

PENAL INSTITUTIONS AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill makes a number of miscellaneous amendments of the Penal Institutions Act 1954.

Many of the provisions of this Bill are consequential upon changes proposed in the Criminal Justice Bill. However, the following changes are of more substance:

- (a) It is no longer intended to make separate provision for youth prisons (*clauses 2, 4, 6, and 7*). This reflects a change in penal policy.
 - (b) The strict separation of the sexes is no longer considered essential (*clause 8*).
 - (c) The present provisions relating to release to work are streamlined, and provision is made for local committees to make recommendations on cases of this kind. Each such committee is to comprise a District Court Judge, an officer of the Department of Justice, and one other person appointed by the Minister (*clause 9*).
 - (d) Provision for separate pre-release hostels is abolished (*clause 21*).
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Hon. Mr McLay

PENAL INSTITUTIONS AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Penal Institutions Act 1954

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as
5 follows:

- 1. Short Title and commencement**—(1) This Act may be cited as the Penal Institutions Amendment Act 1983, and shall be read together with and deemed part of the Penal Institutions Act 1954* (hereinafter referred to as the principal Act).
- 10 (2) This Act shall come into force on the 1st day of July 1985.

*R.S. Vol. 4, p. 65

Amendments: 1980, No. 77; 1981, No. 85; 1982, No. 91

2. Interpretation—(1) The principal Act is hereby amended by repealing section 2, and substituting the following section:

“2. In this Act, unless the context otherwise requires,—

“‘Inmate’ means any person for the time being in the legal custody of the Superintendent of any penal institution: 5

“‘Minister’ means the Minister of Justice:

“‘Officer’ means the Superintendent or any officer or employee of a penal institution appointed or employed under section 6 of this Act: 10

“‘Penal institution’, or ‘institution’, means any prison, corrective training institution, or police jail established under this Act.”

(2) The following enactments are hereby repealed:

(a) Section 2 (1) of the Penal Institutions Amendment Act 15 1975:

(b) Section 2 of the Penal Institutions Amendment Act 1980.

3. Administration of Act—Section 3 of the principal Act (as amended by section 2 of the Penal Institutions Amendment Act 1983) is hereby amended by adding the following 20 subsections:

“(5) Any authorisation under subsection (3) of this section may be given to any specified officer or to the holder or holders for the time being of any specified office or class of offices.

“(6) Every such authorisation shall be revocable at will, and 25 no such authorisation shall prevent the exercise of any power, duty, or function by the Secretary.

“(7) Every such authorisation shall, until revoked, continue in force according to its tenor notwithstanding that the Secretary by whom it was made has ceased to hold office, and 30 shall continue to have effect as if made by the successor in office to that Secretary.”

4. Establishment of penal institutions—(1) Section 4 of the principal Act (as substituted by section 3 (1) of the Penal Institutions Amendment Act 1980) is hereby amended by 35 repealing subsection (1) (b).

(2) Where, at the commencement of this section, any penal institution is declared to be a youth prison (whether or not it is also declared to be some other kind of penal institution), it shall hereafter be deemed to be a prison. 40

5. Superintendent and other officers of penal institutions—The principal Act is hereby amended by repealing section 6, and substituting the following section:

5 “6. (1) For every institution, not being a police jail, there shall from time to time be appointed or employed under the State Services Act 1962 a Superintendent and such other officers and employees as may be required.

10 “(2) The Minister may from time to time appoint or employ for any institution in part-time capacities such persons as may be required as chaplains, counsellors, education officers, or other officers or employees.

15 “(3) For every institution there shall be a medical officer, who shall be a medical practitioner and who may be appointed or employed under **subsection (1)** or under **subsection (2)** of this section.

“(4) With respect to every person appointed or employed under **subsection (2)** of this section, the following provisions shall apply:

20 “(a) He shall not by virtue of that appointment or employment become an officer of the Public Service, and nothing in the State Services Act 1962 or the Government Superannuation Fund Act 1956 shall apply to the appointment:

25 “(b) He may be paid out of money appropriated by Parliament for the purpose such remuneration by way of salary or fees and such allowances as may be determined by the Minister, with the concurrence of the Minister of Finance:

30 “(c) The appointment or employment may be held in conjunction with any office, appointment, or employment that is not inconsistent therewith.

“(5) The Commissioner of Police may from time to time appoint any member of the Police to be the Superintendent or any other officer of any police jail.

35 “(6) In every institution in which females are received there shall be a sufficient number of female officers or employees.”

6. Classification of offenders—(1) Section 8A of the principal Act (as inserted by section 4 of the Penal Institutions Amendment Act 1980) is hereby repealed.

40 (2) Section 4 of the Penal Institutions Amendment Act 1980 is hereby consequentially repealed.

7. Detention of inmates—(1) Section 12 of the principal Act (as substituted by section 5 (1) of the Penal Institutions Amendment Act 1980) is hereby amended by omitting from subsection (1) the words “or by any direction given under section 8A of this Act, and subject to section 43 (2c) of the Criminal Justice Act 1954,” and substituting the words “and subject to **sections 65 and 130** of the Criminal Justice Act **1983**”.

(2) Section 12 of the principal Act (as so substituted) is hereby further amended by repealing paragraphs (a) and (b) of subsection (1), and substituting the following paragraph:

“(a) A person who is sentenced to imprisonment or preventive detention or is transferred under section 23 of this Act shall serve his sentence in a prison:”.

(3) Section 12 of the principal Act (as so substituted) is hereby further amended by repealing subsection (2), and substituting the following subsection:

“(2) Subject to the provisions of this Act or of any other enactment, a person may be held in custody on remand in—

“(a) Any police jail; or

“(b) Any other penal institution designated for the purpose 20 by the Secretary for Justice.”

8. Separation of male and female inmates no longer required—Section 18 of the principal Act is hereby repealed.

9. Part-time release to engage in employment—(1) Section 21A of the principal Act (as inserted by section 2 of the Penal Institutions Amendment Act 1961) is hereby amended by repealing subsection (1), subsection (2) (as substituted by section 6 (1) of the Penal Institutions Amendment Act 1980), and subsections (2A) to (2C) (as substituted by section 3 (2) of the Penal Institutions Amendment Act 1963), and substituting the following subsections:

“(1) The Secretary for Justice may, on the recommendation of a committee established under section 21B of this Act, direct that any specified inmate who is serving a sentence of imprisonment or preventive detention and who wishes to be released under this section shall be released from day to day to engage in employment (including self-employment).

“(2) Any direction under **subsection (1)** of this section shall be given subject to any conditions imposed by any committee established under section 21B of this Act, and to such other conditions relating to the nature and place of employment as the Secretary for Justice may impose.

“(2A) Any such direction may be revoked at any time by the Secretary for Justice.”

(2) Section 21A of the principal Act (as so inserted) is hereby further amended by adding the following subsection:

5 “(9) In this section references to persons sentenced to imprisonment include references to persons committed to prison for non-payment of a sum of money or for disobedience of a Court order or for contempt of Court.

(3) The following enactments are hereby consequentially
10 repealed:

(a) Subsections (1), (2), and (3) (a) of section 3 of the Penal Institutions Amendment Act 1963:

(b) Section 2 (3) (a) of the Criminal Justice Amendment Act
15 1963:

(c) Section 6 of the Penal Institutions Amendment Act 1980.

10. Committees to make recommendations for release—

(1) The principal Act is hereby amended by repealing section 21B (as inserted by section 2 of the Penal Institutions Amendment Act 1961), and substituting the following section:

20 “21B. (1) For the purposes of section 21A of this Act, there shall be such number of committees as the Minister may from time to time determine.

“(2) Every such committee shall consist of 3 members, being—

25 “(a) A District Court Judge who shall be the chairman of the committee and who shall be appointed by the Minister on the nomination of the Chief District Court Judge:

30 “(b) An officer of the Department of Justice appointed by the Secretary for Justice:

“(c) One other member appointed by the Minister.

“(3) Every member of a committee who is appointed under **paragraph (a)** or **paragraph (c)** of **subsection (2)** of this section shall be appointed for a term not exceeding 5 years, but may from
35 time to time be reappointed, or may at any time resign his office by writing addressed to the Minister.

“(4) Any member of a committee who is appointed under **paragraph (c)** of **subsection (2)** of this section may at any time be removed from office by the Minister for disability, neglect of
40 duty, or misconduct proved to the satisfaction of the Minister.

“(5) The Minister or (in the case of a person appointed under **subsection (2) (b)** of this section) the Secretary for Justice may appoint any person as a deputy to act for any member of a committee while—

“(a) That member is unable by reason of illness, absence 5
from New Zealand, or other sufficient cause to
perform the duties of his office; or

“(b) In the case of a person appointed under **subsection (2) (c)**
of this section, that member is absent from any place 10
at which a meeting of a committee is to be held.

“(6) Any deputy appointed under **subsection (5)** of this section shall, while he acts as such, be deemed to be a member of the committee.

“(7) In any case where the chairman of a committee does not attend any meeting of the committee, any District Court 15
Judge may attend the meeting in his place and, while attending that meeting and in respect of any matter arising from that meeting, he shall be deemed for all purposes to be the chairman of the committee.

“(8) In the absence of the officer appointed under **subsection 20**
(2) (b) of this section from any meeting of the committee, the Secretary for Justice may authorise any other officer or any former officer of the Department of Justice to attend the meeting in the member’s stead, and, while any such officer or former officer is attending any meeting under this subsection, 25
he shall be deemed for all purposes to be a member of the committee.

“(9) Every such committee is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951. 30

“(10) There shall be paid out of money appropriated by Parliament for the purpose to every member of any such committee appointed by the Minister, other than the chairman, remuneration, by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees 35
and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

“(11) Meetings of any such committee shall be held at such times and places as the committee or the chairman appoints.

“(12) At any meeting of any such committee, 2 members 40
shall form a quorum.

“(13) Subject to the provisions of this Act and of any regulations made under this Act, every such committee may regulate its procedure in such manner as it thinks fit.

“(14) The functions of each such committee shall be—

“(a) To make recommendations on the exercise of the powers conferred on the Secretary for Justice by section 21A (1) of this Act:

5 “(b) In any case where it thinks fit, to determine any conditions to be attached to any direction to be given under section 21A (1) of this Act.”

(2) Section 3 (3) (d) of the Penal Institutions Amendment Act 1963 is hereby consequentially repealed.

10 **11. Earnings of employed inmate**—(1) Section 21C of the principal Act (as inserted by section 2 of the Penal Institutions Amendment Act 1961) is hereby amended by inserting in subsection (4) (e), after the word “fine”, the words “or reparation”.

15 (2) Section 21C of the principal Act (as so inserted) is hereby further amended by repealing subsection (5), and substituting the following subsection:

“(5) Where any Superintendent of an institution is satisfied that any inmate of that institution—

20 “(a) Has failed to observe any condition imposed on his release under section 21A of this Act; or

“(b) Has failed to work satisfactorily for any period during which he is released under that section; or

25 “(c) Has failed, without lawful excuse, to return before or at the expiry of any period for which he was released,—

he may as a disciplinary measure pay into the Public Account a sum not exceeding \$100 from any money that is held to the credit of any inmate and that has been paid to the Secretary
30 under subsection (1) or subsection (2) or subsection (3) of this section, and that sum shall be forfeited to the Crown and shall not be applied or paid under subsection (4) or subsection (6) of this section:

35 “Provided that the Superintendent shall not pay any sum into the Public Account under this section until the inmate has been informed of the reason for the proposed payment and has been given an opportunity to make an explanation to the Superintendent or to the Secretary or to an Inspector of Penal Institutions.

40 (3) Section 3 (3) (e) of the Penal Institutions Amendment Act 1963 is hereby consequentially repealed.

12. Transfer of inmates from one institution to another—(1) Section 22 of the principal Act is hereby amended by repealing subsection (2) (as added by section 3 of the Penal Institutions Amendment Act 1976).

(2) Section 3 of the Penal Institutions Amendment Act 1976 5
is hereby consequentially repealed.

13. Transfer of corrective training inmate to prison—
(1) Section 23 of the principal Act (as substituted by section 8 of the Penal Institutions Amendment Act 1975) is hereby amended by omitting from subsection (1) the word “medically”, 10
and substituting the words “, by reason of his physical or mental condition,”.

(2) Section 23 of the principal Act (as so substituted) is hereby further amended—

(a) By omitting from subsection (2) the words “Minister is 15
satisfied on the recommendation of the Secretary for Justice”, and substituting the words “Secretary for Justice is satisfied”:

(b) By omitting from that subsection the word “Minister” where it secondly occurs, and substituting the words 20
“Secretary for Justice”.

(3) Section 23 of the principal Act (as so substituted) is hereby further amended by omitting from subsection (4) the word “Minister”, and substituting the words “Secretary for Justice”.

14. Removal of inmate for judicial purposes—(1) Section 25
26 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Any inmate may be brought up for trial or sentence (or for any bail application, remand, adjournment, or other ancillary proceeding), and may be removed by or under the 30
direction of the Superintendent from one institution to another or from one place of confinement to another for such purpose or for the purpose of undergoing his sentence.”

(2) Section 26 (2) of the principal Act is hereby amended by repealing paragraph (b), and substituting the following 35
paragraph:

“(b) In any other case the interests of justice require the attendance of any inmate, whether as a party or as a witness,—

“(i) Before any Court; or 40

“(ii) Before any tribunal constituted by or under any enactment; or

“(iii) At any meeting or examination convened or conducted under the authority of any enactment,—

”

(3) Section 26 (2) of the principal Act is hereby further amended by omitting the words “District Court Judge”, and substituting the word “Registrar”.

5 (4) Section 26 (2A) of the principal Act (as inserted by section 11 of the Penal Institutions Amendment Act 1975) is hereby amended by omitting the words “Justice, or District Court Judge” in both places where they occur, and substituting in each case the words “Judge, or Registrar”.

10 (5) Section 26 (3) of the principal Act is hereby amended by omitting the words “District Court Judge”, and substituting the word “Registrar”.

15. Length of sentence—(1) The following enactments are hereby repealed:

15 (a) Section 29 of the principal Act and the heading above that section:

(b) Section 30 of the principal Act:

(c) Sections 31 and 31A of the principal Act (as substituted by section 14 (1) of the Penal Institutions Amendment Act 1975).

20 (2) The following enactments are hereby consequentially repealed:

(a) Section 3 of the Penal Institutions Amendment Act 1961:

(b) Section 14 of the Penal Institutions Amendment Act 1975:

(c) The Penal Institutions Amendment Act (No. 2) 1978:

25 (d) Sections 10 and 11 of the Penal Institutions Amendment Act 1980.

16. Powers of Visiting Justice in relation to offences by inmates—(1) Section 33 (3) (a) of the principal Act (as substituted by section 15 (1) of the Penal Institutions Amendment Act 1975)

30 is hereby amended by omitting the words “release in accordance with section 31 of this Act from”, and substituting the words “remission of sentence in accordance with **section 75** of the Criminal Justice Act **1983** in respect of”.

(2) Section 33 (3) (e) of the principal Act is hereby repealed.

35 (3) Section 33 (5) of the principal Act (as added by section 15 (3) of the Penal Institutions Amendment Act 1975) is hereby amended—

40 (a) By omitting the words “release in accordance with section 31 of this Act”, and substituting the words “remission of sentence in accordance with **section 75** of the Criminal Justice Act 1983”:

(b) By omitting the words “the said section 31”, and substituting the words “the said **section 75**”.

17. Powers of Superintendent in relation to certain offences by inmates—(1) Section 34 (3) (a) of the principal Act (as substituted by section 16 (1) of the Penal Institutions Amendment Act 1975) is hereby amended by omitting the words “release in accordance with section 31 of this Act from”, 5 and substituting the words “remission of sentence in accordance with **section 75** of the Criminal Justice Act 1983 in respect of”.

(2) Section 34 (3) (e) of the principal Act is hereby repealed.

(3) Section 34 (5) of the principal Act (as added by section 10 16 (3) of the Penal Institutions Amendment Act 1975) is hereby amended—

(a) By omitting the words “release in accordance with section 31 of this Act”, and substituting the words “remission of sentence in accordance with **section 75** of the 15 Criminal Justice Act 1983”:

(b) By omitting the words “the said section 31”, and substituting the words “the said **section 75**”.

18. Superintendent to deliver calendar of persons committed for trial—Section 39 of the principal Act is hereby 20 repealed.

19. Subsidies to after-care associations—Section 43 of the principal Act is hereby repealed.

20. Regulations—(1) Section 45 (2) (g) of the principal Act (as substituted by section 2 of the Penal Institutions Amendment 25 Act 1981) is hereby repealed.

(2) Section 2 of the Penal Institutions Amendment Act 1981 is hereby consequentially repealed.

21. Pre-release hostels—(1) The Penal Institutions Amendment Act 1978 is hereby repealed. 30

(2) The following enactments are hereby consequentially repealed:

(a) Section 14 of the Penal Institutions Amendment Act 1980:

(b) Section 3 of the Penal Institutions Amendment Act 1981.