

# **Corrections Amendment Bill (No 2)**

Government Bill

As reported from the Law and Order  
Committee

## **Commentary**

### **Recommendation**

The Law and Order Committee has examined the Corrections Amendment Bill (No 2) and recommends that it be passed with the amendments shown.

### **Introduction**

This bill makes a number of amendments to the Corrections Act 2004, which are intended to improve the operations of the corrections system. The amendments are needed to address issues with the existing legislation; the proposed changes would expand the existing framework and give better effect to its provisions.

This commentary covers the key amendments that we recommend to the bill. It does not cover minor or technical amendments.

### **Definitions**

We recommend amending the definition of “electronic communication device” in clause 4 of the bill, to allow for circumstances where prisoners may be permitted to use a telephone by their supervisors.

We recommend that the definition of “officer” in clause 4 be amended so that the chief executive could designate any employee of the department to hold specific powers or carry out particular functions of an officer, as set out in specified provisions of the legislation.

We recommend that a subclause be added to clause 4 to include a national preventive mechanism, as defined by the Crimes of Torture Act 1989, in the definition of “official agency”.

### **Religious and spiritual needs**

We recommend that clause 6 be amended so that new section 79(3) allows the possible use of alcohol in both Christian and non-Christian religious ceremonies, and to make it clear that the provision authorises the consumption of only small quantities of alcohol in such religious ceremonies. New section 79(3), inserted by the bill, allows wine to be provided by prison chaplains and ministers of religion at church services attended by prisoners.

### **Possession, carriage, and use of firearms prohibited**

We recommend amending clause 7, which allows a sick or injured animal to be killed using a firearm for humane reasons. To ensure this is clear, we recommend inserting the words “sick or injured” before “animals”.

### **Authority to search property**

We recommend inserting new clause 8A to amend section 96 of the Corrections Act to clarify that the authority conferred by the Act to search items or places authorises the use of aids such as chemical substances, x-ray or imaging equipment, or other mechanical, electrical, or electronic devices.

### **Prisoner may be required to submit to drug or alcohol test**

We recommend inserting new clause 19(1) into the bill to amend section 124(2)(c)(i) by substituting “that has as one of its aims the reduction of” for “that aims to reduce”. It has been noted that the wording of the current provision that applies when a prisoner has agreed to be tested for drug or alcohol use on demand may be interpreted more

restrictively than intended. Various programmes and arrangements will not be effective in rehabilitating or reintegrating the prisoner if he or she continues to use drugs or alcohol. In these cases it can be said that the reduction of drug and alcohol use is one of the aims of the action even though it is not the primary focus or the ultimate purpose.

### **Power of seizure**

We recommend inserting new clauses 21A and 21B to broaden the power of forfeiture applying to offences against discipline. In the current regulations there is a power to seize items that may be used as evidence of an offence against discipline, but the legislation allows items to be forfeited only if they are unauthorised. The recommended amendments would allow a hearing adjudicator or Visiting Justice to order the forfeiture of anything that had been used to commit a proven offence against discipline. Forfeiture of such items would be discretionary, and items not belonging to the prisoner who committed the offence could be returned to their rightful owners. This would align the legislation more closely with the general offences against the Corrections Act in section 150.

### **Unauthorised deliveries, communications, and recordings**

We recommend that clause 22(5) be amended by replacing “knowingly” with “without reasonable excuse” in section 141(1)(g). We believe that this would help the Courts to focus on the circumstances of the particular case, thereby reducing the likelihood that innocent behaviour would be captured.

We recommend amending clause 22(6) of the bill to change the penalties set out in section 141. We recommend that offences against sections 141(1)(b) and 141(1)(c), and attempts to commit them, incur a maximum fine of \$5,000.

We also recommend that clause 22(7) be amended so that for offences committed by officers, staff members, or probation officers against new section 141(1)(g) the maximum term of imprisonment would be 12 months instead of three months.

This change would ensure consistency in the maximum penalties that could be imposed on an officer, staff member, or probation officer, as

the new offence in new section 141(1)(g) is similar to those applicable for the introduction of contraband under section 141(1)(a), (b), (c), or (d).

## **Appendix**

### **Committee process**

The Corrections Amendment Bill (No 2) was referred to the committee on 21 February 2008. The closing date for submissions was 8 April 2008. We received and considered three written submissions from interested groups and individuals. We heard one submission.

### **Committee membership**

Ron Mark (Chairperson)

Hon David Benson-Pope (Deputy Chairperson)

Chester Borrows

Martin Gallagher

Hon Darren Hughes

Simon Power

Kate Wilkinson

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**Corrections Amendment Bill (No 2)**

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~

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*Hon Phil Goff*

## **Corrections Amendment Bill (No 2)**

Government Bill

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Corrections Amendment Act (No 2) **2007**.

**2 Commencement**

This Act comes into force on a date to be appointed by the Governor-General by Order in Council, and 1 or more orders may be made bringing different provisions into force on different dates. 5

**3 Principal Act amended**

This Act amends the Corrections Act 2004. 10

**Part 1**

**Amendments to Corrections Act 2004**

**4 Interpretation**

(1) Section 3(1) is amended by inserting the following definition in its appropriate alphabetical order: 15

“**electronic communication device**—

“(a) means an electronic communication device (other than a device used to assist with a disability) that is capable of any or all of the following actions:

    “(i) transmitting sound: 20

    “(ii) computing information:

    “(iii) functioning as a telephone:

- “(iv) communicating in any other way using any technology (including telecommunication, radiocommunication, Internet, and broadcasting technology):
- “(b) includes any part of an electronic communication device (for example, a SIM card) regardless of whether the part— 5
- “(i) is capable of any of the actions specified in **paragraph (a)**; and
- “(ii) is detachable and may be used in other electronic communication devices: 10
- “(c) includes any device that enables or facilitates the functioning of an electronic communication device (for example, a recharger or charging device):
- “(d) does not include— 15
- “(i) any telephone facility provided for the use of prisoners under section 77; and
- “(ii) any telephone facility or telephone system ~~authorised by the chief executive or a prison manager to be used in a prison; or by the Commissioner of Police to be used in a police jail (whether inside or outside a prison) that a prisoner is permitted to use by a person under whose control or supervision the prisoner is~~”. 20
- (2) Paragraph (a)(v) of the definition of **officer** in section 3(1) is amended by omitting “of 2” and substituting “of 1”. 25
- (2A) Paragraph (a) of the definition of **officer** in section 3(1) is amended by omitting “; but” and also by adding the following subparagraph:
- “(vi) in respect of any provision, any employee of the department who the chief executive designates to carry out the powers and functions of an officer under that provision in respect of 1 or more prisons; but”. 30
- (2B) The definition of **official agency** in section 3(1) is amended by adding “; or” and also by adding the following paragraph: 35
- “(k) a national preventive mechanism (as defined in section 16 of the Crimes of Torture Act 1989)”.

- (3) The definition of **staff member of a prison** or **staff member** in section 3(1) is amended by omitting “or independent contractor” in each place where it appears.
- (4) The definition of **unauthorised item** in section 3(1) is amended by repealing paragraph (c) and substituting the following paragraph: 5  
“(c) any electronic communication device.”
- (5) The definition of **unauthorised item** in section 3(1) is amended by inserting the following paragraph after paragraph (f): 10  
“(fa) any thing or substance that could be used to tamper with any sample that a prisoner is required to supply in accordance with a prescribed procedure under section 124.”
- 5 Restrictions on exercise of certain powers** 15  
Section 23 is amended by repealing subsection (3) and substituting the following subsection:
- “(3) Despite sections 21 and 22, the following provisions do not apply to a member of the armed forces, or an officer who is not also a member of the police: 20  
“(a) sections 18 and 18A of the Misuse of Drugs Act 1975 (which confer powers of search and seizure):  
“(b) section 13A of the Misuse of Drugs Amendment Act 1978 (which confers powers in relation to internal concealment): 25  
“(c) sections 56 to 58 of the Misuse of Drugs Amendment Act 2005 (which confer enforcement powers in relation to restricted substances):  
“(d) sections 200B, 200F, and 200G of the Summary Proceedings Act 1957 (which confer powers in relation to tracking devices).” 30
- 6 Religious and spiritual needs**  
Section 79 is amended by adding the following subsection:
- “(3) Section 129(a) does not apply to a prisoner who, during a religious service (whether inside or outside a prison), consumes wine provided at the service by a prison chaplain or minister of 35

~~religion for the purposes of the Eucharist, Holy Communion, Mass, or Communion.—~~

- “(a) consumes a small quantity of wine provided at the service by a prison chaplain or minister of religion for the purposes of the Eucharist, Holy Communion, Mass, or Communion, with the express authority of the prison manager or chief executive; or 5
- “(b) consumes a small quantity of wine or other alcohol provided at the service as part of the ritual of the religion in question, by the person conducting the service, with the express authority of the prison manager or chief executive.” 10

## 7 Possession, carriage, and use of firearms prohibited

- (1) The heading to section 86 is amended by omitting “**prohibited**” and substituting “**restricted**”. 15
- (2) Section 86 is amended by repealing subsection (1) and substituting the following subsection:
- “(1) No officer or staff member may possess, carry, or use any firearm within a prison except as provided under **subsection (3)**.” 20
- (3) Section 86 is amended by adding the following subsections:
- “(3) The chief executive may, in writing, authorise an officer or staff member to possess, carry, or use a firearm within a prison, but only in a specified area of the prison for 1 or more of the following purposes: 25
- “(a) for the purpose of any specified prison industry:
- “(b) for the purpose of humanely killing sick or injured animals:
- “(c) for the purpose of pest control.
- “(4) If **subsection (3)** applies, a firearm— 30
- “(a) may only be used by an officer or staff member who holds a current firearms licence under section 24 of the Arms Act 1983 and in accordance with that Act; and
- “(b) must not be used while prisoners are present; and
- “(c) must not be stored in a prison.” 35

## 8 Definition of strip search

- (1) Section 90(2) is amended by adding the following paragraph:

- “(g) lift or raise any part of his or her body (including, for example, rolls of fat, genitalia, and breasts).”
- (2) Section 90(3) is amended by inserting “and to conduct a visual examination of the anal and genital areas (without the use of any instrument or device designed to illuminate or magnify),” 5 after “and ears,”.

**8A Authority to search property**

Section 96 is amended by adding the following subsection:

- “(7) Authority to search any cell or other place, vehicle, or item, includes the authority to use an aid or aids such as a chemical substance or x-ray or imaging equipment or some other mechanical, electrical, or electronic device, or other similar aid.” 10

**9 Search of prisoners and cells**

- (1) Section 98(6)(g) is amended by inserting “or immediately after” after “immediately before”. 15
- (2) Section 98(6)(g) is amended by adding the following subparagraph:  
 “(iv) any hearing before the New Zealand Parole Board:”.
- (3) Section 98(6) is amended by adding the following paragraph: 20  
 “(j) if the prisoner is required under section 124 to submit to a prescribed procedure in the situation referred to in **section 124(2)(d)**, immediately before the prisoner submits to that procedure.”
- (4) Section 98(8) is amended by inserting “(other than in the situation referred to in **section 124(2)(d)**)” after “section 124”. 25

**10 Search of staff lockers and other places**

Section 100 is amended by repealing subsection (1) and substituting the following subsection:

- “(1) For the purpose of detecting an unauthorised item, an officer may, with the prior approval of the prison manager, and in the presence of another officer, search any place set aside in a prison for the exclusive use of any person other than a prisoner (for example, a staff member’s locker).” 30

**11 New section 103A inserted**

The following section is inserted above section 104:

**“103A Interpretation**

In this section and in sections 104 to **110A**, unless the context otherwise requires,—

5

“**authorised officer** means a prison manager or an officer authorised by the manager to open and read mail for the purposes of sections 104 to **110A**.”

**12 General considerations relating to mail**

Section 104 is amended by omitting “staff members” and substituting “authorised officers”.

10

**13 Opening of mail**

Section 106(2) is amended by—

- (a) omitting “a staff member” and substituting “an authorised officer”; and
- (b) omitting “staff member” and substituting “authorised officer”.

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**14 Reading of correspondence**

- (1) Section 107(1) is repealed and the following subsection substituted:

20

“(1) An authorised officer may read correspondence between a prisoner and another person for the purpose of ascertaining whether it may be withheld under section 108(1).”

- (2) Section 107(2) is amended by omitting “manager” and substituting “authorised officer”.

25

**15 Withholding mail**

- (1) Section 108(1)(d) is amended by omitting “has read under section 107(1), and the manager believes on reasonable grounds that it” and substituting “believes on reasonable grounds”.

- (2) Section 108(1)(d) is amended by adding “; or” and also by adding the following subparagraphs:

“(v) prejudice the maintenance of the law (including the prevention, detection, investigation, prosecu-



tion, and punishment of offences, and the right to a fair trial); or

“(vi) breach an order or direction of any court or constitute contempt of court.”

**16 Mail between prisoners, official agencies, and members of Parliament** 5

Section 109 is amended by omitting “A staff member” and substituting “An authorised officer”.

**17 Mail between prisoners and legal advisers**

Section 110(1) and (2) are amended by omitting “A staff member” and substituting in each case “An authorised officer”. 10

**18 New sections 110A to 110C inserted**

The following sections are inserted after section 110:

**“110A Restrictions on disclosure of mail**

An authorised officer must not disclose any information obtained from correspondence contained in any mail between a prisoner and another person unless— 15

“(a) the disclosure is made to another authorised officer for the purpose of determining whether—

“(i) mail may be withheld under section 108(1); or 20

“(ii) mail that is withheld under section 108(1) should be forwarded to an enforcement officer under section 108(2); or

“(iii) **paragraph (c)** applies; or

“(b) the officer believes on reasonable grounds that the disclosure— 25

“(i) is necessary to avoid prejudice to the maintenance of the law by a public sector agency (within the meaning of the Privacy Act 1993), including the prevention, detection, investigation, prosecution, and punishment of offences; or 30

“(ii) is necessary for the conduct of proceedings (already commenced or reasonably in contemplation) before a court or tribunal; or

- “(iii) is necessary to prevent or lessen a serious and imminent threat to public health, public safety, or the life or health of any person; or
- “(iv) has been authorised by the Privacy Commissioner under section 54(1) of the Privacy Act 1993; or
- “(c) the disclosure is required by any enactment or rule of law.

**“110B Warnings in relation to mail**

The chief executive must take all practicable steps to ensure that when, or reasonably promptly after, prisoners are received at a prison they are informed in writing—

- “(a) that their correspondence—
  - “(i) may be opened and read; and
  - “(ii) may be withheld and the grounds on which it may be withheld; and
- “(b) about the types of correspondence that are exempted from being opened, read, and withheld, and the extent to which the exemptions apply.

**“110C Application of Privacy Act 1993**

The Privacy Act 1993 applies to any activity authorised under any of sections 104 to **110B** relating to correspondence to or from a prisoner.”

**19 Prisoner may be required to submit to drug or alcohol test**

- (1) Section 124(2)(c)(i) is amended by omitting “that aims to reduce” and substituting “that has as one of its aims the reduction of”.
- (2) Section 124(2) is amended by adding the following paragraph:
  - “(d) if the prisoner has submitted to a prescribed procedure under this section by supplying a sample and the prison manager believes, on reasonable grounds, that the sample supplied is dilute, tainted, or otherwise contaminated.”

- 20 Offences by prisoner**  
 Section 128(1)(d) is amended by inserting “communication” after “electronic”.
- 21 Offences by prisoners relating to drugs and alcohol**  
 Section 129(a) is amended by inserting “or unless **section 79(3)** applies” after “medical officer”. 5
- 21A Powers of hearing adjudicator in relation to offences against discipline**  
 Section 133(4) is amended by repealing paragraph (a) and substituting the following paragraph: 10  
“(a) any offence against section 128(1), 129, 130, or 131, the hearing adjudicator may, after giving the prisoner an opportunity to provide reasons why the order should not be made, and whether or not he or she imposes a penalty under subsection (3), order that any article or thing used to commit the offence or in respect of which the offence was committed be forfeited to the Crown.” 15
- 21B Powers of Visiting Justice in relation to offences by prisoners**  
 Section 137(4) is amended by repealing paragraph (a) and substituting the following paragraph: 20  
“(a) any offence against section 128(1), 129, 130, or 131, the Visiting Justice may, after giving the prisoner an opportunity to provide reasons why the order should not be made, and whether or not he or she imposes a penalty under subsection (3), order that any article or thing used to commit the offence or in respect of which the offence was committed be forfeited to the Crown.” 25
- 22 Unauthorised deliveries, communications, and recordings**  
 (1) The heading to section 141 is amended by omitting “**and recordings**” and substituting “**recordings, and possession of unauthorised items**”. 30

- (2) Section 141(1) is amended by omitting “and is liable on summary conviction to imprisonment for a term not exceeding 3 months, to a fine not exceeding \$2,000, or to both”.
- (2) Section 141(1) is amended by—
- (a) omitting “Every person” and substituting “Subject to **subsection (1AA)**, every person”; and
- (b) omitting “and is liable on summary conviction to imprisonment for a term not exceeding 3 months, to a fine not exceeding \$2,000, or to both”.
- (3) Section 141(1)(e) is amended by omitting “the safety of any other person,” and substituting “the well-being of any victim of an offence committed by that prisoner, the safety of any person,”.
- (4) Section 141(1)(f) is amended by omitting “the safety of any other person,” and substituting “the well-being of any victim of an offence committed by that prisoner, the safety of any person,”.
- (5) Section 141(1) is amended by repealing paragraph (g) and substituting the following paragraphs:
- “(g) ~~knowingly~~ without reasonable excuse, has in his or her possession any unauthorised item while in a prison:
- “(h) attempts to do any of the things described in **paragraphs (a) to (g)**.”
- (6) Section 141 is amended by inserting the following subsections after subsection (1):
- “(1AA) Subsection (1)(g) does not apply to a prisoner.
- “(1A) A person is liable on summary conviction to imprisonment for a term not exceeding 3 months, to a fine not exceeding \$5,000, or to both, who—
- “(a) commits an offence against **subsection (1)(a) or (g)** subsection (1)(a), (b), (c), or (g); or
- “(b) commits an offence against **subsection (1)(h)** by attempting to do any thing described in **subsection (1)(a) or (g)** subsection (1)(a), (b), (c), or (g).
- “(1B) A person is liable on summary conviction to imprisonment for a term not exceeding 3 months, to a fine not exceeding \$2,000, or to both, who—

- “(a) commits an offence against any of **subsection (1)(b) to (f)** subsection (1)(d) to (f); or
- “(b) commits an offence against **subsection (1)(h)** by attempting to do any thing described in any of **subsection (1)(b) to (f)** subsection (1)(d) to (f).” 5
- (7) Section 141(3) is amended by omitting “subsection (1)” and substituting “**subsection (1A) or (1B)**”.
- (7) Section 141(3) is amended by—
- (a) omitting “subsection (1)” and substituting “**subsection (1A) or (1B)**”; and 10
- (b) by omitting “or (d)” and substituting “(d), or (g)”.
- 23 New section 141A inserted**
- The following section is inserted after section 141:
- “141A Unauthorised use or possession of electronic communication device by prisoner”** 15
- “(1) Every prisoner (whether inside or outside a prison) commits an offence who, except with the express authority of the prison manager or the chief executive,—
- “(a) uses an electronic communication device knowing that he or she is not authorised to use it; or 20
- “(b) knowingly has an electronic communication device in his or her possession.
- “(2) A prisoner who commits an offence against **subsection (1)** is liable on summary conviction to imprisonment for a term not exceeding 3 months, to a fine not exceeding \$5,000, or to 25 both.”
- 24 Restricted communications with, or deliveries to, prisoner outside prison**
- (1) Section 143(1) is amended by omitting “and is liable on summary conviction to imprisonment for a term not exceeding 3 30 months, to a fine not exceeding \$2,000, or to both”.
- (2) Section 143 is amended by inserting the following subsections after subsection (2):
- “(2A) A person who commits an offence against subsection (1)(a) or (b) is liable on summary conviction to imprisonment for a 35

term not exceeding 3 months, to a fine not exceeding \$2,000, or to both.

“(2B) Despite **subsection (2A)**, an officer, staff member, or probation officer who commits an offence against subsection (1)(b) is liable to imprisonment for a term not exceeding 12 months, to a fine not exceeding \$5,000, or to both.” 5

(3) Section 143(3)(a) is amended by omitting “the safety of any other person,” and substituting “the well-being of any victim of an offence committed by that prisoner, the safety of any person,”. 10

## 25 Contravention of section 118

(1) The heading to section 146 is amended by inserting “**110A or**” after “**section**”.

(2) Section 146 is amended by inserting “**110A or**” after “**section**”.

## 26 Power of seizure 15

Section 150 is amended by adding the following subsection:

“(3) Anything that is forfeited to the Crown—

“(a) under subsection (2) may, subject to any order of a court, be sold, used, destroyed, or disposed of in any manner that the chief executive directs: 20

“(b) under any provision of section 133 or 137 may be sold, used, destroyed, or disposed of in any manner that the chief executive directs.”

## 27 New heading and sections 179A to 179E inserted

The following heading and sections are inserted after section 179: 25

### *Emergency management*

#### “179A Detention of prisoners eligible for release during outbreak or spread of infectious disease

“(1) A prisoner who is eligible for release under the Parole Act 2002 may be detained beyond his or her statutory release date in any part of the prison if that detention is pursuant to any order or requirement under section 70 or 79 of the Health Act 1956. 30

“(2) In this section, **statutory release date** has the meaning given to it in section 4(1) of the Parole Act 2002.

“**179B No compensation for detention in prison under Health Act 1956**

“(1) To avoid doubt, the Crown is not liable to make a payment to or otherwise compensate any person in respect of any detention in a prison if that detention is pursuant to any order or requirement under the Health Act 1956. 5

“(2) This section does not—

“(a) limit **section 179E** or 195 or any other enactment dealing with liability or the payment of compensation; or 10

“(b) affect any cause of action relating to unlawful arrest or detention.

“**179C Interpretation**

In this section and **sections 179D and 179E**, unless the context otherwise requires,— 15

“**act or omission** means any act or omission described in **section 179E(1)(a)**

“**epidemic emergency affecting a prison or prisoners** means an epidemic— 20

“(a) that occurs while an epidemic notice is in force; and

“(b) in respect of which the chief executive reasonably believes that the corrections system is no longer able to fulfill its purpose in section 5(1)(a) in relation to the prison or prisoners affected 25

“**epidemic notice** means a notice under section 5 of the Epidemic Preparedness Act 2006

“**failure** means any failure described in **section 179E(1)(b)**

“**prison emergency** means an emergency—

“(a) affecting the safety or health of the prisoners or any class or group of prisoners, or the security of the prison; and 30

“(b) in respect of which the chief executive reasonably believes that the corrections system is no longer able to fulfill its purpose in section 5(1)(a) in relation to the prison or prisoners affected 35

“**regulations** means regulations made under section 200

“**state of emergency affecting a prison or prisoners** means a state of emergency—

- “(a) within the meaning of section 4 of the Civil Defence Emergency Management Act 2002; and 5
- “(b) in respect of which the chief executive reasonably believes that the corrections system is no longer able to fulfill its purpose in section 5(1)(a) in relation to the prison or prisoners affected.

“**179D Notification of emergency** 10

“(1) The chief executive must notify the Minister within 7 days of determining the existence of—

- “(a) an epidemic emergency affecting a prison or prisoners; or
- “(b) a prison emergency; or 15
- “(c) a state of emergency affecting a prison or prisoners.

“(2) A notice under **subsection (1)** must—

- “(a) be in writing and signed by the chief executive; and
- “(b) state the date on which it is signed; and
- “(c) state the nature of the emergency that exists; and 20
- “(d) specify the actions taken to date in respect of the emergency; and
- “(e) specify any action proposed to be taken to enable the corrections system to fulfill its purpose in section 5(1)(a). 25

“(3) The chief executive must notify the Minister within 7 days of determining that the emergency no longer exists.

“(4) A notice under **subsection (3)** must—

- “(a) be in writing and signed by the chief executive; and
- “(b) state the date on which it is signed; and 30
- “(c) specify the actions taken in respect of the emergency.

“**179E Exclusion of liability while epidemic notice in force or during emergency**

“(1) There is no cause of action against the Crown, a Minister of the Crown, an officer or employee of a Minister of the Crown, the chief executive, an employee of the department, a contractor, 35



or an independent contractor, to recover damages for any harm or loss that is due directly or indirectly to—

“(a) any act or omission by any person that occurs while carrying out his or her functions; or duties; or exercising his or her powers under a provision of this Act or the regulations that has been modified by Order in Council under the Epidemic Preparedness Act 2006 while an epidemic notice is in force; or

“(b) any failure by any person to comply (or comply fully) with any provision of this Act or the regulations if—

“(i) the failure occurs during an epidemic emergency affecting a prison or prisoners, a prison emergency, or a state of emergency affecting a prison or prisoners; and

“(ii) it is impossible or unreasonable in the circumstances to comply (or comply fully) with this Act or the regulations.

“(2) A person is not exempt from liability under **subsection (1)** if the act or omission, or failure, constitutes bad faith or gross negligence on the part of that person.

“(3) A person may apply to the High Court for leave to bring proceedings against any person referred to in **subsection (1)** on the ground that the act or omission, or failure, constitutes bad faith or gross negligence on the part of that person.

“(4) The ~~Court~~ court must not grant leave unless it is satisfied that there are grounds for the contention that the act or omission, or failure, constitutes bad faith or gross negligence on the part of the person against whom proceedings are sought to be brought.

“(5) An application for leave under **subsection (3)** must be made—

“(a) within 2 years after the act or omission, or failure, to which the application relates; or

“(b) in the case of a continuance of injury or damage, within 2 years after the ceasing of the injury or damage.

“(6) Nothing in this section—

“(a) prevents the Crown from making any ex gratia payment it considers justifiable on the basis of hardship or fairness:

“(b) limits the operation of section 86 of the State Sector Act 1988:

“(c) affects any cause of action relating to unlawful arrest or detention.”

**28 New heading and section 181A inserted** 5

The following heading and section are inserted after section 181:

*“Information sharing about highest-risk offenders*

**“181A Disclosure of information relating to highest-risk offenders** 10

“(1) A specified agency that enters into an information sharing agreement under section 182D (as modified by **subsection (5)**) with another specified agency is authorised to disclose to that agency any personal information about a highest-risk offender, but only if the disclosure is for, or relates to, a purpose listed in **subsection (3)**. 15

“(2) Nothing in **subsection (1)** limits the operation of the Privacy Act 1993 or section 182 of this Act.

“(3) The purposes for which personal information about highest-risk offenders may be disclosed under an information sharing agreement between specified agencies are— 20

“(a) to assist the monitoring of compliance of highest-risk offenders with their conditions of release:

“(b) to assist in facilitating the rehabilitation of highest-risk offenders: 25

“(c) to facilitate the reintegration of highest-risk offenders into the community:

“(d) to manage the risk that the offender may commit further offences: 30

“(e) to identify any increased risk that the offender may breach his or her conditions or will commit further offences.

“(4) For the purposes of this section,—

“**highest-risk offender** means any offender whom the chief executive considers, having regard, ~~amongst~~ among other matters, to the nature and seriousness of his or her offending, to 35

be included in the class of offenders who pose the highest risk to public safety

“**specified agency** means—

“(a) the Department of Corrections:

“(b) the New Zealand Police: 5

“(c) any public sector agency (as that term is defined in section 2 of the Privacy Act 1993) that the Minister of Justice, after consultation with the Privacy Commissioner, identifies as a specified agency for the purposes of this section by notice in the *Gazette*. 10

“(5) Sections 182D and 182E apply to information sharing agreements about highest-risk offenders as if every reference in those sections to a child sex offender were a reference to a highest-risk offender.

“(6) Information disclosed for the purposes of this section may be disclosed prior to the offender’s release from prison. 15

“(7) This section does not limit or affect any information sharing agreement under section 182D in relation to a child sex offender who is also a highest-risk offender.”

**29 Offender information may be disclosed to facilitate monitoring of certain offenders 20**

(1) The heading to section 182 is amended by omitting “**certain offenders**” and substituting “**persons on temporary release**”.

(2) Section 182(1) is amended by repealing paragraph (b).

(3) Section 182(3) is amended by repealing paragraph (b). 25

(4) Section 182(4) is repealed.

(5) Section 182(5) is amended by omitting “or subsection (4)”.

(6) Section 182(6) is repealed.

**30 Information sharing about child sex offenders**

Section 182A is amended by adding the following subsection: 30

“(4) Information disclosed for the purposes of this section may be disclosed prior to the offender’s release from prison.”

**31 New heading and sections 189A to 189C inserted**

The following heading and sections are inserted after section 189:

*“Detection, interception, etc, of  
radiocommunications within prison boundaries* 5

**“189A Interpretation**

In this section and **sections 189B and 189C**, unless the context otherwise requires,—

“**harmful interference** has the meaning given to it in section 2(1) of the Radiocommunications Act 1989 10

“**interference** has the meaning given to it in section 2(1) of the Radiocommunications Act 1989

“**radiocommunications** has the meaning given to it in section 2(1) of the Radiocommunications Act 1989

“**unauthorised electronic communication**— 15

“(a) means any electronic communication made in contravention of **section 141A(1)(a)**; and

“(b) includes any electronic communication received on an electronic communication device that the prisoner uses or possesses in contravention of that section. 20

**“189B Detection, interception, etc, of radiocommunications within prison boundaries**

For the purpose of stopping or preventing unauthorised electronic communications to or from prisoners within prison boundaries, and the delivery, possession, or use of electronic communication devices by any person in contravention of section 141,— 25

“(a) any person authorised by the chief executive for the purpose of this section may use any equipment or device to detect, intercept, monitor, disable, disrupt, or interfere with radiocommunications within prison boundaries; but 30

“(b) no interference may be made under this section that would result in harmful interference outside prison boundaries. 35

**“189C Recordings of unauthorised communications**

If a prison manager believes on reasonable grounds that an unauthorised electronic communication contains information relating to the commission or attempted commission of an offence, a record of that communication may be made and given—

- “(a) to an enforcement officer:
- “(b) to the chief executive or any other employee of the department.”

**Part 2**

**Amendments to other enactments**

*Crimes Act 1961*

**32 Amendment to Crimes Act 1961**

- (1) This section amends the Crimes Act 1961.
- (2) Section 216B(4) is amended by—
  - (a) omitting “monitoring” and substituting “any monitoring of a”; and
  - (b) adding “or any interception of a private communication if the interception is authorised under **section 189B** of that Act” after “Corrections Act 2004”.

*Parole Act 2002*

**33 Amendments to Parole Act 2002**

- (1) This section and **section 34** amend the Parole Act 2002.
- (2) Section 17 is amended by adding the following subsection:
- “(3) Subsection (2) is subject to **section 179A** of the Corrections Act 2004.”

**34 Conditions applying to release at statutory release date**

Section 18 is amended by adding the following subsection:

- “(4) A prisoner to whom **section 179A** of the Corrections Act 2004 applies—
  - “(a) is not, during the period between the statutory release date and the date of actual release, subject to any release conditions that will apply on or after his or her statutory release date; but

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“(b) from the statutory release date the time begins to run on the prisoner’s release conditions.”

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**Legislative history**

3 December 2007  
21 February 2008

Introduction (Bill 165-1)  
First reading and referral to Law and Order  
Committee

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