



4 April 2018

C93151

9(2)(a)

Dear 9(2)(a)

Thank you for your email of 5 February 2018, requesting information about women's prisons. Your request has been considered under the Official Information Act 1982 (OIA). On 6 March 2018, Corrections advised that, pursuant to section 15A(1)(b) of the OIA, an extension of 20 working days was required and that you may expect to receive a response by 5 April 2018.

You advise that you have been told about cases where transgender prisoners have had sexual relationships with female prisoners, and that a woman may have fallen pregnant during her term of imprisonment as a result of such a relationship. I can advise that these concerns were referred to prison management at Auckland Region Women's Corrections Facility (ARWCF), Arohata Prison and Christchurch Women's Prison, along with a number of relevant senior staff based regionally and at Corrections' National Office, and no evidence is held to suggest these allegations are substantiated.

With regard to female prisoners at the three women's prisons listed above, you asked:

1. *from January 1, 2016 to date, how many inmates have requested pregnancy tests?*

Upon their arrival at a women's prison, all female prisoners are asked if they could be pregnant by staff at the prison Health Centre, and women's prisons routinely conduct pregnancy tests for prisoners on request. Details of these discussions and any request for a pregnancy test are recorded within consultation notes on a prisoner's individual health file, and this data is not centrally collated or held in any reportable format.

This part of your request is therefore declined in accordance with section 18(g) of the OIA, as the information requested is not held by the Department, and we have no grounds for believing that it is held by another agency or more closely connected with the functions of another agency.

2. *From January 2016 to date, how many inmates fell pregnant while serving their sentence?*

Corrections has no record of any prisoners who have become pregnant while in prison custody during this timeframe. Some women do learn that they are pregnant or give birth while on remand or serving a sentence of imprisonment, and others have young children at the time of sentencing.

Women's prisons generally have the same facilities as men's prisons, however women's prisons have mothers with babies units and feeding and bonding facilities.

Mothers with babies units

Some women prisoners with babies and children up to the age of 24 months may be eligible to live in self-care units where they can bond in a safe and supportive environment. The mothers with babies units aim to:

- assist the mother to develop and maintain a functional relationship with her child,
- reduce the likelihood of the mother re-offending.

The units can have up to four mothers and their children, with shared kitchen and lounge areas. Laundry facilities are also provided. Mothers and their babies have their own bedroom, with a cot provided for the baby.

Prisoners in the mothers with babies units still have access to the full range of rehabilitation and learning opportunities available.

Feeding and bonding facilities

Feeding and bonding facilities are available to all security classifications, including remand and high security women prisoners.

Mothers with babies aged under nine months old who are cared for in the community are permitted daily visits in secure, purpose-built facilities where they can feed and bond with their child.

These facilities replicate a domestic lounge setting with a bathroom, kitchenette and bedroom for the baby. There is also an external courtyard. Mothers are allowed to spend up to 12 hours a day with their babies.

Further information about the units is available from the link below, including a link to the 16-page resource 'New Beginnings – Mothers with Babies unit' brochure: http://www.corrections.govt.nz/resources/new_beginnings_-_mothers_with_babies_unit.html

Additionally, a parenting course operated by the Plunket Society is available for eligible female prisoners, titled 'Plunket's Parenting in Prisons'. The content of the programme covers seven modules in which the prisoners learn about

parenting in general, the baby's development, safety issues and further learning and development of the child. It is a four week programme which identifies the individual needs of each woman early on. The facilitator then helps the women to develop a plan for pregnancy and motherhood. The programme consists of teaching and interaction with the participants in group work. The course is directed at pregnant women or mothers serving a sentence of imprisonment for less than two years and priority is given to those under 30 years of age.

Further, social workers and counsellors are also now employed in the three women's prisons. These staff work with particularly vulnerable women and mothers in prison, with a focus on women who are concerned about their children's wellbeing in the community, or where the Ministry for Children, Oranga Tamariki are involved in their children's lives. The social workers also focus on providing support to women who are pregnant, women who have their babies with them in prison, young women in need of support, and those who identify as transgender.

3. *From January 2016 to date, how many inmates who were impregnated during their sentence suffered miscarriages while at the prison?*
4. *From January 2016 to date, how many inmates who were impregnated during their sentence requested an abortion while at the prison? And how many of these requests were approved?*

As outlined in response to Question One, Corrections has no record of any prisoners who have become pregnant while in prison custody during this timeframe, and as such the answer is none.

With regard to the topic of prisoners who have suffered a miscarriage or undergone a pregnancy termination during a term of imprisonment, Corrections is committed to ensuring that all prisoners receive a standard of healthcare reasonably equivalent to that found in the community. Medical Officers working in prisons on contract assess a prisoner's condition and determine whether primary, secondary or tertiary level intervention or treatment is appropriate. The Ministry of Health (or ACC) are responsible for funding and administering secondary and tertiary health care services for prisoners. Secondary health care refers to specialist and hospital services, including surgery and assessment. Tertiary health care refers to treatment that is more complex or of a specific nature.

To clarify, prisoners are referred to and access secondary and tertiary health services on the same basis as any person in the community. Corrections would not 'approve' the termination of any prisoner's pregnancy, nor would it directly oversee or administer the secondary or tertiary health care services that would be associated with a prisoner's miscarriage, or a termination of their pregnancy.

5. *From January 2016 to date, how many transgender inmates were in the prison?*

Corrections is aware of the needs of transgender prisoners, including the issues surrounding their placement and safety. While there are only a small number of prisoners in New Zealand who identify as transgender, we acknowledge that they are a vulnerable group with highly complex needs. Although it is widely recognised that the management of transgender prisoners is a complicated issue, Corrections has worked hard in recent years to ensure the safety of all prisoners is protected, in relation to the placement of transgender prisoners.

An amendment to the Corrections Regulations 2005 came into effect in February 2014, which established new requirements for determining whether transgender or intersex prisoners should be accommodated in a male or a female prison. Amendments to regulation 190 of the Corrections Act 2005 have the following two elements:

- First, where a prisoner's birth certificate has been amended to record a different sex from that recorded at birth (this requires a Family Court order), the prisoner is entitled to be placed in accordance with the revised certificate.
- Second, a transgender prisoner who has not had their birth certificate amended may nevertheless apply to the Chief Executive of the Department of Corrections for placement in accordance with their nominated gender, if they are eligible for consideration. The Chief Executive will consider a range of factors related to the prisoner's commitment to living as a member of their nominated gender, and the safety of that prisoner and other prisoners.

A transgender prisoner whose detention relates to a serious sexual offence against a person of their nominated gender, or was released from a prison sentence for such an offence within the last seven years, will not be eligible to apply to the Chief Executive.

As you should be aware, transgender is an umbrella term for people whose gender identity, gender expression or behavior does not conform to that typically associated with the sex to which they were assigned at birth. We have, however, interpreted this part of your request to relate to transgender prisoners who were previously accommodated in a male prison, who have applied and been approved for placement in a women's prison in accordance with their nominated gender.

As at 28 February 2018, we can confirm thirteen individuals who applied for and were approved placement in accordance with their nominated gender have been placed in a women's prison, at some point since January 2016. Eight of the prisoners were approved placement at ARWCF, and five at Arohata Prison. It should be noted some of these prisoners transferred between the two sites during the timeframe you have specified. At any one time, transgender prisoners account for a small percentage of the total prison population, within both men's and women's prisons.

6. *From January 2016 to date, how many cases were you made aware of/are aware of where transgender inmates had sexual relations with other women in the prison?*
7. *From January 2016 to date, how many cases were you made aware of/are aware of where transgender inmates had not been taking their hormone medication?*

As outlined in response to Question One, this type of information, if held, would be detailed within prisoners' individual file and/or health records, and this data is not centrally collated or held in any reportable format. This part of your request is therefore declined in accordance with section 18(g) of the OIA.

With regard to your question about hormone medication, standard practice applies when any prisoner refuses prescribed medication, which involves custodial and health staff educating the prisoner of the importance of compliance with their medication, and ultimately having the prisoner reviewed by a Medical Officer.

8. *From January 2016 to date, how many cases were reported where women felt intimidated by transgender inmates?*
9. *From January 2016 to date, how many cases were reported where women complained of unwanted sexual advances by transgender inmates?*

Managing prisoners' safety is a core function of Corrections, and a duty we take extremely seriously. We have a range of policies, processes and tools in place that ensure that concerns about prisoner safety are identified and mitigated. This includes prisoners at risk of self harm, at risk of harm to others and at risk of harm from others.

There are a variety of ways that prisoners are able to notify staff of any potential risk to their safety in custody. When in their cell they are able to use a call alarm to alert staff. Prisoners are also encouraged to report concerns directly to staff, via a family member or friend, or by contacting an Inspector, the Office of the Ombudsman or the anonymous crime reporting line Crimestoppers.

As outlined above, information about any cases when a female prisoner 'felt intimidated' by or 'complained of unwanted sexual advances' from a transgender prisoner, if such information is held, would be detailed within a prisoner's individual file and/or health records. This kind of data is not centrally collated or held in any reportable format, and this part of your request is therefore declined in accordance with section 18(g) of the OIA.

Senior prison management have advised, however, that they are not aware of any substantiated reports of this nature. Further information about allegations of sexual assault in prisons is provided below.

10. From January 2016 to date, have there been any cases where women were raped by transgender inmates?

When an allegation of sexual assault is made by a prisoner we act immediately to ensure that the victim is supported and that New Zealand Police are notified. Support may be provided by Health Services staff, a chaplain or other spiritual support person, a kaiwhakamana or other cultural support person, or senior staff. We work closely with Police to ensure that they have access to information or evidence that may assist any criminal investigation they are undertaking.

For reporting purposes, serious assault is defined as an act of physical violence that involves one or more of the following:

- Bodily harm requiring medical intervention by health staff followed by overnight hospitalisation (beyond initial assessment or medical observation) in a medical facility.
- Bodily harm requiring extended periods of ongoing medical intervention.
- Sexual assault of any form and degree.

Corrections holds no record of any sexual assault incident, including allegations of rape, occurring at a women's prison during the specified timeframe, either involving a transgender prisoner, or otherwise.

A total of two prisoner on prisoner serious assault incidents are recorded for women's prisons over the 2015/16 period (and none for 2016/2017). One of the incidents occurred at ARWCF, and the other at Christchurch Women's Prison. However, neither of these incidents included an alleged sexual assault, nor did they involve a transgender prisoner.

11. From January 2016 to date, how many inmates requested birth control pills?

Some female prisoners will be prescribed oral contraception during their imprisonment. These cases would primarily include prisoners on remand and short term sentences continuing with prescribed medication from their external GP, so that the patient is protected on their release into the community. Other women may be prescribed this medication at their request, and as recommended by the doctor, for health reasons such as heavy menstrual bleeding.

As outlined in response to your earlier questions, this data is not centrally collated or held in any reportable format, and this part of your request is therefore declined in accordance with section 18(g) of the OIA.

I trust the information provided is of assistance. Should you have any concerns with this response, I would encourage you to raise these with the Department. Alternatively you are advised of your right to also raise any concerns with the Office of the Ombudsman. Contact details are: Office of the Ombudsman, PO Box 10152, Wellington 6143.

Yours sincerely



Rachel Leota
National Commissioner

RELEASED UNDER THE
OFFICIAL INFORMATION ACT 1982

11 April 2018

C93612

9(2)(a)

Dear 9(2)(a)

Thank you for your email of 20 February 2018, requesting information about Corrections policy and the placement of transgender prisoners. Your request has been considered under the Official Information Act 1982 (OIA).

Corrections is aware and sympathetic to the needs of transgender prisoners, including the issues surrounding their placement and safety. There are on average 25 people in our prisons who identify as transgender at any one time, and while this accounts for a small percentage of the total prison population, we acknowledge that they are a vulnerable group, and need to be treated as individuals.

We have worked hard in recent years to ensure the safety of all prisoners is protected, with regard to the placement and management of transgender persons. As you may be aware, an amendment to the Corrections Regulations 2005 came into effect in February 2014, which established new requirements for determining whether transgender or intersex prisoners should be accommodated in a male or a female prison. Amendments to regulation 190 of the Corrections Act 2005 have the following two elements:

- First, where a prisoner's birth certificate has been amended to record a different sex from that recorded at birth (this requires a Family Court order), the prisoner is entitled to be placed in accordance with the revised certificate.
- Second, a transgender prisoner who has not had their birth certificate amended may nevertheless apply to the Chief Executive of the Department of Corrections for placement in accordance with their nominated gender, if they are eligible for consideration. The Chief Executive will consider a range of factors related to the prisoner's commitment to living as a member of their nominated gender, and the safety of that prisoner and other prisoners.

A transgender prisoner whose detention relates to a serious sexual offence against a person of their nominated gender, or who was released from a prison sentence for such an offence within the last seven years, will not be eligible to apply to the Chief Executive.

In considering the information provided in response to your questions below, which relate to Prison Operations Manual (POM) policy for the placement of transgender prisoners in a male or female prison, please note that further policy and guidelines were rolled out on 5 March 2018, in relation to wider management considerations for transgender prisoners.

As you will be aware, transgender is an umbrella term to refer to a person whose gender identity does not completely align with their assigned sex at birth. Going forward, each transgender prisoner will have an individualised support plan and will be able to choose the gender of staff who will conduct searches. The provision of an individual support plan will not depend on whether the transgender prisoner has legal recognition of their gender identity, or whether they have undergone medical or surgical steps. Custodial staff are being provided with training material to develop an understanding of gender diversity, with a focus on the use of correct and appropriate language. Alongside the implementation of new policy in prisons, probation staff have recently begun diversity training, which includes building awareness and understanding of community-based offenders who identify as transgender.

These guidelines align our approach with comparable jurisdictions internationally, as well as other New Zealand agencies such as the New Zealand Police and Customs.

The new POM *I.10 Management of transgender prisoners* policy is publicly available, at:

http://www.corrections.govt.nz/resources/policy_and_legislation/Prison-Operations-Manual/Induction/I-10.html

With regard to the application of POM *M.03 Specified gender and age movements* policy, as it relates to transgender prisoners, you have asked:

1. *If a prisoner is serving for a serious sexual offence, under remand for such, or has previously served a sentence of imprisonment for a serious sexual offence which falls under "M.03.05.Res.01 Schedule of serious sexual offences" - would, at the time of determining the most appropriate accommodation, the prisoner be housed with members of the sex to which these offences occurred, IF they provided a birth certificate that matches that sex? e.g. The newly arrived prisoner provides a birth certificate that indicates they are female but are serving for a serious sexual offence against a female.*

If a transgender prisoner satisfies the first element outlined above, which is obtaining an amended birth certificate in accordance with a Family Court order that records a different sex from that recorded at birth, they are not required to apply to the Chief Executive and will be entitled to be placed in accordance with the revised certificate.

Managing prisoners' safety is a core function of Corrections, and a duty we take extremely seriously. We have a range of policies, processes and tools in place that ensure concerns about prisoner safety are identified and mitigated. This includes prisoners at risk of self harm, at risk of harm to others and at risk of harm from others. There are a variety of ways that prisoners are able to notify staff of any potential risk to their safety in custody. When in their cell they are able to use a call alarm to alert staff. Prisoners are also encouraged to report concerns directly to staff, via a family member or friend, or by contacting an Inspector, the Office of the Ombudsman or the anonymous crime reporting line Crimestoppers.

When an allegation of sexual assault is made by any prisoner we act immediately to ensure that the victim is supported and that New Zealand Police are notified. Support may be provided by Health Services staff, a chaplain or other spiritual support person, a kaiwhakamana or other cultural support person, or senior staff. We work closely with Police to ensure that they have access to information or evidence that may assist any criminal investigation they are undertaking.

You may also wish to note that the newly implemented POM 1.10.07 *Support Plan for Trans Prisoners* policy stipulates that transgender prisoners must be placed in a cell on their own and not double-bunked with another prisoner. This policy gives consideration to the safety of all prisoners, although it may be overridden by the Prison Director if two transgender prisoners with the same gender identity choose to be placed in a shared cell, in which case their suitability would be assessed using the Shared Accommodation Risk Assessment (SACRA).

2. Are prisoners eligible or ineligible to apply to have the sex marker on their birth certificate changed while they are serving a prison sentence?

Transgender prisoners are able to apply to the Family Court to amend their birth certificate under the same eligibility criteria as a person in the community. The application process is managed by external agencies and does not relate to the functions of Corrections, although custodial staff may provide guidance or assistance, as part of the transgender prisoner's individual support plan. You may wish to refer to the Department of Internal Affairs' website or contact them directly, should you require further information on this topic.

In terms of the medical evidence required as part of such an application, Corrections has a statutory obligation under the Corrections Act 2004 to provide a primary health service to prisoners reasonably equivalent to that found in the community. Medical Officers working in prisons on contract assess a prisoner's condition and determine whether primary, secondary or tertiary level intervention or treatment is appropriate.

While primary health care services are administered by Medical Officers within prisons, the Ministry of Health (or ACC) are responsible for funding and administering secondary and tertiary health care services for prisoners, on the same basis that it is provided to people in the community. Secondary health care refers to specialist and hospital services, including surgery and assessment. Tertiary health care refers to treatment that is more complex or of a specific nature.

3. *If a prisoner applies to have the sex marker on their birth certificate changed, while serving a sentence and was successful - would they be moved to a prison catering for prisoners of the sex indicated on their updated birth certificate, without further procedures being applied?*

Yes. As outlined in response to Question One, in this situation the prisoner would satisfy the first element for determining their placement in a prison that aligns with their gender identity, and they would be entitled to be placed in accordance with the revised certificate.

4. *Would the process be any different if that same prisoner (who has been successful in changing the sex marker on their birth certificate) was serving a sentence for a serious sexual offence, under remand for such, or has previously served a sentence of imprisonment for a serious sexual offence which falls under "M.03.05.Res.01 Schedule of serious sexual offences", against a member of the sex that now matches their updated birth certificate?*

Again, please refer to the information provided in response to Question One.

5. *please could you provide a blank copy of the "M.03.05.Form.02 Application for review of prisoner's placement" and the "M.03.05.Form.04 Decision on determination of prisoner's placement"*

Please find these documents attached.

I hope the information provided is helpful. Should you have any concerns with this response, I would encourage you to raise these with Corrections. Alternatively you are advised of your right to also raise any concerns with the Office of the Ombudsman. Contact details are: Office of the Ombudsman, PO Box 10152, Wellington 6143.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Rachel Leota', with a long horizontal flourish extending to the right.

Rachel Leota
National Commissioner

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M.03.05.Form.04 Decision on determination of prisoner's placement



(Prisoner's full name) _____ PRN _____
 at (Prison) _____ Unit _____ Cell _____

(Select the option that applies)

Has applied for a review of the initial placement determination.
 After considering all the available information, and the recommendations of the Chief Custodial Officer and the Director Offender Health
 I, _____ (Insert name)
 being _____ (Insert position)
 (Select the option that applies)

Decline the prisoner's application to be placed according to their nominated sex, or
 Approve the prisoner's application to be placed according to their nominated sex of:
 (Select the option that applies) Male Female
 and direct that the prisoner is to be immediately placed in a prison that accommodates prisoners of that sex.

Or

Has supplied a birth certificate that: (Select the option that applies)
 does not record their sex records their sex as Indeterminate
 After considering all the available information,
 I, _____ (Insert name)
 being _____ (Insert position)

Confirm, that the prisoner's current placement is appropriate, or
 Approve the prisoner's application to be placed in a prison that accommodates prisoners who are:
 (Select the option that applies) Male Female
 and direct that the prisoner is to be immediately placed in a prison that accommodates prisoners of that sex.

Or

Has requested a review of the decision dated: _____ / _____ / _____ relating to placement where the prisoner provided a birth certificate that: (Select the option that applies)
 does not record their sex records their sex as Indeterminate
 After considering all the available information,
 I, _____ (Insert name)
 being _____ (Insert position)

Confirm the decision and that the prisoner is to remain in their current placement, or
 Approve the placement of the prisoner according to their nominated sex of:
 (Select the option that applies) Male Female
 and direct that the prisoner is to be immediately placed in a prison that accommodates prisoners of that sex.

Signature _____ / _____ / _____

The reasons, in summary, for this decision are:

M.03.05.Form.02 Application for review of prisoner's placement



Part A: Application for review by prisoner

<i>(Prisoner's full name)</i> _____	PRN _____
at <i>(Prison)</i> _____ Unit _____	Cell _____
<i>(Select the option that applies)</i>	
<input type="checkbox"/> I apply to the Chief Executive of the Department of Corrections for a review of the determination made that I am a <input type="checkbox"/> Male / <input type="checkbox"/> Female <i>(Select option that applies)</i> prisoner for the purpose of my placement in a New Zealand prison. My nominated sex is, <input type="checkbox"/> Male / <input type="checkbox"/> Female <i>(Select option that applies)</i> , and I believe I should be detained in a prison that manages prisoners of my nominated sex.	
Signature _____ <small>(prisoner)</small>	Date ____ / ____ / ____

Or

<i>(Prisoner's full name)</i> _____	PRN _____
at <i>(Prison)</i> _____ Unit _____	Cell _____
<input type="checkbox"/> Has provided a birth certificate that <i>(select the option that applies)</i> : <input type="checkbox"/> Records sex as Indeterminate <input type="checkbox"/> Records no sex and my preference is to be placed in a: <input type="checkbox"/> Male prison <input type="checkbox"/> Female prison <input type="checkbox"/> No preference Please briefly state why you have selected that preference _____ _____ _____ _____ _____	
Signature _____ <small>(prisoner)</small>	Date ____ / ____ / ____

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Part B – Information to support an application for a review

The following information is required, under Regulation 65C(3) of the Corrections Regulations 2005 as amended, to be taken into account by the Chief Executive of the Department of Corrections when considering your application. Please complete this information as fully as possible.

Information about your nominated sex

For how long have you lived as a person of your nominated sex? Do you intend to live permanently as a person of your nominated sex? <input type="checkbox"/> Yes <input type="checkbox"/> No If you answered "No" to the last question, please explain why.
Have you undergone, or are you undergoing, medical assessment and/or treatment to acquire the physical appearance of a person of your nominated sex? <input type="checkbox"/> Yes <input type="checkbox"/> No If you answered yes to the previous question, please ensure that the health professional providing the medical treatment is listed as one of the health professionals we can contact.

Health professionals who can provide information to support your application

What is the name of your current GP _____ Your GP's contact details: Street name and number _____ Suburb _____ Town / city _____ Name of practice _____ Practice phone number _____ Have you consulted any other health professional about your gender identity?: <input type="checkbox"/> Yes <input type="checkbox"/> No If you answered yes and you have consulted more than 1 health professional please give contact details for up to 2 health professionals you have consulted.
Name of health professional _____ Street name and number _____ Suburb _____ Town / city _____ Name of practice _____ Practice phone number _____
Name of health professional _____ Street name and number _____ Suburb _____ Town / city _____ Name of practice _____ Practice phone number _____

Other people we can contact who can provide information to support your application

Is there anyone who could verify how long you have lived as a person of your nominated sex? If so, and you are willing for us to contact that person or these people, please ensure their contact details are included here.

Please provide details for up to 2 other people that we can contact to support your application. These could be your partner, other family members or support persons.

Given name(s) _____	Surname _____		
Relationship to you _____			
Street name and number _____			
Suburb _____			
Town / city _____			
Phone numbers _____	(Home) _____	(Work) _____	(Cell phone) _____

Given name(s) _____	Surname _____		
Relationship to you _____			
Street name and number _____			
Suburb _____			
Town / city _____			
Phone numbers _____	(Home) _____	(Work) _____	(Cell phone) _____

Additional information

Is there anything you would like to add in support of this application? <input type="checkbox"/> Yes <input type="checkbox"/> No
If yes please state what you would like to add

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Part B – Authority to access prisoner medical and personal information

Authorisations and signatures

I declare that I have disclosed in this application all information that is relevant to a review of my placement and that all of the information I have given in this application is, to the best of my knowledge and belief, correct.

I give authority for the Chief Executive of the Department of Corrections to obtain any information relevant to this application that the Chief Executive of the Department of Corrections considers necessary to make an informed decision about the best placement option for me, from any or all health professionals or private persons listed in this application.

I am aware that collection of this information is authorised by the Corrections Regulations 2005, and that information provided by me or any persons I have named in this application will not be used for any purpose other than for the determination of my placement in a men's or women's prison.

The principles of the Privacy Act 1993 will apply to any information collected.

(Prisoner's full name) _____ PRN _____

Signature _____

Once you have fully completed this application and the supporting information, you can hand it to any staff member, who will sign to confirm they have received it and arrange for its delivery. Alternatively you can seal a copy of the application in an envelope addressed to the prison manager and then request delivery.

Received by

_____ (officer's name)
Designation _____ Tag No. _____

Signature _____ Date / / Time _____

Copy received by the Prison Manager Date / / _____

Copy received by Prison Health Centre Manager Date / / _____

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982



08 June 2018

C95541

9(2)(a)

Dear 9(2)(a)

Thank you for your email of 23 April 2018, requesting information about transgender prisoners. Your request has been considered under the Official Information Act 1982 (OIA).

Managing prisoners' safety is a core function of Corrections, and a duty we take extremely seriously. We have a range of policies, processes and tools in place to ensure that concerns about prisoner safety are identified and mitigated. This includes prisoners at risk of self harm, at risk of harm to others and at risk of harm from others.

Corrections is aware and sympathetic to the needs of transgender prisoners, including the issues surrounding their placement and safety. We currently have 33 people in our prisons with an alert on their file indicating that they identify as transgender. While this accounts for a small percentage of the total prison population, we acknowledge that they are a vulnerable group with complex needs, and need to be treated as individuals.

Transgender is an umbrella term to refer to a person whose gender identity does not completely align with their assigned sex at birth. Gender identity is different from a person's sexuality. In March 2018, Corrections introduced strengthened policy surrounding the management of transgender prisoners, with a focus on being responsive to individuals and their circumstances.

Going forward, each transgender prisoner will have an individualised support plan and will be able to choose the gender of staff who will conduct searches. The provision of an individual support plan will not depend on whether the transgender prisoner has legal recognition of their gender identity, or whether they have undergone medical or surgical steps.

Custodial staff are also being provided with training material to develop an understanding of gender diversity, with a focus on the use of correct and appropriate language. Alongside the implementation of new policy in prisons, Community Corrections staff have recently begun diversity training, which includes building awareness and understanding of community-based offenders who identify as transgender.

These guidelines align our approach with comparable jurisdictions internationally, as well as other New Zealand agencies such as the New Zealand Police and Customs.

Our new policy regarding the management of transgender prisoners is publicly available, at:

http://www.corrections.govt.nz/resources/policy_and_legislation/Prison-Operations-Manual/Induction/I-10.html

You have asked:

1. *How many prisoners in NZ prisons are currently legally recognised as transgender men (biological females who identify legally and socially as men)?*
2. *During April 2017, how many prisoners in NZ prisons were legally recognised as transgender women (biological males who identify legally and socially as women)?*
3. *During April 2017, how many prisoners in NZ prisons were legally recognised as transgender men (biological females who identify legally and socially as men)?*
4. *As at 23 April 2018, how many trans women (biological males who identify legally and socially as women) are in female prisons?*
5. *As at 23 April 2018, how many trans men (biological females who identify legally and socially as men) are in male prisons?*

As highlighted above, Corrections' management of transgender prisoners is not dependent on whether the prisoner has legal recognition of their gender identity, and transgender is an umbrella term to refer to a person whose gender identity does not completely align with their assigned sex at birth.

If it is identified that a prisoner identifies as transgender during their initial reception process, or at any other point of their management, an alert is placed on their electronic prisoner file.

We do not report on transgender individuals' identities to the level of detail, or in such a manner as described in your questions.

The parameters of your request have been adjusted accordingly, to relate to information held about prisoners with a transgender alert.

At the date of data extraction, which was 27 April 2018, 33 prisoners had a transgender alert. Seven of those were housed in a female prison, and 26 were housed in a male prison.

6. *From 1 January 2017 to the end of December 2017, how many biologically male prisoners who were legally recognised as 'female' (trans women) were imprisoned in female prisons in NZ?*
7. *From 1 January 2016 to the end of December 2016, how many biologically male prisoners who were legally recognised as 'female' (trans women) were imprisoned in female prisons in NZ?*
8. *From 1 January 2015 to the end of December 2015, how many biologically male prisoners who were legally recognised as 'female' (trans women) were imprisoned in female prisons in NZ?*
9. *From 1 January 2017 to the end of December 2017, how many biologically female prisoners who were legally recognised as 'male' (trans men) were imprisoned in male prisons in NZ?*
10. *From 1 January 2016 to the end of December 2016, how many biologically female prisoners who were legally recognised as 'male' (trans men) were imprisoned in male prisons in NZ?*
11. *From 1 January 2015 to the end of December 2015, how many biologically female prisoners who were legally recognised as 'male' (trans men) were imprisoned in male prisons in NZ?*

During 2017, 48 prisoners with a transgender alert were imprisoned at some point across all prisons. 38 of these individuals were imprisoned in a men's prison during this period, and 13 were imprisoned in a women's prison.

During 2016, 36 prisoners with a transgender alert were imprisoned at some point across all prisons. 28 of these individuals were imprisoned in a men's prison during this period, and 14 were imprisoned in a women's prison.

During 2015, 29 prisoners with a transgender alert were imprisoned at some point across all prisons during this period. 24 were imprisoned in a male prison during this period, and 7 were imprisoned in a women's prison.

Note that for each year, some prisoners transferred between a men's and women's prison, meaning they will be counted in both groups for the specified period.

As explained above, a transgender alert is not limited to the specific definitions outlined in each of your questions.

12. *How many incidents have there been in NZ prisons where transgender women (biologically male) prisoners have assaulted female prisoners between the dates 1 January 2017 and the end of December 2017?*

13. *How many incidents have there been in NZ prisons where transgender women (biologically male) prisoners have assaulted female prisoners between the dates 1 January 2016 and the end of December 2016?*

14. *How many incidents have there been in NZ prisons where transgender women (biologically male) prisoners have assaulted female prisoners between the dates 1 January 2015 and the end of December 2015?*

We have a range of policies, processes and tools in place that ensure that concerns about prisoner safety are identified and mitigated. This includes prisoners at risk of self harm, at risk of harm to others and at risk of harm from others.

There are a variety of ways in which prisoners are able to notify staff of any potential risk to their safety in custody. When in their cell they are able to use a call alarm to alert staff. Prisoners are also encouraged to report concerns directly to staff, via a family member or friend, or by contacting an Inspector, the Office of the Ombudsman or the anonymous crime reporting line Crimestoppers.

A total of four prisoner on prisoner assault incidents occurred in women's prisons in 2017, where the prisoner alleged to have committed the assault had a transgender alert. There were zero incidents of this type in 2016, and one incident of this type in 2015.

While no assault is acceptable, it is an unfortunate reality that they do occur from time to time, as we manage some of New Zealand's most difficult and challenging people. Understanding and managing risk is a challenge common to all correctional jurisdictions, and reducing violence in prisons is a priority for Corrections.

In reviewing these numbers you may wish to note that as outlined in Corrections 2016/2017 Annual Report, across the prison estate (which comprises more than 10,000 prisoners), there were almost 1,500 non-serious/no injury assaults on prisoners and staff, along with 25 serious assaults, recorded for this period. As such, the number of assault incidents involving a transgender prisoner in a women's prison accounts for a very small proportion of all assault incidents.

Further information about assault incidents in prisons can be found on pages 43-44 and page 84 of the Corrections 2016/17 Annual Report, at:
http://www.corrections.govt.nz/data/assets/pdf_file/0006/898629/Annual_Report_2016-17.pdf

15. *How were female prisoners consulted about introducing biologically male (trans women) prisoners into their prison?*

16. *How long was the consultation period? What core factors were taken into account? Do females report feeling safe around these trans women (biologically male) prisoners? What is the process if women report feeling unsafe around these trans women (biologically male) prisoners?*

In accordance with the Corrections Act 2004, we must make public safety paramount when managing offenders, and administer all sentences in a safe, secure, humane and effective manner. All prison facilities are operated in accordance with New Zealand legislation and based on other agreements, such as the United Nations Standard Minimum Rules for the Treatment of Prisoners.

All prisoner placements are managed in accordance with relevant policy and legislation, rather than consultation with the existing prisoners housed at any given site. We have worked hard in recent years to ensure the safety of all prisoners is protected, with regard to the placement and management of transgender persons.

An amendment to the Corrections Regulations 2005 came into effect in February 2014, which established new requirements for determining whether transgender or intersex prisoners should be accommodated in a male or a female prison. Amendments to regulation 190 of the Corrections Act 2005 have the following two elements:

- First, where a prisoner's birth certificate has been amended to record a different sex from that recorded at birth (this currently requires a Family Court order), the prisoner is entitled to be placed in accordance with the revised certificate.
- Second, a transgender prisoner who has not had their birth certificate amended may nevertheless apply to the Chief Executive of the Department of Corrections for placement in accordance with their nominated gender, if they are eligible for consideration. A range of factors will be considered for any application, related to the individual prisoner's commitment to living as a member of their nominated gender, and the safety of that prisoner and other prisoners.

A transgender prisoner whose detention relates to a serious sexual offence against a person of their nominated gender, or who was released from a prison sentence for such an offence within the last seven years, will not be eligible to apply to the Chief Executive.

Managing prisoners' safety is a core function of Corrections, and a duty we take extremely seriously. We have a range of policies, processes and tools in place that ensure that concerns about prisoner safety are identified and mitigated. This includes prisoners at risk of self harm, at risk of harm to others and at risk of harm from others.

There are a variety of ways that prisoners are able to notify staff of any potential risk to their safety in custody. When in their cell they are able to use a call alarm to alert staff. Prisoners are also encouraged to report concerns directly to staff, via a family member or friend, or by contacting an Inspector, the Office of the Ombudsman or the anonymous crime reporting line Crimestoppers.

17. What are the top five reasons males are imprisoned separately to females in New Zealand?

Corrections does not hold this type of information in any reportable format. We also do not consider this question to be a valid request for official information, as required by section 12 of the OIA.

18. Between the dates of 1 January 2015 and the end of December 2015 how many females in NZ prisons between have been reported a sexual assault while in prison?

19. Between the dates of 1 January 2016 and the end of December 2016 how many females in NZ prisons between have been reported a sexual assault while in prison?

20. Between the dates of 1 January 2017 and the end of December 2017 how many females in NZ prisons between have been reported a sexual assault while in prison?

When an allegation of sexual assault is made by a prisoner we act immediately to ensure that the victim is supported and that New Zealand Police are notified. Support may be provided by Health Services staff, a chaplain or other spiritual support person, a kaiwhakamana or other cultural support person, or senior staff. We work closely with Police to ensure that they have access to information or evidence that may assist any criminal investigation they are undertaking.

For reporting purposes, serious assault is defined as an act of physical violence that involves one or more of the following:

- Bodily harm requiring medical intervention by health staff followed by overnight hospitalisation (beyond initial assessment or medical observation) in a medical facility.
- Bodily harm requiring extended periods of ongoing medical intervention.
- Any sexual assault.

Corrections holds no record of any serious assault incident within a women's prison that included an allegation of sexual assault during the specified timeframe, either involving a transgender prisoner, or otherwise.

21. How many females who identify as males (trans men) in male prisons have reported sexual assault the past 12 months?

Corrections holds no record of any serious assault incident that included an allegation of sexual assault, reported by a prisoner in a men's prison who has a transgender alert, in the last 12 months.

22. Can female prisoners access a legal abortion if they are impregnated in prison? How should they go about this if they need?

As you may be aware, there are three women's prisons in New Zealand: Auckland Region Women's Corrections Facility, Arohata Prison and Christchurch Women's Prison. Corrections has no record of any prisoners who have become pregnant while in prison custody, during the timeframe specified throughout the rest of your questions.

Following their arrival at a women's prison, all female prisoners are asked if they could be pregnant by staff at the prison Health Centre, and women's prisons routinely conduct pregnancy tests for prisoners on request. Some women do learn that they are pregnant or give birth while on remand or serving a sentence of imprisonment, and others have young children at the time of sentencing.

We are committed to ensuring that all prisoners receive a standard of healthcare reasonably equivalent to that found in the community. Medical Officers working in prisons on contract assess a prisoner's condition and determine whether primary, secondary or tertiary level intervention or treatment is appropriate.

The Ministry of Health (or ACC) are responsible for funding and administering secondary and tertiary health care services for prisoners. Secondary health care refers to specialist and hospital services, including surgery and assessment. Tertiary health care refers to treatment that is more complex or of a specific nature.

To clarify, prisoners are referred to and access secondary and tertiary health services on the same basis as any person in the community. Corrections would not 'approve' the termination of any prisoner's pregnancy, nor would it directly oversee or administer the secondary or tertiary health care services that would be associated with the termination of their pregnancy.

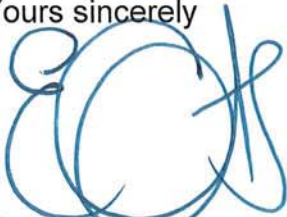
With regard to female prisoners who are pregnant or have young children on their arrival in prison, you may wish to note that while women's prisons generally have the same facilities as men's prisons, they also have mothers with babies units and feeding and bonding facilities. Information is available on our website, at:

http://www.corrections.govt.nz/resources/new_beginnings_-_mothers_with_babies_unit.html

Further to this, social workers and counsellors are also now employed in each of the three women's prisons. These staff work with particularly vulnerable women and mothers in prison, with a focus on women who are concerned about their children's wellbeing in the community, or where the Ministry for Children, Oranga Tamariki are involved in their children's lives. The social workers also focus on providing support to women who are pregnant, women who have their babies with them in prison, young women in need of support, and those who identify as transgender.

I hope the information provided is helpful. If you have any concerns with this response, I would encourage you to raise these with Corrections. Alternatively you are advised of your right to also raise any concerns with the Office of the Ombudsman. Contact details are: Office of the Ombudsman, PO Box 10152, Wellington 6143.

Yours sincerely



Emma Coats
Principal Adviser Ministerial Services
Corporate Services

RELEASED UNDER THE
OFFICIAL INFORMATION ACT 1982

18 June 2018

C95601

9(2)(a)

Dear 9(2)(a)

I refer to 9(2)(a) email of 26 April 2018, requesting information about transgender prisoners. 9(2)(a) she has asked for this response to be sent to your email address instead. Your request has been considered under the Official Information Act 1982 (OIA).

Managing prisoners' safety is one of Corrections' core functions, and a duty we take extremely seriously. We have a range of policies, processes and tools in place to ensure that concerns about prisoner safety are identified and mitigated. This includes prisoners at risk of self harm, at risk of harm to others and at risk of harm from others.

Corrections is aware and sympathetic to the needs of transgender prisoners, including the issues surrounding their placement and safety. As at 30 April 2018, there were 33 people in our prisons identifying as transgender. While this accounts for a small percentage of the total prison population, we acknowledge that transgender prisoners are a vulnerable group with complex needs. We have worked hard in recent years to ensure the safety of all prisoners is protected, with regard to the placement and management of transgender persons.

In March 2018, Corrections introduced strengthened policy surrounding the management of transgender prisoners, with a focus on being responsive to individuals and their circumstances. Each transgender prisoner will now have an individualised support plan and will be able to choose the gender of staff who conduct searches. The provision of an individual support plan will not depend on whether the transgender prisoner has legal recognition of their gender identity, or whether they have undergone medical or surgical steps.

Custodial staff are also being provided with training material to develop an understanding of gender diversity, with a focus on the use of correct and appropriate language. Alongside the implementation of new policy in prisons, Community Corrections staff have recently begun diversity training, which includes building awareness and understanding of community-based offenders who identify as transgender.

These guidelines align our approach with comparable jurisdictions internationally, as well as other New Zealand agencies such as New Zealand Police and Customs.

Our new policy regarding the management of transgender prisoners is publicly available, at:

http://www.corrections.govt.nz/resources/policy_and_legislation/Prison-Operations-Manual/Induction/I-10.html

You have asked:

- 1) *What percentage of trans women and trans men in New Zealand prisons are sex offenders?*
- 2) *What is the average percentage of male and female sex offenders?*

Corrections reports on prisoners' most serious offence type. A prisoner's recorded most serious offence is based on the Ministry of Justice Seriousness Score, and is associated with their current aggregate sentence. The parameters of this part of your request have been adjusted accordingly.

As at 30 April 2018, 13 out of a total of 957 female prisoners, and 2057 of a total of 9768 male prisoners, had sexual offending as their most serious offence type. Nine of the 33 prisoners who identify as transgender had sexual offending as their most serious offence type, however please note that because of the way that this information is recorded, each of these individuals will also be captured within either the male or female figures. Caution is also urged when comparing rates between these groups, as prisoners with a transgender alert comprise a very small cohort of offenders.

Please note that information about prisoners' most serious offence type across the entire prison population is published quarterly on our website. Our most recent statistics are available at:

http://www.corrections.govt.nz/resources/research_and_statistics/quarterly_prison_statistics/prison_stats_december_2017.html

- 3) *There are approximately 25 trans-identifying prisoners in New Zealand prisons. How many are in men's prisons and how many are in women's prisons?*

Of the 33 prisoners mentioned above who identify as transgender, seven were housed in a women's prison, and 26 were housed in a men's prison, as at 30 April 2018.

- 4) *Would changes to the Births, Deaths, Marriages and Relationships Registration Act make it easier for prisoners to self-identify their gender, determining whether they go to a men's or women's prison?*

To the extent that you have asked Corrections to form a view about legislation that does not relate to the functions of this agency, this is not a request for official information.

As outlined above, however, Corrections' management of transgender prisoners is not dependent on whether the prisoner has legal recognition of their gender identity.

Information about our policy, as it relates to the placement of transgender prisoners, has been provided below in response to your next two questions.

- 5) *I understand trans-identifying prisoners are ineligible for transfer if they are serving for a serious sexual offence, under remand for such, or have previously served a sentence of imprisonment for a serious sexual offence committed against a member of the sex to which they identify. But what if they have committed a serious sexual offence against a member of the opposite sex to which they identify, or both (assuming the transfer rule is to protect members of the sex which the offender has victimised before)?*

An amendment to the Corrections Regulations 2005 came into effect in February 2014, which established new requirements for determining whether transgender or intersex prisoners should be accommodated in a male or a female prison. Amendments to regulation 190 of the Corrections Act 2005 have the following two elements:

- First, where a prisoner's birth certificate has been amended to record a different sex from that recorded at birth (this currently requires a Family Court order), the prisoner is entitled to be placed in accordance with the revised certificate.
- Second, a transgender prisoner who has not had their birth certificate amended may nevertheless apply to the Chief Executive of the Department of Corrections for placement in accordance with their nominated gender, if they are eligible for consideration.

A transgender prisoner whose detention relates to a serious sexual offence against a person of their nominated gender, or who was released from a prison sentence for such an offence within the last seven years, will not be eligible to apply to the Chief Executive.

Although this policy does not extend to transgender prisoners convicted of a sexual offence against a person of the gender opposite to that to which they identify, I would stress that eligibility to make an application to the Chief Executive does not mean that the application is guaranteed to be approved.

For any application received, the Chief Executive will consider a range of factors related to the individual prisoner's commitment to living as a member of their nominated gender, and the safety of that prisoner and other prisoners.

6) *Do the new Corrections guidelines, which came into place in March, make it easier for prisoners to choose their sex on their birth certificate?*

Transgender prisoners are able to apply to the Family Court to amend their birth certificate under the same eligibility criteria as a person in the community. Although custodial staff may provide guidance or assistance with this as part of the transgender prisoner's individual support plan, the application process is managed by external agencies and does not relate to the functions of Corrections. You may wish to refer to the Department of Internal Affairs' website or contact them directly, if you require further information on this topic.

I hope the information provided is helpful. If you have any concerns with this response, I would encourage you to raise these with Corrections. Alternatively you are advised of your right to also raise any concerns with the Office of the Ombudsman. Contact details are: Office of the Ombudsman, PO Box 10152, Wellington 6143.

Yours sincerely



Rachel Leota
National Commissioner

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982



25 May 2018

C95647

9(2)(a)

Dear 9(2)(a)

Thank you for your email of 27 April 2018, requesting further information about transgender prisoners. Your request has been considered under the Official Information Act 1982 (OIA).

Public safety and reducing re-offending are the ultimate goals for Corrections. In accordance with the Corrections Act 2004, we must make public safety paramount when managing offenders, and administer all sentences in a safe, secure, humane and effective manner. All prison facilities are operated in accordance with New Zealand legislation and based on other agreements, such as the United Nations Standard Minimum Rules for the Treatment of Prisoners.

Corrections is aware and sympathetic to the needs of transgender prisoners, including the issues surrounding their placement and safety. We have worked hard in recent years to ensure the safety of all prisoners is protected, with regard to the placement and management of transgender persons. While transgender individuals account for a small percentage of the total prison population, we acknowledge that they are a vulnerable group with complex needs, and need to be treated as individuals.

Transgender is an umbrella term to refer to a person whose gender identity does not completely align with their assigned sex at birth. Gender identity is different from a person's sexuality. As outlined in our previous correspondence to you about this topic, in March 2018 we introduced strengthened policy surrounding the management of transgender prisoners, with a focus on being responsive to individuals and their circumstances. The new policy is publicly available, at:

http://www.corrections.govt.nz/resources/policy_and_legislation/Prison-Operations-Manual/Induction/I-10.html

You have asked:

- 1) *Please provide the number of all "transgender alerts" recorded, in the Integrated Offender Management System (IOMS), at this time. Including those on remand or sentenced.*

As at the date of your request, 33 prisoners had a transgender alert. 26 of these were sentenced prisoners, and 7 were held on remand.

- 2) *Please provide information as to how the above individuals identify (i.e. female/women or male/men) and where they are currently being held (i.e. female or male facility)*

Of the 33 prisoners with a transgender alert as at the date of your request, 26 were housed in a men's prison, and 7 were housed in a women's prison.

Corrections' management of transgender prisoners is not dependent on whether the individual has legal recognition of their gender identity, or whether surgical or medical steps have been taken. Our aim is to manage transgender prisoners in a manner that is individualised according to need, and seeks to preserve the person's dignity, safety and privacy.

If it is identified that a prisoner identifies as transgender during their initial reception process, or at any other point during their custodial management, a transgender alert is placed on their electronic prisoner file. Although information about a transgender prisoner's gender identity may be detailed within records such as their case notes or medical file, we do not report specifically on whether each of these individuals identifies as male or female. As highlighted above, transgender is an umbrella term to refer to a person whose gender identity does not completely align with their assigned sex at birth. Some transgender people do not identify as exclusively female or male. As such, in some cases it may be difficult or inappropriate for such a determination to be made by custodial staff.

Records of *how the above individuals identify (i.e. female/women or male/men)* do not currently exist in a form that can be readily supplied to you, and would instead require initiation of a project to extract, analyse and present the data in the form requested. Therefore, this part of your request is declined under section 18(g) of the OIA, as the information requested is not held by Corrections, and we have no grounds for believing that it is held by another agency or more closely connected with the functions of another agency.

- 3) *With respect to the privacy of the individuals involved, please provide information as to the percentage or number of those prisoners according to most serious offence type, as per classification used for the Prison Facts and Statistics, dishonesty, violence, sex offences, drug & anti-social offence, traffic and other.*

Please refer to the table below, for information about the most serious offence type for prisoners with a transgender alert, as at the date of your request.

Most Serious Offence	Transgender Alert
Dishonesty	5
Violence	9
Sexual offences	9
Drugs	2
Traffic	1
Other	7
Total	33

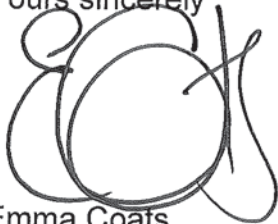
- 4) *Please disclose the number of appeals against prison placement that have been made under section M.03.05 in the Prison Operations Manual; that is, how many transgender people have requested to be moved to a different facility under the Department of Corrections' purview for reasons of sex/gender, since the policy took effect in February 2014.*
- 5) *With respect to the privacy of the individuals involved, please also provide the outcomes of those appeals, i.e. the number of successful movements or refusals. I understand that the IOMS records "placement review declined" alerts and "placement review filed" alerts.*
- 6) *Please provide information as to where the successful applicants were transferred to, i.e. number of transfers from female to male facility and number of transfers from male to female facility.*
- 7) *Please provide information as to where the unsuccessful or ineligible applicants remained, i.e. male or female facility.*

20 applications have been made for a review of initial determination of placement, under Corrections' M.03.05 Transgender and intersex prisoner policy. Of these, 18 applications were approved, one was withdrawn and one was pending a decision, as at the date of your request. All applications relate to prisoners who have sought to transfer from a men's prison to a women's prison.

It should be noted that information about applications for review are held by Offender Health teams. Although the outcome of applications are recorded in IOMS, this application process is entirely distinct from placing a transgender alert on a prisoner's electronic file, as described above in our response to Question Two.

I hope the information provided is helpful. If you have any concerns with this response, I would encourage you to raise these with Corrections. Alternatively you are advised of your right to also raise any concerns with the Office of the Ombudsman. Contact details are: Office of the Ombudsman, PO Box 10152, Wellington 6143.

Yours sincerely



Emma Coats
Principal Adviser Ministerial Services
Corporate Services

RELEASED UNDER THE
OFFICIAL INFORMATION ACT 1982

13 August 2018

C97522

Emilie Rakete
Sent via Twitter: @cannibality

Dear Ms Rakete

Thank you for your request dated 25 June 2018, made via Twitter, for information about care for transgender prisoners. Your request has been considered under the Official Information Act 1982.

You have asked for:

All information regarding the action plan for the care of transgender prisoners which you agreed to implement, as part of your agreement with the Auckland Pride Parade planning board.

Managing prisoners' safety is one of Corrections' core functions, and a duty we take extremely seriously. We have a range of policies, processes and tools in place to ensure that concerns about prisoner safety are identified and mitigated. This includes prisoners at risk of self harm, at risk of harm to others and at risk of harm from others.

As at 30 April 2018, there were 33 people in our prisons identifying as transgender. This accounts for a small percentage of the total prison population, however we acknowledge that transgender prisoners are a vulnerable group with complex needs.

I note that another Twitter user involved in discussions with Corrections about this matter has replied to your request, providing a list of measures relating to transgender prisoners. I can advise that each of the steps they mention has been, or is in the process of being implemented. An overview is provided below.

In March 2018, Corrections introduced strengthened policy for the management of transgender prisoners, with a focus on being responsive to individuals and their circumstances. Each transgender prisoner will now have an individualised support plan and will be able to choose the gender of staff who conduct searches. The provision of an individual support plan will not depend on whether the transgender prisoner has legal recognition of their gender identity, or whether they have undergone medical or surgical steps.

1

Custodial staff are also being provided with training material to develop an understanding of gender diversity, with a focus on the use of correct pronouns and appropriate language.

These guidelines align our approach with comparable jurisdictions internationally, as well as other New Zealand agencies such as New Zealand Police and Customs.

Our new policy regarding the management of transgender prisoners is publicly available, at:

http://www.corrections.govt.nz/resources/policy_and_legislation/Prison-Operations-Manual/Induction/I-10.html

The placement of transgender and intersex prisoners in a male or female prison, including the process for a review of initial determination of placement, continues to be managed in accordance with Prison Operations Manual M.03.05 policy. This is publicly available, at:

http://www.corrections.govt.nz/resources/policy_and_legislation/Prison-Operations-Manual/Movement/M.03-Specified-gender-and-age-movements/M.03-4.html

Alongside the implementation of new policy in prisons, staff across various parts of Corrections have recently begun intensive diversity training sessions, focusing on:

- building awareness and understanding of offenders who identify as transgender;
- working with transgender people;
- LGBTQIA+ terminology;
- the difference between biological sex and gender identity;
- correct use of pronouns; and
- respecting dignity and being aware of our own unconscious bias.

To date, diversity training has been delivered to almost 1,100 Corrections staff. Work is also underway to incorporate the training into Frontline Futures, which is a programme delivered to all new frontline Community Corrections staff.

Corrections is committed to supporting and promoting diversity and acceptance in our workplace, and we have established the Rainbow Network, which is available to all Corrections employees to join. The Rainbow Network's aims include promoting greater understanding and open dialogue about how we can make Corrections a safer place to work for LGBTQIA+ staff, in addition to empowering staff to work more effectively with LGBTQIA+ offenders.

We are also continuing to liaise with transgender and wider rainbow community individuals and groups, with an aim to strengthen support networks with those who may provide valuable assistance and expertise, around the reintegration of transgender prisoners on their release.

I can also advise that the Office of the Inspectorate ran a focus group with transgender prisoners at Tongariro Prison earlier this year, following the implementation of the new transgender policy described above. I understand that this was considered a valuable exercise for all involved. Prisoners had specific concerns addressed, including ensuring female products are available for them to purchase via the prisoner canteen system, as well as having questions answered about hormone treatment, and the introduction of individual support plans.

In accordance with our obligations under the Corrections Act 2004, all prisoners are entitled to receive a standard of health care reasonably equivalent to that found in the community. With regard to the medical needs of transgender prisoners, it should be noted that Medical Officers working in prisons on contract assess a prisoner's condition and determine whether primary, secondary or tertiary level intervention or treatment is appropriate. Primary health care is delivered by Corrections, and includes services such as general practice, pharmaceuticals (prescriptions), and nursing services. Primary mental health care is also included.

The Ministry of Health (or ACC) are responsible for funding and administering secondary and tertiary health care services for prisoners. Secondary and tertiary health care refers to specialist and hospital services, including surgery or specialised services (such as Endocrinology), as well as more complex forensic mental health services. Prisoners are referred to secondary or tertiary health care services on the same basis as any person in the community.

Corrections recognises that a lack of available Endocrinology Services in some regions of New Zealand can present a barrier for transgender prisoners housed at some of our sites, just as it can be for those in the community. In such cases, I would encourage the individual to discuss their options with prison staff. Options could include seeking a transfer to another prison to access services.

As this response highlights, while Corrections has worked hard in recent years to ensure the safety and dignity of transgender prisoners is protected, this is an area that remains under development. To ensure we are providing the best level of care to those who need it, as well as contributing to public safety and reducing re-offending, we are committed to the continuous improvement of policy and procedures that incorporate an awareness of diversity in their design, development and delivery.

I hope the information provided is helpful. If you have any concerns with this response, I would encourage you to raise these with Corrections. Alternatively you are advised of your right to also raise any concerns with the Office of the Ombudsman. Contact details are: Office of the Ombudsman, PO Box 10152, Wellington 6143.

Yours sincerely



Richard Waggott
Deputy Chief Executive
Corporate Services

RELEASED UNDER THE
OFFICIAL INFORMATION ACT 1982



22 August 2018

C98637

9(2)(a)

Dear 9(2)(a)

Thank you for your email of 30 July 2018, requesting information about recent amendments to Corrections' policy regarding the management of transgender prisoners. Your request has been considered under the Official Information Act 1982 (OIA).

Managing prisoners' safety is one of Corrections' core functions, and a duty we take extremely seriously. We have a range of policies, processes and tools in place to ensure that concerns about prisoner safety are identified and mitigated. This includes prisoners at risk of self harm, at risk of harm to others and at risk of harm from others.

As at 1 May 2018, there were 33 people in our prisons identifying as transgender. While this accounts for a small percentage of the total prison population, we acknowledge that transgender prisoners are a vulnerable group with complex needs. We have worked hard in recent years to ensure the safety of all prisoners is protected, with regard to the placement and management of transgender persons.

As you are aware, in March 2018 Corrections introduced strengthened policy for the management of transgender prisoners, with a focus on being responsive to individuals and their circumstances.

If it is established that a prisoner identifies as transgender during their initial reception process, or at any other point of their management, an alert is placed on their electronic prisoner file.

In accordance with our new policy, each transgender prisoner now has an individualised support plan and is able to choose the gender of staff who conduct searches. The provision of an individual support plan will not depend on whether the transgender prisoner has legal recognition of their gender identity, or whether they have undergone medical or surgical steps.

Custodial staff are also being provided with training material to develop an understanding of gender diversity, with a focus on the use of correct pronouns and appropriate language.

These guidelines align our approach with comparable jurisdictions internationally, as well as other New Zealand agencies such as New Zealand Police and Customs.

Corrections' new Prison Operations Manual (POM) policy regarding the management of transgender prisoners is publicly available, at:
http://www.corrections.govt.nz/resources/policy_and_legislation/Prison-Operations-Manual/Induction/I-10.html

The placement of transgender and intersex prisoners in a male or female prison, including the process for a review of initial determination of placement, continues to be managed in accordance with existing POM movements policy, which is also publicly available, at:
http://www.corrections.govt.nz/resources/policy_and_legislation/Prison-Operations-Manual/Movement/M.03-Specified-gender-and-age-movements/M.03-4.html

Alongside the implementation of the new policy in prisons, Community Corrections and non-frontline management staff have recently begun intensive diversity training sessions, which focus on building an awareness and understanding LGBTQIA+ terminology, respecting dignity, and being aware of unconscious bias. To date, the diversity training has been delivered to almost 1,100 Corrections employees. Work is also underway to incorporate the diversity training into Frontline Futures, which is a programme delivered to all new frontline Community Corrections staff.

With reference to the recently implemented POM *I.10 Management of transgender prisoners* policy discussed above, you have requested:

any policy document made (or any paper/report of a similar nature) detailing the changes and the reasons for the changes

We have identified one document within scope of your request, attached as Appendix One. This is an October 2016 paper prepared for Corrections' Executive Leadership Team (ELT), titled *Guidance for the management of trans prisoners*.

This document details the development and consultation on proposed guidelines and recommended approaches, which were approved by the ELT and subsequently developed into our strengthened policy for the management of transgender prisoners. It outlines that Corrections consulted with internal and external stakeholders, and was informed by the approaches of other New Zealand justice sector partners, as well as international jurisdictions.

Corrections has balanced your interest in this information against the privacy interests of individuals whose personal information is involved. We have determined some information should be withheld under section 9(2)(a) of the OIA, to protect the privacy of natural persons, including deceased natural persons.

Other information, relating to legal advice received by Corrections, has been withheld under section 9(2)(h) of the OIA, to maintain legal professional privilege.

I trust the information provided is of assistance to your research. If you have any concerns with this response, I would encourage you to raise these with Corrections. Alternatively you are advised of your right to also raise any concerns with the Office of the Ombudsman. Contact details are: Office of the Ombudsman, PO Box 10152, Wellington 6143.

Yours sincerely


pp Vanessa Koenig
Principal Adviser Ministerial Services
Corporate Services

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Executive Leadership Team

ELT Meeting Date	Wednesday 26 October 2016		
Title	Guidance for the management of trans prisoners		
Author	9(2)(a)		
Team	Chief Custodial Officer's Team, Service Development		
Approval <input checked="" type="checkbox"/>	Discussion <input type="checkbox"/>		

Author Sign-off

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Signature		Extn	9(2)(a)	Date	

Sponsoring Deputy Chief Executive Sign-off

Name	Jo Field	Title	Deputy Chief Executive Service Development		
Signature		Extn	9(2)(a)	Date	

Recommendations

It is recommended that the Executive Leadership Team:

a)	Note that guidance for custodial staff on the management of trans prisoners is required as part of the transgender action plan endorsed by the Executive Leadership Team in March 2016	Yes / No
b)	Approve a new approach to the management of trans prisoners which encompasses the following: <ul style="list-style-type: none"> Trans prisoner's management should be individualised and formulated in consultation with the trans person. A safe management plan should be developed and regular reviews should be undertaken. The Prison Director should approve the contents of the safe management plan. 	Yes / No
	<ul style="list-style-type: none"> The approach to trans prisoner's management should not be dependent on whether they are placed in a prison which 	Yes / No

	houses men or women.	
	<ul style="list-style-type: none"> • Trans prisoners should have access to personal items required to maintain their gender appearance. 	Yes / No
	<ul style="list-style-type: none"> • Trans prisoners should be searched and urine tested in accordance with their gender identity, unless an alternative approach is more appropriate. 	Yes / No
	<ul style="list-style-type: none"> • Trans prisoners should be accommodated in single cells, unless they provide informed consent to be placed in shared accommodation with other trans prisoners of the same biological sex. 	Yes / No
	<ul style="list-style-type: none"> • Trans prisoners should have access to support and guidance from external trans support groups while in prison and on transition into the community. 	Yes / No
c)	Agree that wide consultation should be taken prior to implementation of these guidelines	Yes / No
d)	Agree that a comprehensive programme of training and education for prison staff is required for a new approach to the management of trans prisoners to be successful	Yes / No
e)	Note that the comprehensive programme of training and education is under development by Learning and Development	Yes / No

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Purpose

- 1 This paper proposes the content of guidance to custodial staff about the safe and appropriate management of trans prisoners, including rationale for the proposed content of the guidelines. These proposals are recommended by the Service Development Senior Leadership Team (SDSLT) and the Corrections Services Senior Leadership Team.

Terminology

- 2 In recognition of the diverse nature of the trans, intersex and genderqueer community, the generic term “trans” is used throughout this paper and through the draft management guidelines¹.

Executive summary

- 3 The Department of Corrections (the Department) changed its approach to the placement of trans prisoners through regulatory amendment in 2014. 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 aligning with their biological sex. This move was a progressive step for the Department. However, it was not accompanied by any change to how trans prisoners are managed on a day to day basis, whether they are in a prison which aligns with their gender identity, or not.
- 4 In March 2016 the Executive Leadership Team (ELT) approved an action plan to improve the Department’s response to, and management of, trans prisoners. As part of that plan guidance on the day to day management of trans prisoners was to be developed for prison staff.
- 5 The Chief Custodial Officer’s Team has conducted a scan of other jurisdictions and New Zealand justice sector partners to understand their approaches to the management of trans people in their care. New Zealand’s approach is less developed than the jurisdictions canvassed, and does not preserve the rights, privacy and dignity of trans prisoners as well as our comparable partners.
- 6 Accordingly, and in light of gaps identified, a new approach is recommended for the Department’s management of trans prisoners. Options for the new approach were considered by SDSL on 21 July 2016 and CSLT on 23 August 2016. Both groups considered and discussed a number of options relating to specific aspects of the guidance, which has provided a recommended new approach which both groups agree with.
- 7 The new approach suggested for the management of trans prisoners by the Department is intended to better recognise and protect the rights of trans people to live as their identified gender. The approach is outlined in the points below:

¹ This was also the term used by the Human Rights Commission in their 2007 Inquiry “To Be Who I Am.”

- The approach to trans prisoner's management should be individualised and formulated in consultation with the trans person. A safe management plan should be developed and regular reviews should be undertaken. The Prison Director should approve the contents of the safe management plan.
 - The approach to trans prisoner's management should not be dependent on whether they are placed in a prison which houses men or women.
 - Trans prisoners should have access to personal items required to maintain their gender appearance.
 - Trans prisoners should be searched and urine tested in accordance with their gender identity, unless an alternative approach is more appropriate.
 - Trans prisoners should be accommodated in single cells, unless they provide informed consent to be placed in shared accommodation with other trans prisoners of the same biological sex.
 - Trans prisoners should have access to support and guidance from external trans support groups while in prison and on transition into the community.
- 8 The approach described above is a significant practice, and culture, change for most prisons and prison staff. Prison staff do not receive any formalised training or education about people who identify as trans, the issues and challenges they may face relating to their gender identity or particular approaches to their management in a prison environment. Since the introduction of the regulatory changes in 2014, concerns have been raised by corrections officer unions about their staff being required to strip search prisoners of the opposite biological gender. Discussions about these issues have been continuing with staff on site, and with the union.
- 9 For the new approach to be successful, staff will need to buy into, and understand, its purpose. While knowledge and acceptance levels are likely to vary across the staff population, there is a clear need to this new approach to be preceded by education, training and open and honest conversations with prison staff, delivered and facilitated by experts. Learning and Development have been engaged to produce this work in conjunction with the Chief Custodial Officer and Director Offender Health.

Implications for over-represented and vulnerable groups (e.g. Māori, women, youth and transgender offenders)

- 10 This paper seeks to improve the management of trans prisoners, who are identified as a vulnerable group.

Background

- 11 Trans prisoners are, on the whole, a vulnerable group inside and outside the wire. The Human Rights Commission conducted an inquiry in 2007 which looked at the treatment of trans people in New Zealand. It concluded that trans people face discrimination that undermines their ability to have a secure family life, to find accommodation, to work, to build a career and to participate in community life.
- 12 The inquiry also heard that trans people had experienced victimisation and discrimination throughout the criminal justice system on the basis of their actual or perceived gender identity. This report led to significant changes in the Department's policy relating to the placement of trans prisoners in the prison estate.
- 13 Current guidance provided to staff about trans prisoners is exclusively focused on their placement, i.e. whether they are placed in the prison of their biological sex or their gender identity. There is currently no guidance to staff on trans prisoners' management, regardless of prison placement.
- 14 In March 2016 SDSLT and ELT approved an action plan to improve the Department's response to, and management of, trans prisoners. The action plan contained actions to be addressed by the Chief Custodial Officer and the Director Offender Health and required the development of guidance for custodial staff on the safe management of trans prisoners. Specifically, guidance was to include shared cell accommodation decisions, safe and appropriate strip searching, how to manage behaviour considered unsafe for the prisoner or other prisoners, appropriate clothing and boundaries for mixing.
- 15 Other aspects of the action plan that could also be included in the guidance are:
 - requiring custodial staff to document on IOMS any conversations with the prisoner in relation to their decision to apply, or not apply, for review of the initial placement decision;
 - requiring that custodial staff complete and record the outcomes of a discussion with the prisoner on safe management with every trans prisoner. The discussion is to be documented in a safety plan with a copy provided to the prisoner where this is deemed necessary. Where a safety plan is not deemed necessary this is to be documented in IOMS.
 - exploring options for trans prisoners to access appropriate personal care items while they are in prison.
- 16 SDSLT and CSLT discussed the proposals in this paper on 21 July 2016 and 23 August 2016 respectively. The two groups' final recommendations are the content of this paper.

Policy objective

- 17 To ensure trans prisoners are managed in a way which protects their safety, enhances their rights to dignity and privacy and ensures the safety and security of other prisoners and staff.

Problem definition/opportunity

- 18 There is no consistent approach or guidance on the management and treatment of trans prisoners in New Zealand, and a lack of clarity about safe and appropriate management of this vulnerable group. This creates the risk that the rights and dignity of trans prisoners are not sufficiently protected, and staff are not sufficiently certain about how to appropriately manage trans prisoners.
- 19 The provision of guidance on the management of trans prisoners means the Department has an opportunity to enhance the protection of trans prisoner's rights and provide clarity, education and training to its staff on trans issues and appropriate management and safeguarding. It also provides an opportunity for New Zealand Corrections to come up to par with comparable jurisdictions who have already made significant advances in the management of their trans populations.

Jurisdictional scan

- 20 Analysis of other jurisdictions' approaches to the treatment and management of trans prisoners was undertaken to ensure that the guidelines drafted covered the necessary areas and were in line with international best practice. Guidelines produced in New South Wales, Scotland, England and Wales and Canada were reviewed and compared to the status quo in New Zealand. Additionally, the United Nations Handbook on the Treatment of Special Needs Prisoners was reviewed for its guidance.
- 21 The scan and comparison to the status quo in New Zealand is attached to this memorandum at **Appendix A**.
- 22 In summary, all jurisdictions reviewed have specific guidelines about the treatment and management of trans prisoners. Guidance was provided about personal searching, cell accommodation, clothing and personal items and treating trans prisoners with respect and sensitivity. Most of the guidelines made specifications about enhanced case management processes for trans prisoners and expressed the importance of training and educating staff about trans people, the challenges they have likely encountered in life, and the best ways to approach their management.
- 23 New Zealand comparisons were also sought and the searching policies of New Zealand Customs (Customs) and the New Zealand Police (Police) were reviewed and compared to that of Corrections. Both Customs and Police had a significantly different approach to the Department, with detained people who identify as trans

searched by staff members of the same gender as their gender identify, not their biological sex.

- 24 The policies in place in the other jurisdictions and comparable New Zealand agencies were more explicitly responsive to the needs and challenges of trans prisoners than the current Departmental approach.

Contents of safe management guidelines

- 25 On the basis of the areas specified in the action plan and the analysis of other jurisdiction's approaches, it is proposed that our guidelines on the management of trans prisoners are significantly updated. Changes would address:

- the reception and induction of trans prisoners;
- planning their safe management;
- cell accommodation;
- personal searching and urine testing;
- clothing and appearance;
- escorts and transfers; and
- support required from trans organisations.

- 26 The proposed guidelines are attached at **Appendix B**. The rationale for the content of the guidelines is explored below.

Reception and induction

- 27 Placement guidance which relates to where a trans prisoner is placed within the prison estate (a prison that accommodates men or a prison that accommodates women) already exists in the Prisons Operations Manual (POM).
- 28 The recommended approach is that additions are made to this section that require staff to discuss placement with prisoners whose gender is unclear, and add in clear reporting and documentation requirements of these conversations so the Department has assurance that prisoners who identify as trans have been given the opportunity to apply for a placement review, and their status as trans will be recorded at the earliest possible opportunity if it is not already. In addition, further material will be produced to provide to trans prisoners on arrival so they are aware of their options.

Planning safe management

- 29 The action plan requires that safe management plans are developed for each trans prisoner if it is deemed necessary. To ensure that this happens in a timely manner and that expectations about management are agreed from the outset, the draft guidelines specify that a discussion must be held between at least the prisoner, the Principal Corrections Officer and Case Officer within the first 72 hours of their

reception, or of becoming aware that the prisoner identifies as trans. The content of the safe management plan should be approved by the Prison Director.

- 30 The process requires that where possible a safe management plan is set up with the prisoner. The plan should cover how the prisoner's management will ensure their safety, dignity and privacy. Reaching a position on each of their management aspects, within certain confines, will enable the Department to ensure the safety of trans people in its care and make the prisoner aware of their obligations and our expectations of them.
- 31 Individual plans also recognise the diversity among the trans prisoner population, as well as the different circumstances they can be in. In particular, they could be held in prisons which do, or do not, align with their gender identity. These alternate scenarios present different risks which need to be mitigated in different ways.

Review of safe management plan

- 32 The safe management plan should be an active document. To continue to ensure the safety, dignity and privacy of trans prisoners it should be regularly reviewed with the prisoner. To ensure the plan remains relevant it should be reviewed with the prisoner 14 days after the first safe management meeting and at 3 monthly intervals thereafter. Additional reviews could be sought by the prisoner or staff if they believe it to be necessary.

Cell accommodation

- 33 A proportion of prisoners in New Zealand are double bunked. Double bunking presents risks for trans prisoners, including the risk of sexual assault, exploitation and consensual sex in exchange for financial and other benefits. This risk is higher if thorough risk assessments are not conducted on the prisoners proposed to share a cell.
- 34 The status quo in the POM is that a trans prisoner may be placed in shared cell accommodation with another trans prisoner. It also specifies that if the prisoner chooses and it is safe to do so they may be accommodated with a prisoner who is not trans. In May 2016 a direction was sent from the Chief Custodial Officer to all Prison Directors that trans prisoners were only to share cells with other trans prisoners. This is in line with the Chief Executive's instructions issued on 1 December 2010 on the use of shared cells.

Recommended approach: single cell accommodation is the presumed approach but trans prisoners are permitted to share cells with other trans prisoners of the same biological sex only

- 35 Trans prisoners are a vulnerable population and it is important that their privacy is ensured. While the privacy of all prisoners is compromised when placed in a shared cell, there is the potential for it to be more detrimental for trans prisoners who may have physical variations during transition, and may be uncomfortable with

- 39 The sex of the staff member conducting personal searches on trans prisoners is currently dependent on the prison that the prisoner is in. It is therefore not related to the prisoner's identified gender or their biological gender. By way of example, a male to female trans woman in a men's prison is searched by male officers. A male to female trans woman in a woman's prison is searched by female officers.

Recommended approach: trans prisoners are searched and urine tested in line with their gender identity unless agreed otherwise

- 40 This approach is a significant change to current policy in that trans prisoners housed in the prison that aligns with their biological sex and not their gender identity, would usually be searched by officers of the same sex as their gender identity. For example, a male to female trans woman housed in Auckland Prison would be searched by female officers.
- 41 While being searched by an officer of the same sex as the prisoner's gender identity would be the starting point, an alternative agreement can be reached, i.e. a trans prisoner can ask to be searched by officers of their biological sex. There could be a range of reasons for this request, for example that they are in the initial stages of their physical transition.

How the option would work

- 42 The way this option would work is that searching, and urine testing, would be a subject that must be covered in the safe management meeting. The starting position would be as described above, however discussion with the prisoner could result in a different outcome being recorded in their safe management plan. The safe management plan, including searching arrangement, must be approved by the Prison Director.
- 43 For initial searches, for example the mandatory strip search on arrival, the prisoner will be asked discretely about their gender identity if the prisoner's gender is unclear to officers on reception. The presumption is the same in this scenario; that they are strip searched by an officer of their gender identity, but the process should be discussed with the prisoner who can elect otherwise. If staff are unsure of the prisoner's expressed gender identity, they should take steps to ascertain their gender identity. These steps should include looking on any IOMS profile that exists, assessing their physical appearance, consulting with Health Services and consulting with Police who managed them while in their custody.

Rationale

- 44 The status quo only recognises a trans prisoner's gender identity when their application for a placement review has been approved and they have been transferred to the prison of their gender identity. While a placement review is pending, or even when it has been determined in the prisoner's favour and they are exiting the prison, the prisoner will be searched based on the prison they are in.

This method of determining the sex of the staff member who should search trans prisoners is arbitrary and fails to protect the privacy and dignity of trans people.

- 45 The recommended approach best ensures that trans prisoners are treated with dignity and their gender identity is recognised by staff and the Department. Furthermore, it avoids arbitrary decision making on the basis of location and ensures individual consistency and the ability to adapt approaches as the prisoner navigates their own transition. It is the same approach as that taken by the Police and Customs for these reasons.
- 46 Like any group, trans prisoners are diverse and are at varying stages of transition. There are a range of reasons why trans people may not go through “full transition”. This includes, but is not limited to, the prohibitive cost and lack of availability of the treatment in New Zealand. Differing stages of transition does not reflect an individual’s gender identity and should not disproportionately affect their treatment in line with their gender identity. However, their stage of transition may provide context to their decision to seek a placement review and how this is considered by the Chief Executive. Additionally, it could affect who they feel most comfortable with conducting personal searches on them.

Challenges of the recommended option

9(9(2)(h) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

48 When England and Wales and Scotland brought in their searching policies, which are in line with the recommended option, staff expressed concerns. However, both jurisdictions have reported that these issues were comprehensively addressed through education, training and honest discussion. Both had informal training sessions, particularly with staff who expressed the most concern, with England reporting sessions which were “doors closed, everything on the table” were particularly useful for changing staff attitudes and understanding their concerns.

49 Both jurisdictions are now some years from having introduced their policies and they are now imbedded in the prison estate, with individual staff concerns being addressed through line managers and Prison Governors. All staff undertake mandatory equality and diversity training which covers a range of issues as well as managing trans prisoners. Similar training is delivered by the New Zealand Police.

Options considered but discounted for searching and urine testing

50 Three further options were considered but discounted relating to strip searching trans prisoners. Those options are summarised below.

- Trans prisoners will be searched and urine tested by officers in line with the prison they are in (if they are in a men's prison they will be searched and urine tested by male officers, if they are in a women's prison they will be searched and urine tested by female officers). This is the status quo and fails to recognise trans prisoner's gender identity, including those who are prohibited from applying for a placement review and those who chose not to for various reasons. 9(2)(h)

[REDACTED]
[REDACTED]
[REDACTED]

- Trans prisoners will be searched and urine tested in line with their biological sex (if they are a biological male they will be searched by male officers, if they are biologically female they will be searched by female officers). This would represent a regression in our policy on the management of trans prisoners. The option fails to protect trans prisoner's dignity, even more so if they are significantly through their transition, or even fully through their physical transition. 9(2)(h)

- Trans prisoners will be searched and urine tested in line with the Chief Executive's placement determination (if the Chief Executive has determined the prisoner should be placed in the prison which aligns with their gender identity, officers of the same sex as their gender identity will search and urine test them).

9(2)(h)

[REDACTED], it does not protect trans prisoners dignity and privacy to the same extent as the recommended option, and still carries the likelihood of concern from staff.

Clothing and appearance

51 People who identify as trans are likely to utilise personal items to maintain the appearance of their identified gender. Alongside clothing, common items include cosmetics, hair removal cream, breast binders and prosthetics. Access to these items is important for trans people to manage their gender appearance, and maintain their gender identity.

52 Prisoners are allowed access to items in prison which are specified in the Authorised Property Rules (the Rules) made under section 45 of the Corrections Act 2004. Any purchases made through the P119 purchasing system are approved by the Rules via a general provision. Prisoners can request to use funds from their trust account on other purchase, but anything they apply for must also be approved by the Rules and approved by a Principal Corrections Officer (or above).

Recommended approach: trans prisoners have access to the items and clothing they need to maintain their gender identity

53 This approach would see trans prisoners' being able to maintain their gender appearance through the use of personal items that they would utilise outside prison. However, access to these items would be dependent on the ability to ensure the safety and security of prisoners and staff if those items are introduced.

Items

54 In relation to the P119 ordering system, there are two different approved P119 lists, one for women's prisons and one for men's prisons. The women's P119 contains a range of "gender specific" items which are not included on the men's P119. These items are hair ties, tweezers, mascara, lip stick and hair dye. Trans prisoners in men's prisons do not have access to these items but all prisoners in women's prisons do have access to these items.

55 In May 2016, Prison Directors considered the addition of the above items to the men's P119. However, they made a decision which is contrary to the recommended approach to this aspect of trans prisoner's management. While they approved the addition of face wash and emery boards they did not approve hair ties, tweezers, mascara or lip stick. They did not consider hair dye.

56 9(2)(h)

57 Despite Prison Director's decision not to add items to the P119, prisoners are able to apply to expend funds from their trust accounts and this system can be used to ensure trans prisoner's access to these items. Which items the prisoner would like access to should be discussed with them at their safe management meetings, and reviewed alongside the entirety of the plan. As with all other aspects, the safe management plan will be approved by the Prison Director.

58 Guidance will be provided to Prison Directors about what to consider when making a determination of whether a trans prisoner should have access to the items applied for. These items are likely to be cosmetics and hygiene products.

59 Items such as breast binders and prosthetics are not currently authorised through the Rules. However, they are items that are important to enable trans people to maintain their gender appearance. The use of these items depends on the trans person's stage of transition. The recommended approach is therefore that access to these items is determined by Health Services. To put this into practice the Rules will need to be amended and guidance will need to be developed for health staff on the assessment of trans prisoners need for access to items to maintain their gender identity.

Clothing

- 60 Aside from remand prisoners, prisoners in New Zealand are usually required to wear clothing issued by the prison. This clothing is “unisex” and no changes need to be made to its provision through this work. Remand prisoners should be permitted to dress in a manner which allows them to maintain their gender identity if they chose to do so. Strategies should be put in place, and discussions should continue, if unit staff believe that the prisoner’s safety is at risk if they dress in line with their gender identity.

Escorts and transfers

- 61 The current operational policy in POM states that trans prisoners should be escorted “like with like,” this extends to trans prisoners.

Recommended approach: trans prisoners should be escorted in single cell vehicles, exceptions can be made if they are placed on a reintegrative temporary removal with other prisoners

- 62 Trans prisoners should always be escorted in a single cell vehicle to ensure their safety. While single cell vehicles are the norm for escorting prisoners on temporary removals from prison, pool cars are used for reintegrative temporary removals and can be used for more than one prisoner. The most common example of this is shopping trips from self care units, and in the near future will include guided release. A trans prisoner should not be excluded from these reintegrative activities by virtue of their gender identity. It is recommended that the Custodial Systems Manager be able to determine, as with all other temporary removals, whether it is safe and appropriate for a trans prisoner to be escorted in a vehicle with other prisoners. This will ensure trans prisoner’s equitable access to rehabilitative and reintegrative activities.

Support required from trans organisations

- 63 Support from trans organisations is a recurring theme in other jurisdictions’ guidelines for the management of trans prisoners, and frequently referenced in the Human Rights Commission inquiry. There is some support already in place. Mount Eden Corrections Facility and Auckland South Corrections Facility both have trans consultants who conduct support groups and other work with trans prisoners. The three women’s prisons will soon have an on-site social worker and counsellor who will be able to provide some support to trans prisoners depending on their needs.

Recommended approach: trans prisoners are aware of, and have access to, support from trans organisations

- 64 The action plan specified that a network of support should be established for trans prisoners. This work has been commenced by the Chief Custodial Officer and the Director Offender Health. Prior to the implementation of the management

guidelines it is recommended that support networks be in place including a directory of contacts for both prison staff and trans prisoners to seek advice and help from.

- 65 External support from trans organisations should be discussed at the initial safe management meeting and staff should work to ensure that the support requested is put in place for the prisoner.

Education, training and culture change

- 66 This proposed changes outlined in this paper will, if approved, be a significant culture change for custodial staff and are will attract union attention and concern. For this new approach to be successful there needs to be comprehensive education and training, alongside consultation, delivered to all custodial staff, and the policy needs to be championed by managers. Such training could also encompass training and raising awareness of issues faced by same and both sex attracted people, and managing other diversities in the prison estate. It is imperative that this training is delivered by experts alongside Departmental staff.

- 67 Learning & Development have been engaged in this work and have provided the comment below on their proposed approach:

- There are two elements to the successful implementation of a learning approach in this area. Firstly a knowledge transfer and then a behavioural change programme along side each other. The first relates to any new process and policy that is created to support the effective care of trans prisoners. This will be a didactic approach and will involve a practice development session for those staff who support trans people through their sentence.
- The second element relates to an organisational culture change and requires connecting people's hearts and minds to trans people. This would be achieved through a communications and awareness plan. A series of collateral to raise awareness would be developed along side the non profit groups that surround and support the LGBT community. This would involve posters, flyers, video content and webinars with guest speakers. This will help our prison culture understand and better empathise with working with a diverse group of individuals. This may also cover an understanding of the Rainbow Competency Model and the Bisexual umbrella. The key underpinning idea that people who identify as trans should be included and respected will come through strongly.
- To ensure this work is correctly designed and delivered an existing government working group will be initially consulted and a workshop will be held to create a focus. Working along side the Chief Custodial Officer's team we will ensure that a fit for purpose practice development session is created and working along side Organisational Development to design and push out content. A month will be focused on in mid 2017 potentially May, to drive this awareness programme and launch the PDS.

Next Steps

- 68 Following approval by ELT, wide internal and external consultation should then be commenced prior to a final policy and plan being submitted to ELT.
- 69 The trans rights movement has been gaining momentum in New Zealand and across the world over the last 5 years. There are now a number of community services and pressure groups which have been set up to lobby government, and to support trans people, in particular trans youth.
- 70 Any change to the Department's approach to managing trans people in prison will attract the attention of these groups. They are also a key source of expert guidance to ensure our approach is representative of best practice and will work to support trans prisoners appropriately. Therefore, alongside extensive internal consultation a range of external groups and agencies will be consulted on the contents of our new approach. This will include the groups and agencies indicated below:
- Agender
 - Pride Auckland
 - Ara Taiohi
 - RainbowYouth
 - JustSpeak
 - No Pride in Prisons
 - New Zealand Police
 - Ministry of Social Development
 - Ministry of Justice
 - Human Rights Commission
 - Office of the Ombudsman
 - Unions – CANZ, PSA, NZNO
 - Trans prisoners

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Appendix A

Comparison of the management of trans prisoners in New Zealand and other jurisdictions

Management aspect	Country	Operational policy	New Zealand comparison
Reception and induction	New South Wales, Australia	<ul style="list-style-type: none"> ➤ During induction screening transgender prisoners are kept separate from other prisoners in their own cell and have access to their own shower and toilet in private. ➤ A full “social history” is taken for all transgender prisoners during induction. It is used to determine their particular needs, their placement and programme pathway. 	<ul style="list-style-type: none"> ➤ There is no specific mention of transgender prisoners in the induction guidelines apart from the guidance relating to initial determination of a prisoner’s gender and placement decision
	Scotland	<ul style="list-style-type: none"> ➤ Guidance states that a transgender prisoner’s treatment should not be dependent on whether the prisoner has formal recognition of their acquired gender under the Gender Recognition Act or not, or whether they are applying. They must still be treated as a transgender prisoner for all purposes. ➤ On reception the prisoner is to be rubbed down as per normal procedure. However, a transgender prisoner is to be rubbed down in accordance with their social gender (the gender in which they live day to day). If there is uncertainty the prisoner is to be asked which gender they wish to be searched by, this conversation is to be recorded and the search conducted accordingly. ➤ At risk of self harm and suicide status is to be assessed on an individual basis. There is acknowledgement that transgender prisoners are at higher risk than the general population of self harm and suicide but the risk assessment must be individual. ➤ Only in “exceptional circumstances” can restrictions be placed on unsupervised access to additional gender reassignment related property. Where these exceptional circumstances do apply, for example if the prisoner is determined to be at risk of self harm or suicide, they must still have supervised access to these items for association. ➤ Scotland has “first night accommodation” to settle prisoners into prison. Transgender prisoners are permitted longer stays in “first night accommodation” than other received prisoners. 	
Case management and management plans	Scotland	<ul style="list-style-type: none"> ➤ Scotland has implemented a particular form of multi-disciplinary case management for transgender prisoners. It can be integrated into regular case management so long as the relevant issues are addressed. ➤ The MDT includes, among others, the prisoner, their personal officer, 	<ul style="list-style-type: none"> ➤ There is no specific mention of different case management or safety planning for transgender prisoners.

Note: this document does not look at policies which relate to the placement of transgender prisoners

Appendix A

Comparison of the management of trans prisoners in New Zealand and other jurisdictions

		<p>representatives from transgender organisations if wanted by the prisoner and the local equality and diversity manager.</p> <ul style="list-style-type: none"> ➤ A case conference is held within 7 days of the reception of the transgender prisoner, or within 7 days of becoming aware that the prisoner has a different gender identity to their biological identity. ➤ Case conferences are to be held monthly for three months, then quarterly. If issues are resolved the conferences can then be held 6 monthly. ➤ The purpose of the case conferences is to examine all the circumstances of the transgender prisoner's case, and to gather the prisoner's views and wishes in relation to their management. The case conference is required to seek expert opinions from the medical specialist treating the transgender prisoner at the NHS Gender Identity Clinic. ➤ Full risk assessments are conducted and decisions are made to ensure that: <ul style="list-style-type: none"> ○ the prisoner's safety, dignity and privacy are ensured, especially as the prisoner progresses through their transition. This including ensuring safety, dignity and privacy through accommodation and searching decisions; ○ the prisoner is provided with access to necessary additional property; ○ the prisoner's access to gender reassignment services under the NHS; ○ the prisoner has access to social support and contact and mental health support; ○ the prisoner has equitable access to mainstream services; ○ inter-prison transfers are managed appropriately if necessary; and ○ reintegration is appropriately managed. 	
	<p>England and Wales</p>	<ul style="list-style-type: none"> ➤ Transgender prisoners must have a management care plan outlining how their safety will be managed. Advice must be sought from the NOMS Equalities Group or Women's Team. ➤ Transgender prisoners are encouraged to enter an individualised voluntary compact (agreement) with the prison which details how they will be managed while in prison. The compact covers: <ul style="list-style-type: none"> ○ Accommodation 	

Note: this document does not look at policies which relate to the placement of transgender prisoners

Appendix A

Comparison of the management of trans prisoners in New Zealand and other jurisdictions

		<ul style="list-style-type: none"> ○ Showers ○ Laundry ○ Dress code ○ Employment ○ Offending behaviour ○ Facilities list ○ Monthly review ○ Named liaison/personal officers/key workers ○ Support ○ Searching <p>➤ Transgender prisoners can apply to have their recorded name changed.</p>	
Cell accommodation	New South Wales, Australia	<ul style="list-style-type: none"> ➤ Access to the same accommodation and classification system as their identified gender. ➤ Single cell accommodation is to be made available unless case management indicates that shared accommodation is required. ➤ Transgender prisoners must be provided with separate toilet facilities and allowed to shower separately. ➤ Transgender prisoners are to be “clustered” where possible and separate accommodation may be provided so long as they continue to have equitable access to services and programmes. 	<ul style="list-style-type: none"> ➤ Guidance currently states that transgender prisoners may be placed in shared cell accommodation with another transgender prisoner, or in single cell accommodation. If the prisoner chooses and it is safe to do so they may be accommodated with a prisoner who is not transgender. ➤ In May 2016 a direction went out to Prison Directors from the Chief Custodial Officer that transgender prisoners were only to be accommodated in cells with other transgender prisoners
	Scotland	<ul style="list-style-type: none"> ➤ Must be placed in single cell accommodation unless the Unit Manager has carefully assessed that shared cell accommodation is sufficiently safe and provides sufficient privacy for the transgender person and the person they are sharing a cell with. ➤ Association restrictions are to be avoided where possible. ➤ Case management of transgender prisoners is intensive with conferences required at intervals. All case management decisions are discussed including cell accommodation. More detail is provided on this process is provided above. 	
	England and Wales	<ul style="list-style-type: none"> ➤ Cell sharing is permitted. There is a commitment that the accommodation provided will afford “the maximum amount of privacy possible whilst still providing access to a full regime.” ➤ Cell sharing will be done on an individual risk assessment basis which 	

Note: this document does not look at policies which relate to the placement of transgender prisoners

Appendix A

Comparison of the management of trans prisoners in New Zealand and other jurisdictions

		includes consideration of specific vulnerabilities.	
	United Nations Handbook on prisoners with special needs	<ul style="list-style-type: none"> ➤ Transgender prisoners should be placed in whatever environment that best protects their safety. ➤ Transgender prisoners should never be in cells with prisoners who may pose a risk to their safety. ➤ The prisoner's views and concerns should be taken into account when making placement decisions ➤ Protective segregation should be immediately available when requested 	
Person searching	New South Wales, Australia	<ul style="list-style-type: none"> ➤ All searching and urinalysis must be performed by officers of the prisoner's gender identification "except in the cases of emergency." 	<ul style="list-style-type: none"> ➤ There is no specific guidance relating to transgender prisoners ➤ Section 94 of the Corrections Act 2004 requires that rub down searches and strip searches are only carried out by a person of the same sex as the person to be searched, and no strip search may be carried out in view of any person who is not of the same sex as the person being searched. In practice, this is currently interpreted in relation to the prison that the transgender prisoner is held in as opposed to their gender identity or their biological sex/genital appearance. Therefore, if the transgender prisoner is held in a men's prison their personal searches will be conducted by men. If they are held in a women's prison their personal searches will be conducted by a women. ➤ Section 94 also stipulates that a person who carried out a scanner search, rub down search, strip search or x-ray search must conduct the search with decency and sensitivity and in a manner that affords to the person being searched the greatest degree of privacy and dignity consistent with the purpose of the search.
	Scotland	<ul style="list-style-type: none"> ➤ Case management conference will review the prisoner's individual circumstances to determine appropriate and safe searching of the prisoner and discuss staff training requirements if necessary. ➤ Prior to the first case management conference searching must occur in accordance with the prisoner's social gender. If there are any difficulties experiences or concerns expressed during this time by the prisoner or staff the Unit Manager should decide how best to temporarily deal with the difficulties and record this outcome. Advice can be sought from the headquarters Equality and Diversity Team. ➤ The general principles to guide case conference decisions are: <ul style="list-style-type: none"> ○ Searching should happen in accordance with the prisoner's "social gender". A prisoner's social gender is the one they live in day to day. If the If the prisoner's social gender is unclear staff are directed to ask them in a discrete manner (this should have happened by the time of the case conference). ○ Genital appearance should not be used to determine search requirements. ○ If a prisoner is going to be searched not in accordance of their social gender, the rationale must be recorded. ➤ Staff are guided that: <ul style="list-style-type: none"> ○ Any physical variation is to be responded to professionally and respectfully ○ Extra items worn by transgender prisoners to assist their gender appearance, such as prosthetics and chest bindings, are to be searched carefully 	

Note: this document does not look at policies which relate to the placement of transgender prisoners

Appendix A

Comparison of the management of trans prisoners in New Zealand and other jurisdictions

		<ul style="list-style-type: none"> ○ Sufficient time is to be provided at the end of searches to replace the items required for their identified gender appearance and a mirror is to be provided if required. ➤ Staff concerns about performing searches on transgender people should be initially addressed through staff training and information about gender reassignment and equality requirements. ➤ A guide about strip searching transgender prisoners has been drafted for provision to staff in the first instance. 	<p>New Zealand Police and New Customs</p> <ul style="list-style-type: none"> ➤ NZ Police also have powers to conduct personal searches. Their policy is to ask the transgender person which gender they would feel comfortable with conducting the search. If the person does not express a preference they determine the person's sex on the basis of appearance and clothing and conduct the search accordingly. Biological or birth gender is not the determinative factor. ➤ New Zealand Customs also has powers to conduct personal searches. Where the person is transgender, they may specify the gender of the searcher.
England and Wales		<ul style="list-style-type: none"> ➤ Transgender prisoners are encouraged to enter a voluntary "compact" (agreement) with the prison in respect of their searching arrangements. This happens as part of a wider consultative approach to case management of transgender prisoners. The prisoner's wishes must be sought and taken into account as well as appropriate external advice. ➤ The Governor of the prison must decide if the agreed compact is suitable taking into account legal considerations, whether the prisoner has a gender recognition certificate, the sex characteristics of the prisoner, the views of the prisoner and staff and the likelihood of the prisoner cooperating with the voluntary compact. There is guidance on drawing up a compact, the most important factors are whether the prisoner is in receipt of a gender recognition certificate and at what stage in their transition the transgender prisoner is. ➤ A guidance table for the drawing up of the compact is attached. Essentially, the first step is a consultative approach with the prisoner. As a final resort, if the prisoner insists on being searched by officers of their acquired or identified gender that will normally occur. 	
Canada		<ul style="list-style-type: none"> ➤ Individualised arrangements are put in place for searching transgender prisoners through consultation with the prisoner. ➤ These arrangements are written down in a protocol. A sample protocol is provided for reference. 	
United Nations Handbook on special needs prisoners		<ul style="list-style-type: none"> ➤ There should <i>always</i> be a justification for carrying out a strip search on any prisoners ➤ Transgender prisoners should be provided with a choice regarding the gender of the person conducting the search. Prison authorities must ensure the search is conducted by the appropriate gender of officer to ensure minimum interference with personal dignity. 	

Note: this document does not look at policies which relate to the placement of transgender prisoners

Appendix A

Comparison of the management of trans prisoners in New Zealand and other jurisdictions

Clothing and other personal items	New South Wales, Australia	<ul style="list-style-type: none"> ➤ Transgender prisoners have the right to dress at all times in clothing appropriate to their gender identification, whatever prison they are housed in. ➤ Corrections are obliged to provide the transgender prisoner with appropriate clothing for their identified gender, including gender specific underwear. ➤ If the prisoner is housed as per their biological gender, they are able to purchase the same “personal care” items as prisoners of their identified gender. 	<p>Clothing</p> <ul style="list-style-type: none"> ➤ There are no specific national guidelines on the transgender prisoners’ clothing. ➤ Remand accused prisoners cannot be required to wear clothing or footwear required by the prison (regulation 68(3)). By implication transgender remand accused prisoners have a right wear their gender appropriate clothing, including underwear. ➤ In addition, if the prisoner’s own clothing is generally insufficient or unfit for use, the manager of the prison must require the prisoner to wear clothing provided by the prison. There is nothing to specify that this clothing should be gender appropriate when provided. ➤ Prison issued clothing is unisex and women’s underwear is provided to women’s prisons through donations. Christchurch Women’s Prison sews their own when there is a need. ➤ The authorised property rules do not make gendered distinctions for clothing. ➤ There is potential for local policies relating to transgender women housed in men’s prisons to prohibit their use of gender appropriate clothing and underwear. <p>Personal items</p> <ul style="list-style-type: none"> ➤ There is no specific allowance for transgender prisoners to possess items needed to present convincingly in their identified gender (such as breast binders/prosthesis) in the authorised property rules. ➤ Personal grooming and health care items are available to purchase through the
	Scotland	<ul style="list-style-type: none"> ➤ Suitable access is to be provided to additional property items required to maintain their acquired gender appearance. It is specified that this is not to be viewed as “special treatment” but is an accessibility requirement. ➤ An list of example items the transgender prisoner may require is provided, but is specified as not exhaustive: <ul style="list-style-type: none"> ○ clothing and underwear ○ sanitary wear ○ shaving equipment ○ hair removal cream ○ facial cosmetics ○ breast binders ○ wigs and hair pieces ○ prosthetics (breasts/genitals) ○ dilation medical supplies ➤ Case management of transgender prisoners is intensive with conferences required at intervals. All case management decisions are discussed including clothing and personal items. 	
	England and Wales	<ul style="list-style-type: none"> ➤ Transgender prisoners are permitted to dress appropriately for their nominated gender. Female prisoners in England and Wales do not wear prison uniforms but wear their own clothes. This means that transgender women in men’s prisons do not wear prison uniform. ➤ Items required to present as their identified gender are permitted and can only be prohibited where it can be demonstrated that they present a security risk which cannot be mitigated. ➤ All transgender prisoners can use make up to present more 	

Note: this document does not look at policies which relate to the placement of transgender prisoners

Appendix A

Comparison of the management of trans prisoners in New Zealand and other jurisdictions

		convincingly as their identified gender, this access cannot be restricted.	<p>P119 system. The women's P119 has the following items which are not on the men's P119:</p> <ul style="list-style-type: none"> ○ Facial wash ○ Hair ties ○ Emery board ○ Tweezers ○ Mascara (black) ○ Lipstick (baby pink and pink blast) ○ Hair dye (black, chocolate brown, medium blonde) ○ Women's razors and razor blades (only for women housed in low security units) <p>➤ Prison Directors have permitted (in the week of 16 May 2016) adding the facial wash and emery board to the men's P119. They declined to add the other items.</p>
Escorts and transfers	New South Wales, Australia	<ul style="list-style-type: none"> ➤ During the induction screening process transgender prisoners must be kept separate on escorts ➤ Male to female transgender prisoners in women's prisons and female to male transgender prisoners in women's prisons may be escorted with other women, so long as there are so safety and security concerns ➤ Male to female transgender prisoners housed in men's prisons and female to male transgender prisoners housed in men's prisons must be kept separate during escorts <i>"to avoid the risk of physical or sexual assault by other inmates"</i>. 	<ul style="list-style-type: none"> ➤ The prisoner separation matrix specifies that transgender prisoners may only be escorted with other transgender prisoners. Transgender is listed under "female" prisoners who need to travel "like with like."
	Scotland	<ul style="list-style-type: none"> ➤ No specification regarding escorts ➤ If it is proposed that the prisoner is to be transferred the case conference will explore how the transfer would be accommodated and considerations are given to make this determination. Where the case conference has concerns about the transfer they must seek clarification of the reasons for the transfer and determine strategies to prevent the transfer from occurring. 	

Note: this document does not look at policies which relate to the placement of transgender prisoners

Appendix A

Comparison of the management of trans prisoners in New Zealand and other jurisdictions

Miscellaneous and general	New South Wales, Australia	<p>Equitable access, sensitivity and respect</p> <ul style="list-style-type: none"> ➤ Transgender prisoners are to be provided with equitable access to rehabilitative and reintegrative services. ➤ Transgender prisoners are to be provided with access to services to meet specific needs, for example access to community transgender and legal services with specialised transgender knowledge. ➤ Transgender prisoners must be referred to by their identified gender name and corresponding pronouns. All unit records must reflect their identified gender name and corresponding pronouns. This is regardless of the name that appears on their file 	<ul style="list-style-type: none"> ➤ The bulk of the guidance we have about transgender prisoners related to their prison placement. There is no guidance above and beyond the regular guidance about vulnerable grounds and ensuring safety and security. ➤ Limited staff training is provided on issues of diversity.
	Scotland	<p>Information sharing and confidentiality</p> <ul style="list-style-type: none"> ➤ Clear guidance is provided on information sharing in relation to the prisoner's gender identity. The guidance states that such information should only be shared with staff with the permission of the prisoner, or without the permission of the prisoner if it is essential to "manage the risk of crime." ➤ Guidance is provided on information sharing with other agencies. An integrated approach is encouraged with the court service and police indicating that it is good practice for those services to notify prisons in advance if they are likely to receive a transgender prisoner. Services should take the opportunity to co-ordinate their response to ensure consistency in terms of respecting the prisoner's name, consistency of medical assistance, property provision, and mental health care and risk assessments. <p>Sensitivity and respect</p> <ul style="list-style-type: none"> ➤ The guidance is prefaced on six values: belief that people can change, respect for individual's needs and their rights, integrity, openness, courage and humility. ➤ The guidance states that professionalism and sensitivity are to be maintained at all times in response to transgender prisoners. ➤ The prisoner's gender identity and corresponding name must be used and respected. <p>Staff training</p> <ul style="list-style-type: none"> ➤ Staff training on transgender and associated issues is recommended. <p>Requests for assistance</p> <ul style="list-style-type: none"> ➤ Prisoner requests for assistance in relation to their gender identity must 	

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	England and Wales	<p>be taken seriously. The prisoner must be urgently provided with the opportunity to discuss their issues in private and away from others in custody.</p> <p>Sensitivity and respect</p> <ul style="list-style-type: none"> ➤ Statement at the beginning of the guidance that prisons must permit prisoners who consider themselves transgender and wish to live in their identified gender to do so permanently. ➤ Must refer to transgender prisoners with their identified name and corresponding pronouns. <p>Harassment and staff training</p> <ul style="list-style-type: none"> ➤ Prisons must put measures in place to manage transphobic harassment ➤ The guidance advises that it is helpful for sties to have education and training about gender reassignment and prevention of transphobia for staff 	
	United Nations Handbook on prisoners with special needs	<p>Policies and strategies</p> <ul style="list-style-type: none"> ➤ Prison authorities need to develop policies and strategies to ensure the maximum possible protection of transgender prisoners and which facilitate their social reintegration in an effective manner. ➤ Management guidelines need to make absolutely clear that discrimination on the basis of actual or perceived gender identity will not be tolerated. <p>Information sharing</p> <ul style="list-style-type: none"> ➤ Guidance should emphasise the right to confidentiality regarding gender identity <p>Consultation</p> <ul style="list-style-type: none"> ➤ Community representatives of LGBT groups should be consulted on any policies and strategies <p>Monitoring</p> <ul style="list-style-type: none"> ➤ Measureable standards should be developed to assess and evaluate the outcome of strategies and practices <p>Staff training</p> <ul style="list-style-type: none"> ➤ Prison authorities should have staff training which includes awareness raising about transgender prisoners and the special needs that they may have 	

Note: this document does not look at policies which relate to the placement of transgender prisoners

		<p>Equitable access</p> <ul style="list-style-type: none"> ➤ Equitable access to programmes should be provided and in those programmes the prisoner should be protected from violence or abuse ➤ Rape prevention programmes should be established ➤ Counselling programmes for transgender prisoners should be established ➤ Community organisations should be encouraged to visit and implement programmes, including to raise awareness of transgender prisoners and issues among other prisoners and staff. Support should also be sought from these organisations, especially if prisoners do not have contact with their families <p>Complaints</p> <ul style="list-style-type: none"> ➤ An effective, accessible and confidential complaints system is a key component to ensure the safety of transgender prisoners 	
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Appendix B Proposed safe management guidelines for trans prisoners

Introduction and directory of terms

- 1 Being trans is not a lifestyle and is not a choice. The management and treatment of trans people in custody must reflect that fact.
- 2 A directory of terms relating to trans identity is provided below for reference and understanding.

Term	Definition
Sex / biological sex	Usually refers to a person's biological make up defined as "male" or "female" and including indeterminate sex
Gender	The social and cultural construction of what it means to be a man or a woman
Gender identity	A person's internal, deeply felt sense of being male or female, or something in between. A person's gender identity may not correspond with their sex.
Gender expression	How someone expresses their sense of masculinity and/or femininity externally
Intersex	A general term used for a variety of conditions in which a person is born with reproductive or sexual anatomy that does not seem to fit the typical biological definitions of female or male. Some people identify as "intersex".
Wakawahine, Hinehi, Hinehua	Te Reo Māori terms which describe someone born with a male body who has a female gender identity
Tangata ira tane	Te Reo Māori term describing someone born with a female body who has a male gender identity
Trans	A person whose gender identity is different from their physical sex at birth
Transsexual	A person who has changed, or is in the process of changing, their physical sex to conform to their gender identity
MtF / trans woman / queen	Male-to-female / someone born with a male body who has a female gender identity
FtM / trans man	Female-to-male / someone born with a female body who has a male gender identity
Fa'afafine, Fakaleiti, Akava'ine, Mahu, Vaka sa lewa lewa, Rae rae, Fafafine	Terms that Pasifika trans and "third sex" people use to describe themselves. They also have wider meanings that are best understood in a cultural context.
Genderqueer	People who do not conform to traditional gender norms and express a non-standard gender identity. Some may not change their physical sex or cross dress, but identify as genderqueer, gender neutral or androgynous.
Trans	A generic term to describe people whose gender identity does not completely align with their physical sex. This term recognises the diversity of trans people.
Gender reassignment services	The full range of medical services that trans people may require to medically transition including, counselling, hormone treatment, electrolysis, internal surgeries (such as mastectomy or hysterectomy) and a range of genital

Appendix B Proposed safe management guidelines for trans prisoners

	reconstruction surgeries
Transitioning	Steps taken by trans people to live in their gender identity. These often involve medical treatment to change one's sex through hormone therapy and may involve gender reassignment/realignment surgeries

- 3 Trans prisoners' treatment and management should not depend on whether the prisoner has sought formal recognition of their identified gender or whether they have undergone surgery or other medical intervention to change their physical appearance.
- 4 Trans prisoners must be referred to by their preferred identified gender name and corresponding pronouns. File notes and other unit records should reflect this, regardless of the prisoner's recorded name on IOMS.

Reception and induction

- 5 [Placement guidance already exists in POM]
- 6 Staff must discuss placement options with all prisoners who are trans, or where a prisoner's gender is unclear. This discussion should be approached by staff with sensitivity and respect for the prisoner's wishes and views.
- 7 The discussion about a trans prisoner's placement must take place as soon as possible following staff becoming aware that the prisoner identifies as trans, or the prisoner's gender identity is unclear.
- 8 The content of these discussions and the prisoner's decision to apply, or not apply, for review of their initial placement must be recorded as a file note in IOMS.

Initial personal searches

- 9 If a prisoner's gender is unclear on initial reception, the prisoner should be asked discretely about their gender identity and the searching process should be discussed with them.
- 10 The trans prisoner's view on who they would be most comfortable searching them should be identified. The presumed position is that trans prisoners are to be rubbed down and strip searched by officers of the same sex as the prisoner's gender identity. This applies regardless of whether they are in the prison of their identified gender or not.
- 11 If the prisoner expresses that they would prefer to be searched by officers of their biological sex, this view should be recorded in an IOMS file note and the search should be carried out in line with the prisoner's wishes.

Planning safe management

- 12 Regardless of whether a trans prisoner is accommodated in the prison of their gender identity, the Principal Corrections Officer and the prisoner's Case Officer must hold a safe management discussion with the prisoner within the first 7 days of their reception, or of becoming aware that the prisoner identifies as trans.
- 13 The content of the safe management plan must be approved by the Prison Director.

Appendix B Proposed safe management guidelines for trans prisoners

- 14 The purpose of the conversation with the prisoner is to ensure the prisoner's safe and appropriate management by:
- gathering the prisoners views in relation to their safety and management;
 - discussing options about aspects of their management; and
 - formulating a safe management plan for the prisoner.
- 15 A safe management plan may not be necessary in the circumstances where the prisoner and staff have no concerns about the prisoner's management and safety. For example, where a prisoner has fully transitioned to their identified gender and is not vulnerable in the prison they are housed in. This is a decision for the Prison Director. If a safe management plan is deemed not necessary by the Prison Director this decision and rationale must be documented in an IOMS file note.
- 16 If a safe management plan is not deemed necessary, the initial safe management conversation should still occur and the management of the prisoner should align with the guidance provided below.
- 17 If the prisoner refuses to engage in the safe management planning process staff should still meet to discuss the prisoner's management. They should formulate a plan for staff to follow on the basis of the information they have available to them.
- 18 All parties relevant to the prisoner's management should be involved in the conversation. At a minimum the resulting safe management plan should be forwarded to the prisoner's case manager.
- 19 The safe management plan should cover aspects of the prisoner's management detailed in the table below. Guidance on appropriate management of these issues is also in the table below.

Management aspect	Considerations
<p>Ensuring safety, dignity and privacy</p> <p>How will the prisoner's safety, dignity and privacy be ensured while they are in this prison?</p>	<ul style="list-style-type: none"> * Ascertain what, if any, concerns the prisoner may have about their safety, dignity and privacy. * Ascertain what, if any, concerns staff may have about this prisoner's safety, dignity and privacy.
<p>Cell accommodation</p> <p>Which unit and cell will the prisoner's safety be best protected in?</p>	<ul style="list-style-type: none"> * In the first instance, trans prisoners should be placed in single cell accommodation. * If two trans prisoners want to be placed in a shared cell together this may be permitted if: <ul style="list-style-type: none"> o both prisoners are assessed by staff through the SACRA tool as suitable to be housed in shared cells; and o staff assess, using the SACRA tool, that they are compatible for sharing a cell.
<p>Association and mixing</p> <p>Are there any safety issues with the prisoner associating with other prisoners?</p>	<ul style="list-style-type: none"> * Restrictions on the association and mixing of trans prisoners should be avoided where possible * If there is reason to restrict or deny a trans prisoner's association with other prisoners, the requirements for segregating prisoners must be followed as normal.
<p>Personal searching and urine testing</p>	<ul style="list-style-type: none"> * Searching arrangements should be discussed with the trans prisoner at the initial safe management meeting. The assumed position is that the prisoner is searched as per their

Appendix B Proposed safe management guidelines for trans prisoners

<p>What searching arrangement will best protect the prisoner's dignity and privacy?</p>	<p>gender identity. This applies regardless of whether the prisoner is housed in the prison of their gender identity or not. However, an alternative agreement can be entered into and recorded on the prisoner's safe management plan if this is more appropriate.</p> <ul style="list-style-type: none"> * Items that the trans prisoner uses to display convincingly as their gender identity should be searched sensitively during a strip search, as with all other items of clothing. The prisoner must be provided with sufficient time after the strip search to replace those items before leaving the search area.
<p>Clothing and appearance</p> <p>What items does the prisoner need to maintain their gender identity?</p>	<ul style="list-style-type: none"> * At all times trans prisoners have the right to dress and appear in clothing and other items appropriate to their gender identity. This is irrespective of the prison they are housed in. * Note that clothing can be prison issued clothing if the Prison Director has required prisoners to wear clothing and/or footwear provided by the prison. * Trans prisoners must be provided with suitable access to items required to maintain the appearance of their gender identity in line with the Authorised Property Rules. * Access to breast binders and prosthesis will be determined by Health Services. * These items can only be withheld from the prisoner if the Prison Director determines that it is a risk to the safety and security of the prison or the prisoner. Attempts should be made to mitigate these risks. * Strategies to manage the wearing of inappropriate clothing, e.g. underwear only, should be considered and documented where necessary.
<p>Escorts and transfers</p> <p>How will the prisoner's safety be ensured during escort?</p>	<ul style="list-style-type: none"> * In the first instance, trans prisoners should be escorted (including on inter-prison transfer) in a single cell vehicle and, therefore, separate to other prisoners. * Trans prisoners may be escorted in a vehicle with other prisoners if the Custodial System Manager determines that it is safe and appropriate to do so in the circumstances. For example, trans prisoners must not be prohibited from reintegrative temporary removals (such as shopping trips from self care units) which use pool cars for transport.
<p>Support required by the prisoner from trans organisations</p> <p>What support does the prisoner need from external organisations?</p>	<ul style="list-style-type: none"> * Trans prisoners should be provided with sufficient and appropriate support from trans organisations. Staff should attempt to put this support in place if requested by the prisoner. * Was the prisoner receiving any support from trans organisations and communities prior to arriving in custody? If so, can that support be arranged to continue?

Review of safe management plan

- 20 The safe management plan should be reviewed on a regular basis to ensure that it continues to be relevant for the prisoner. A trans prisoner's transition may be continuing in the prison environment leading to physical and emotional changes. This may require changes to the safe management plan which should be kept constantly under review.

Appendix B Proposed safe management guidelines for trans prisoners

- 21 At a minimum, the plan should be reviewed with the prisoner 14 days after the first safe management meeting and then at 3 monthly intervals or as requested by the prisoner. Staff can also trigger a review if they believe it is necessary in the circumstances (for example, if the prisoner is experiencing difficulties in the unit/at work/in programmes, there are issues with the prisoner's behaviour or the prisoner has undergone a significant physical or emotional change.)

Staff concerns about personal searching and urine testing of trans prisoners

- 22 If staff have concerns about conducting personal searches on trans prisoners they are to address the issue with the appropriate Tier 5 Manager. The Tier 5 Manager should work to allay the staff member's concerns in any way possible, including through the provision of training and education. If these concerns cannot be allayed and the staff member has genuine and reasonable motivations for not wanting to conduct personal searches on trans prisoners that staff member may be exempt from the duty if the site is able to make other arrangements.

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

03 September 2018

C98063

9(2)(a)

Dear 9(2)(a)

Thank you for your email of 11 July 2018, requesting information about transgender male prisoners. Your request has been considered under the Official Information Act 1982 (OIA).

Managing prisoners' safety is one of Corrections' core functions, and a duty we take extremely seriously. We have a range of policies, processes and tools in place to ensure that concerns about prisoner safety are identified and mitigated. This includes prisoners at risk of self harm, at risk of harm to others and at risk of harm from others.

As at 1 May 2018, there were 33 people in our prisons identifying as transgender. While this accounts for a small percentage of the total prison population, we acknowledge that transgender prisoners are a vulnerable group with complex needs. We have worked hard in recent years to ensure the safety of all prisoners is protected, with regard to the placement and management of transgender persons.

In March 2018, Corrections introduced strengthened policy for the management of transgender prisoners, with a focus on being responsive to individuals and their circumstances.

Transgender is an umbrella term to refer to a person whose gender identity does not completely align with their assigned sex at birth. If it is established that a prisoner identifies as transgender during their initial reception process, or at any other point of their management, an alert is placed on their electronic prisoner file.

In accordance with the new policy, each transgender prisoner now has an individualised support plan and is able to choose the gender of staff who conduct searches. The provision of an individual support plan does not depend on whether the transgender prisoner has legal recognition of their gender identity, or whether they have undergone medical or surgical steps. Custodial staff are also being provided with training material to develop an understanding of gender diversity, with a focus on the use of correct pronouns and appropriate language.

Our new policy regarding the management of transgender prisoners is publicly available, at:

http://www.corrections.govt.nz/resources/policy_and_legislation/Prison-Operations-Manual/Induction/I-10.html.

Alongside the implementation of new policy in prisons, Community Corrections and non-frontline management staff have recently begun intensive diversity training sessions, which focus on building an awareness and understanding LGBTQIA+ terminology, respecting dignity, and being aware of unconscious bias. To date, the diversity training has been delivered to almost 1,100 employees.

The placement of transgender and intersex prisoners in a men's or women's prison, including the process for a review of initial determination of placement, continues to be managed in accordance with existing Prison Operations Manual M.03.05 policy. This is publicly available, at:

https://www.corrections.govt.nz/resources/policy_and_legislation/Prison-Operations-Manual/Movement/M.03-Specified-gender-and-age-movements/M.03-4.html

When reviewing this policy, you may also wish to note that an amendment to the Corrections Regulations 2005 came into effect in February 2014, which established new requirements for determining whether transgender or intersex prisoners should be accommodated in a male or a female prison. Amendments to regulation 190 of the Corrections Act 2005 have the following two elements:

- First, where a prisoner's birth certificate has been amended to record a different sex from that recorded at birth (this currently requires a Family Court order), the prisoner is entitled to be placed in accordance with the revised certificate.
- Second, a transgender prisoner who has not had their birth certificate amended may nevertheless apply to the Chief Executive of the Department of Corrections for placement in accordance with their nominated gender, if they are eligible for consideration. A range of factors will be considered for any application, related to the individual prisoner's commitment to living as a member of their nominated gender, and the safety of that prisoner and other prisoners.

A transgender prisoner whose detention relates to a serious sexual offence against a person of their nominated gender, or who was released from a prison sentence for such an offence within the last seven years, will not be eligible to apply to the Chief Executive.

You have asked:

- *How many trans-identified males are in New Zealand prisons.*
- *How many are in for violent crimes, including sexual assault?*
- *How many trans-identified males are in women's prisons?*

Your first three questions are answered together below.

As mentioned above, transgender is an umbrella term to refer to a person whose gender identity does not completely align with their assigned sex at birth. It is also important to note that some transgender people do not identify as exclusively female or male. Some people may identify as neither gender, or as gender fluid.

As your request focuses on 'trans-identified males' in prisons, each of these questions has been interpreted to relate to transgender individuals who may have been assigned female at birth, but identify as male.

Of the 33 transgender prisoners mentioned above, 26 were housed in a men's prison, and 7 were housed in a women's prison. Two of the transgender prisoners in men's prisons are recorded as identifying as male (although, that is not to say that these individuals were assigned female at birth). One transgender prisoner in a women's prison is recorded as identifying as male.

To date, all reviews of initial determination of placement have been where the transgender prisoner has sought to transfer from a men's prison to a women's prison.

Corrections has balanced your interest in information about the convictions of the three transgender prisoners who identify as male against the privacy interests of the individuals whose personal information is involved.

Due to the small number of individuals in question, we consider releasing information about their conviction histories could lead to their identification. We believe there are strong privacy rights attached to these individuals' personal information in this case. Therefore, information about these three prisoners' conviction histories or current sentences is withheld under section 9(2)(a) of the OIA, to protect the privacy of natural persons, including deceased natural persons.

I can advise, however, that no transgender individual housed at a women's prison (either identifying as male, or female) has been convicted of sexual offences.

- *Since 2017 how many assaults (including sexual assaults) were reported against women by trans-identified persons in women's prisons?*

We have a range of policies, processes and tools in place that ensure that concerns about prisoner safety are identified and mitigated. This includes prisoners at risk of self harm, at risk of harm to others and at risk of harm from others.

There are a variety of ways in which prisoners are able to notify staff of any potential risk to their safety in custody. When in their cell they are able to use a call alarm to alert staff. Prisoners are also encouraged to report concerns directly to staff, via a family member or friend, or by contacting an Inspector, the Office of the Ombudsman or the anonymous crime reporting line Crimestoppers.

A total of six prisoner on prisoner assault incidents occurred in women's prisons from January 2017 to the date of your request, where the prisoner alleged to have committed the assault had a transgender alert.

While no assault is acceptable, it is an unfortunate reality that they do occur from time to time, as we manage some of New Zealand's most difficult and challenging people. Understanding and managing risk is a challenge common to all correctional jurisdictions, and reducing violence in prisons is a priority for Corrections.

You may wish to note that as outlined in Corrections 2016/2017 Annual Report, across the prison estate (which comprises more than 10,000 prisoners at any one time), there were almost 1,500 non-serious/no injury assaults on prisoners and staff, along with 25 serious assaults, recorded for the 12 month period. This includes a considerable drop in the number of recorded prisoner on prisoner assaults compared to the previous year. As such, the number of assault incidents involving a transgender prisoner in a women's prison accounts for a very small proportion of all assault incidents.

Further information about assault incidents in prisons can be found on pages 43-44 and page 84 of Corrections' 2016/17 Annual Report, at:
http://www.corrections.govt.nz/data/assets/pdf_file/0006/898629/Annual_Report_2016-17.pdf

I hope the information provided is helpful. Should you have any concerns with this response, I would encourage you to raise these with Corrections. Alternatively you are advised of your right to also raise any concerns with the Office of the Ombudsman. Contact details are: Office of the Ombudsman, PO Box 10152, Wellington 6143.

Yours sincerely



Rachel Leota
National Commissioner

RELEASED UNDER THE
OFFICIAL INFORMATION ACT 1982

14 September 2018

C99396

9(2)(a)

Dear 9(2)(a)

Thank you for your email of 22 August 2018, requesting further information about recent amendments to Corrections' policy regarding the management of transgender prisoners. Your request has been considered under the Official Information Act 1982 (OIA).

On 22 August, you were provided with an OIA response that included a 32 page paper outlining the development and consultation on proposed guidelines and recommended approaches, which were subsequently developed into Corrections' strengthened policy for the management of transgender prisoners, implemented in March 2018.

Further to this, you have requested:

any correspondence, consultation or policy documents detailing the reasons for the changes made and why certain policies were/ were not included

While we consider the document previously released to you provides a comprehensive overview about this topic, unfortunately, we cannot readily extract the requested information from our electronic records. Correspondence and consultation documents relating to the development of *1.10 Management of transgender prisoners* policy are not centrally collated, and information that may fall within scope of your request would be held by various teams, from several service areas across Corrections.

In order to identify and collate the information you have asked for, we would need to ask a large number of staff to check the records they hold. This information would then need to be manually reviewed to determine whether it would be relevant to your request, and to assess its release in accordance with the withholding provisions of the OIA. This would require significant time and human resource, which would impact on Corrections' core operations.

In accordance with the OIA, we have considered whether to affix a charge or extend the time limit for responding. However, given the scale of the request we do not consider that this would be an appropriate use of our publicly funded resources.

Therefore, this part of your request is declined under section 18(f) of the OIA, as the information cannot be made available without substantial collation or research. As per section 18B we have considered whether consulting the requester would assist to make the request in a form that would remove the reason for the refusal. However, we do not consider that the request could be refined in this instance.

As you are aware, Corrections' policy regarding the management of transgender prisoners is publicly available, at the following links:
http://www.corrections.govt.nz/resources/policy_and_legislation/Prison-Operations-Manual/Induction/I-10.html

http://www.corrections.govt.nz/resources/policy_and_legislation/Prison-Operations-Manual/Movement/M.03-Specified-gender-and-age-movements/M.03-4.html

You have also requested:

current number of trans prisoners, number of incidents of any assaults, and any details about whether there have been complaints from trans prisoners (and if so the general subject matter of the complaint). Obviously some of this information will be private so I was looking more for statistics and broad brush themes as opposed to particulars with names

I have addressed each aspect of your request in turn below.

Transgender prison population

Transgender is an umbrella term to refer to a person whose gender identity does not completely align with their assigned sex at birth. We recognise that some transgender people do not identify as exclusively female or male. Some people may identify as neither gender, or as gender fluid.

As mentioned in Corrections' previous response to you, the provision of an individual support plan does not depend on whether the transgender prisoner has legal recognition of their gender identity, or whether they have undergone medical or surgical steps. A focus of our new policy is being responsive to individuals and their circumstances.

We can provide transgender prisoner population figures relating to a snapshot of the prison population as at 1 May 2018.

On this date, there were 33 people in our prisons identifying as transgender. 26 were housed in a men's prison. Of these, 22 are recorded as identifying as female, two are recorded as identifying as indeterminate, and two are recorded as identifying as male (although, that is not to say that these individuals were assigned female at birth). Of the remaining 7 transgender prisoners housed in a women's prison, six are recorded as identifying as female, and one is recorded as identifying as male.

To date, all reviews of initial determination of placement, which are made in accordance with the Prison Operations Manual M.03-4 policy linked above, have been where the transgender prisoner has sought to transfer from a men's prison to a women's prison. To date, all applications made under this policy have been approved by the Chief Executive.

Assault incidents

We have a range of policies, processes and tools in place to ensure that concerns about prisoner safety are identified and mitigated. This includes prisoners at risk of self harm, at risk of harm to others and at risk of harm from others.

There are a variety of ways in which prisoners are able to notify staff of any potential risk to their safety in custody. When in their cell they are able to use a call alarm to alert staff. Prisoners are also encouraged to report concerns directly to staff, via a family member or friend, or by contacting the Office of the Inspectorate, the Office of the Ombudsman or the anonymous crime reporting line Crimestoppers.

Within women's prisons, four prisoner on prisoner assault incidents occurred in 2017, and two in 2018¹, where the prisoner alleged to have committed the assault had a transgender alert. There were no assault incidents during this period within women's prisons where a transgender prisoner is recorded as the victim.

Within men's prisons, five prisoner on prisoner assault incidents occurred in 2017 involving a transgender prisoner: three where the transgender prisoner was the victim, and two where they were alleged to have committed the assault. There have been three prisoner on prisoner assault incidents in 2018 involving a transgender prisoner in men's prisons: two where the transgender prisoner was the victim, and one where they were alleged to have committed the assault.

While no assault is acceptable, it is an unfortunate reality that they do occur from time to time, as we manage some of New Zealand's most difficult and challenging people. Understanding and managing risk is a challenge common to all correctional jurisdictions, and reducing violence in prisons is a priority for Corrections.

You may wish to note that as outlined in Corrections 2016/2017 Annual Report, across the prison estate (which comprises more than 10,000 prisoners at any one time), there were almost 1,500 non-serious/no injury assaults on prisoners and staff, along with 25 serious assaults, recorded for the 12 month period. This includes a considerable drop in the number of recorded prisoner on prisoner assaults compared to the previous year. As such, the number of assault incidents involving a transgender prisoner accounts for a very small proportion of all assault incidents.

¹ Year to date 14 September 2018

Further information about assault incidents in prisons can be found on pages 43-44 and page 84 of Corrections' 2016/17 Annual Report, at: http://www.corrections.govt.nz/data/assets/pdf_file/0006/898629/Annual_Report_2016-17.pdf

Complaints

Corrections operates a three tiered prisoner complaints process. If any prisoner is unhappy with any aspect of their management, they should complete a PC.01 prisoner complaint form in the first instance, to enable prison staff to respond to their concerns directly. If they feel that their complaint has not been adequately handled by prison staff, they can contact Corrections' Complaints Response Desk at a centralised 0800 number to escalate their concerns. If CRD are unable to resolve the complaint to their satisfaction, they can then approach the Office of the Inspectorate.

Alongside these processes, prisoners can refer complaints directly to external agencies such as the Office of the Ombudsman or Human Rights Commissioner.

Corrections does not centrally record, or hold in any reportable format, data on the types or 'themes' of complaints made by transgender prisoners. To provide this information to you and would instead necessitate research or analysis of information held on individual prisoners' records, and require us to initiate a project to extract, analyse and present the data in the form requested.

I can advise, however, that the Office of the Inspectorate ran a focus group with transgender prisoners at Tongariro Prison earlier this year, following the implementation of our new transgender policy. Prisoners had specific concerns addressed, including ensuring female products are available for them to purchase via the prisoner canteen system, as well as having questions answered about hormone treatment, and the introduction of individual support plans.

You may wish to note that the Ministry of Health (or ACC) are responsible for funding and administering secondary and tertiary health care services for prisoners. Secondary and tertiary health care refers to specialist and hospital services, including surgery or specialised services (such as Endocrinology), as well as more complex forensic mental health services. Prisoners are referred to secondary or tertiary health care services on the same basis as any person in the community.

Corrections is also continuing to liaise with transgender and wider rainbow community individuals and groups, with an aim to strengthen support networks with those who may provide valuable assistance and expertise, around the reintegration of transgender prisoners on their release.

I trust the information provided is of assistance. If you have any concerns with this response, I would encourage you to raise these with Corrections. Alternatively you are advised of your right to also raise any concerns with the Office of the Ombudsman. Contact details are: Office of the Ombudsman, PO Box 10152, Wellington 6143.

Yours sincerely



Cameron Oldfield
Principal Adviser Ministerial Services
Corporate Services

RELEASED UNDER THE
OFFICIAL INFORMATION ACT 1982

18 October 2018

C99438

9(2)(a)

Dear 9(2)(a)

Thank you for your email of 23 August 2018, requesting a detailed breakdown of information relating to the transgender prison population. Your request has been considered under the Official Information Act 1982 (OIA).

You have written further to two OIA requests dated 20 February and 27 April 2018, regarding transgender prisoners. Corrections' responses to those requests provided you with detailed information relating to Corrections' policy regarding the management of transgender prisoners and processes to protect prisoners' safety.

These responses also included data about the number of transgender prisoners by male and female prison, transgender prisoners by most serious offence type, and the number and outcomes of applications made by transgender prisoners for a review of initial determination of placement.

As mentioned in our previous responses to you, Corrections' management of transgender prisoners does not depend on whether the transgender prisoner has legal recognition of their gender identity, or whether they have undergone medical or surgical steps. A focus of our new policy for the management of transgender prisoners is being responsive to individuals and their circumstances.

I would like to assure you that safety remains Corrections' number one priority. Corrections attended the Governance and Administration Select Committee to answer questions regarding the Births, Deaths, Marriages, and Relationships Registration Bill. We are considering the potential impact of the Bill on our operations to ensure that our processes uphold the safety of all prisoners in our care.

Your further request comprises five pages of tables, seeking a detailed breakdown of information relating to the transgender prisoner population, including the following elements:

- The number of all prisoners with a transgender alert, by calendar year 2014 to present, including whether they were housed in a men's or women's prison, and according to their most serious offence type.
- The number of applications made by transgender prisoners for a review of the initial determination of placement by calendar year 2014 to present, according to whether the application was to be placed in a men's or women's prison, and including the outcome of the application and the prisoner's subsequent placement in a men's or women's prison.
- The number of transgender alerts input into the Integrated Offender Management System (IOMS) by calendar year 2014 to present, by men's or women's prison, including whether the alert was placed on the offender's file at the time of their initial imprisonment.
- The number of assault incidents where the prisoner alleged to have committed the assault had a transgender alert by calendar year 2014 to present, by men's or women's prison, according to whether each incident was recorded as a non-serious/no-injury or serious assault incident, and according to whether it was a prisoner-on-prisoner or prisoner-on-staff assault incident.
- The number of assault incidents where the prisoner who was victim of the alleged assault had a transgender alert by calendar year 2014 to present, by men's or women's prison, according to whether each incident was recorded as a non-serious/no-injury or serious assault incident, and according to whether it was a prisoner-on-prisoner or prisoner-on-staff assault incident.
- The number of prisoner-on-prisoner and prisoner-on-staff assault incidents across the whole prison population by calendar year 2014 to present, by men's or women's prison.
- The number of prisoners, by calendar year 2014 to present, by men's or women's prison, according to their most serious offence type.

Most of the information you have requested cannot be readily extracted from our electronic records. To provide you with the full datasets you have requested, in the format you have specified, would instead require detailed analysis and the manual review of many individual offender records.

Internal consultations have been necessary for Corrections to ascertain the extent of the information you have requested that is readily available. We estimate that it would take in excess of 100 hours to gather and collate all the information you have sought. This data would then need to be reformatted in order for it to be presented to you in the manner requested, and checked for accuracy. Further, as much of your request relates to a very small cohort of offenders, we may also need to consider the privacy rights attached to some of the information you have requested.

To respond to your request in full and in the manner you have requested would require significant time and human resource, which would impact on Corrections' core operations.

In accordance with the OIA, we have considered whether to affix a charge or extend the time limit for responding. However, given the scale of the request we do not consider that this would be an appropriate use of our publicly funded resources. Therefore, the full breakdowns you have requested are declined under section 18(f) of the OIA, as the information cannot be made available without substantial collation or research.

As per section 18B of the OIA we have considered whether consulting the requestor would assist to make the request in a form that would remove the reason for the refusal.

For some parts of your request, partial data is readily available and this has been provided below. For other parts of your request, we have provided advice about how you could refine and resubmit the questions, should you wish to obtain more information about that particular aspect of your request.

Transgender prisoner population and most serious offence (table one)

We are able to provide partial data regarding the transgender prisoner population, and the parameters of this part of your request have been amended accordingly

During 2015, 29 prisoners with a transgender alert were imprisoned at some point across all prisons. Twenty four were imprisoned in a men's prison during this period, and seven were imprisoned in a women's prison.

During 2016, 36 prisoners with a transgender alert were imprisoned at some point across all prisons. Twenty eight of these individuals were imprisoned in a men's prison during this period, and 14 were imprisoned in a women's prison.

During 2017, 48 prisoners with a transgender alert were imprisoned at some point across all prisons. Thirty eight of these individuals were imprisoned in a men's prison during this period, and 13 were imprisoned in a women's prison.

Note that for each year, some prisoners will have transferred between a men's and women's prison, meaning they will be counted in both groups for the specified period.

Should you wish to obtain it, we could reconsider a request to be provided with the most serious offence type for transgender prisoners, according to a snapshot of the prisoner population as at 30 June annually (i.e, rather than the number of individuals imprisoned at any point during each year).

Applications for review of placement (table one)

As at 17 September 2018, there have been a total of 24 applications for a review of the initial determination of a prisoner's placement, made in accordance with Prison Operations Manual *M.03.05.03 Application for review of initial determination* policy.

Of these, 21 applications have been approved, and three have been withdrawn. All applications to date have related to prisoners seeking to transfer from a men's prison to a women's prison.

Records show that four of these applications were received by offender health staff in 2014, three were received in 2015, 11 were received in 2016, two were received in 2017, and three have been received in 2018. One application, which did not advance, does not have a date recorded.

Please note, due to the very small number of individuals involved, we consider releasing any further information about applications for review of placement could lead to the identification of individual applicants. We also consider that there are strong privacy rights attached to this information. Therefore, additional details about applications for review of placement will be withheld under section 9(2)(a) of the OIA, to protect the privacy of natural persons.

Assault incidents involving transgender prisoners (tables two and three)

We are able to provide partial data regarding assault incidents involving transgender prisoners, and the parameters of this part of your request have been amended accordingly.

We have a range of policies, processes and tools in place to ensure that concerns about prisoner safety are identified and mitigated. This includes prisoners at risk of self harm, at risk of harm to others and at risk of harm from others.

There are a variety of ways in which prisoners are able to notify staff of any potential risk to their safety in custody. When in their cell they are able to use a call alarm to alert staff. Prisoners are also encouraged to report concerns directly to staff, via a family member or friend, or by contacting the Office of the Inspectorate, the Office of the Ombudsman or the anonymous crime reporting line Crimestoppers.

Within women's prisons, four prisoner on prisoner assault incidents occurred in 2017, and two in 2018¹, where the prisoner alleged to have committed the assault had a transgender alert. There were no assault incidents during this period within women's prisons where a transgender prisoner is recorded as the victim.

¹ Year to date 14 September 2018

Within men's prisons, five prisoner on prisoner assault incidents occurred in 2017 involving a transgender prisoner: three where the transgender prisoner was the victim, and two where they were alleged to have committed the assault. There have been three prisoner on prisoner assault incidents in 2018 involving a transgender prisoner in men's prisons: two where the transgender prisoner was the victim, and one where they were alleged to have committed the assault.

This type of information is not easy to extract from our reporting system, and to provide the full breakdown you have requested would involve detailed analysis of our electronic records. We do not consider that this part of your request could be refined in this instance.

While no assault is acceptable, it is an unfortunate reality that they do occur from time to time, as we manage some of New Zealand's most difficult and challenging people. Understanding and managing risk is a challenge common to all correctional jurisdictions, and reducing violence in prisons is a priority for Corrections.

Our staff recognise the importance of knowing and understanding prisoners, and actively engage with them to reinforce positive behaviour. Staff anticipate and attempt to resolve problems through the active management of prisoners, and are trained in de-escalation techniques, and interpersonal and tactical communication skills. The goal is always to manage a potentially volatile situation in a manner that minimises the likelihood of provoking a violent response.

We take strong action to ensure that prisoners are held to account for their behaviour whenever they use violence. We also support staff and prisoners who have been the victims of assault and provide assistance in reporting the incident to the New Zealand Police. The Police determine whether or not criminal charges will be laid in relation to an assault. Prisoners who use violence can also be charged through the internal misconduct system.

You may wish to note that as outlined in Corrections 2016/2017 Annual Report, across the prison estate (which comprises around 10,000 prisoners at any one time), there were almost 1,500 non-serious/no injury assaults on prisoners and staff, along with 25 serious assaults, recorded for the 12 month period. This includes a considerable drop in the number of recorded prisoner on prisoner assaults compared to the previous year.

As such, the number of assault incidents involving a transgender prisoner accounts for a very small proportion of all assault incidents.

Assault incidents involving all prisoners (table four)

Information about assault incidents across all prisons is reported in Corrections' Annual Reports, which are publicly available from 2004/05 onwards.

Corrections' 2017/18 Annual Report includes information about assault incidents on pages 20 and 45 of the report, at:
https://www.corrections.govt.nz/data/assets/pdf_file/0011/926219/Department_of_Corrections_Annual_Report_2017_2018.pdf

Corrections' 2016/17 Annual Report includes information about assault incidents on pages 43-44 and page 84 of the report, at:
http://www.corrections.govt.nz/data/assets/pdf_file/0006/898629/Annual_Report_2016-17.pdf

Information about serious assault incidents, broken down by prison (currently available by financial year up until 2015/16) can also be found at this link:
https://www.corrections.govt.nz/resources/research_and_statistics/assaults_in_prisons.html

Should you wish to obtain it, we could reconsider a request to be provided with assault incidents broken down by men's and women's prisons by financial year.

Prisoners' most serious offence type (table five)

A breakdown of the total prison population by most serious offence type is published quarterly on our website, at:
https://www.corrections.govt.nz/resources/research_and_statistics/quarterly_prison_statistics/prison_stats_march_2018.html#ethnicity

Should you wish to obtain it, we could reconsider a request to be provided with prisoners' most serious offence type by male/female prison populations, as at 30 June annually.

I trust the information provided is of assistance. Should you have any concerns with this response, I would encourage you to raise these with Corrections. Alternatively you are advised of your right to also raise any concerns with the Office of the Ombudsman. Contact details are: Office of the Ombudsman, PO Box 10152, Wellington 6143.

Yours sincerely



Cameron Oldfield
Principal Adviser Ministerial Services
Corporate Services

14 December 2018

C102464

9(2)(a)

Dear 9(2)(a)

Thank you for your email of 20 November 2018 to the Department of Internal Affairs, requesting information about the management of transgender prisoners. As your request relates to the functions of Corrections, it was transferred to us for response on 21 November 2018, in accordance with section 14 of the Official Information Act 1982 (OIA). Your request has been considered under the OIA.

You have asked:

- *Has the Department of Corrections developed a plan to cater for inmates who are transgender, intersex or gender diverse?*

Managing prisoners' safety is one of Corrections' core functions, and a duty we take extremely seriously. We have a range of policies, processes and tools in place to ensure that concerns about prisoner safety are identified and mitigated. This includes prisoners at risk of self harm, at risk of harm to others and at risk of harm from others.

As any one time, there are around 30 people in our prisons identifying as transgender. This accounts for a small percentage of the total prison population, however we acknowledge that transgender prisoners are a vulnerable group with complex needs.

In March 2018, Corrections introduced strengthened policy for the management of transgender prisoners, with a focus on being responsive to individuals and their circumstances.

If it is established that a prisoner identifies as transgender during their initial reception process, or at any other point of their management, an alert is placed on their electronic prisoner file.

Each transgender prisoner now has an individualised support plan and is able to choose the gender of staff who conduct searches. The provision of an individual support plan will not depend on whether the transgender prisoner has legal recognition of their gender identity, or whether they have undergone medical or surgical steps.

Custodial staff are also being provided with training material to develop an understanding of gender diversity, with a focus on the use of correct pronouns and appropriate language.

These guidelines align our approach with comparable jurisdictions internationally, as well as other New Zealand agencies such as New Zealand Police and Customs.

Our new policy regarding the management of transgender prisoners is publicly available at: www.corrections.govt.nz/resources/policy_and_legislation/Prison-Operations-Manual/Induction/I-10.html.

The placement of transgender and intersex prisoners in a male or female prison, including the process for a review of initial determination of placement, continues to be managed in accordance with Prison Operations Manual M.03.05 policy. This is publicly available at: www.corrections.govt.nz/resources/policy_and_legislation/Prison-Operations-Manual/Movement/M.03-Specified-gender-and-age-movements/M.03-4.html.

Alongside the implementation of the new policy in prisons, Community Corrections and non-frontline management staff have recently begun intensive diversity training sessions, which focus on building an awareness and understanding LGBTQIA+ terminology, respecting dignity, and being aware of unconscious bias. Diversity training has now been delivered to more than 1,000 Corrections employees, and work is also underway to incorporate the training into Frontline Futures, which is a programme delivered to all new frontline Community Corrections staff.

Corrections is committed to supporting and promoting diversity and acceptance in our workplace, and we have established the Rainbow Network, which is available to all Corrections employees to join. The Rainbow Network's aims include promoting greater understanding and open dialogue about how we can make Corrections a safer place to work for LGBTQIA+ staff, in addition to empowering staff to work more effectively with LGBTQIA+ offenders.

We are also continuing to liaise with transgender and wider rainbow community individuals and groups, with an aim to strengthen support networks with those who may provide valuable assistance and expertise, around the reintegration of transgender prisoners on their release.

I can also advise that the Office of the Inspectorate ran a focus group with transgender prisoners at Tongariro Prison earlier this year, following the implementation of the new transgender policy described above. Prisoners had specific concerns addressed, including ensuring female products are available for them to purchase via the prisoner canteen system, as well as having questions answered about hormone treatment, and the introduction of individual support plans.

In accordance with our obligations under the Corrections Act 2004, all prisoners are entitled to receive a standard of health care reasonably equivalent to that found in the community. With regard to the medical needs of transgender prisoners, it should be noted that Medical Officers working in prisons on contract assess a prisoner's condition and determine whether primary, secondary or tertiary level intervention or treatment is appropriate. Primary health care is delivered by Corrections, and includes services such as general practice, pharmaceuticals (prescriptions), and nursing services. Primary mental health care is also included.

The Ministry of Health (or ACC) are responsible for funding and administering secondary and tertiary health care services for prisoners. Secondary and tertiary health care refers to specialist and hospital services, including surgery or specialised services (such as Endocrinology), as well as more complex forensic mental health services. Prisoners are referred to secondary or tertiary health care services on the same basis as any person in the community.

I trust the information provided is of assistance. Should you have any concerns with this response, I would encourage you to raise these with Corrections. Alternatively you are advised of your right to also raise any concerns with the Office of the Ombudsman. Contact details are: Office of the Ombudsman, PO Box 10152, Wellington 6143.

Yours sincerely



Cameron Oldfield
Principal Adviser Ministerial Services
Corporate Services

07 March 2019

C103412, C103550, C103799

9(2)(a)

Tēnā koe 9(2)(a)

Thank you for your emails of 17, 21 and 24 December 2018, requesting information about the Births, Deaths, Marriages, and Relationships Registration Bill (the Bill), and assault incidents in women's prisons. Your requests have been considered under the Official Information Act 1982 (OIA).

Managing prisoners' safety is one of Corrections' core functions, and a duty we take extremely seriously. We have a range of policies, processes and tools in place to ensure that concerns about prisoner safety are identified and mitigated. This includes prisoners at risk of self harm, at risk of harm to others and at risk of harm from others.

New Zealand law, consistent with international instruments such as the United Nations Standard Minimum Rules for the Treatment of Prisoners, requires male and female prisoners to be detained in separate prisons or in separate quarters within a prison. This is necessary for the safety and welfare of prisoners, and for the security and good order of prisons. While placement in a men's or women's prison is a straightforward matter for most prisoners, for a very small group of prisoners, placement can be more challenging.

At any one time there are around 30 to 40 people in our prisons identifying as transgender. This accounts for a small percentage of the current total prison population of around 10,000 prisoners, however we acknowledge that transgender prisoners are a vulnerable group with complex needs.

In March 2018, Corrections introduced a strengthened policy for the management of transgender prisoners, with a focus on being more responsive to individuals and their circumstances.

If it is established that a prisoner identifies as transgender during their initial reception process, or at any other point of their management, an alert is placed on their electronic prisoner file.

Each transgender prisoner has an individualised support plan and is able to choose the gender of staff who conduct searches. The provision of an individual support plan does not depend on whether the transgender prisoner has legal recognition of their gender identity, or whether they have undergone medical or surgical steps.

Custodial staff have been provided with training material to develop an understanding of gender diversity, with a focus on the use of correct pronouns and appropriate language.

These guidelines align our approach with comparable jurisdictions internationally, as well as other New Zealand agencies such as New Zealand Police and Customs.

Our policy regarding the management of transgender prisoners is publicly available at: www.corrections.govt.nz/resources/policy_and_legislation/Prison-Operations-Manual/Induction/I-10.html.

The placement of transgender and intersex prisoners in a male or female prison, including the process for a review of initial determination of placement, is managed in accordance with Prison Operations Manual M.03.05 policy. This is publicly available at: www.corrections.govt.nz/resources/policy_and_legislation/Prison-Operations-Manual/Movement/M.03-Specified-gender-and-age-movements/M.03-4.htm.

Alongside the implementation of the new policy in prisons, Community Corrections and non-frontline management staff have begun intensive diversity training sessions, which focus on building an awareness and understanding of LGBTQIA+ terminology, respecting dignity, and being aware of unconscious bias. Diversity training has been delivered to more than 1,000 Corrections employees, and work is also underway to incorporate the training into Frontline Futures, which is a programme delivered to all new frontline Community Corrections staff.

Corrections is committed to supporting and promoting diversity and acceptance in our workplace, and we have established the Rainbow Network, which is available to all Corrections employees to join. The Rainbow Network's aims include promoting greater understanding and open dialogue about how we can make Corrections a safer place to work for LGBTQIA+ staff, in addition to empowering staff to work more effectively with LGBTQIA+ offenders.

In accordance with our obligations under the Corrections Act 2004, all prisoners are entitled to receive a standard of health care reasonably equivalent to that found in the community. With regard to the medical needs of transgender prisoners, it should be noted that Medical Officers working in prisons assess a prisoner's condition and determine whether primary, secondary or tertiary level intervention or treatment is appropriate.

Primary health care is delivered by Corrections, and includes services such as general practice, prescriptions, and nursing services. Primary mental health care is also included.

The Ministry of Health (or ACC) are responsible for funding and administering secondary and tertiary health care services for prisoners. Secondary and tertiary health care refers to specialist and hospital services, including surgery or specialised services, as well as more complex forensic mental health services. Prisoners are referred to secondary or tertiary health care services on the same basis as any person in the community.

Your email of 17 December 2018 requests:

communications relating to my email queries dated December 6, 2018, December 11, 2018 and December 17, 2018.

Corrections holds one set of emails relating to the formulation of a response to your email query of 6 December 2018. This material, if released, would be likely to impact the provision of free and frank communication with Corrections' media team in the future, and would in turn inhibit the ability of the media team to provide fulsome responses to journalists in a timely manner.

Therefore, this information is withheld under section 9(2)(g)(i) of the OIA, to maintain the free and frank expression of opinions between officials.

All other information Corrections holds within scope of this part of your request is direct email correspondence between you and staff in Corrections' communications team.

All communications relating to the potential impact of the Births, Deaths, Marriages, and Relationships Registration Bill on Corrections operations.

Corrections was aware of the proposed changes contained in the Bill and considered the potential impact on prison operations to ensure that processes uphold the safety of all prisoners in our care. In August 2018, Corrections attended the Governance and Administration Select Committee to answer questions regarding the placement and management of transgender prisoners.

Corrections has discussed the potential implications of the Bill with Department of Internal Affairs, in relation to addressing any matters arising from the easing of transgender individuals' ability to change the nominated sex on their birth certificate.

I can assure you that Corrections has risk management tools at its disposal, and the safety of all prisoners will always be our number one priority.

The information within scope of your request includes internal emails and emails with Department of Internal Affairs staff in relation to the formulation of advice for Corrections' Select Committee appearance.

In October 2018 Corrections also prepared an internal paper outlining potential implications of the Bill on the way that transgender prisoners are managed, taking into account legally privileged information. Additionally, in November 2018, a joint briefing relating to this matter was provided to the Minister of Internal Affairs and the Minister of Corrections.

As you are aware, the Bill was recently deferred. However, Corrections considers that matters arising from the Bill in its current form remain under active consideration by Ministers.

The information you have requested is therefore withheld in full in accordance with the following sections of the OIA:

- 9(2)(f)(iv), to protect the confidentiality of advice tendered by Ministers of the Crown and officials.
- 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.
- 9(2)(h), to maintain legal professional privilege.

As per section 9(1) of the OIA, we have considered whether there are countervailing public interest considerations favouring the release of the requested information. At this time, we do not believe such considerations are present in this case. We may, however, be able to reconsider this part of your request at a later date, after the Government confirms the future direction of the Bill.

As you may be aware, following the announcement that the Bill will be deferred, Crown Law released some information in relation to advice they provided to the Government. This information is available at: www.beehive.govt.nz/sites/default/files/2019-02/Crown%20Law%20advice%20BDMRR%20Bill%200.pdf

All communications relating to possible changes to M.03.05 Transgender and intersex prisoner procedures that may be necessary if the above legislation is passed.

As above, information we hold relating to possible changes to Prison Operations Manual M.03.05 Transgender and intersex prisoner policy includes internal emails, and correspondence with Department of Internal Affairs staff and our legal advisers.

At this time, no decision has been made regarding whether M.03.05 will be reviewed, or in relation to the formulation of amended policy.

Information within scope of this part of your request is refused in accordance with the following sections of the OIA:

- 6(c) of the OIA, as the release of this information would be likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences.
- 9(2)(f)(iv), to protect the confidentiality of advice tendered by Ministers of the Crown and officials.
- 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.
- 9(2)(h), to maintain legal professional privilege.

As mentioned above, we may be able to reconsider this part of your request at a later date.

In response to information included in a Corrections OIA response dated 3 September 2018 (our ref C98063), regarding six assault incidents in women's prisons that involved transgender prisoners, your email of 21 December 2018 requests:

whether the prisoners identified as trans men or trans women (assuming some trans men choose to be housed in women's prisons)?

We recognise that transgender is an umbrella term to refer to a person whose gender identity does not completely align with their assigned sex at birth. Some transgender people do not identify as exclusively female or male. Some people may identify as neither gender, or as gender fluid.

The information we hold suggests that each of the prisoners involved in the six assault incidents identifies as female.

Your email of 21 December 2018 also requests:

- *Also, for comparative purposes, do you have the overall number of assaults reported in women's prisons over that same period?*

And your email of 24 December 2018 requests:

- *the overall number of assaults at women's prisons over the period Jan to May 2017 so I can compare to the earlier figure*

Please note, Corrections' OIA response of 3 September 2018 relied on a dataset of assault incidents in women's prisons from January 2017 to June 2018 (rather than from January 2017 to May 2018, as was suggested in an email to you from Corrections' communications team).

We have therefore interpreted the relevant timeframe for both of these requests to be 1 January 2017 to 30 June 2018.

Throughout this period, there were a total of 166 prisoner on prisoner assault incidents, and a total of 102 prisoner on staff assault incidents, giving a total of 268 assault incidents within women's prisons.

All of these incidents except for two are recorded as 'no-injury' or 'non-serious' assaults. There was one serious prisoner on staff assault incident, and one serious prisoner on prisoner assault incident recorded, within the specified period. A serious assault is defined as an act of violence that includes: sexual assault of any form where police charges have been laid; bodily harm that requires medical intervention by medical staff followed by overnight hospitalisation; or bodily harm that requires extended periods of ongoing medical intervention.

While no assault is acceptable, it is an unfortunate reality that they do occur from time to time, as we manage some of New Zealand's most difficult and challenging people. Understanding and managing risk is a challenge common to all correctional jurisdictions, and reducing violence in prisons is a priority for Corrections. We have a range of policies, processes and tools in place that ensure that concerns about prisoner safety are identified and mitigated. This includes prisoners at risk of self harm, at risk of harm to others and at risk of harm from others.

There are a variety of ways in which prisoners are able to notify staff of any potential risk to their safety in custody. When in their cell they are able to use a call alarm to alert staff. Prisoners are also encouraged to report concerns directly to staff, via a family member or friend, or by contacting an Inspector, the Office of the Ombudsman or the anonymous crime reporting line Crimestoppers.

Prisoners are held to account for their behaviour whenever they use violence. We also support staff and prisoners who have been the victims of assault, and provide assistance in reporting the incident to New Zealand Police. Police determine whether or not criminal charges will be laid in relation to an assault, however prisoners who use violence can also be charged through the internal misconduct system. If the prisoner pleads or is found guilty, the hearing adjudicator or Visiting Justice determines the appropriate sanction, which can include loss of privileges, forfeiture of earnings, or cell confinement.

I trust the information provided is of assistance. Should you have any concerns with this response, I would encourage you to raise these with Corrections. Alternatively you are advised of your right to also raise any concerns with the Office of the Ombudsman. Contact details are: Office of the Ombudsman, PO Box 10152, Wellington 6143.

Ngā mihi nui



Rachel Leota
National Commissioner

Released under the OIA 1982