

14 November 2014

B2665

Minister of Corrections

## **Ten-point action plan – Responding to the illegal departure of Phillip John Smith**

### **Purpose**

- 1 This briefing informs you of the ten steps the Department intends to take to respond to and learn from the events resulting in the illegal departure from New Zealand of Phillip John Smith.

### **Background**

- 2 The temporary release of certain prisoners from custody fulfils several legitimate purposes that are provided for in the Corrections Act 2004, including “the rehabilitation of the prisoner and his or her successful reintegration into the community”. Temporary releases can be highly beneficial for prisoners approaching their actual release from prison and can reduce their likelihood of reoffending. The Department will therefore have an ongoing commitment to approving the temporary release of prisoners where these benefits are consistent with the safety of the public. Public safety will always be the paramount consideration.
- 3 We acknowledge that this balance was not struck in the case of Phillip Smith, and that the decision-making behind temporary releases in general needs to be improved as a result. Our priority now is to better understand what particular factors contributed to his illegal departure and how they can be addressed.
- 4 Based on our understanding of events so far, we have developed a **ten-point action plan**, which identifies the priority areas in which we already have or intend to make improvements. These are as follows.

### **Action Item 1: Chief Custodial Officer Review**

- 5 The Chief Custodial Officer commenced a review of the Smith case on 11 November 2014. It will focus on the incident itself, identifying specific causal and contributing factors, how the incident was responded to in the initial stages, and managed throughout. This will also include the extent to which relevant standards, procedures, operational systems, work practices and risk controls were in place and being complied with.

- 6 The review will also consider the broader temporary release process and make such recommendations for the improvement of promulgated standards, procedures, operating systems, work practices and risk controls as may be necessary arising out of the review. The review will result in an interim report on 17 November and a final report will be completed by 24 November.

### **Action Item 2: Immediate suspension of temporary release**

- 7 In immediate response to this incident, on 11 November 2014 I also suspended all temporary releases for reintegrative purposes (e.g. home leave, job interviews, attending a family event, etc.) for at least two weeks, pending the review described above. This decision was made in consultation with the National and Regional Commissioners. I now intend to extend this suspension period until 9 December 2014. I have issued instructions that provide for a Regional Commissioner to approve temporary releases for reintegrative purpose in exceptional circumstances.

### **Action Item 3: Interim instructions to guide approval of temporary release in exceptional cases**

- 8 To guide Regional Commissioners (and prison managers) in assessing whether an application for temporary release is exceptional and authorised during the suspension period, the National Commissioner issued instructions on 12 November 2014.
- 9 These instructions provide strong checks on any exceptional decisions to temporarily release a prisoner by:
- further narrowing the eligibility criteria for temporary release
  - limiting the maximum period of temporary release to 12 hours, unless approval is obtained from the National Commissioner
  - encouraging prisons to use temporary removal, under the close supervision of a Corrections officer, as a more secure alternative, where there is a legitimate need for the prisoners to leave prison
  - declining permission to approve the temporary release of certain classes of prisoners without a condition of GPS monitoring
  - requiring Regional Commissioners to consider imposing GPS monitoring in any other case (within resource constraints)
  - making the sponsor vetting and monitoring process more robust, with stronger obligations on the sponsor for maintaining control of the offender
  - requiring Regional Commissioners to strongly consider requiring the offender to surrender their passport(s)

- providing prisons with a template for a contingent border alert request, which would be issued in the event of any concerns over the course of the offender's temporary release.
- 10 We are actively investigating how we might overcome limits to the availability of GPS monitoring devices in the short-term. In the medium-term, the Department has confirmed 3M as its preferred bidder for an electronic monitoring contract next year, which is expected to allow the Department to increase the scale of its GPS monitoring.

#### **Action Item 4: Commissioning a review of psychological treatment**

- 11 I am commissioning a comprehensive and independent review of the current approach to risk assessment undertaken by Departmental psychologists in relation to treated offenders. This review will include one external expert psychologist who has capability in the departmental approach to risk assessment. The purpose of this review is to provide clear ethically defensible guidelines for completing risk assessments (and most relevant to this are New Zealand Parole Board Reports) on treated offenders. The members of the review panel will be confirmed by 24 November and will include external involvement.
- 12 A second part to the review will be to conduct a thorough review of the treatment provided to Phillip Smith both during and after his engagement in the Te Piriti programme for child sexual offenders. The review panel will provide a report on their findings (in relation to both aspects of the review) to Executive Leadership Team by 30 January 2015. You will be briefed subsequently.

#### **Action Item 5: Supporting the victims of Phillip Smith and reviewing interactions with victims generally**

- 13 I have extended a personal apology to each of the victims of Phillip Smith. I have offered to meet personally with them in order explain what has happened, outline my personal commitment to take actions to prevent this happening in future and looking to make this right for them, as far as possible. This will be the start of an ongoing effort on our part to ease the burden of recent events on them.
- 14 The Department will be reviewing the current processes for victim notification and identify areas for improvement. The first priority will be to resolve any issues identified as part of the Chief Custodial Officer's review and it is expected that the proposed solutions will be able to be implemented this year. Once the immediate areas of concern have been resolved, further work will be undertaken to identify additional opportunities for improvement which is likely to be completed in early 2015.

### **Action Item 6: Wider inter-agency review of identity information sharing**

- 15 I have asked the Chief Executive of the Ministry of Justice to convene a cross-agency review, across Justice Sector agencies, and Department of Internal Affairs, Immigrations, and Customs to identify systemic issues and opportunities to improve collaboration and information sharing.

### **Action Item 7: Review of higher-risk prisoners granted temporary release**

- 16 I have also commissioned an immediate regional review to gain greater clarity regarding all high profile and high risk prisoners across the estate who are being considered for, or are currently undertaking temporary supervised release. Each Prison Manager has been asked to identify these prisoners with the support of the high risk teams in their region. They will be personally checking the plans in place to support these releases and considering whether they are sufficiently robust, appropriate and whether anything additional can be done. I expect an interim report by Monday November 17.

### **Action Item 8: Operational summit**

- 17 The National Commissioner will be holding an Operational Summit on 25 November 2014 to workshop our key risks and future strategies relating to activities that take prisoners outside the secure perimeter of our prisons. The workshop will be attended by Prison Managers and all Regional Operations Managers as well as key staff from National Office, including the High Risk Response team and the Chief Psychologist. An invitation will be extended to the New Zealand Parole Board. Regional Commissioners have been engaged to look for practical scenarios to illustrate the current environment within which these activities take place and the need for change. The themes, content and structure of the workshop will be developed early in the week commencing 17 November 2014.

### **Action Item 9: Exploring options for extending notification practices with customs**

- 18 The Department has an established process for requesting a border alert in the event that an offender unlawfully at large poses a flight risk from New Zealand. The request is processed by Interpol and registered in the Customs database of border alerts, preventing the offender from travelling under the name and/or passport number specified. They are generally active within an hour of the request. The Department issues these requests in highly exceptional cases, where it has a warrant for the offender's arrest or is in the process of obtaining one.
- 19 The instructions issued to Regional Commissioners on 12 November includes a process for preparing contingent border alert requests, so that they are ready to send to Interpol at short notice, before approving the temporary release of any prisoner in exceptional circumstances. We will be considering whether this should be an ongoing precaution taken in respect of all temporary releases and possibly other classes of offenders with the potential to abscond,

such as those temporarily removed from prison or serving home detention. We will also be exploring other possible avenues for more routinely communicating to Customs the potential flight risk posed by these offenders. Early consultation with other agencies will be necessary before proceeding with this option. However, Customs have already indicated a willingness to assist. We expect to have identified possible options by 21 November.

#### **Action Item 10: Policy and process improvements**

- 20 In addition to the above measures, we will be considering a range of other internal processes and procedures that could have been better employed in response to the incident involving Smith. These will include, but not be limited to:
- *Incident line notification procedures* – Looking into how the incident could have been escalated more immediately and a response better coordinated, for example, by convening an ‘Emergency Operations Centre’.
  - *The production of urgent Fact Finder briefings* – Setting consistent expectations for senior regional staff to communicate the facts of an incident fully and immediately to National Office. One of our regions has protocols for producing Fact Finder briefings in these emergency situations, which could be extended nationally.
  - *24/7 Contactability of key custodial staff* – In the event of a serious incident, we can have difficulties contacting staff in prisons who are mobile and do not have access to cell phones, due to cell phone blocking technology. Options for improving communication channels around the clock may include use of the radio frequency devices custodial staff carry with them.
- 21 We will also be reviewing other situations in which prisoners leave prisons such as the release to work scheme, the supervision of prisoners in a work party, other kinds of temporary removal and external self-care arrangements for certain prisoners, to improve the robustness of the policies underpinning these movements.

**Recommendations**

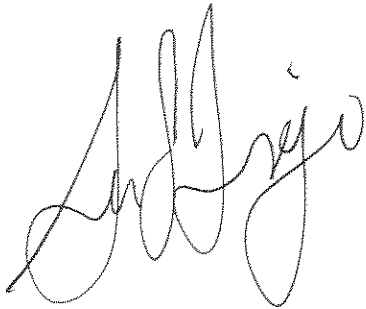
22 It is recommended that you:

- a) **Note** that I have commissioned the ten-point action plan set out in this paper.
- b) **Note** that I will brief you on any emerging issues and upon completion of each action item.
- c) **Agree** to brief Cabinet on the ten-point action plan.

YES / NO  
YES / NO  
YES / NO



Ray Smith  
Chief Executive



Hon Peseta Sam Lotu-liga  
**Minister of Corrections**

Date signed:

16 / 11 / 14