



## ANALYSIS

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Amendments to Principal Act Consequential on Amendment Made by Section 10 (2)

1997, No. 58

**An Act to amend the Penal Institutions Act 1954**

[20 August 1997]

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Penal Institutions Amendment Act 1997, and is part of the Penal Institutions Act 1954 (“the principal Act”).

(2) This Act (other than sections 4, 10, and 11) comes into force on a date to be appointed by the Governor-General by Order in Council.

**2. Interpretation**—(1) Section 2 of the principal Act (as substituted by section 2 (1) of the Penal Institutions Amendment Act 1994) is amended by inserting in subsection (1), in their appropriate alphabetical order, the following definitions:

“‘Drug’ means—

“(a) A controlled drug within the meaning of the Misuse of Drugs Act 1975:

“(b) A prescription medicine or restricted medicine within the meaning of the Medicines Act 1981:

“‘Random testing programme’ means a programme of the kind described in section 36BA:”.

(2) Section 2 (1) of the principal Act (as so substituted) is amended by repealing paragraphs (b) and (c) of the definition of the term “unauthorised item”, and substituting the following paragraph:

“(b) Any drug, alcohol, or other intoxicating substance:”.

**3. Reporting responsibilities**—Section 4F (2) of the principal Act (as inserted by section 3 of the Penal Institutions Amendment Act 1994) is amended by repealing paragraph (h), and substituting the following paragraphs:

“(h) The operation of random testing programmes in the institution:

“(ha) The number and nature of any tests or other procedures to which inmates of the institution have been required to submit under section 36C, and the reasons for requiring those inmates to submit to those tests or procedures:”.

**4. Secretary may issue operational standards**—(1) Section 10A of the principal Act (as inserted by section 8 of the Penal Institutions Amendment Act 1994) is amended by adding to subsection (1), as paragraph (d), the following paragraph:

“(d) Any other matter in respect of which the Secretary is authorised or required, by or under this Act, to issue operational standards.”

(2) Section 10A of the principal Act (as so inserted) is amended by repealing subsections (2) and (3), and substituting the following subsections:

“(2) Subject to subsection (5), any operational standards issued under this section may be made to apply—

“(a) Generally in respect of all institutions or in respect of any specified institution or of institutions of any specified class or classes:

“(b) Generally in respect of all persons (whether inmates, staff members of any institution, independent

contractors, visitors, or any other persons) or of persons of any specified class or classes.

“(3) Every person must comply with every operational standard issued by the Secretary under this section, so far as that standard is applicable to that person, until that standard is revoked by the Secretary.”

(3) This section comes into force on the date on which section 8 of the Penal Institutions Amendment Act 1994 comes into force.

**5. Definition of strip search**—Section 21E of the principal Act (as inserted by section 13 of the Penal Institutions Amendment Act 1994) is amended by repealing paragraphs (f) and (g) of subsection (2), and substituting the following paragraph:

“(f) With his or her legs spread apart, bend his or her knees.”

**6. Search of inmates and cells**—Section 21K of the principal Act (as so inserted) is amended by inserting, after subsection (5), the following subsection:

“(5A) Subject to section 21G, an inmate who is required under section 36BB to submit to a prescribed procedure for the purpose of detecting whether or not the inmate has used drugs, or consumed alcohol, or both, may, immediately before the inmate supplies a sample in accordance with that procedure, be required to undergo a strip search conducted by an officer, but only if—

“(a) The nature of the prescribed procedure is such that there is a risk that the inmate may tamper with the sample; and

“(b) A strip search is necessary to ensure that such tampering does not occur.”

**7. Offences relating to drugs and alcohol**—(1) The principal Act is amended by inserting, after section 32, the following section:

“32A. (1) Every inmate commits an offence against discipline who,—

“(a) Without the authority of a medical officer, uses any drug or consumes alcohol; or

“(b) Having been required under section 36BB to submit to a prescribed procedure, refuses to comply with that requirement; or

“(c) Tamper with any sample required to be supplied (whether by that inmate or any other inmate) in accordance with such a procedure.

“(2) Every person commits an offence against discipline who,—

“(a) While he or she is on temporary release under section 21; and

“(b) In breach of a condition or restriction imposed on his or her release; and

“(c) Without the authority of a medical officer,—  
uses any drug or consumes alcohol.

“(3) For the purposes of this Act, an offence against subsection (1) or subsection (2) is an offence against discipline under section 32 (1), and the provisions of this Act apply accordingly.

“(4) No complaint alleging that a person has committed an offence against subsection (2) may be laid while that person is on temporary release under section 21, but nothing in this subsection prevents the laying of such a complaint once that person has ceased to be on temporary release.”

(2) Section 32 (2) (j) of the principal Act is consequentially repealed.

**8. New heading and sections substituted**—(1) The principal Act is amended by repealing section 36B (as inserted by section 5 of the Penal Institutions Amendment Act 1979), and substituting the following heading and sections:

*“Testing for Drugs and Alcohol*

**“36B. Secretary to issue drug and alcohol strategy**—  
(1) The Secretary must, at intervals of not more than 3 years, issue a drug and alcohol strategy relating to drug and alcohol use by inmates.

“(2) Every drug and alcohol strategy must include provisions relating to the following matters:

“(a) The assessment of individual inmates:

“(b) Measures to reduce the demand for drugs and alcohol among inmates:

“(c) Measures to reduce the supply of drugs and alcohol to inmates:

“(d) Treatment services and harm minimisation services:

“(e) Staff training.

**“36BA. Random testing programmes**—A random testing programme is a programme—

- “(a) Under which a class or classes of inmates are identified so that certain inmates in that class or those classes may be required to submit to a prescribed procedure for the purpose of detecting whether or not the inmates have used drugs, or consumed alcohol, or both; and
- “(b) Under which the inmates from a particular class who are to be required to submit to a prescribed procedure are selected by a method which ensures that each inmate in that class has an equal chance of being selected; and
- “(c) That is operated in accordance with any applicable regulations made under this Act and any applicable operational standards.

“**36BB. Inmate may be required to submit to drug or alcohol test**—(1) Subject to subsection (3), an officer may, in any of the situations referred to in subsection (2), require an inmate to submit to any prescribed procedure for the purpose of detecting whether or not the inmate has used drugs, or consumed alcohol, or both.

“(2) The situations referred to in subsection (1) are as follows:

- “(a) Where the Superintendent, or any other staff member authorised for the purpose by the Superintendent, believes, on reasonable grounds, that the inmate has committed an offence against section 32A (1) (a) or section 32A (2):
- “(b) Where the inmate’s name has been selected under a random testing programme:
- “(c) Where the inmate is a voluntary participant in any programme—
  - “(i) That aims to reduce drug and alcohol use among inmates; and
  - “(ii) Under which the inmate agrees to submit, on demand made under this section, to any prescribed procedure.

“(3) No person may be required to submit to a prescribed procedure under this section while that person is on temporary release under section 21, but nothing in this subsection prevents that person from being required to submit to such a procedure once that person has ceased to be on temporary release.

“(4) On requiring an inmate to submit to a prescribed procedure under this section, the officer must—

- “(a) Inform the inmate—

- “(i) Of the reason for the requirement; and
- “(ii) Of the consequences for the inmate if the inmate refuses to submit to the procedure; and
- “(iii) That it is a disciplinary offence to tamper with any sample required to be supplied in accordance with the procedure; and

“(b) Explain to the inmate, in general terms,—

- “(i) How the procedure will be carried out; and
- “(ii) How any sample obtained from the procedure will be analysed.

**“36BC. Inmate to be informed of result of procedure—**

Where, under section 36BB, an inmate submits to a prescribed procedure, the Superintendent must ensure that the inmate is informed, as soon as practicable and in writing, of the results of the procedure.

**“36BD. Restrictions on use of results of procedure—**

Neither the fact that an inmate has been required, under section 36BB, to submit to a prescribed procedure, nor any information obtained from any such prescribed procedure, are admissible as evidence against any inmate or any other person—

“(a) In any proceedings under this Act, other than proceedings for an offence against section 32A; or

“(b) In any proceedings under any other enactment.

**“36BE. Regulations relating to drug and alcohol testing—**(1) Without limiting the generality of section 45, but subject to subsection (2), regulations may be made under that section for any of the following purposes:

“(a) Prescribing one or more types of procedure to which an inmate may be required to submit, under section 36BB, for the purpose of detecting whether or not the inmate has used drugs, or consumed alcohol, or both:

“(b) Regulating such procedures, including (without limitation)—

“(i) Prescribing how any such procedure is to be carried out:

“(ii) Prescribing how any samples obtained from any such procedure are to be analysed or stored, or both:

“(iii) Prescribing procedures for preserving the chain of evidence:

“(iv) Providing for the disposal of samples obtained from a prescribed procedure:

“(v) Regulating access to, and the use and disclosure of, information obtained from the analysis of such samples, and providing for the destruction of such information:

“(c) Providing for random testing programmes, including (without limitation)—

“(i) Prescribing the purposes for which random testing programmes may be established:

“(ii) Prescribing the principles under which random testing programmes must operate:

“(iii) Prescribing standards that random testing programmes must meet:

“(iv) Prescribing specifications for random testing programmes, including (without limitation) defining the class of inmates to which the programme applies, and specifying the frequency of testing and the percentage of inmates to be tested:

“(v) Providing for the general administration of random testing programmes:

“(d) Authorising the Secretary to issue operational standards relating to any of the matters in respect of which regulations may be made under this subsection.

“(2) No procedure may be prescribed under subsection (1) (a) which requires any inmate to supply a sample of his or her blood, but nothing in this subsection limits the power to prescribe any procedure that requires an inmate to supply any other type of sample (including, without limitation, a sample of saliva, or urine, or other bodily sample).

“36BF. **Annual report of Secretary**—The Secretary must include in his or her annual report to the Minister under section 30 of the State Sector Act 1988 a report on—

“(a) The measures taken to reduce drug and alcohol use by inmates:

“(b) The effectiveness of those measures:

“(c) Random testing programmes, including a summary of the results of those programmes.”

(2) The following enactments are consequentially repealed:

(a) The Penal Institutions Amendment Act 1979:

(b) Section 17 of the Penal Institutions Amendment Act 1994.

**9. Secretary may issue security operational standards**—Section 36ZG of the principal Act (as inserted by section 19 of the Penal Institutions Amendment Act 1994) is amended by

adding to subsection (1), as paragraph (d), the following paragraph:

“(d) Any other matter in respect of which the Secretary is authorised or required, by or under this Act, to issue security operational standards.”

**10. Regulations**—(1) Section 45 (1) of the principal Act (as substituted by section 26 (1) of the Penal Institutions Amendment Act 1994) is amended by repealing paragraphs (22) and (23), and substituting the following paragraphs:

“(22) Prescribing one or more types of procedure to which an inmate may be required to submit, under section 36BB, for the purpose of detecting whether or not the inmate has used drugs, or consumed alcohol, or both:

“(23) Regulating such procedures, including (without limitation)—

“(a) Prescribing how any such procedure is to be carried out:

“(b) Prescribing how any samples obtained from any such procedure are to be analysed or stored, or both:

“(c) Prescribing procedures for preserving the chain of evidence:

“(d) Providing for the disposal of samples obtained from a prescribed procedure:

“(e) Regulating access to, and the use and disclosure of, information obtained from the analysis of such samples, and providing for the destruction of such information:

“(23A) Providing for random testing programmes, including (without limitation)—

“(a) Prescribing the purposes for which random testing programmes may be established:

“(b) Prescribing the principles under which random testing programmes must operate:

“(c) Prescribing standards that random testing programmes must meet:

“(d) Prescribing specifications for random testing programmes, including (without limitation) defining the class of inmates to which the programme applies, and specifying the frequency of testing and the percentage of inmates to be tested:

“(e) Providing for the general administration of random testing programmes:”.

(2) Section 45 (1) of the principal Act (as so substituted) is amended by inserting, after paragraph (30), the following paragraph:

“(30A) Authorising the Secretary to issue operational standards relating to any of the matters in respect of which regulations may be made under this section.”.

(3) Section 45 of the principal Act (as so substituted) is amended by adding the following subsection:

“(3) No procedure may be prescribed under subsection (1) (22) which requires any inmate to supply a sample of his or her blood, but nothing in this subsection limits the power to prescribe any procedure that requires an inmate to supply any other type of sample (including, without limitation, a sample of saliva, or urine, or other bodily sample).”

(4) The principal Act is consequentially amended by repealing section 36BE (as substituted by section 8 of this Act).

(5) This section comes into force on the date on which section 26 (1) of the Penal Institutions Amendment Act 1994 comes into force.

#### **11. Amendments consequential on section 10 (2)—**

(1) The principal Act is consequentially amended in the manner set out in the Schedule.

(2) This section comes into force on the date on which section 26 (1) of the Penal Institutions Amendment Act 1994 comes into force.

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Section 11 (1)

## SCHEDULE

## AMENDMENTS TO PRINCIPAL ACT CONSEQUENTIAL ON AMENDMENT MADE BY SECTION 10 (2)

Provision of Principal Act	Amendment
Section 7	By omitting from subsection (1) the word "thereunder", and substituting the words "made under this Act or with any operational standards". By inserting in subsection (2) (as substituted by section 5 of the Penal Institutions Amendment Act 1994), after the words "any such regulations", the words "and to any operational standards".
Section 17 (1)	By inserting, after the word "Act", the words "and to any operational standards".
Section 20	By inserting in subsection (1), after the word "Act", the words "and to any operational standards". By inserting in subsection (3), after the word "Act", the words ", or any operational standards, or both".
Section 22 (1)	By inserting, after the word "Act", the words "and to any operational standards".
Section 44 (1)	By inserting, after the words "any regulations made under this Act", the words "or of any operational standards".

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This Act is administered in the Department of Corrections.

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