

Corrections (Victim Protection) Amendment Bill

Member's Bill

As reported from the Justice Committee

Commentary

Recommendation

The Justice Committee has examined the Corrections (Victim Protection) Amendment Bill and recommends that it be passed. We recommend all amendments unanimously.

Introduction

This is a Member's bill in the name of Rima Nakhle MP. As introduced, the bill aims to protect victims of crime and people under a protection order from unwanted contact from prisoners. It would amend the Corrections Act 2004 by creating an obligation on the chief executive and prison managers to protect victims from unwanted contact.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

We propose an alternative approach

We heard from the Department of Corrections that the bill as introduced would be operationally difficult to implement, particularly for people on community-based sentences, orders, and parole. This is because the department controls or supervises

26,000 people in the community, as well as approximately 9,500 prisoners. Difficulties with information sharing between agencies contribute to this.

We were advised that Corrections cannot practicably monitor the communications of people it manages in the community in the way it can monitor the phone calls, visits, and mail of people in prison. We request that the relevant agencies continue to monitor the safeguards available to serve the protection of victims where offenders are serving community-based sentences, orders, and parole. We propose an alternative approach to prevent prisoners from making unwanted contact with victims of crime. We consider that our approach would result in better outcomes for victims and ensure that the law is workable for the department. We set out several recommended amendments below.

Amended obligation on the chief executive

Clause 4 of the bill as introduced would insert new section 8(1)(ja) into the Corrections Act. This would place an obligation on the chief executive to establish and maintain processes that would protect victims and protected persons from unwanted contact from any person under the control or supervision of Corrections (including those in the community). Clause 5 would place a similar obligation on prison managers in relation to unwanted contact from prisoners. Clause 6 would require Corrections' annual report to include a report on the way these functions were carried out. As noted above, the bill as introduced would likely have significant resourcing and fiscal implications for the department.

Clause 6 of the bill as introduced would require Corrections to provide information in its annual report on the number of people who have requested no contact from a person in custody. The purpose of the annual report is to provide a system-wide view of how the agency is performing. We consider the proposed legislative requirement impracticable, and think it may fall outside the general purpose of the annual report. The committee has other avenues to acquire this information, including the annual review process. To ensure that the bill is workable for the department and of benefit to victims, we recommend removing clauses 5 and 6, and substantially amending clause 4.

We recommend amending clause 4, new section 8(1)(ja), to place a different obligation on the chief executive. They would be required to establish and maintain processes to inform visitors of prisoners and recipients of prisoner communications about measures they can take if they do not want to be contacted by a prisoner. We think this approach would support victims to control what contact they receive from prisoners, and make clear the department's obligations to victims.

Introducing a new offence of making unwanted contact

To reinforce this approach, we propose amending section 128 to make it an offence against prison discipline for a prisoner to contact someone who the prisoner knows or reasonably ought to know does not want to be contacted. The Act provides a range of punishments for prisoners who are found guilty of an offence against prison discipline. We recommend inserting clause 4C to do this.

We understand that some prisoners try to bypass contact restrictions by asking for help from another prisoner, or family or friends. Our proposed amendment would cover these circumstances and make it clear to prisoners that they should not contact victims who do not wish to be contacted.

Consideration of victims' interests

Corrections staff are already required to consider “victims’ interests” when dealing with prisoner mail under section 104(g) of the Act. To reinforce this requirement and reduce the risk of further harm to victims, we recommend inserting clauses 4A and 4B to amend sections 77 and 104.

Our proposed new section 77(5A) would require Corrections to take into account the interests of victims—in particular, being free from unwanted contact—when deciding what conditions to impose on prisoners regarding outgoing telephone calls. Our amendment to section 104(g) would impose a similar requirement relating to prisoner mail. These amendments would affirm that further harm to victims should be prevented when Corrections is making decisions about prisoner communications.

Consistency with the New Zealand Bill of Rights Act 1990

The bill as introduced received a clean vet from the Attorney-General and contained no inconsistencies with the New Zealand Bill of Rights Act 1990. Amendments made to the bill would introduce a new offence of making unwanted contact with someone who does not wish to receive contact from a prisoner. This could be considered to be a limit on a prisoner’s right to free expression. However, we consider that any limit on that right, if indeed there is one, would be demonstrably justified if accepted by the House and subsequently passed into law by Parliament.

Appendix

Committee process

The Corrections (Victim Protection) Amendment Bill was referred to the committee on 20 March 2024.

We called for submissions on the bill with a closing date of 6 May 2024. We received and considered submissions from 12 interested groups and individuals. We heard oral evidence from three submitters.

Advice on the bill was provided by the Department of Corrections. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

James Meager (Chairperson)

Hon Ginny Andersen

Jamie Arbuckle

Cameron Brewer

Tākuta Ferris

Paulo Garcia

Dr Tracey McLellan

Rima Nakhle

Tamatha Paul

Todd Stephenson

Hon Dr Duncan Webb

Related resources

The documents we received as advice and evidence are available on the Parliament website.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Rima Nakhle

Corrections (Victim Protection) Amendment Bill

Member's Bill

Contents

	Page
1 Title	1
2 Commencement	1
3 Principal Act	1
4 Section 8 amended (Powers and functions of chief executive)	1
<u>4A</u> <u>Section 77 amended (Outgoing telephone calls)</u>	<u>2</u>
<u>4B</u> <u>Section 104 amended (General considerations relating to mail)</u>	<u>2</u>
<u>4C</u> <u>Section 128 amended (Offences by prisoner)</u>	<u>2</u>
5 Section 12 amended (Powers and functions of prison managers)	2
6 Section 190 amended (Matters to be included in annual report)	2

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Corrections (Victim Protection) Amendment Act **2024**.

2 Commencement

This Act comes into force on the day after ~~the date on which it receives the~~ 5
Royal assent.

3 Principal Act

This Act amends the Corrections Act 2004 ~~(the principal Act)~~.

4 Section 8 amended (Powers and functions of chief executive)

After section 8(1)(j), insert:

- (ja) ensuring that processes are established and maintained to inform visitors of prisoners and recipients of prisoner communications of measures that

10

they can take if they do not want to be contacted by a prisoner: protect the following from unwanted contact with persons under control or supervision:

- (i) victims of offences:
- (ii) persons for whose benefit protection orders under the Family Violence Act 2018 are in place: 5

4A Section 77 amended (Outgoing telephone calls)

After section 77(5), insert:

- (5A) In deciding what conditions (if any) to impose, the chief executive or the Commissioner of Police must take into account the interests of victims (including, in particular, being free from unwanted contact with prisoners). 10

4B Section 104 amended (General considerations relating to mail)

In section 104(g), after “the interests of victims”, insert “(including, in particular, being free from unwanted contact with prisoners)”.

4C Section 128 amended (Offences by prisoner) 15

After section 128(1)(r), insert:

- (s) contacts a person, or solicits anyone else to contact a person, who the prisoner knows or ought reasonably to know does not want to be so contacted.

5 Section 12 amended (Powers and functions of prison managers) 20

After section 12(e), insert:

- (ea) ensuring that processes are established and maintained to protect the following from unwanted contact with prisoners received in the prison:
 - (i) victims of those prisoners:
 - (ii) persons in respect of whom a protection order under the Family Violence Act 2018 is in place against those prisoners: 25

6 Section 190 amended (Matters to be included in annual report)

In section 190(1)(a)—

- (a) replace “section 8(1)(k)” with “section 8(1)(ja) and (k)”; and
- (b) replace “section 12(d)” with “section 12(ea) and (d)”. 30

Corrections (Victim Protection) Amendment Bill

Legislative history

1 February 2024
20 March 2024

Introduction (Bill 11–1)
First reading and referral to Justice Committee