

3 April 2020

Justice Venning  
Chief High Court Judge

Justice Susan Thomas  
Incoming Chief High Court Judge

Judge Taumaunu  
Chief District Court Judge

## **Department of Corrections' approach to prisoners' access to counsel during Alert Level 4**

I have recently written to the New Zealand Law Society to outline how the Department of Corrections is facilitating prisoner contact with legal counsel in the context of Covid-19. I thought it may be useful for you to also be informed of the approach the Department is taking in that respect, as well as in other areas.

We deliver an essential public service in prisons and our community and are committed to continuing our work to keep people safe.

I would like to stress that we are aligning all our actions and measures with the New Zealand Government COVID-19 alert levels. These alert levels specify the public health and social measures to be taken at different levels. In order to do this, the Department has had to put some measures in place that change the way we do things.

### ***Legal Adviser and Prisoner Contact***

Following New Zealand moving to COVID-19 Alert Level 4, some activities have had to temporarily stop considering physical distancing requirements, including face-to-face visits by legal advisers. These measures do not alter prisoners' right to access to legal counsel. Prisoners still have access to counsel by:

- phone and by audio visual link (AVL) (where available); and
- post, courier and email in line with our processes relating to legally privileged correspondence and documents.

I further outline how this access works below.

#### ***By phone or AVL***

While the process can vary slightly from site to site, lawyers who seek phone contact with their client in prison can call the prison's main phone number and will be put through to the Residential Unit in which the prisoner resides. If the prisoner is unlocked

staff will work to facilitate the phone call. If the prisoner is locked down at that time (for example to avoid mixing of prisoners with different security classifications and segregation statuses), staff will endeavour to either facilitate the call immediately or propose a new time that works for both parties.

A prisoner can ask to make a phone call to their lawyer when unlocked, and staff will attempt to facilitate the call in a timely manner.

We are informed that that AVL booths in courtrooms are now in heavy use for hearings. On that basis, we are informing lawyers that they should ideally try to contact prisoners by telephone. In some situations, however, lawyers are also able to contact prisoners using these booths. We have emphasised that it is more important than ever that these are only utilised through the official booking system. If lawyers were to attempt to call into a prison AVL booth using their own phones, this could disrupt court hearings that are underway utilising that booth.

#### *By postal services and email*

We are encouraging legal advisers to continue to contact prisoners via postal and courier services as they remain operating as essential services.

The Department has also expanded the use of email communications to further facilitate prisoner access to counsel. All prison sites will now, and until further notice, accept email communications sent to the official email address set out in the schedule for prisoners, if emails are:

- Sent to an official prison email address on the schedule. This is because we cannot be sure that other email addresses will be regularly monitored or that mail and mail sent to them will be actioned.
- Sent from a recognised email address linked to the law firm, practice or organisation that is verifiable.
- Sent with the following subject title:

\*Legally privileged correspondence / documents\* (Prisoner Surname, first name), (PRN if known), (UNIT if known).

- Comprised of a cover letter and attachment(s) to total no more than 20 double sided pages. Lawyers are advised to courier extensive documents / discovery to site as per standard processes.

We have put these requirements in place to ensure privilege can be maintained. For instance, where a Corrections Officer must investigate who the recipient of an email ought to be, any privilege in that email may be lost. We also cannot guarantee that our staff will be able to print everything out in the order that might be intended by their legal adviser.

Lawyers have been informed that post and courier services should be utilised in the usual manner as much as possible. This is to avoid overextending prison resources by

requiring those resources to manage emails during the period of COVID-19 related restrictions. This may also result in the prisoner getting the documents more quickly.

### ***Statutory Visitors***

During the process of making the decisions currently in force, the starting point was to recognise that the country is at Alert Level 4, and to ensure the Department was appropriately observing the health requirements of lock-down and physical distancing.

I had regard to the role of the relevant statutory bodies, particularly that of the Ombudsman. I also had regard to the Statement of Principles issued by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment. Those decisions do not prevent exceptions from being made for those who fulfil important constitutional functions within the system.

It is important to note that the decision I made in this respect was to suspend visits from statutory visitors that were not pre-approved. This means that where a plan to enable a visit to occur safely can be agreed between the statutory visitors and the Department, I would expect to be able to approve that to occur.

I appreciate there is a level of uncertainty in the community generally about the impacts of the epidemic. Access to prisons and prisoner rights are very important considerations in this context. Ultimately, I consider that I have made my decisions based on the overarching public safety purpose of the Corrections system.

Accordingly, statutory visitors can be provided with access to prisons during the COVID-19 lockdown where it is appropriate to do so. I simply want to be sure that we do this in a way that is safe

### *Ombudsman New Zealand*

I was in close contact with the Chief Ombudsman, Peter Boshier, prior to this restriction coming into force. We are collectively considering how employees of the Office of the Ombudsman might visit prisons safely during this period for the purposes of carrying out that Office's important functions. We want to reduce, as far as possible, the likelihood that anyone visiting a prison could infect a prisoner with COVID-19, and to also prevent a visitor from being infected with COVID-19 should Covid-19 start to manifest in the prison environment. We are not looking to prevent the Ombudsman from carrying out his important functions. In fact, I consider that it is even more essential that he exercise some of those functions in the current context.

### *The Office of the Inspectorate*

I have also been in contact with the Office of the Inspectorate of the Department of Corrections, which is an operationally independent unit of the Department.

In response to COVID-19, the Office of the Inspectorate is now dealing directly with all complaints and issues that come to them, seeking early resolution opportunities. This will enable the Inspectorate to identify any emerging risks and challenges. The number of inspectors available to handle complaints has been doubled and they moved to a seven day a week complaints operation from the first week of lockdown. This means telephone messages are being cleared at weekends, ensuring that any serious or

urgent complaint is handled immediately, and providing ongoing assurance of any trends or concerns.

The Office of the Inspectorate is communicating with international agencies dealing with prisoner oversight to ensure New Zealand is in line with international best practice. They are also proactively engaging with the Human Rights Commissioner to seek advice about the Office of the Inspectorate's functions during the COVID-19 situation.

I recognise the importance of inspectors being able to visit prisons, speak to prisoners and staff directly, and see first-hand what is happening. The Inspectorate is currently preparing advice for me about how re-entry to the prison network by inspectors can be achieved safely, taking regard of WHO guidelines. There is no precedent for this, and it is important that these guidelines are developed to ensure the safety of Inspectorate staff, prisoners and prison staff before visits recommence.

### *Visiting Justices*

Disciplinary hearings conducted by Visiting Justices under the Corrections Act 2004 are a necessary and important component of prison management. We are working with the Visiting Justices to put a plan in place to ensure that these can continue to be conducted in a safe manner.

### ***New Zealand Parole Board***

The New Zealand Parole Board is continuing to conduct hearings as essential services in the Justice sector. Lawyers can access these hearings as needed.

### ***Prison Management, Community Corrections and Release***

The Department undertakes essential work in managing both prisons and community corrections, and this remains the case during COVID-19. Our staff are applying a strong COVID-19 lens to their work.

We are undertaking a range of actions to protect our prisons from COVID-19. To date we have not had a positive case of COVID-19 in our prisons. We have undertaken testing on those individuals who present symptoms – with all tests returning a negative result to date – and will continue to do so. Most tests were of prisoners who have recently been remanded to our custody.

We have opted for separation units for people who come into prison for the first 14 days. These units are accommodation separated from that of prisoners who have been with us for over 14 days. For those in the separation units, this also means we can continue to monitor their health and check for symptoms in a safe area. They have daily health checks and access to all other minimum entitlements currently in place. This helps to prevent any cross-contamination of persons who have had recent exposure in the wider community with those who have been in prison for longer periods.

We are using personal protective equipment (PPE) for both staff and prisoners such as masks and gloves, as well as enhanced hygiene practices, enhanced cleaning of surfaces and maintaining a 2-meter distance from one another where possible. In suspected cases of COVID-19, full PPE (eye protection, masks, gloves, gowns and

booties) are worn by staff interacting with the prisoner. The prisoner will be segregated as necessary in accordance with section 60 of the Corrections Act 2004 for medical oversight awaiting any test results.

We ensure that all staff are checked on their health status when arriving at work, and any staff member who is unwell does not come to work. We provide direct primary health services at our prisons and our health teams are in very close contact with colleagues at regional public health and the Ministry of Health.

We currently have 3819 people remanded in custody. Of those, 1326 are remand convicted, awaiting sentencing. We will assist the Ministry of Justice and the Judiciary wherever we can to progress these hearings.

Our staff are, amongst other things, ensuring COVID-19 risk factors are considered for any proposed EM Bail address and release address. We are also ensuring released prisoners understand their full obligations regarding the nationwide lockdown (stay at home) to prevent the spread of COVID-19 within the community. We are also managing how people travel safely and appropriately to their bail or release addresses to ensure they can adhere to the lockdown rules.

Electronic monitoring continues to operate unchanged.

While we appreciate these are times of uncertainty in many respects, we remain steadfast in our commitment to play our part in the criminal justice process and in maintaining public safety. I hope this information is of assistance. Please contact me should you have any questions about our approach to COVID-19.

Yours sincerely

A handwritten signature in black ink, appearing to be 'J. Lightfoot', written over the text 'Yours sincerely'.

Jeremy Lightfoot  
Chief Executive