

18 March 2020

Jeremy Lightfoot
Chief Executive Corrections
Department of Corrections | Ara Poutama Aotearoa
Wellington

By email c/o: robyn.fisher@corrections.govt.nz

Dear Jeremy,

Covid-19 and lawyers' contact with clients who are in prison

We are writing to you on behalf of members of the legal profession who have raised concerns about ongoing lawyer-prisoner interactions during the Covid-19 pandemic.

The New Zealand Law Society | Te Kāhui Ture o Aotearoa (**Law Society**) and the Criminal Bar Association (**CBA**) are closely monitoring potential problems which could arise for legal workplaces, lawyers and their clients, and in the wider justice system, due to Covid-19. As you know, the circumstances surrounding Covid-19 are rapidly evolving, requiring us all to explore alternative measures to protect individuals' health and wellbeing.

We acknowledge the Department of Corrections (**Corrections**) will be doing everything you can to keep everyone in your care safe and well. One concern members of the profession have raised with us, however, is the risk lawyers and prisoners face from lawyers visiting clients in prison during these uncertain times. Given prisoners are a vulnerable group in society (due to the nature of the prison environment), we invite Corrections to urgently consider alternative temporary measures to address these concerns while facilitating lawyer-client interactions. One available option could be to expand the use of email communications between lawyers and their clients in prison.

We understand Corrections engaged Miriam Dean QC to undertake an independent review of the processing of prisoners' mail, and that the final report was released in October 2019. As noted in the report, current practice across prisons relating to use of email communications is very ad hoc, with some prisons not accepting *any* emails from lawyers, even if they do not contain information subject to legal professional privilege (for example, a blank legal aid form). We also understand that as a matter of course, any attachments to an email (for example a pdf attachment containing police disclosure) are immediately "stripped" from the system.¹

Although 'email' communication is not included in the definition of 'mail' in section 110 of the Corrections Act 2004, the ability for lawyers to communicate with their clients in a timely and safe

¹ Independent Review of Processing of Prisoners' Mail by Department of Corrections (Ara Poutama Aotearoa), Miriam Dean QC and Grant O'Fee MNZM, 7 October 2019, at p 26.

manner over the coming months, necessitates wider consideration of alternative solutions to support lawyer-prisoner interactions and to ensure 'business as usual' is adhered to as much as possible.

We appreciate that any increased use of email communications will likely have associated resourcing issues, however, we invite Corrections to explore this option to address the specific risk identified above. We also appreciate that there may be underlying concerns from Corrections staff around printing information that is subject to legal professional privilege. As noted in the report, "this should not, however, be allowed to get in the way of printing and delivering such mail to the prisoner without undue delay. One simple solution would be for the prisoner and the lawyer to sign a short, standard waiver that makes clear Corrections may print out these emails".²

We invite you to consider the risk and possible solution identified above to address concerns raised by members of the profession due to Covid-19, and would welcome the opportunity to discuss this further with you. We can be contacted in the first instance via the Law Society's Principal Adviser, Bronwyn Jones (bronwyn.jones@lawsociety.org.nz) or Law Reform Adviser Amanda Frank (amanda.frank@lawsociety.org.nz).

We look forward to hearing from you.

Yours sincerely

Tiana Epati (New Zealand Law Society President)
Len Andersen (Criminal Bar Association President)

² Ibid.