



ANALYSIS

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1999, No. 114

An Act to amend the Penal Institutions Act 1954

[14 October 1999

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 1999, and is part of the Penal Institutions Act 1954 (“the principal Act”).

(2) This Act comes into force on the day on which it receives the Royal assent.

PART 1

AMENDMENTS TO PRINCIPAL ACT

2. Interpretation—(1) Section 2 (1) of the principal Act is amended by repealing the definition of “escort duty”, and substituting the following definition:

“ ‘Escort duty’—

“(a) Means the transport of persons in custody—

“(i) To or from a penal institution or police station; or

“(ii) To or from any place at which their attendance is or has been required for judicial purposes; or

“(iii) To or from a residence (within the meaning of the Children, Young Persons, and Their Families Act 1989); or

“(iv) For any purpose authorised by section 27 or section 28; or

“(v) For the purposes of the Mental Health (Compulsory Assessment and Treatment) Act 1992; and

“(b) Includes their custody, control, and supervision during that transport, and any custody, control, and supervision while they are at any place to or from which they are transported (other than a penal institution or police station) that is incidental to that transport.”.

(2) Section 2 (1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:

“ ‘Authorised person’ means a person for the time being authorised under section 21R (1) to monitor inmate calls; and includes the Secretary:

“ ‘Completely erased’ means erased so that it is not retrievable:

“ ‘Contracted provider’ means a person engaged by the Secretary or a contractor to provide services in connection with telephone monitoring:

“ ‘Device’, in relation to a telephone call, includes any answering machine, computer, fax, printer, tape recorder, or telephone:

“ ‘To disclose an inmate call’ means to disclose the substance, meaning, or purport of an inmate call, or of any part of it; and includes—

“(a) To allow any person to listen to or read a recording of an inmate call; and

“(b) To give or lend to any person a recording of an inmate call:

“‘Eligible employee’ means a person who is an employee of the Secretary, an employee of a contractor, an employee of a contracted provider, or a contracted provider:

“‘Employee’ includes a person engaged under a contract for services:

“‘Exempt call’ means an inmate call to which section 21P (2) applies:

“‘Information’ includes data in digital form:

“‘Inmate call’—

“(a) Means any information transmitted by means of a telephone call to which an inmate of an institution is a party, conducted while the inmate is in the institution; and

“(b) Includes part of an inmate call:

“‘To monitor’ means to do any or all of the following:

“(a) Listen to, record, and take notes from:

“(b) Listen to, read, and take notes from a recording of:

“‘Privacy Commissioner’ means the Privacy Commissioner appointed under section 12 of the Privacy Act 1993:

“‘Recording’, in relation to an inmate call, means any means by which all or any part of the call has been captured; and includes—

“(a) A copy or print-out of such a means:

“(b) A transcript, written translation, or written translation of a transcript, of the call:

“(c) A copy of a recording of a transcript, written translation, or written translation of a transcript, of the call:

“‘Telephone call’ means a call made, using any part or parts of 1 or more telephone systems, between a device and any other device or devices:

“‘Telephone system’ includes a telephone network:

“‘Translate’ includes decode and decrypt; and ‘translation’ has a corresponding meaning.”

(3) Section 2 (1) of the principal Act is amended by omitting from the definition of “courtroom custodial duty” the word “undertaking”.

3. Act binds the Crown—The principal Act is amended by inserting, after section 2, the following section:

“2A. This Act binds the Crown.”

4. New provisions inserted—The principal Act is amended by inserting, after section 21M, the following heading and sections:

“Telephone Calls May be Monitored

“21N. Purposes of monitoring inmates’ telephone calls—(1) The principal purpose of monitoring inmate calls is to increase the safety of the community by making it easier to—

“(a) Prevent and discourage the commission of offences by, for the benefit of, or with the help or encouragement of, inmates; and

“(b) Detect and investigate offences committed by, for the benefit of, or with the help or encouragement of, inmates; and

“(c) Prosecute, convict, and punish—

“(i) Inmates who commit offences, or help or encourage other people to commit offences; and

“(ii) People who commit offences for the benefit of, or with the help or encouragement of, inmates; and

“(d) Prevent and discourage escapes from institutions.

“(2) Monitoring inmate calls also has the purpose of making it easier to—

“(a) Maintain the security, good order, and discipline of institutions; and

“(b) Protect the safety of inmates.

“21O. Inmate calls that may be monitored—(1) Any inmate call that is not an exempt call may be monitored under this Act.

“(2) An exempt call may be monitored under this Act if the person undertaking the monitoring does not have reasonable grounds to believe that it is an exempt call.

“(3) A person listening to an inmate call or a recording of an inmate call under this Act who forms the view that there are reasonable grounds to believe that it is an exempt call—

“(a) Must promptly stop listening to it; and

“(b) Must take all practicable steps to ensure that every recording of it is destroyed, or completely erased.

“(4) Subsection (2) is subject to subsection (3).

“21P. Certain calls not to be monitored—(1) An inmate call to which subsection (2) applies is exempt from monitoring under this Act.

“(2) This subsection applies to an inmate call if, and only if, it is—

“(a) A call between an inmate and a Member of Parliament;
or

“(b) A call, relating to the inmate’s legal affairs, between an inmate and a person holding a current practising certificate under section 57 of the Law Practitioners Act 1982—

“(i) Who acts for the inmate; or

“(ii) With whom the inmate is discussing the possibility of the person’s acting for the inmate; or

“(c) A call between an inmate and a person acting, in respect of the inmate, in an official capacity as—

“(i) An Ombudsman holding office under the Ombudsmen Act 1975, or an employee from the Office of the Ombudsmen; or

“(ii) An Inspector of Penal Institutions appointed under section 5; or

“(iii) The Health and Disability Commissioner appointed under section 8 of the Health and Disability Commissioner Act 1994, or an employee of the Commissioner; or

“(iv) The Privacy Commissioner, or an employee of the Commissioner; or

“(v) A member or employee of the Human Rights Commission continued by section 4 of the Human Rights Act 1993; or

“(vi) The Police Complaints Authority established by section 4 of the Police Complaints Authority Act 1988, or an employee of the Authority; or

“(vii) A District Court Judge or Justice of the Peace, appointed under section 10 (2) to be a Visiting Justice for the institution in which the inmate is an inmate; or

“(d) A call between an inmate and a person (other than an inmate) who—

“(i) Is a person of a kind or description for the time being exempted from monitoring under this Act by the Governor-General by Order in Council (being an order specifying a purpose or purposes for which the exemption is being granted); and

“(ii) Is acting for a purpose specified in the order;

or

“(e) A call between an inmate and a person (other than an inmate) for the time being exempted from monitoring under this Act by the Secretary.

“21Q. **Only certain persons to monitor**—(1) No person other than an authorised person may monitor an inmate call under this Act.

“(2) A person to whom subsection (3) applies may listen to an inmate call or a recording of an inmate call, or read a transcript of an inmate call, if doing so is necessary for, or incidental to any other action or process necessary for, the effective undertaking of the work concerned.

“(3) This subsection applies to a person who is undertaking, with the Secretary’s authority, work comprising the administration, installation, maintenance, repair, testing, or upgrading of a system—

“(a) By or from which recordings of inmate calls are made;

or

“(b) In which recordings of inmate calls are stored.

“(4) Subsection (1) is subject to subsection (2) of this section, and to subsections (4) to (6) of section 21T.

“21R. **Secretary may authorise certain persons to monitor calls**—(1) The Secretary may from time to time, by written notice to the person concerned, authorise any eligible employee to monitor inmate calls.

“(2) The person ceases to be an authorised person if—

“(a) The Secretary cancels the authority; or

“(b) The person ceases to be an eligible employee.

“21s. **Warnings**—(1) The Secretary must take all practicable steps to ensure that—

“(a) On or reasonably promptly after being admitted to an institution, inmates are told in writing—

“(i) That some of their telephone calls may be monitored; and

“(ii) Which kinds of call are exempt from monitoring; and

“(iii) The purposes for which information obtained from monitoring may be used; and

“(b) There are prominently placed in every institution, near telephones that inmates are authorised to use, written notices—

“(i) Warning inmates that their telephone calls (other than exempt calls) may be monitored; and

“(ii) Stating in general terms the purposes for which information obtained from monitoring may be used; and

“(c) At the start of every outward inmate call that is being or is to be monitored, the inmate hears, and there is transmitted to the device to which the call is made, a message to the effect that the call may be monitored.

“(2) The matters referred to in subsection (1)(a) must be presented to an inmate in such a way that the inmate can easily understand them.

“21T. **Authorised disclosure of information**—(1) An authorised person may disclose an inmate call for a purpose specified in section 21N as a purpose of monitoring inmate calls.

“(2) An authorised person may disclose an inmate call if the authorised person believes on reasonable grounds that the disclosure—

“(a) 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

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

“(c) 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

“(d) Has been authorised by the Privacy Commissioner under section 54 (1) of the Privacy Act 1993.

“(3) An authorised person may disclose an inmate call to the inmate concerned.

“(4) An authorised person who is listening to an inmate call may allow any eligible employee to listen to the call, for the purpose of interpreting it.

“(5) An authorised person may allow any eligible employee to listen to a recording of an inmate call, for the purpose of providing a transcript, a written translation, or both.

“(6) An authorised person may allow any eligible employee to read a transcript of an inmate call, for the purpose of providing a written translation.

“21U. **Restrictions on disclosure of information**—(1) An authorised person must not knowingly disclose an inmate call otherwise than under section 21T.

“(2) An authorised person who is listening to an inmate call must not knowingly allow any other person to listen to it, except under section 21T (4).

“(3) An eligible employee (other than an authorised person) who under section 21T has been allowed to listen to an inmate call or a recording of an inmate call, or read a transcript of an inmate call, must not knowingly disclose the call except to an authorised person.

“(4) A person who under section 21Q (2) has heard an inmate call or a recording of an inmate call, or read a transcript of an inmate call, must not knowingly disclose the call except to an authorised person.

“(5) Every person who acts in contravention of any of subsections (1) to (4) commits an offence, and is liable on summary conviction to a fine not exceeding \$2,000.

Cf. 1961, No. 43, s. 312k

“21v. **Application of Privacy Act 1993**—(1) The Privacy Act 1993 applies to the monitoring of inmate calls under sections 21N to 21Y.

“(2) Subsection (1) overrides section 21U (1).

“21w. **Destruction of recordings**—(1) The Secretary must take all practicable steps to ensure that every recording of an inmate call held by the Secretary is destroyed, or completely erased,—

“(a) On or before the expiration of the period of 6 months after the call was made; or

“(b) As soon after that expiration as it appears that no information contained in it would be likely to be—

“(i) Required for the purposes of an investigation into an offence or possible offence; or

“(ii) Required for the purposes of an investigation into the possibility that an offence may be committed in the future; or

“(iii) Required for evidence in a prosecution or possible prosecution for an offence, or in disciplinary proceedings, or in proceedings against an inmate for a disciplinary offence; or

“(iv) Required to be disclosed under the Privacy Act 1993; or

“(c) If the Privacy Commissioner has notified the Secretary in writing that a complaint has been made under the

Privacy Act 1993 in relation to the recording, until the Privacy Commissioner has notified the Secretary in writing that the complaint has not been proceeded with, or has been finally disposed of.

“(2) The Commissioner of Police or, as the case may be, the chief executive of a department of State specified in the First Schedule of the State Sector Act 1988 (other than the Secretary) must take all practicable steps to ensure that every recording of an inmate call held by the Police or that department that was obtained by the monitoring of the call under this Act is destroyed, or completely erased, as soon as it appears that no proceedings or disciplinary proceedings (or no further proceedings or disciplinary proceedings) will be taken in which any information contained in it would be likely to be required to be produced in evidence.

“(3) Nothing in subsections (1) and (2) applies to any record of any information adduced in proceedings in any court or tribunal.

“(4) If—

“(a) Two or more recordings of inmate calls are stored in such a way that it is not practicable to destroy or completely erase 1 without destroying or completely erasing the others; and

“(b) Subsection (1) requires the destruction or complete erasure of 1 or more, but not all of them,—

an authorised person may arrange for the recording or recordings that are not required to be destroyed or completely erased to be copied, so that the copy or copies may be retained and all the recordings may be destroyed or completely erased; and any copy is admissible in evidence to the same extent that the destroyed recording it is a copy of would have been.

Cf. 1961, No. 43, s. 312j

“21x. Notice to be given of intention to produce evidence of recording—Particulars of a recording of an inmate call must not be received in evidence by any court against any person, or in any proceedings against an inmate for a disciplinary offence, unless the party intending to adduce it has given the person reasonable notice of the party’s intention to do so, together with—

“(a) Either—

“(i) A transcript of the recording, if the party intends to adduce it in the form of a recording; or

“(ii) A written statement setting forth the full particulars of the recording, if the party intends to adduce oral evidence of it; and

“(b) A statement of the time, place, and date of the call, and of the names and addresses of the parties to the call, if they are known.

Cf. 1961, No. 43, s. 312L

“21Y. **Annual report to cover monitoring system**—The Department’s annual report under section 30 of the State Sector Act 1988 must—

“(a) Describe the processes and systems in place during the year to which the report relates to supervise and control the monitoring of inmate calls under this Act; and

“(b) State, as an approximate proportion of the inmate calls monitored (otherwise than merely by being recorded) during the year to which the report relates, the number of calls disclosed under subsection (1) or subsection (2) of section 21T to any person other than an employee of the Secretary or a contractor; and

“(c) State,—

“(i) As an approximate proportion of the inmate calls monitored (otherwise than merely by being recorded) during the year to which the report relates, the number of calls disclosed under subsection (1) or subsection (2) of section 21T to an employee of the Secretary or a contractor; and

“(ii) As an approximate proportion of those inmate calls disclosed, the number of proceedings against an inmate for a disciplinary offence in which a recording of any of those calls was used in evidence.

“21z. **Privileged evidence**—(1) This subsection applies to evidence that—

“(a) Has been obtained by the monitoring of an inmate call under sections 21N to 21Y; and

“(b) But for the monitoring, would have been privileged by virtue of—

“(i) Any provision of Part III of the Evidence Amendment Act (No. 2) 1980; or

“(ii) Any rule of law conferring privilege on communications of a professional character between a barrister or solicitor and a client.

“(2) Evidence to which subsection (1) applies remains privileged, and must not be given in any court except with the consent of the person entitled to waive the privilege.”

Cf. 1961, No. 43, s. 312O

5. Offences relating to drugs and alcohol—(1) Section 32A (1) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

“(b) Having been required under section 36BB to submit to a prescribed procedure,—

“(i) Refuses to comply with the requirement; or

“(ii) Without reasonable excuse, fails to comply with the requirement; or”.

(2) Section 32A (2) (a) of the principal Act is amended by inserting, after the expression “21”, the words “or is released under section 21A”.

(3) The proviso to section 21A (8) of the principal Act is consequentially amended by omitting the words “to 36 and section 44 of this Act”, and substituting the words “and 44”.

(4) Section 36BB of the principal Act is consequentially amended by repealing subsection (3), and substituting the following subsections:

“(3) A person may not be required to submit to a prescribed procedure under this section at a time when subsection (3A) applies to the person; but nothing in this subsection prevents the person from being required to submit to a prescribed procedure under this section when that subsection has ceased to apply to the person.

“(3A) This subsection applies to a person who is for the time being—

“(a) Released under section 21; or

“(b) Released under section 21A.”

6. Right of appeal to Visiting Justice against decision of Superintendent—Section 35 (1) of the principal Act is amended by inserting, before the word “request”, the words “no later than 14 days after being dealt with”.

7. Complaints by prisoners—Section 36Y of the principal Act is amended by—

(a) Omitting from subsection (1) the words “a security monitor”, and substituting the words “an Inspector”; and

- (b) Omitting from subsection (2) the words “security monitor” in the 3 places they occur, and substituting in each case the words “an Inspector”; and
- (c) Repealing subsection (3).

8. Secretary may issue security operational standards—

Section 36ZG of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

“(2) A security operational standard may apply generally to all persons (whether prisoners, security officers, or any other persons), or to persons of a specified kind or description only.”

9. Offences—Section 44 (4) of the principal Act is amended by inserting, after the word “institution,” the words “or any security officer,”.

PART 2

AMENDMENTS TO CRIMES ACT 1961

10. Amendments to Crimes Act 1961—(1) Section 216B (1) of the Crimes Act 1961 is amended by omitting the words “and (3) of this section”, and substituting the words “to (4)”.

(2) Section 216B of the Crimes Act 1961 is amended by adding the following subsection:

“(4) Subsection (1) does not apply to monitoring an inmate call under section 21O of the Penal Institutions Act 1954.”

This Act is administered in the Department of Corrections.
