepper spray, as well as by appropriate training and guidance for staff.

s 9(2)(1)(v)



§ 9(2)(1)(iv)

§ 9(2)(1)(iv)

§ 9(2)(1)(iv)

§ 9(2)(1)(iv)

Released under the Official Information Act 1982

s 9(2)(1)(iv)

20 s 9(2)(1)(iv)

Consultation

Agency consultation

- 21 Five agencies commented on the proposals: the Ministries of Social Development and Health, the Ministry for Women, the Office of the Ombudsman, and the Office of the Privacy Commissioner. The Ministry for Women did not seek any substantive changes.
- 22 The Ministry of Health initially expressed some concern about the pepper spray proposal, particularly relating to its potential use on mentally ill prisoners. We responded that the proposal does not broaden the grounds for using pepper spray and that there are legislative safeguards relating to the use of force against prisoners. The Ministry was comfortable with our response.

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s 9(2)(1)(iv)

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s 9(2)(1)(iv)

Consultation with the Office of the Ombudsman

- 25 The Chief Ombudsman also raised a number of issues. In particular, he expressed concern about broadening access to pepper spray and s 9(2)(1)(iv)
[REDACTED] we have written to the Ombudsman explaining why we wish to continue with these proposals.

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§ 9(2)(1)(w)

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§ 9(2)(1)(w)

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Next steps

32 Subject to your approval of the attached Cabinet paper, we will work with your Office to lodge it through CabNet for consideration by the Cabinet Social Policy Committee (SOC). We suggest the dates of 8 March or 15 March 2017.

33 We have drafted speaking points on the proposed changes, to support your attendance at SOC. These are attached.

34 Following approval from SOC, the Department will work with the Parliamentary Counsel Office to draft the text of the Regulations.

35 We will keep you updated on any developments or issues with the drafting process as they arrive.

§ 9(2)(g)(i)

Recommendations

36 It is recommended that you:

- a) **Note** that the Department has consulted relevant government agencies on proposals to amend the Corrections Regulations 2005. YES/NO
- b) **Approve** the Cabinet paper *Corrections Amendment Regulations: Policy Approval* for submission to the Cabinet Office, with the accompanying Regulatory Impact Statement, for consideration at the Cabinet Social Policy Committee. YES/NO

Jo Field
Deputy Chief Executive
Service Development

Hon Louise Upston
Minister of Corrections

Date signed:

19/02/2017

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CABINET SOCIAL POLICY COMMITTEE

SPEAKING POINTS: CORRECTIONS AMENDMENT REGULATIONS

This paper contains five proposals for amendments to the Corrections Regulations 2005. These relate to:

- 1 the carriage of pepper spray by custodial prison staff

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I will briefly address each of these in turn.

1. Pepper spray

Pepper spray is an important tactical option available to custodial staff when there is a planned, serious incident. However, current restrictions on its storage and use mean that it cannot be used for spontaneous incidents.

This proposal would enable custodial staff to carry pepper spray on duty if it has been issued to them by the Prison Director and they have received training in its use.

It would complement the range of other tools available to custodial staff to manage prisoners safely, including de-escalation training.

If asked about health and safety risks:

Staff issued with pepper spray are required to be trained in its use. This requirement will continue, and the training refreshed for the expanded use. Corrections will carefully consider the individual circumstances in each prison for how and when pepper spray is issued.

If asked about current use:

In the last 12 months, pepper spray has been issued on 46 occasions and actually used on 6 occasions.

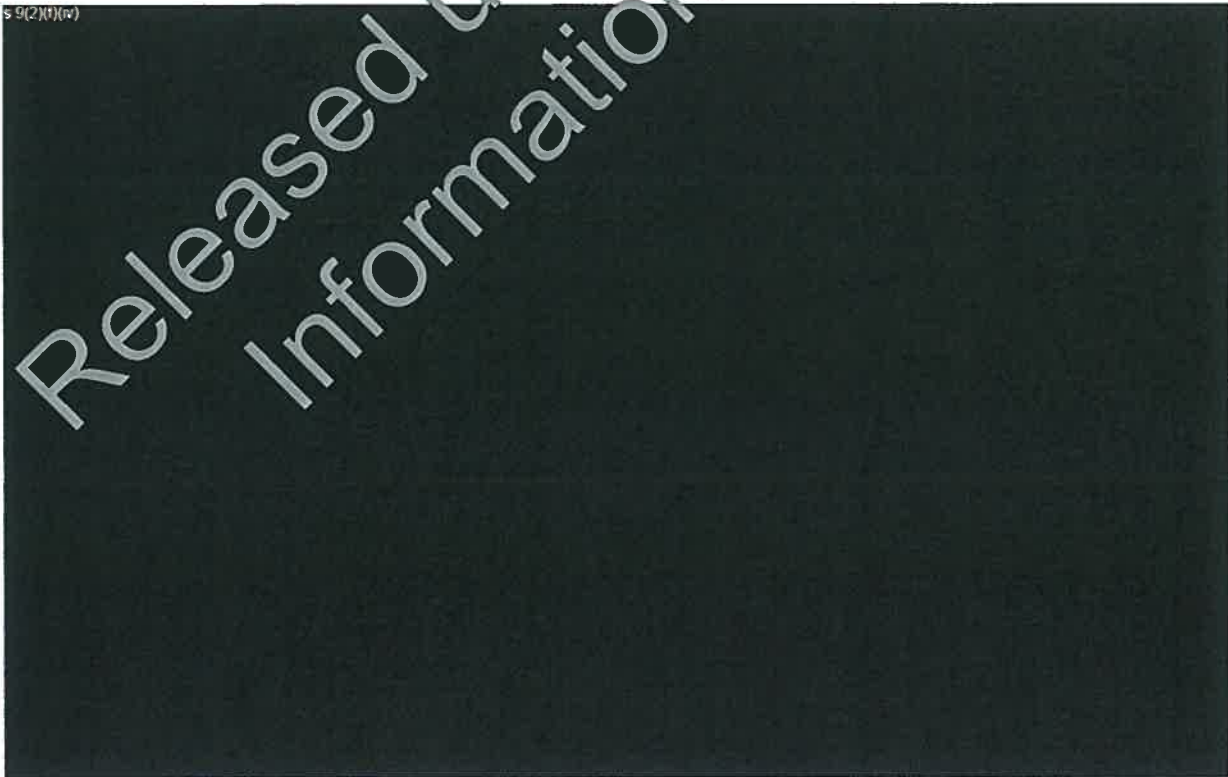
By comparison, there were 17 serious assaults on staff and over 470 other assaults on staff, and 45 serious prisoner-on-prisoner assaults and over 1030 other prisoner-on-prisoner assaults.

If asked about the use of pepper spray outside the wire:

The proposal would also enable a Prison Director to allow staff to carry pepper spray outside the prison, for example, in escort vehicles. This would give these staff an additional tactical option if there is an incident outside the wire, particularly in remote areas where back-up might be far away.

There would be additional training and guidance given to staff issued with pepper spray outside the wire including how to manage involvement with members of the public. There would also be strict requirements about storage and return of pepper spray.

s 9(2)(f)(iv)



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CABINET SOCIAL POLICY COMMITTEE

SPEAKING POINTS: CORRECTIONS AMENDMENT REGULATIONS

This paper contains proposals for amendments to the Corrections Regulations 2005 that will improve the safety of staff, visitors and the wider public.

- I wish to particularly draw your attention to the regulations relating to **pepper spray** that will facilitate this tactical tool being more readily available to trained staff to respond to unplanned incidents. This will support our staff to be safe in their work in what can be a dangerous environment.

- s 9(2)(f)(iv) [Redacted]

- s 9(2)(f)(iv) [Redacted]

- s 9(2)(f)(iv) [Redacted]

- s 9(2)(f)(iv) [Redacted]

- s 9(2)(f)(iv) [Redacted]

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○ s 9(2)(f)(iv) [Redacted]

○ s 9(2)(f)(iv) [Redacted]

- Finally, I have asked my officials to do further work on the complex area of s 9(2)(f)(iv) [Redacted]

- I recommend these important amendments to the Committee today.

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DETAILED OVERVIEW OF THE FIVE PROPOSED AMENDMENTS

Pepper spray

Pepper spray is an important tactical option available to custodial staff when there is a planned, serious incident. However, current restrictions on its storage and use mean that it cannot be used for spontaneous incidents.

This proposal would enable custodial staff to carry pepper spray on duty if it has been issued to them by the Prison Director and they have received training in its use.

It would complement the range of other tools available to custodial staff to manage prisoners safely, including de-escalation training.

If asked about health and safety risks:

Staff issued with pepper spray are required to be trained in its use. This requirement will continue, and the training refreshed for the expanded use. Corrections will carefully consider the individual circumstances in each prison for how and when pepper spray is issued.

If asked about current use:

In the last 12 months, pepper spray has been issued on 46 occasions and actually used on 6 occasions. By comparison, there were 17 serious assaults on staff and over 470 other assaults on staff, and 45 serious prisoner-on-prisoner assaults and over 1030 other prisoner-on-prisoner assaults.

If asked about the use of pepper spray outside the wire:

The proposal would also enable a Prison Director to allow staff to carry pepper spray outside the prison, for example, in escort vehicles. This would give these staff an additional tactical option if there is an incident outside the wire, particularly in remote areas where back-up might be far away.

b3(2)(D)(iv)

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b3(2)(D)(iv)

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- [Redacted list item 1]
- [Redacted list item 2]
- [Redacted list item 3]

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Consultation

In developing these proposals, officials consulted widely with other government agencies, including Ministries of Justice, Social Development, Health, Women, The Office of the Ombudsman, and the Office of the Privacy Commissioner.

Regulatory Impact Statement:

Corrections Amendment Regulations 2017

Agency Disclosure Statement


This Regulatory Impact Statement (RIS) has been prepared by the Department of Corrections.

It provides an analysis of options to enhance the legislative framework of the corrections system. In particular, it reviews options for amendments to Corrections Regulations 2005 (Regulations) to:

- better support the safe and humane administration of prisons;
- promote the reintegration of prisoners into the community on release;
- protect victims of crime from undue distress; and
- reduce legal risks to the Department of Corrections.

Analysis of each issue was informed by consideration of relevant information including, where appropriate, information from comparable jurisdictions. As the problems in these areas relate to the legislative regime, most interventions require an amendment to Regulations.

The Ministries of Health, Justice and Social Development, New Zealand Police, Te Puni Kōkiri, Ministry for Women, Treasury, Office of the Ombudsman, and Office of the Privacy Commissioner were consulted. The Department of the Prime Minister and Cabinet and State Services Commission were informed.


Suzanne Kennedy
Chief Policy Adviser
Department of Corrections

February 2017

Executive summary

- 1 Five issues with the legislative framework have been identified as presenting barriers to the humane and effective management of prisons. The issues listed below each have a separate problem definition and options analysis against the status quo.

#	ISSUE
1	<p>Improved access to pepper spray</p> <p><u>Current Position:</u></p> <ul style="list-style-type: none"> Pepper spray may only be carried by officers in planned use of force situations, and therefore is not an option when dealing with incidents that arise spontaneously. <p><u>Proposal:</u></p> <ul style="list-style-type: none"> Enable Prison Directors to issue pepper spray to officers, subject to any conditions or restrictions imposed by the Chief Executive.
2	<p>s 9(2)(i)(iv)</p>
3	<p>s 9(2)(i)(iv)</p>
4	<p>s 9(2)(i)(iv)</p>
5	<p>s 9(2)(i)(iv)</p>

1. Improved access to pepper spray

Status quo and problem definition

- 2 Oleoresin capsicum spray, more generally known as "pepper spray", is widely used by law enforcement agencies to subdue people who are behaving in a dangerous, violent, or combative manner. Pepper spray has been available to prison personnel since 2012, when it was rolled out nationally following a twelve month trial. Trained officers may employ it as a tactical option if the Prison Director reasonably believes it is, or will be, necessary to use force against a prisoner.
- 3 Under current Regulations, prison personnel are not permitted to carry pepper spray in the normal course of their duties. Pepper spray can only be assigned in anticipation of a planned use of force situation, such as extracting a prisoner from their cell. It must be promptly returned to storage when no longer needed, and cannot be carried outside the prison.
- 4 These provisions restrict the ability of trained personnel from using pepper spray in 'spontaneous' situations. In 2015/16 there were 17 serious assaults on staff and over 470 other assaults.¹ Analysis of a small sample of injury assaults on staff showed that the incidents unfolded over very short timeframes, and none involved a planned use of force.² In these circumstances, pepper spray could have been a useful tool to defuse the situation.

Objectives

- 5 The objectives of this proposal are to ensure that provisions relating to the carriage of pepper spray sufficiently improve the safety and security of prisons, in particular, through enhancing the ability of staff to respond to unanticipated events.

Options and impact analysis

Option 1

- 6 The preferred option is to provide corrections officers with improved access to pepper spray both in 'planned' use of force situations and 'spontaneous' situations, including escorts outside of prison. This would require amendments to the Regulations, and consequential amendments to the Arms Regulations 1992.

¹ Annual Report of the Department of Corrections for the year ended 30 June 2016.

² Department of Corrections, *Health and safety assessment prison staff assaults*, p3.

- 7 Under this proposal, the Prison Director would be able to authorise regular access to pepper spray for prison personnel trained in its use, subject to the conditions and restrictions of the Chief Executive. Generally, one officer per unit will carry pepper spray while on duty, but the policy would provide for flexibility in this approach.
- 8 There are some risks to extending the use of pepper spray. There are some health risks associated with pepper spray so its inclusion in everyday practice could increase the likelihood of health incidents. This risk is higher in spaces where the ventilation systems are not designed for rapid dispersal of chemical agents, such as in escort vehicles and some prison facilities. Other potential risks include:
- pepper spray being used without reasonable cause;
 - canisters being taken by prisoners and used against staff or other prisoners;
 - adverse impact on relationships between staff and prisoners;
 - adverse impact on vulnerable groups, particularly prisoners with serious mental health issues; and
 - incidents involving members of the public, with attendant litigation and reputational issues.
- 9 Overall, pepper spray is a safe tactical option, with a low risk of injury compared with other means of force³. The risks identified above can be mitigated to a large extent by ensuring that staff receive appropriate training and guidance.

Option 2

- 10 Another option is to limit the use of pepper spray to the perimeters of prison land. This provides similar opportunities to option one, but pepper spray would not be available to staff escorting prisoners outside the prison.
- 11 This option provides the opportunity to remove some of the risks described in paragraph 8. Pepper spray would not be used in escort vehicles, so the health risks associated with air circulation would be reduced. There is also a reduced risk that pepper spray would also be a factor in any incidents involving members of the public.
- 12 These risks were considered minor compared to the benefits of expanding access to pepper spray outside of prisons. Potentially, pepper spray would be useful as a tactical option in spontaneous incidents occurring during the escort of prisoners, for example, in a remote location where rapid police assistance is unlikely to be obtained.

³ According to data provided by the New Zealand Police, only 2.6% of incidents involving the use of pepper resulted in injury to the subject, a lower injury rate than for handcuffs, batons and "empty hand" force.

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Consultation

- 56 The Ministries of Health, Justice and Social Development, New Zealand Police, Te Puni Kōkiri, Ministry for Women, Treasury, Office of the Ombudsman and Office of the Privacy Commissioner were consulted. The Department of the Prime Minister and Cabinet and State Services Commission were informed.

Conclusions and recommendations

- 57 *Improved access to pepper spray* – Provide corrections officers with improved access to pepper spray both in 'planned' use of force situations and 'spontaneous' situations, including escorts outside of prison.

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Implementation plan

- 62 The amendments, if made, will be implemented by the Department of Corrections through normal operational channels. There are no significant additional costs envisaged, and all implementation costs and risks will be managed within the Department's baseline funding.

- 63 In general, the amendments require additional guidance and training for practitioners:

- a) *Improved access to pepper spray* – Guidance and, if necessary, additional training would be provided to staff to ensure the safe implementation of the new Regulations.

b)

c)

s 9(2)(t)(iv)

d)

e)

Monitoring, evaluation and review

- 64 The intention of these amendments is to make a number of improvements to the current legislative framework of the corrections system. This will contribute to achieving the Department's outcomes of improving public safety, reducing reoffending and better public value. It is therefore not envisaged that there will be any change to departmental performance indicators and data collection, or a review process. Any improvements in efficiency and effectiveness in terms of staff time and consistency of process will be monitored in routine internal service improvement processes and internal audit.

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Office of the Minister of Corrections
Chair, Cabinet Social Policy Committee

CORRECTIONS AMENDMENT REGULATIONS 2016

Proposal

- 1 This paper seeks your agreement to a package of amendments to the Corrections Regulations 2005 (the Regulations).

Executive Summary

- 2 The amendments to the Regulations sought in this paper are summarised in the table below.

Topic	Current position	Proposed
Pepper spray	Pepper spray may only be issued where the use of force is contemplated, and may not be carried when escorting prisoners outside a prison. This means pepper spray cannot be used to deal with incidents arising spontaneously.	Enable Prison Directors to issue pepper spray to officers, including when escorting prisoners outside a prison, subject to any conditions or restrictions imposed by the Chief Executive of the Department of Corrections (the Chief Executive).

s 9(2)(1)(w)

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Topic	Current position	Proposal
s 9(2)(i)(v)		

Background

3 Overall, the Corrections Act 2004 (the Act) and the associated Regulations continue to provide a sound legislative framework for the corrections system. Amendments are required occasionally to implement new policies or clarify provisions. The most recent amendments, which came into force in February 2014, introduced a new approach to the placement of transgender prisoners. Since then, the need for a number of minor policy changes has been identified, as set out in the following proposals.

Pepper spray

Current situation

4 Pepper spray has been available to prison staff as a tactical option since the end of 2012, when it was rolled out nationally following a 12 month trial. The current regulations do not permit corrections officers to carry pepper spray in the normal course of their duties. Pepper spray may be issued to officers who have had training in its use if the Prison Director believes that it is, or will be, necessary to use force against a prisoner.¹ The pepper spray must be promptly returned to storage once the Prison Director believes it is no longer believed to be necessary to use force against a prisoner. Under no circumstances may pepper spray be carried outside the prison.

Issue

5 There is concern at the number of assaults by prisoners on staff – in 2015/16 there were 17 “serious assaults” and over 470 other assaults.² A study of a small random sample of assaults found that all the injuries resulted from assaults that unfolded over very short timeframes and none involved planned use of force.³

6 Current regulations restrict the ability to use pepper spray in such circumstances, because the Prison Director has to authorise taking the spray from storage before it can be deployed. The Regulations also preclude the use of pepper spray to deal with incidents of serious disorder that could arise when prisoners are being escorted outside the prison. Such incidents can be hard to control, particularly if they occur in remote locations where it is less likely that the Police will be able to provide timely assistance.

¹ If it is impracticable for the Prison Director to direct the issuing of pepper spray, this can be done by another officer who has had adequate training in the use of pepper spray.

² Annual Report of the Department of Corrections for the year ended 30 June 2016.

³ Department of Corrections, Health and safety assessment prison staff assaults, p3.

Benefits and risks of greater access to pepper spray

- 7 Allowing at least one officer in a unit to carry pepper spray while on duty would provide an additional tactical option to deal with violent situations that arise spontaneously. The deployment of pepper spray could be effective in speedily resolving some of these situations, thereby protecting staff and prisoners from injury.
- 8 There are risks in giving staff greater access to pepper spray. There are health and safety risks in using pepper spray in confined spaces, such as escort vehicles, and in some prisons due to the nature of the ventilation system. If officers routinely carried pepper spray, there would be increased risks of inappropriate use, canisters being taken by prisoners and used against staff, and adverse impacts on the relationship between prisoners and staff.⁴ It is also possible that members of the public could become involved in incidents involving the use of pepper spray against prisoners. For example, if pepper spray is carried when escorting prisoners in the community, there is a risk that an innocent bystander could be affected when the spray is discharged. This could raise legal and reputational issues for the Department of Corrections.
- 9 These risks can be mitigated to a large degree by the Department providing appropriate guidance and training to those officers who will be issued with pepper spray.

Proposed amendments

- 10 It is proposed that Chief Executive may authorise any Prison Director to issue pepper spray to officers of the prison who have received training in its use, subject to any conditions or restrictions imposed by the Chief Executive. Any officer who has been issued with pepper spray could carry it while on duty on prison land or while escorting prisoners outside the prison. It is intended that, in general, one officer per unit would be authorised to carry pepper spray. However, the proposed amendments would not require the Department to adopt such a policy.

s 9(2)(f)(iv)

⁴ These reasons were cited by staff in Department of Corrections, *Evaluation report on the operational trial of oleoresin capsicum (pepper spray)*, 2012, p23.

55(2)(f)(iv)

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s 9(2)(1)(iv)

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Consultation

- 33 The Ministries of Health, Justice and Social Development, New Zealand Police, Te Puni Kōkiri, Ministry for Women, Treasury, Office of the Ombudsman and Office of the Privacy Commissioner were consulted. The Department of the Prime Minister and Cabinet and State Services Commission were informed.

s 9(2)(1)(iv)

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s 9(2)(1)(iv)

Department of Corrections Response

- 35 The Department accepts the recommendation to undertake a privacy impact assessment and will liaise with the Office of the Privacy Commissioner in the course of its implementation planning.

Financial implications

- 36 The proposals do not have significant financial implications.

Human rights

- 37 The proposals are considered to be consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

s 9(2)(1)(iv)

Legislative implications

- 38 Subject to Cabinet approval of the proposals, amendments to the Regulations will be drafted and submitted to the Cabinet Legislation Committee.

Regulatory impact analysis

- 39 A Regulatory Impact Statement has been prepared and is attached to this paper. The Department of Corrections has advised that, in the opinion of its reviewer, the regulatory impact analysis meets the quality assurance criteria.

Gender implications

- 40 No gender implications have been identified for the proposals in this paper.

Disability perspective

- 41 There is overseas evidence that mentally ill prisoners are more likely to commit disciplinary infractions and have force used against them.¹³ It seems likely that enabling officers to carry pepper spray would result in more frequent use of pepper spray against mentally ill prisoners. However, it may mean that alternative forms of force, such as control and restraint techniques, which can be as or more harmful, have to be used less frequently.

Publicity

- 42 I intend to issue a press release once the Amendment Regulations have been drafted and approved.

Recommendations

- 43 I recommend that the Committee:

Pepper spray

- 1 **agree** that the Chief Executive of the Department of Corrections may authorise any Prison Director to issue pepper spray to officers of the prison who have received training in its use, subject to any conditions or restrictions imposed by the Chief Executive;
- 2 **agree** that an officer who has been issued pepper spray may carry it while on duty on prison land or when escorting prisoners outside the prison;

¹³ See, for example, *Callous and cruel: Use of force against inmates with mental disabilities in US jails and prisons*, Human Rights Watch, 2015.

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s 9(2)(i)(iv)

s 9(2)(i)(iv)

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s 9(2)(i)(iv)

s 9(2)(i)(iv)

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s 9(2)(i)(iv)

Process

- 12 **direct** the Department of Corrections to instruct the Parliamentary Counsel Office to draft amendments to the Corrections Regulations implementing paragraphs 1-4 and 6-11;
- 13 **authorise** the Minister of Corrections to make further policy decisions that may be necessary to give effect to paragraphs 1-11.

Authorised for lodgement

Hon Louise Boston

Minister of Corrections



16 May 2017

B3297 ✓

Minister of Corrections

Lodging the Cabinet Legislation Committee Paper: Corrections Amendment Regulations 2017

Purpose

- 1 This briefing provides you with the attached Cabinet Legislation Committee paper to be lodged by 10am Thursday 18 May 2017, for consideration on Wednesday 24 May.
- 2 Attached are speaking notes and the text of the Corrections Amendment Regulations to support your attendance at this meeting.

Background

- 3 On 20 March 2017, Cabinet gave approval to amend the Corrections Regulations 2005 [CAB-17-MIN 9999 refers]

Implementing the Amendment Regulations

- 4 The amended Regulations will allow Corrections Officers to be issued, carry, and use pepper spray while carrying out their duties on prison land, and while escorting prisoners, subject to conditions and restrictions imposed by the Chief Executive
- 5 An implementation team has been established, with a governance board chaired by Jeremy Lightfoot, National Commissioner. This team will lead the rollout of pepper spray from 1 July 2017, with Auckland Prison as the first site where pepper spray will be carried under the new Regulations.
- 6 The implementation team will consider when and how pepper spray can be used safely and appropriately, as part of determining any necessary conditions and restrictions on the carrying and use of pepper spray.

Next steps and important dates

- 7 In order to implement the Cabinet decision by 1 July, the Amendment Regulations need to be gazetted on Thursday 1 June.
- 8 Cabinet and the Executive Council therefore need to consider the amendments on Monday 29 May (the next available meeting as indicated on CabNet). The below table outlines the process from 16 May onwards.

Date	Action required	By whom
18 May, by 10am	Lodge the Cabinet paper and final draft Regulations for consideration by Cabinet Legislation Committee Provide a signed Advice Sheet for the Executive Council to the Cabinet Office	Office of the Minister of Corrections
18 May	Provide a signature copy of the Corrections Amendment Regulations 2017 to the Cabinet Office	Parliamentary Counsel Office
24 May at 5.30pm	Consider the paper and Regulations	Cabinet Legislation Committee
29 May at 11.30am	Consider the Cabinet Legislation Committee Minute	Cabinet
29 May at 4pm	Approve the Corrections Amendment Regulations 2017	Executive Council and Governor General
1 June	Gazette the Corrections Amendment Regulations 2017	Cabinet Office
1 July	Implementation of the Corrections Amendment Regulations 2017	Department of Corrections

Recommendations


9 It is recommended that you

- a) **Note** the attached speaking notes and text of the Corrections Amendment Regulations 2017 relating to pepper spray.
- b) **Agree** to lodge the attached Cabinet Legislation Committee paper.

YES / NO

YES / NO


Jo Field
Deputy Chief Executive
Service Development


Hon Louise Upston
Minister of Corrections

Date signed:

21/5/17

DRAFT FOR CONSULTATION

Corrections Amendment Regulations 2017

Governor-General

Order in Council

At Wellington this day of 2017

Present:
in Council

These regulations are made under sections 85(2), 200, and 202 of the Corrections Act 2004—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the advice of the Minister of Corrections who, in accordance with section 85(3) of that Act, is satisfied that—
 - (i) the use of pepper spray is compatible with the humane treatment of prisoners; and
 - (ii) the potential benefits from the use of pepper spray outweigh the potential risk.

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6 Consequential amendments to Arms Regulations 1992

3

Regulations

1 Title

These regulations are the Corrections Amendment Regulations 2017.

2 Commencement

These regulations come into force on 1 July 2017.

3 Principal regulations

These regulations amend the Corrections Regulations 2005 (the principal regulations).

4 Regulation 120A revoked (Meaning of pepper spray)

Revoke regulation 120A.

5 Regulations 123A to 123C replaced

Replace regulations 123A to 123C with:

123A Meaning of pepper spray

In these regulations, pepper spray means an aerosol spray or other aerosol substance that—

- (a) contains a pepper-based (for example, oleoresin capsicum) or synthetic irritant to the eyes and respiratory passages; and
- (b) is designed for use as a disabling weapon.

123B Use of pepper spray

- (1) Pepper spray may only be issued to an officer and only if the officer has received adequate training in the use of pepper spray.
- (2) A security officer, or a staff member who is not an officer, must not, in any circumstance,
 - (a) be issued pepper spray; or
 - (b) carry pepper spray while performing his or her functions.
- (3) Pepper spray may only be issued at the direction of—
 - (a) the manager of a prison; or
 - (b) an officer (other than the officer to whom the pepper spray is to be issued) who has received adequate training in the use of pepper spray, if it is impracticable for the manager to direct the issue of the pepper spray.

- (4) The issuing of pepper spray must comply with any further conditions or restrictions imposed by the chief executive.

123C Drawing and use of pepper spray

- (1) An officer who has been issued pepper spray may draw or use it while performing his or her functions—
- (a) in a prison; or
 - (b) on escort duty.
- (2) The officer may only draw or use the pepper spray against a prisoner and only if the officer has reasonable grounds for believing that the use of physical force is reasonably necessary for any of the purposes referred to in section 33() of the Act.
- (3) The officer must use the pepper spray in a way that minimises pain or injury to the prisoner, so far as that is consistent with protecting prison security or the safety of any person.
- (4) Officers trained in the use of pepper spray must undergo refresher courses, approved by the chief executive, at least once a year.
- (5) The drawing and use of pepper spray must also comply with any further conditions or restrictions imposed by the chief executive.

123D Keeping pepper spray secure

- (1) An officer must ensure that any pepper spray issued to him or her is kept secure.
- (2) The manager of a prison must ensure the secure storage of pepper spray at all times when it is not issued to an officer.

6 Consequential amendments to Arms Regulations 1992

- (1) This regulation amends the Arms Regulations 1992.
- (2) In regulation 30A(1), definition of pepper spray, replace “regulation 120A” with “regulation 123”.
- (3) In regulation 30A(2), replace “for the purposes of regulations 121 to 123 of” with “in accordance with”.

Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.
 These regulations, which come into force on 1 July 2017, amend the Corrections Regulations 2005 (the **principal regulations**).

The principal regulations currently provide that pepper spray may only be issued if the prison manager (or another adequately trained officer in limited circumstances) reasonably believes that force is, or will be, necessary against a prisoner. The amendments allow pepper spray to be issued without this requirement, but only to officers who have received adequate training in its use and subject to any further conditions or restrictions imposed by the chief executive.

Security officers, and staff members who are not officers, continue to be prohibited from carrying pepper spray.

An officer to whom pepper spray has been issued must keep it secure and the prison manager must ensure that it is securely stored when it is not issued to an officer.

The amendments allow officers who have been issued pepper spray to draw and use it both in the prison and while carrying out escort duty outside the prison.

The amendments also set out the following restrictions with respect to the drawing and use of pepper spray:

- they provide that pepper spray may not be drawn or used unless the officer has reasonable grounds for believing that physical force is reasonably necessary for any of the purposes in section 83(1) of the Act;
- they continue the requirement that pepper spray must be used in a way that minimises pain or injury to the prisoner so far as that is consistent with protecting prison security or a person's safety;
- they provide that the drawing and use of pepper spray are subject to any further conditions or restrictions imposed by the chief executive;
- they continue the requirement that officers trained in the use of pepper spray must undergo refresher courses.

The regulation that sets out the meaning of pepper spray is moved from regulation 120A to sit with the other regulations relating to pepper spray. It is amended to make it clear that pepper spray includes aerosol foam, gels, and other aerosol substances. It is also updated to include synthetic forms of pepper spray.

Consequential amendments are also made to the Arms Regulations 1992.

Regulatory impact statement

The Department of Corrections produced a regulatory impact statement on 20 March 2017 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at—

- [Insert URL link(s) to the RIS on the agency's/agencies' Internet site(s)]
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*:

These regulations are administered by the Department of Corrections.

Chair

Cabinet Legislation Committee

Corrections Amendment Regulations 2017: Approval for Gazetting

Proposal

- 1 This paper proposes amending the Corrections Regulations 2005 to allow for the carriage and use of pepper spray by Corrections Officers while carrying out their duties in prison and when escorting prisoners outside the prison.

Policy

- 2 On 20 March 2017, Cabinet gave policy approval to develop the Corrections Amendment Regulations relating to four key areas: pepper spray, s 9(2)(iv) s 9(2)(iv) s 9(2)(iv) s 9(2)(iv)
- 3 Cabinet agreed that pepper spray could be issued to officers and carried while on duty on prison land or when escorting prisoners outside the prison, subject to conditions and restrictions imposed by the Chief Executive.
- 4 To provide pepper spray as a tactical option to Corrections Officers as quickly as possible, the Department of Corrections has developed Regulations relating to pepper spray to be passed and implemented separately and in advance of the other issues that also received Cabinet policy approval.
- 5 The Regulations as drafted do not require any additional policy decisions by the Cabinet Legislation Committee.

Current situation

- 6 Pepper spray is not currently able to be carried or used by Corrections Officers as a part of their normal duties. Pepper spray is not permitted to be carried or used outside of the prison. It may only be issued by the Prison Manager where they believe that it is or will be necessary to use force against a prisoner. In practice, this means that pepper spray can only be used as a planned response to an incident, not in spontaneous situations.

The Amendment Regulations

- 7 The Amendment Regulations provide a new authority for pepper spray to be issued to, and carried and used by, Corrections officers as part of their normal

duties both in prison and while on escort duties, subject to any conditions or restrictions imposed by the Chief Executive.

- 8 This new authority will complement the existing Regulations, which state that:
- Pepper spray must only be issued by the prison manager to officers who have received adequate training in its use, or by another officer who is trained if it is impracticable for the prison manager to issue it
 - Pepper spray must be securely stored when not issued to an officer
 - Pepper spray must only be used where the use of force against a prisoner is reasonably necessary
 - Pepper spray may only be used against a prisoner
- 9 Operational guidance will be developed around which escorts pepper spray should be carried on, and any restrictions and conditions that will be imposed on issuing and using it.
- 10 Implementing the revised Regulations will have some costs, including
- purchasing pepper spray for individual carriage
 - installing secure storage for pepper spray
 - training staff to use pepper spray
- 11 The anticipated costs for implementation up to 1 July 2018 is s 9(2)(g), s 9(2)(g). These costs will be met from within baselines.

Regulatory Impact Analysis

- 12 The Department of Corrections confirms that it has complied with the principles of the Code of Good Regulatory Practice and the regulatory impact analysis requirements, including the consultation requirements. A Regulatory Impact Statement was submitted at the time that Cabinet and Cabinet Committee approval of the policy relating to the Bill was sought [SOC-17-MIN-0013 and CAB-17-MIN-0039 refers].

Certification by the Parliamentary Counsel Office

- 13 The draft Regulations have been certified by the Parliamentary Counsel Office

Compliance

- 14 The Bill complies with:
- principles of the Treaty of Waitangi
 - rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993

- disclosure statement requirements (a disclosure statement has been prepared and is attached to the paper)
- principles and guidelines set out in the Privacy Act 1993
- relevant international standards and obligations
- the LAC Guidelines on the Process and Content of Legislation

Consultation

- 15 The Department has consulted with the following agencies on the proposed Regulations and taken their comments into account: the Ministries of Justice, Social Development, Oranga Tamariki, Police, Health, Women's Affairs, the Treasury, State Services Commission, and Te Puni Kōkiri. The Department of the Prime Minister and Cabinet has been informed.

Publicity

- 16 I plan to issue a media release around the time that the Corrections Amendment Regulations 2017 are made by the Executive Council.

Commencement of Regulations

- 17 I recommend that these Regulations be made on 1 June and come into force on 1 July.

Financial implications

- 18 The costs of implementing the amended Regulations will be met from within Departmental baselines.

Recommendations

- 19 It is recommended that the Cabinet Legislation Committee:

- 1 **note** that on 20 March 2017 Cabinet gave approval for the development of Regulations relating to pepper spray
- 2 **note** that the Corrections Amendment Regulations 2017 will give effect to the decision referred to in recommendation one
- 3 **note** that the proposed amendments will allow Corrections Officers to carry and use pepper spray in the course of their duties on prison land or when escorting prisoners outside the prison, subject to any conditions and restrictions imposed by the Chief Executive
- 4 **authorise** the submission to the Executive Council of the Corrections Amendment Regulations 2017

Authorised for lodgement

Hon Louise Upston
Minister of Corrections

Date signed:

/ /

Released under the Official
Information Act 1982

Corrections Amendment Regulations 2017

JH
18 MAY 2017
PCO 20515/2.0
WELLINGTON

Patsy Raddy

Order in Council

At Wellington this 29th day of May 2017

Her Excellency the Governor-General

Present:
in Council

These regulations are made under sections 85(z), 200, and 202 of the Corrections Act 2004—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the advice of the Minister of Corrections who, in accordance with section 85(3) of that Act, is satisfied that—
 - (i) the use of pepper spray is compatible with the humane treatment of prisoners; and
 - (ii) the potential benefits from the use of pepper spray outweigh the potential risks.

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- (a) contains a pepper-based (for example, oleoresin capsicum) or synthetic irritant to the eyes and respiratory passages; and
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123B Issue of pepper spray

- (1) Pepper spray may be issued only to an officer and only if the officer has received adequate training in the use of pepper spray.
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- (3) The officer must use the pepper spray in a way that minimise pain or injury to the prisoner, so far as that is consistent with protecting prison security or the safety of any person.
- (4) Officers trained in the use of pepper spray must undergo refresher courses, approved by the chief executive, at least once a year.
- (5) The drawing and use of pepper spray must also comply with any further conditions or restrictions imposed by the chief executive.

123D Keeping pepper spray secure

- (1) An officer must ensure that any pepper spray issued to him or her is kept secure.
- (2) The manager of a prison must ensure that pepper spray is securely stored at all times except when it is issued to an officer.

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- pepper spray must be used in a way that minimises pain or injury to the prisoner so far as that is consistent with protecting prison security or a person's safety (as in the current provisions).
- the drawing and use of pepper spray are subject to any further conditions or restrictions imposed by the chief executive.
- officers trained in the use of pepper spray must undergo refresher courses (as in the current provisions).

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Corrections Amendment Regulations 2017

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Information Act 1982

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