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Legislative Policy Team  
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Tēnā koe,

## Feedback on options for more transparent management of extreme threat prisoners

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to provide feedback on the Department of Corrections (**Corrections**) *Consultation on options for more transparent management of extreme threat prisoners: Discussion Document 2025 (discussion document)*.

1.2 This feedback has been prepared with input from the Law Society's Criminal Law Committee.<sup>1</sup>

## 2 General comment

2.1 The Law Society supports the intention to improve the transparency of the management of extreme threat prisoners (**ETP**) and agrees improved transparency is desirable. Further, the Law Society understands that the need for the management of ETP to be reviewed has arisen in part from reports released by the Office of the Inspectorate (**OOI**) and the Chief Ombudsman. These reports set out significant concerns 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 (noting that some prisoners may be designated ETP and reside outside of the unit).<sup>2</sup>

2.2 The discussion document states that Corrections must operate in accordance with the New Zealand Bill of Rights Act 1990 (**Bill of Rights**), the Human Rights Act 1993, and the Public Service Act 2020 and notes this legislation will be considered when developing options.<sup>3</sup> The Law Society strongly supports this, and agrees it is essential

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<sup>1</sup> More information about this committee can be found on the Law Society's website: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/>.

<sup>2</sup> 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**).

<sup>3</sup> Department of Corrections "Consultation on options for more transparent management of extreme threat prisoners: Discussion document 2025" (**discussion document**) at 9.

to robustly test options and whether any limitations on individual prisoners' rights are both reasonable and demonstrably justifiable.

### 3 Topic 1: Identifying and designating extreme threat prisoners

- 3.1 The discussion document seeks feedback on the establishment of a framework for designating ETPs to enable the provision of a higher level of custodial management of the designated prisoners.<sup>4</sup>

#### Problem 1a

- 3.2 Corrections is considering whether there is a way to strengthen the decision-making and assurance processes to ensure that a prisoner's designated level of threat is proportionate to the level of risk they present. Corrections hopes to improve the robustness and transparency of decision-making relating to the designation of extreme threat status. Three options are considered as a response to the policy issue in question. Loosely, these are:<sup>5</sup>
- (a) To require a panel to make decisions on designation;
  - (b) To create a panel that would make recommendations to the Chief Executive (CE), with the CE making the final decision about designation; or
  - (c) To require all decisions on designation of extreme threat to be made by a court.
- 3.3 The Law Society supports a panel process for the designation of an ETP – but only if that panel process is to be significantly amended from its current structure. We emphasise that the independence of such a panel is an integral feature that would greatly assist in removing potential conflicts of interest and offer valuable protection for both Corrections staff and prisoners. We therefore prefer option one, if the panel convened has independence from Corrections. However, if this is not the intention and the panel is intended to remain an internal panel comprised of Corrections staff (similar to the current structure), we consider option two should be pursued instead.
- 3.4 If the panel is not to be independent, option two is preferred over option one primarily because of the additional layer of accountability provided by requiring the CE to then make the decision on designation. We note, however, that an independent panel would be our preference overall. Independent accountability would otherwise be left to post-decision, provided by the Office of the Inspectorate and by the Ombudsman in reviewing the substantive decisions and conditions that ETPs are subject to. The decision-making powers are also able to be judicially reviewed where necessary.<sup>6</sup>

#### *Legal Representation*

- 3.5 The Law Society is of the view that a prisoner should be entitled to legal representation at the panel stage. These are significant decisions, with significant

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<sup>4</sup> Discussion document at 12.

<sup>5</sup> Discussion document at 12 – 13.

<sup>6</sup> Discussion document at 16.

impacts for the prisoner, and their rights and conditions. The availability of legal representation would also enable the lawyer to explain and assist the prisoner in understanding why they may be considered an extreme threat prisoner if that is the decision ultimately reached by the CE/panel.

- 3.6 For access to legal representation to be meaningful, legal aid would need to be available. We note that consideration the availability of legal aid for such matters would need to be discussed and advanced with officials from the Legal Services Commission. Allowing applications in a similar manner to how legal aid is granted for parole hearings may be useful, see section 107X of the Parole Act 2002.

#### *Review*

- 3.7 At a minimum, there should be a regular review of the status of the prisoner's designated ETP at least every six months or if there is a significant change in the prisoner's circumstances, as is already the requirement in the Corrections Act.<sup>7</sup> In some cases, it may be appropriate to review more regularly, depending on the risk factors present and how rehabilitation efforts within the prison are addressing these factors.
- 3.8 Given the small number of prisoners affected, a minimum requirement to review biannually should not be too onerous on Corrections resourcing. However, we note that should the scope of the proposals be expanded to include remand prisoners, reviews should occur more frequently, given they have not yet been convicted of the alleged crimes they are incarcerated for.

#### *Panel membership*

- 3.9 The Law Society recommends appointing an independent panel as a way to combat potential conflicts of interest and ensure that the focus on protecting prisoners' rights and minimum entitlements is not lost.
- 3.10 We suggest a panel membership could potentially consist of:
- (a) A retired judge as a chair of the panel
  - (b) External psychologist experts to reduce potential bias
  - (c) Other mental health professionals (i.e. psychiatrists)
  - (d) A human rights expert (i.e. past member of the Human Rights Commission or similar)
  - (e) Tikanga/Te ao Māori/cultural expert
  - (f) Sociologist/criminologist with expertise in terrorism/gangs/organised crime
  - (g) Other lawyer and/or community members (similar to Parole Board hearings).
- 3.11 We note that the discussion document appears to assume the panel will include Corrections psychological staff. As noted above, the Law Society considers the independence of the panel from Corrections to be essential, and suggests that rather

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<sup>7</sup> Corrections Act 2004, section 47.

than appointing Corrections staff to the panel, staff should instead provide information and/or reports for the panel's consideration. This will maintain necessary independence and scrutiny of Corrections' advice.

- 3.12 Similarly, the discussion document states that Police currently provide advice on the risk posed by prisoners and that this will continue. We do not see any problem with that; however, we would be concerned about the perception of a conflict of interest should a member of Police be appointed to the panel given their position as the prosecuting agency.

#### *Information*

- 3.13 In the Law Society's view, the information presented to the panel should be comprehensive and detailed, similar to what is prepared for an extended supervision order. This is necessary for a nuanced risk assessment, and consideration of all the various relevant factors, including the specifics of past offences and the treatment the individual has received before and during their incarceration.

#### *Problem 1b*

- 3.14 Problem 1b looks at options for providing improved transparency about the definition of an ETP and creating a bespoke management framework for those prisoners. To address the issue of defining an ETP and creating a framework for the management of ETPs, two options are proposed. They are:<sup>8</sup>
- (a) To create a statutory framework without defining the characteristics of an ETP; or
  - (b) To create a statutory framework that includes a full set of characteristics that warrant designation as an ETP and the higher level of custodial management.
- 3.15 It is important there is transparency and accountability for the decision-making and management of prisoners designated as ETPs. These decisions fundamentally alter the inmate's life and substantially impact their human rights and well-being, which Corrections is duty-bound to protect to a minimum standard.<sup>9</sup>
- 3.16 The Law Society prefers option two. The purpose and need for the designation should be clearly set out in legislation, along with criteria for eligibility to be considered for the ETP designation. This is because the imposition of restrictions on an individual's rights to the degree proposed needs to be demonstrably justified and subject only to reasonable limitation. This should also help to minimise the risks of a potential violation of New Zealand's rights obligations under domestic and international law.
- 3.17 Setting out the criteria for designation statutorily provides an additional layer of protection, as an Act of Parliament would be required to change the characteristics that warrant ETP designation. This further has the benefit of ensuring the human rights implications of the specified characteristics (and broader framework) would be

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<sup>8</sup> Discussion document at 14 - 15.

<sup>9</sup> Corrections Act 2004, sections 5, 6(1), and 8(1); United Nations Standard Minimum Rules for the Treatment of Prisoners (**the Mandela Rules**); Discussion document at 9 - 10.

scrutinised by way of both the Select Committee process and the Attorney-General's section 7 duty to provide reports about the level of compliance with the Bill of Rights.

#### Coverage

- 3.18 The Law Society does not agree that the ETP designation should cover all prisoners: accused, convicted, and sentenced. We consider it would be inappropriate to designate a remand prisoner as an ETP when they have only been charged with an alleged crime and have not had charges against them proven in court. It is a more significant step to apply such restrictive management to a person who has not yet been convicted of any crime, and it is unlikely such a limitation could be considered both justified and reasonable, except in very exceptional circumstances.
- 3.19 As a general rule, the Law Society considers that ETP designation should not apply to prisoners aged under 25. Young offenders are neurologically different to adult offenders, and this is recognised both in academic literature and by the courts.<sup>10</sup> Just as the courts must take account of the offender's age at sentencing, so too should any potential criteria for designation as an ETP.<sup>11</sup> 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.

#### 4 Topic 2: Management of extreme threat prisoners

- 4.1 The discussion document notes that changes to the way ETPs are managed are being considered as part of this work. The aim is to ensure that ETPs are managed in a way that takes into account the threat they pose and ensures greater protection of their rights and minimum entitlements (including access to critical services).<sup>12</sup>

#### Problem 2a

- 4.2 The discussion document states that the risk profile of some prisoners is dynamic and complex, and the current framework cannot adequately respond to the threats posed by these prisoners. Three options are suggested to address the issue. They are:<sup>13</sup>
- (a) To amend the framework so ETPs can only be classified as high or maximum security prisoners;
  - (b) To create a new security classification for ETPs; or
  - (c) To amend the security classifications to take into account different types of risk.

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<sup>10</sup> 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].

<sup>11</sup> Sentencing Act 2002, section 9(2)(a).

<sup>12</sup> Discussion document at 17.

<sup>13</sup> Discussion document at 18 – 19.

- 4.3 The Law Society prefers option two, as it would allow processes and policies to be tailored to the small number of prisoners designated as ETPs. We consider that the need for legislative amendment to enable the change, whilst a lengthier process, will ensure the classification is appropriately targeted and can include considerations to address the concerns about human rights and natural justice that will arise.
- 4.4 In the Law Society's view, it is essential that prisoners are provided with information about the security classification even where it may be sensitive or restricted. A prisoner should be assisted to understand subsequent decisions and restrictions placed on them, and the provision of information will facilitate this. Better understanding is likely to result in less tension, improved compliance, improved perceptions of fairness, and increased trust. It is also a rights consistent measure.

### Problem 2b

- 4.5 The discussion document seeks feedback on options to change the segregation framework so that it can respond to the threats posed by ETPs who are likely to spend long periods of time on segregation. Two options are proposed for consideration of this issue. They are:<sup>14</sup>
- (a) To enable decisions about segregation to be made by the same body that decides the designation of ETPs.
  - (b) To enable Visiting Justices to make segregation decisions using bespoke periods or longer periods to do so.
- 4.6 Prisoners designated as ETPs will not always, as a matter of course, require longer segregation periods with less frequent review periods and a prisoner's status as an ETP is not sufficient justification for prolonged segregation. Nor is the inability to properly manage ETPs in the general prison population.<sup>15</sup> While we acknowledge that the use of segregation is a recognised tool of prison management, we consider long periods of segregation are more likely to become solitary confinement, which could violate the Mandela Rules and lead to harm to the prisoners.
- 4.7 Enabling longer segregation periods not only goes against natural justice principles and human rights provisions (such as the United Nations Convention against Torture, the Crimes Against Torture Act 1989, and the Bill of Rights) it is also likely to engender feelings of distrust, frustration, anger, hopelessness, and apathy in those subject to such conditions. Further, it is unlikely to encourage rehabilitation and progression such that the prisoner is able to transition back to the general prison population which increases risks to safety and well-being and risks becoming a cyclical mechanism. We note that the OOI report and the OPCAT report both clearly indicate there is a feeling of hopelessness in prisoners detained in the PERU on directed segregation orders, noting that whilst Visiting Justices and other staff encourage their good behaviour so that they can progress out of the PERU, their placement orders state that they are placed there for 12 months and so it does not on

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<sup>14</sup> Discussion document at 20.

<sup>15</sup> As noted in the OPCAT report at 1.

its face appear that there is a real chance they can get out of the PERU before then – regardless of their behaviour.<sup>16</sup> The Law Society does not support longer periods of segregation with less frequent review periods.

- 4.8 Segregation should only be permitted in exceptional circumstances where it is necessary, proportional and legally sanctioned, with robust oversight, and for the shortest period necessary. It should only be used where it is clear that any lesser management tool is unable to address the issue or concern.<sup>17</sup> Segregation should not be used to prevent offending outside prison or to prevent influencing others to offend, especially when less restrictive management tools can effectively address the concerns. The cumulative effect of the restrictions of ETP and segregation, must be considered.
- 4.9 As a result, the Law Society prefers option one. Option one better enables decisions about segregation to be made by a panel that includes experts in human rights and mental health, who fully understand the risks posed by the impact of long-term segregation, and ensures the decision-makers have access to all relevant information and personal risk details of the prisoner (given they are the ones who would have decided to designate them as an ETP per problem 1a). The process should also allow the prisoner to be present and part of the decision-making process, including having the ability to provide reasons why they believe they should not be subjected to long-term segregation.
- 4.10 Lastly, natural justice principles should be followed for all decision-making on segregation. Irrespective of the alleged risk, a prisoner has a right to natural justice, and the procedural expectations should be set at a high standard where the impacts of the proposed long-term segregation are such significant restrictions (and well beyond the usual restrictions on liberty imposed on prisoners).

#### Problem 2c

- 4.11 The discussion document identifies that the lack of clarity about the definition of ‘meaningful human contact’ is an issue that needs to be addressed and proposes two options for doing so. The options are:<sup>18</sup>
- (a) To define meaningful human contact for all prisoners; or
  - (b) To provide two definitions of meaningful human contact – one for ETPs and one for all other prisoners.
- 4.12 The Law Society notes ‘meaningful human contact’ is not a simple concept to define in such a way that is readily transferable to all environments and situations and as such would require a certain degree of flexibility to enable the continuation of fact and circumstance specific analysis of situations. *Taylor v Attorney-General (No 3)* helpfully discusses the issue of its definition in the context of a claim by a former prisoner turned prisoner rights advocate that he was subjected to serious mistreatment during

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<sup>16</sup> OOI report at [44]; OPCAT report at 38 – 40.

<sup>17</sup> OPCAT report at 36.

<sup>18</sup> Discussion document at 22.

his incarceration between 2011 and 2018, and his rights and freedoms under section 23(5), and section 9 of the Bill of Rights were breached.<sup>19</sup>

- 4.13 Isac J particularly noted the position of the experts convened to produce what is known as Essex Paper 3, which stated:<sup>20</sup>

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.*

- 4.14 Relevantly, Isac J also stated:<sup>21</sup>

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. As the United Kingdom Supreme Court observed in *R (on the application of AB) v Secretary of State for Justice*:

“‘Solitary confinement’ is not an expression with a defined meaning in English law. Nor does it have any universally agreed definition in international law. It has been used by the European Court of Human Rights in cases covering a variety of circumstances, but has not been defined. In the case law of the European Court concerning article 3, as in domestic cases applying the Human Rights Act, the court has carried out an evaluation of the circumstances of the individual case, rather than asking whether the treatment of the applicant satisfied a particular definition and, if so, basing its decision on whether the period of time during which the definition had been satisfied was in excess of a specified maximum.”

- 4.15 Segregation of a prisoner considerably increases the risk of the prisoner losing meaningful human contact. Based on current practice, an ETP is almost certain to be subject to segregation in excess of 15 days, raising the very real risk of prolonged or indefinite solitary confinement, in breach of domestic and international obligations. Adherence to minimum standard of meaningful human contact is essential to ensure that ‘prolonged segregation’ does not become an alternative name for what is in fact solitary confinement.

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<sup>19</sup> *Taylor v Attorney-General (No 3)* [2022] NZHC 3170 at [123] – [133].

<sup>20</sup> *Taylor*, above n 19 at [125].

<sup>21</sup> *Taylor*, above n 19 at [127].



- 4.16 Meaningful human contact for a minimum of 2 hours a day is therefore essential. We support the proposal to define the term, but note that careful and considered drafting will be necessary.
- 4.17 The Law Society suggests that any proposed definition should be subject to comprehensive public consultation and must take into account the findings of Essex Paper 3, the Mandela Rules, and relevant case law.<sup>22</sup> A definition should be incorporated into legislation so that it is clear, accessible, not subject to operational changes/challenges, and cannot be easily removed or altered.
- 4.18 The Law Society's strong preference for definition is option one, as ETPs have the same needs and minimum entitlements as other prisoners. We consider there is no valid reason why ETPs should be subjected to a different definition of meaningful human contact.

#### Problem 2d

- 4.19 The discussion document states that ETPs spend long periods on segregation without any additional support to mitigate its impact. Three options are provided to improve the provision of additional support with transparency. They are:<sup>23</sup>
- (a) To increase existing minimum entitlements for ETPs;
  - (b) To create additional minimum entitlements for ETPs; or
  - (c) To specify additional cell requirements for holding ETPs.
- 4.20 At the outset, the Law Society urges that the extra entitlements apply to all prisoners who are subject to long periods of segregation, regardless of whether they are designated as an ETP.
- 4.21 The Law Society considers that progressing all three proposed options is worthwhile and will assist in ensuring ETPs human rights are upheld, and physical, emotional and mental well-being is properly supported when subject to long periods of segregation. While we understand that progressing option three may not currently be feasible, it is an option that, in our view, should be pursued to improve the physical and mental health of those subject to long-term segregation.<sup>24</sup> Access to natural light and physical exercise are important components of maintaining mental and physical health.
- 4.22 Our stance is supported by the dicta in *Taylor v Attorney-General (No 3)*. As noted above at [4.12], Mr Taylor pursued declarations that his treatment while on directed segregation was in breach of his rights under sections 23(5) and 9 of the Bill of Rights. In particular, he was not afforded his minimum entitlement to one hour of physical exercise per day.<sup>25</sup> Section 23(5) of the Bill of Rights states that 'everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the

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<sup>22</sup> 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.

<sup>23</sup> Discussion document at 23 - 24.

<sup>24</sup> Discussed in the OPCAT report at 20 - 22.

<sup>25</sup> *Taylor*, above n 18 at [287].

person.’ Section 9 provides that ‘everyone has the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment.’

- 4.23 Although Mr Taylor’s situation did not meet the high threshold for a breach of his rights under section 9, Isac J determined that his rights under section 23(5) were violated as a result of the inconsistent application of his minimum entitlement to daily exercise (and because he was housed in a cell with an operational and monitored CCTV camera).<sup>26</sup>
- 4.24 We suggest that the proposed additional entitlements considered by options one and two should be informed by review of relevant expert material in the realm of psychology, health, and human rights. Prisoners should also be consulted about what they think would make the most difference to them. We suspect it is likely that increased regular contact with family and loved ones would make the most impact. Further, we consider it essential that access to and use of technology is also increased to support the extra entitlements, such as facilitating video calls with family members.

#### Problem 2e

- 4.25 The discussion document states that transparency and confidence in how management plans are tailored for ETPs, including how Corrections is supporting prisoners to progress and rehabilitate is an issue that should be addressed. Corrections hopes to ensure it is delivering on statutory obligations for ETPs, including delivering progression opportunities. Two options are set out:<sup>27</sup>
- (a) To create individualised progression plans for ETPs in addition to the existing management plan; or
  - (b) To amend the requirements for existing management plans to provide a tailored approach to progression pathways for ETPs.
- 4.26 The Law Society prefers option one, providing individualised progression plans for ETPs. This would best support the need for a tailored approach that takes account of ways to progress out of PERU. It could be linked to the management plan, with regular reviews to ensure ETPs are kept informed of their progress and their ability to rejoin the general prison population.
- 4.27 We also note it will be important in some cases to consider the prisoner’s religious and/or cultural background, to ensure that cultural and religious differences in behaviour are taken into account (for example, a lack of direct eye contact is considered respectful in Te Ao Māori, whereas NZ Europeans prefer direct eye contact as a marker of respect).

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<sup>26</sup> *Taylor*, above n 18 at [840] – [843].

<sup>27</sup> Discussion document at 25 – 27.

## 5 Topic 3: Administration and operation of a controlled management unit

- 5.1 The discussion document states that changes are being considered to improve the administration and operation of the controlled management unit where ETPs are imprisoned.<sup>28</sup>

### Problem 3a

- 5.2 The discussion document notes that the lack of a clear statutory framework supporting the establishment of the PERU as a discrete site means there is limited transparency and clarity as to chains of authority and responsibility for the unit's operations. Corrections hopes to introduce a detailed legislative framework that sets out the roles and responsibilities for day-to-day management. Two options are proposed to address this issue:<sup>29</sup>
- (a) To insert in legislation more detail for the establishment and operation of a 'discrete site' within a host prison; or
  - (b) To create a detailed legislative framework specifically for the accommodation of ETPs.
- 5.3 The Law Society prefers option two, as it will improve clarity and certainty about the unit's management and the roles and powers within it. While option one is more responsive to change, it leaves more uncertainty and has less transparency.
- 5.4 The Law Society agrees that extra record-keeping should be required given the higher level of custodial management imposed upon ETPs. This would protect all parties from claims regarding their actions, and decisions while promoting the maintenance of minimum standards and enabling effective oversight.
- 5.5 In addition, the consideration and establishment of any other units such as the PERU should be considered and addressed legislatively.

### Problem 3b

- 5.6 The discussion document states that Corrections cannot destroy the property of ETPs when it may be appropriate to do so to prevent public harm. Two options are proposed to respond to this issue:<sup>30</sup>
- (a) To provide Corrections with the ability to destroy the property of ETPs; or
  - (b) To provide Corrections with the power to destroy the property of all prisoners with connections to terrorism.
- 5.7 The Law Society has some concerns with this proposal. First, and most importantly, the basis from which a decision is made to destroy prisoner property is not clarified sufficiently in the discussion document. The problem definition simply states that Corrections cannot currently destroy said property 'when it may be appropriate to do so to prevent public harm.' Given the number of current offenders incarcerated for

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<sup>28</sup> Discussion document at 29.

<sup>29</sup> Discussion document at 29 – 30.

<sup>30</sup> Discussion document at 31 – 32.

terrorism offences, it is not clear whether this has posed an issue or is simply speculative. It is also unclear why it is considered that similar issues of memorabilia would be raised in the case of an ETP (whose offending is not of any specific nature such that would raise concerns about memorabilia). We consider this proposal needs to be more fully explained, and would hesitate to suggest that property can be destroyed merely because Corrections considers it 'appropriate.'

- 5.8 If this proposal proceeds, at a minimum, the standard should be that it is 'necessary.' Further, in the Law Society's view, such an extreme measure should require independent decision-making. We consider it may be appropriately a function of the panel created to make decisions on ETP designations or the court as independent decision-makers.
- 5.9 Timing of destruction should also be limited to the time of leaving custody or death. Outside of these parameters Corrections staff have other powers which can be implemented to ensure that prisoner property that could be considered memorabilia or similar does not leave the prison. For example, Corrections staff monitor prisoner mail, and this should have robust enough processes to disallow the sending of items that could be considered memorabilia, even if just the letter written by the prisoner.<sup>31</sup>

## 6 Next steps

- 6.1 We would be happy to answer any questions or discuss this feedback further. Please feel free to get in touch via the Law Society's Law Reform & Advocacy Advisor, Shelly Musgrave ([shelly.musgrave@lawsociety.org.nz](mailto:shelly.musgrave@lawsociety.org.nz)).

Nāku noa, nā



Frazer Barton  
**President**

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<sup>31</sup> Corrections Act 2004, sections 108, 110A, and 110B.