New Zealand Law Society
Te Kāhui Ture o Aotearoa

Corrections (Management of Prisoners, and Prisoners' Property) Amendment Bill

Submission of the New Zealand Law Society Te Kāhui Ture o Aotearoa

10 June 2026

1 Introduction

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Corrections (Management of Prisoners, and Prisoners' Property) Amendment Bill (**Bill**). This Bill would amend the Corrections Act 2004 (the **principal Act**) and the Corrections Regulations 2005 (the **principal Regulations**). The primary policy intentions of the Bill are to:

(a) enact a statutory process for the designation of prisoners as "designated management prisoners" (**DMP**) where a prisoner poses an extreme risk of harm, and to make special provision for the management of DMPs;

(b) reform segregation powers to provide for a wider range of circumstances in which segregation may be justified; and

(c) create a new minimum entitlement to meaningful human contact as a means of reducing the risk of prolonged solitary confinement.

1.2 This submission has been prepared with input from the Law Society's Human Rights and Privacy and Criminal Law Committees.[1]

1.3 The Law Society **wishes to be heard** on this submission.

2 General comment

2.1 The policy goals of the Bill are worthwhile, and reform is needed in this area of law. The Law Society supports the Bill's intention to modernise the principal Act to deal with changes in prisoner risk profile, by establishing a clear statutory basis for the safe, lawful, and humane management of a small group of prisoners who pose an extreme risk. Statutory amendments to improve transparency and ensure natural justice protections are welcome. The Law Society also supports practical and fair changes across the prison network that apply to all prisoners that are designed to better uphold prisoner rights and enable best-practice operations.

2.2 There are, however, serious concerns as to the detail of the proposals. As drafted, the Bill risks intruding on individual rights and being unwieldy and expensive in practice. If adopted, the amendments would have the effect of sanctioning treatment that falls below international norms, contrary to New Zealand's commitment to human rights and to the purpose of basing New Zealand law on the minimum conditions defined in the Nelson Mandela Rules (**Mandela Rules**), as stated in section 5(1)(b) of the principal Act.

2.3 Consequently, the Law Society recommends substantial amendment. Without amendment, some of the provisions in the Bill should not proceed.

2.4 The need for this Bill has arisen in part from reports released by the Office of the Inspectorate (**OOI**) and the Chief Ombudsman. These reports set out significant concerns

[1] More information about the Law Society's law reform sections and committees is available on the Law Society's website: NZLS | Law reform committees.

about the shortcomings of the Prisoners of Extreme Risk Unit's (**PERU**) operational framework and the management and well-being of individuals within the unit.[2]

2.5 New Zealand's penal policy is based on the concept that where prison or other forms of detention are necessary, the aim of such detention should be the rehabilitation of the prisoner and the encouragement of self-respect and a sense of personal responsibility.[3] It is axiomatic that Corrections must operate in accordance with the New Zealand Bill of Rights Act 1990 (**Bill of Rights**) and the Human Rights Act 1993, unless Parliament plainly decides to legislate against those constitutional norms. Legislation will not be interpreted to abrogate fundamental rights or freedoms unless Parliament has expressed that intention in unmistakably clear language. The common law position is that sentenced prisoners retain all civil rights not expressly or by necessary implication removed by law.[4]

2.6 Concerns with the Bill arise in regard to:

(a) aspects of the DMP designation process;

(b) substantive treatment of DMPs — including provision for meaningful human contact and restraints on prolonged solitary confinement;

(c) segregation;

(d) prisoner trust accounts; and

(e) access to legal representation.

3 DMP designation process

3.1 The Law Society welcomes and supports the creation of a statutory process for the designation of DMPs. The present lack of any statutory process for designating members of the group known as "prisoners of extreme risk" has been the subject of criticism by the Chief Inspector of Corrections and the Chief Ombudsman. In his inspection report relating to the PERU at Auckland Prison, the Chief Ombudsman noted that the process for designating prisoners of extreme risk lacked independence and tended to confuse or run contrary to statutory processes required under the Corrections Act.[5]

3.2 The new statutory process proposed in clause 12 and new Schedule 1AB of the Bill defines risk criteria against which a designation may be made, permits designations for limited time periods only, and requires the chief executive to have regard to the findings of an advisory panel chaired by an experienced lawyer. The following recommendations are proposed to improve the DMP designation process.

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2 Janis Adair "Prisoners of Extreme Risk Unit (PERU): Announced Inspection July 2023" (Office of the Inspectorate, 27 August 2024) (**OOI report**) at 5–7; Peter Boshier "OPCAT report: Report on an examination of the Prisoners of Extreme Risk Unit under the Crimes of Torture Act 1989" (Office of the Ombudsman, 17 December 2024) (**OPCAT report**).

3 From the 1982 Periodic Report to the United Nations on its compliance with the International Covenant on Civil and Political Rights at [112].

4 *Raymond v Honey* [1983] 1 AC 1 at 10, per Lord Wilberforce.

5 OPCAT report at 7, 32–33 and 48.

Test for designation

3.3 New section 52C in clause 12 of the Bill enacts a test for designation as a DMP, which is elaborated on by new sections 52D, 52E and 52F.

3.4 The chief executive is required to be satisfied on reasonable grounds that the prisoner poses an "extreme risk" to prison or public safety. New section 52C(a) says an eligible person must pose such a risk "while in the legal custody … of the chief executive (including, without limitation, during any temporary removal from prison) or during any temporary release from that legal custody".

3.5 New section 52D(1) elaborates on the "extreme risk" test by noting the types of conduct to which the extreme risk must relate, whether "while in the legal custody … of the chief executive" or while temporarily removed or temporarily released.

3.6 The effect of a DMP designation under new section 52L(1) is that the prisoner must be placed in a DMP cell and otherwise restrictively managed in a way that is consistent with their designation and their case management plan. However, new section 52L(2) provides that these requirements do not apply when a DMP prisoner is detained in a Police jail or removed to any other place of detention under section 35.

"Extreme risk": interpretation

3.7 "Extreme risk" is an unusual term not used in other legislation. The Public Safety (Public Protection Orders) Act 2014 enables Public Protection Orders (**PPO**) to be imposed. A PPO is a civil detention order issued by the High Court. It allows the ongoing detention of persons who have completed their finite prison sentences but pose a certain level of risk. The threshold for such an order is "on the ground that there is a very high risk of imminent serious sexual or violent offending by the person."[6]

3.8 In this Bill, it is suggested that "extreme risk" indicates that a threshold of something more than "very high" is required. Consideration could be given to the addition of "imminent" to the test, to remind the chief executive that the assessment of risk requires that it be proximate.

3.9 Section 52E is intended to provide some further guidance as to what type of risk is taken to be an extreme risk. The guidance requires a "high degree of likelihood" of certain events occurring. This seems to be a standard that falls between the balance of probabilities and the criminal burden of proof beyond reasonable doubt (a "high degree of likelihood" seems to demand more than the ordinary civil standard of the balance of probabilities, meaning 'more likely than not'). A PPO requires the Court to be satisfied "on the balance of probabilities" so it seems clear that the intention of this Bill is that more is required. The consequences of a finding are serious, as such findings will affect fundamental rights held by a vulnerable group. The heightened standard reflects the principle that the more significant the potential impact on an individual, the more cogent the evidence required before that impact can be demonstrably justified.

3.10 Given that Corrections has the ability to utilise other significant measures to manage prisoners that can reduce risks posed by prisoners, the test could also require the chief

6 Public Safety (Public Protection Orders) Act 2014, s 8.

executive to have determined that the imminent extreme risk to prison or public safety cannot be mitigated by ordinary management measures reasonably available to Corrections and can only be properly addressed by designation and restrictive management. Restrictive management should only be considered if the risks cannot be sufficiently mitigated by less intrusive and rights infringing conduct.

Sections 52D–52F: drafting issues

3.11 The Law Society considers that the examples in section 52D are (with one caveat noted at [3.13] below) appropriate but, as above, should be informed by the qualifications that the extreme risk needs to be imminent and, further, cannot be mitigated by ordinary measures reasonably available to Corrections.

3.12 We note that section 52D(1)(b) uses the word "severely" when consistency suggests that the qualifier "serious" would be preferable. Section 52D(1)(d) also omits a qualifier in front of "harm". For consistency the qualifier "serious" should be utilised.

3.13 The blanket inclusion in section 52D(1)(c) of "any offence against the Terrorism Suppression Act 2002" seems inconsistent with the carefully crafted ambit of the Bill intended to only capture matters which pose a very high, or extreme, risk. The inference is the restrictions on constitutional freedoms demand that the anticipated conduct must be of a sufficiently grave level to allow those restrictions to be demonstrably justified. While any terrorism offence is serious, it is possible to legitimately argue that not all of the offences in the Terrorism Suppression Act 2002 are objectively of sufficient seriousness to qualify a prisoner for designation.

3.14 The Law Society believes that new section 52E(1)(a) and (b) may cause confusion. It seems that (b) is otiose because the person poses the extreme risk of all or any of the following *conduct* and the *conduct* is then outlined in section 52D(1)(a)–(d). It is a requirement of the conduct in section 52D(1)(a)–(d) that it be sufficiently serious, which means that it is unnecessary for section 52E(1)(b) to specify that the conduct needs to cause a severe degree of harm.

3.15 As with section 52D, section 52F should also make it clear that the chief executive must consider whether the imminent extreme risk is one that cannot be mitigated by ordinary management measures reasonably available to Corrections.

Test for designation overly broad

3.16 The Law Society further considers that the test for designation in sections 52C and 52D is too broad, in that it applies to people removed from prison or temporarily released from the chief executive's custody, in relation to a restrictive management regime that only applies while someone is in the chief executive's custody in a prison. This mismatch results in an assessment of risk conducted under sections 52C and 52D that does not relate to the restrictive management envisaged by the DMP regime. Restrictive management can only occur inside a prison.

3.17 It is easy to envisage prisoners who pose an extreme risk of serious offending if released from prison, but who do not pose any risk when managed in custody subject to the usual regime applying in the prison unit.

3.18 The Law Society recommends that the DMP designation test be revised to respond solely to extreme risk that might be realised while a person is detained by the chief executive in a prison.

Roles of Panel and chief executive

3.19 Section 52H creates a potentially challenging situation, namely that the Panel recommends that there be no designation and yet the chief executive does not follow that recommendation. The Committee may wish to explore with officials whether litigation risks could arise from this approach.

Imprecise trigger for review of designation

3.20 New section 52K(1) in clause 12 of the Bill creates a duty for "the department" to "inform the chief executive" if "the department becomes aware" of information sufficient to justify reviewing the DMP designation.

3.21 While it is relatively common to define the functions of public service agencies in statute, it is unusual to confer a duty on a "department" rather than on a natural or legal person. "The department" is not a natural or legal person and cannot "become aware". New section 52K(1) is not sufficiently precise. A duty of this nature ought to only be conferred on a person. The Committee may therefore wish to consider:

(a) identifying another public servant on whom the duty can be conferred; or

(b) reformulating the duty as one held by the chief executive only, as it is implicit in the Corrections Act that the chief executive must make whatever administrative arrangements are necessary to discharge the functions and duties conferred under an enactment.

Further independence desirable in constitution of Designated-Management Prisoner Advisory Panel: new Schedule 1AB

3.22 New Schedule 1AB to the Corrections Act, which relates to the sections above, would provide for the establishment and functioning of a DMP Advisory Panel to advise the chief executive when making or reviewing DMP designations.[7] Clause 4 of the Schedule provides that the Panel must be chaired by a barrister or solicitor with at least seven years' practice. They may be a former barrister or solicitor who does not currently hold a practising certificate (such as a current or former judge). Clause 5(1) would require at least five members to be appointed to the Panel. Clause 9 makes clear that Panel members are not Crown employees by virtue of their appointment to the Panel.

3.23 While a degree of independence is implied by these provisions, the Law Society recommends strengthening new Schedule 1AB, by providing that no departmental employee may be appointed to the DMP Advisory Panel.

7 Inserted by clause 25 and Schedule 2 of the Bill.

Designation of prisoners aged under 25 years

3.24 The Committee may wish to consider, and seek advice on whether DMP designation should apply to prisoners aged 25 or under. Young offenders are neurologically different to adult offenders, and this is recognised both in academic literature and by the courts.[8] Just as the courts must take account of the offender's age at sentencing, similar factors can be relevant to designation.[9] Any consideration of applying the designation to a young offender must take into account the offender's age and neurological differences, and recognise that the higher level of custodial management would present a more extreme risk to their welfare and potentially entrench behaviour that could be altered through greater access to rehabilitation.

3.25 There is, of course, a balance that could be struck. For example, there could be some further explicit requirements before any prisoner 25 and under could be designated.

4 Substantive treatment of DMPs

DMP cells

4.1 New section 52L(1) in clause 12 of the Bill would require that a DMP be placed in a DMP cell. DMPs must be provided with reasonable access to a cell-adjacent yard for a cell in which they are placed.[10] The qualities of a DMP cell are to be defined by regulation (new section 52M). The features of DMP cells would be defined by new Part AA of Schedule 2 of the principal Regulations. Those features include a "cell-adjacent yard that receives fresh air; and is attached to, and can be accessed directly from, the cell".

4.2 These provisions appear intended to legitimise the use of existing PERU cells to house DMPs. In relation to those cells, the Chief Ombudsman has noted that:[11]

(a) PERU cells are only 9m^2 in size, with cell-adjoined "yards" of 10m^2;

(b) PERU cells are oppressive and not appropriate for the long-term management of people in custody, having insufficient natural light or fresh air and being non-compliant with the Mandela Rules; and

(c) the cell-adjoined yards consist of high concrete walls with a mesh roof, are "in effect cells without roofs", and are too small to permit exercise "in the open air" as contemplated by the minimum exercise entitlement provided by section 70 of the principal Act.

4.3 The Ombudsman is the national preventive mechanism for prisons under the Optional Protocol to the United Nations Convention Against Torture. The Ombudsman expressed

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8 Elizabeth S Scott, Richard J Bonnie, and Laurence Steinberg "Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy" (2016) 85 Fordham L Rev 641; Ian Lambie and Isabel Randell "The impact of incarceration on juvenile offenders" (2013) 33(3) Clinical Psychology Review 448; Marc Wittmann and Sandra Lehnhoff "Age effects in perception of time" (2005) 97(3) Psychological Reports 921; *Churchwood v R* [2011] NZCA 531 at [77]; *Dickey v R* [2023] NZCA 2 at [76]–[86].

9 Sentencing Act 2002, section 9(2)(a).

10 New section 52L(4).

11 OPCAT report, above n 2 at 18–22.

concerns that PERU detainees have experienced ill-treatment in breach of article 16 of the Convention Against Torture.

4.4 Further, new Part AA of Schedule 2 of the principal Regulations would not require "natural lighting" in DMP cells. This compares unfavourably with Schedule 6 of the principal Regulations, which requires natural lighting for cells used for cell confinement. The Chief Inspector of Corrections interviewed mental health clinicians working with PERU prisoners, who noted that lack of sunlight was impacting PERU prisoners.[12]

4.5 As DMP designations last for up to two years, the expected consequence of enacting the Bill in its current form would be the long-term detention of DMPs in oppressive and inappropriate environments.

4.6 The Law Society opposes those aspects of the Bill which would legitimise a detention environment substantively inconsistent with New Zealand's commitment to human rights and international law obligations.

Meaningful human contact

4.7 New section 69A in clause 18 of the Bill would provide a minimum entitlement to meaningful human contact. New section 69A(2) would create a "rule prohibiting prolonged solitary confinement" providing that a prisoner must be given an opportunity to receive at least 10 hours of meaningful human contact in each 14-day period. New section 69A(3) creates a duty that "the department (for example, the prison manager and a staff member of a prison) must take into account" the desirability of 14 hours of meaningful human contact each week.

4.8 "Meaningful human contact" is defined by new section 69A(4) as involving social interaction and stimulation, being more than fleeting or incidental to institutional interactions, and offered either face-to-face or via telephone call. Whereas the usual entitlement to telephone calls is five minutes each week, new section 77(3A) in clause 19 would increase that minimum entitlement to two hours for DMPs.

4.9 The Law Society opposes new section 69A in its current form. The new section:

(a) would redefine the international law concept of "prolonged solitary confinement" in a way that runs contrary to the expressed statutory purpose of enacting a regime that reflects the Mandela Rules;

(b) is likely to result in the substantive mistreatment of prisoners; and

(c) may give rise to adverse findings by domestic courts and international treaty bodies.

Defining "meaningful human contact"

4.10 The Law Society is not opposed, in principle, to endeavouring to define the term "meaningful human contact". Incorporating a definition into legislation may assist to ensure that it is clear, accessible, not subject to operational changes or challenges, and cannot be easily removed or altered. The issue of defining "meaningful human contact"

12 OOI report, above n 2 at [220].

has been helpfully discussed in a New Zealand context in *Taylor v Attorney-General (No 3)*, in the context of a claim by a former prisoner turned prisoner rights advocate that he was subjected to serious mistreatment during his incarceration between 2011 and 2018, and that his rights and freedoms under sections 23(5) and 9 of the Bill of Rights had been breached.[13] In *Taylor*, Isac J particularly noted the position of the experts convened to produce the document known as Essex Paper 3:[14]

> The experts stressed that r 44 [of the Mandela Rules] needs to be interpreted in good faith and conscious of its intent and purpose. They emphasised that, therefore, it does not constitute 'meaningful human contact' if prison staff deliver a food tray, mail, or medication to the cell door or if prisoners are able to shout at each other through cell walls or vents. In order for the rationale of the Rule to be met, the contact needs to provide the stimuli necessary for human well-being, which implies an empathetic exchange and sustained, social interaction. Meaningful human contact is direct rather than mediated, continuous rather than abrupt, and must involve genuine dialogue. It could be provided by prison or external staff, individual prisoners, family, friends or others — or by a combination of these.

4.11 As His Honour also noted, adopting observations from the United Kingdom Supreme Court in *R (on the application of AB) v Secretary of State for Justice*: "While this guidance is useful, it demonstrates that the concept of meaningful human contact does not readily lend itself to hard and fast rules or concrete definition."[15]

4.12 In seeking to define "meaningful human contact", the findings of Essex Paper 3,[16] the Mandela Rules, and relevant case law must be taken into account.

4.13 This leads to the Law Society's principal concern: that section 69A of the Bill falls substantially short of international law obligations in respect of minimum entitlements to meaningful human contact.

Redefining the international law concept of "prolonged solitary confinement"

4.14 At international law, the concepts of "solitary confinement", "prolonged solitary confinement" and "meaningful human contact" emerge from the Mandela Rules, a set of universal norms relating to the governance of prisons, adopted by the United Nations General Assembly. One of the purposes of the principal Act is to enact rules that are based on the Mandela Rules (section 5(1)(b)).

4.15 "Solitary confinement" and "prolonged solitary confinement" are defined by rule 44. These definitions hinge on deprivation of "meaningful human contact" for different periods of time. "Solitary confinement" refers to the confinement of prisoners for 22 hours or more a day without meaningful human contact. "Prolonged solitary confinement" refers to solitary confinement for a time period exceeding 15 consecutive days. Rule 45 provides that solitary confinement should be used exceptionally as a last

13 *Taylor v Attorney-General (No 3)* [2022] NZHC 3170 at [123]–[133].
14 *Taylor,* above n 13 at [125].
15 *Taylor,* above n 13 at [127].
16 Penal Reform International "Essex Paper 3: Initial Guidance on the Interpretation and Implementation of the UN Nelson Mandela Rules" (Penal Reform International and the Human Rights Centre at the University of Essex, 7—8 April 2016) (**Essex Paper 3**) at 86–97.

resort, for as short a time as possible and subject to independent review, and only pursuant to authorisation by a competent authority.

4.16 The purpose of rules prohibiting prolonged solitary confinement is to avoid the psychological and physical health impacts that result from deprivation of meaningful human contact, which include depression and anxiety, perceptual distortion, paranoia, and increased risk of suicide.[17]

4.17 New section 69A(2) purports to create a "rule prohibiting prolonged solitary confinement". But the text of the rule itself would in effect legitimise solitary confinement, as that term is defined in the Mandela Rules. A guarantee of 10 hours of meaningful human contact in any 14-day period is 18 hours lower than would be expected by a provision that purports to enact statutory guarantees to avoid solitary confinement and prolonged solitary confinement based on the Mandela Rules. Two hours of meaningful human contact each day is the minimum international norm. New section 69A(2) would instead provide for an average of 43 minutes each day.

4.18 Moreover, it would be possible to meet the requirements of new section 69A(2) while nevertheless subjecting a prisoner to prolonged solitary confinement, provided that solitary confinement conditions continue for more than 15 days.

4.19 The proposed departure from the minimum standard set by the Mandela Rules appears to have emerged without close attention:

(a) In the Regulatory Impact Statement prepared for the Bill, Section C Option 4 proposed prohibiting prolonged solitary confinement in a way that "reflect[s] the same definition as Rule 44 of the Mandela Rules."[18] The Minister of Corrections agreed that Section C Option 4 was a preferred option to be put to Cabinet.[19] The resulting Cabinet Paper did not suggest any departure from the Mandela Rules definition.[20]

(b) On 25 June 2025, the Cabinet Social Outcomes Committee agreed with the Minister's proposal that the legislation should "prohibit solitary confinement",[21] which was confirmed by Cabinet on 30 June 2025.[22]

(c) On 29 January 2026 the Cabinet Legislation Committee considered a further Cabinet paper prior to introduction of this Bill. For the first time, the Minister of Corrections proposed a definition of prolonged solitary confinement that departed from the Mandela Rules.[23] Despite asking Cabinet to rescind some aspects of the prior Cabinet decision to reflect the state of the proposed Bill, the

17 Chief Inspector of Corrections (2023) "Separation and Isolation Thematic Report: Prisoners who have been kept apart from the prison population" at [4].
18 RIS at [178].
19 RIS at [205].
20 Office of the Minister of Corrections "Proposed amendments to the Corrections Act 2004 and Corrections Regulations 2005 for the safe, lawful, and humane management of extreme threat prisoners".
21 SOU-25-MIN-0070 at 2.11.
22 CAB-25-MIN-0208.
23 Office of the Minister of Corrections "Corrections (Management of Prisoners, and Prisoners' Property) Amendment Bill: Approval for Introduction" at [22]–[24].

Minister did not seek Cabinet's approval to modify its prior decision to "prohibit solitary confinement", despite the proposed legislation no longer achieving that end.

4.20 Redefining well-understood terms used in the Mandela Rules introduces incoherency to the correctional legislative regime. Purporting to authorise the Department of Corrections to subject prisoners to a regime falling below international human rights norms subjects to the Department to the risk of adverse findings from domestic courts and international treaty bodies.

4.21 The Law Society recommends that new section 69A be reformulated to reflect rule 44 of the Mandela Rules, as was recommended by the RIS and initially approved by Cabinet.

5 Segregation provisions

Varying association status

5.1 New sections 58(2A) and 59(3A) in clause 14 of the Bill would permit the prison manager to at any time vary a segregation direction from restricted association to denied association status, or vice versa.

5.2 These new sections would expressly permit a prison manager to substantially increase the restrictiveness of a segregation order, without any guarantee of prompt review by an external decision-maker. This risks the emergence of solitary confinement, and potentially prolonged solitary confinement if the segregation order continues for over 15 days.

5.3 A segregation order must be reviewed by a decision-maker independent of the prison manager within 14 days (see new sections 58(3)(c) and 59(4)(c)). But external review requirements are then reduced to once every three months (sections 58(3)(d)–(e) and 59(4)(d)). If association status is varied from restricted to denied in such circumstances, a prisoner may face as long as three months of total isolation from other prisoners until the segregation order can be externally reviewed.

5.4 By contrast, a change in status from denied association to restricted association is unobjectionable: the reduction of restriction in this manner ought to be encouraged.

5.5 The Law Society recommends that new sections 58 and 59 be amended to expressly prohibit a prison manager from varying association status from restricted to denied. If denied association is necessary, a new segregation order ought to be made.

Humane treatment during segregation

5.6 While the proposed prolonged solitary confinement provisions were developed with PERU prisoners in mind, they will also benefit other prisoners subject to long-term segregation directions with denied association status. A small number of prisoners are subject to long-term segregation of this nature, and those prisoners inevitably have complex risks and needs. Meaningful human contact for such people cannot come from other prisoners due to their denied association status.

5.7 The Law Society recommends that the proposed segregation provisions be strengthened by including in the review processes provided by new sections 58(3) and 59(4) an

obligation on the prison manager to generate a daily plan for meaningful human contact in relation to any segregation direction that continues without association beyond the initial 14-day period. Such a safeguard would prevent prolonged solitary confinement from occurring in relation to segregated prisoners with denied association status.

6 Prisoners' trust accounts

6.1 The Law Society acknowledges that misuse of trust accounts is a legitimate concern. A trust account allows a prisoner to feel some autonomy, to purchase items not freely available and to maintain contact with family and friends, which is important for reintegration.

6.2 In the Law Society's view, the amendments proposed in clauses 9 and 10 of the Bill delegating rule-making power in relation to trust accounts are problematic. Such rules are made quickly and with less transparency, public debate, or scrutiny than primary legislation would ordinarily attract. The rule makers are officials who are not directly accountable to Parliament in the same way legislators are held to account. It is accepted that the executive typically has greater technical expertise and access to current information, potentially making it better placed than the legislature to craft detailed rules that respond in a timely way to current risks. However, the Law Society is concerned that leaving too much discretion in the hands of the executive allows too much uncertainty.

6.3 To mitigate this, it would be preferable to have some overarching principles to which the rules must adhere when they are promulgated which would provide a measure of comfort. Principles of this nature could be additional to the examples of requirements that may be imposed as noted in section 46A(2)(a)–(g). While it is accepted that section 46A(3) reminds rule makers of the uncontroversial proposition that there are boundaries to the authority given to create the rules, some overarching principles would serve as helpful additional restraints and guides.

6.4 The period of 5 years proposed in section 46A(4) is relatively long and could have a shorter period of, say, 2 years.

7 Access to legal representation

7.1 Prisoners highly value what few freedoms and entitlements they have while serving a sentence of imprisonment. Any perceived infringement of those freedoms and entitlements will be challenged. Inevitably, such challenges will require the involvement of lawyers. Already, a number of the Law Society's members take phone calls and provide assistance and help to prisoners on a pro bono basis. If advice is not available to prisoners there is a real potential for conflict between prisoners and staff.

7.2 The Law Society is of the view that a prisoner should be entitled to legal representation in relation to the matters that the Bill is proposing to implement.

7.3 Access to legal advice is fundamental for prisoners facing further curtailment of their already limited rights, as it ensures they can understand, process and meaningfully challenge decisions that affect them. The provision of timely legal advice ensures that those decisions are subject to proper scrutiny which enhances decision-making and

accountability. Without such access, the practical ability to mount a proper challenge to decisions is likely to be compromised, undermining procedural protections.

7.4 For access to legal representation to be meaningful, legal aid would need to be available. Allowing applications in a manner similar to the way legal aid is granted for parole hearings may be useful, as provided for in section 107X of the Parole Act 2002.[24] We note that consideration of the availability of legal aid for such matters would need to be discussed and advanced with officials from the Legal Services Commission. As officials will be aware, there are already issues surrounding the availability of lawyers willing to provide legal services to legally aided clients. We acknowledge that there are also cost implications associated with these issues.

8 Recommendations

8.1 The Law Society recommends as follows.

Clauses 9 and 10: prisoners' trust accounts

(a) Consider inclusion of overarching principles to which the rules must adhere.

(b) Consider reducing the relatively long period of 5 years proposed in new section 46A(4), perhaps to 2 years.

Clause 12 and new Schedule 1AB: DMP designation

(c) Revise the DMP designation test in new section 52C (elaborated on by new sections 52D, 52E and 52F) to respond solely to extreme risk that might be realised while a person is detained by the chief executive in a prison.

(d) Consideration could be given to the addition of "imminent" to the test, to remind the chief executive that the assessment of risk requires that it be proximate. In addition, restrictive management should only be considered if the imminent extreme risk cannot be sufficiently mitigated by ordinary management measures reasonably available to Corrections.

(e) In new section 52D(1)(b), substitute "seriously disrupting" for "severely".

(f) In new section 52D(1)(d), insert the qualifier "serious" before "harm".

(g) Reconsider the blanket inclusion in section 52D(1)(c) of "any offence against the Terrorism Suppression Act 2002".

(h) Review the necessity for section 52E(1)(b) to specify that the conduct needs to cause a severe degree of harm.

(i) Amend section 52F to require the chief executive to consider whether the imminent extreme risk is one that cannot be mitigated by ordinary management measures reasonably available to Corrections.

[24] Parole Act 2002, s 107X (application of Legal Services Act 2000) provides as follows: *"For the purposes of section 6(a) of the Legal Services Act 2000 (which identifies proceedings for which legal aid may be granted), proceedings under this Part before any court are criminal proceedings."*

(j) Note the potential for litigation risk to arise under section 52H as it is currently framed.

(k) In new section 52K(1), either identify another public servant on whom the duty can be conferred, or reformulate the duty as one held by the chief executive only.

(l) Strengthen new Schedule 1AB by providing that no departmental employee may be appointed to the DMP Advisory Panel.

(m) The Committee may wish to seek advice on whether DMP designation should apply to prisoners aged 25 or under.

Clause 14: segregation

(n) Amend new sections 58 and 59 to expressly prohibit a prison manager from varying association status from restricted to denied. If denied association is necessary, a new segregation order ought to be made.

(o) Strengthen the proposed segregation provisions by including in the review processes provided by new sections 58(3) and 59(4) an obligation on the prison manager to generate a daily plan for meaningful human contact in relation to any segregation direction that continues without association beyond the initial 14-day period.

Clause 18: meaningful human contact

(p) Reformulate new section 69A to reflect rule 44 of the Mandela Rules, as was recommended by officials in the RIS and initially approved by Cabinet.

(q) The findings of Essex Paper 3, the Mandela Rules, and relevant case law must also be taken into account in seeking to define "meaningful human contact".

Schedule 4: features of DMP cells

(r) Seek advice on appropriate amendment to new Part AA of Schedule 2 of the principal Regulations, to ensure that it does not legitimise a detention environment substantively inconsistent with New Zealand's commitment to human rights and international law obligations.

Legal representation

(s) To assist and provide for appropriate access to legal representation, consider inclusion of a clause in the Bill comparable to the Parole Act 2002, s 107X.

Nāku noa, nā

Jesse Savage
Vice President