

PENAL INSTITUTIONS AMENDMENT BILL

AS REPORTED FROM THE JUSTICE AND LAW REFORM
COMMITTEE

COMMENTARY

Recommendation

The Justice and Law Reform Committee has examined the Penal Institutions Amendment Bill and Supplementary Order Paper No. 25 and recommends that the bill be passed with amendments.

Conduct of the examination

The Penal Institutions Amendment Bill was introduced on 17 June 1996 and referred to the Justice and Law Reform Committee on 27 August 1997 for consideration. The closing date for submissions was 18 April 1997. The committee received and considered 16 submissions from seven organisations and other interested groups and individuals. Eight submissions were heard orally. On 3 July 1997 the House referred Supplementary Order Paper No. 25 (SOP) to the committee with an instruction that the committee in its consideration of the bill, consider and, if it thinks fit, adopt the amendments set out on the SOP. One hour and 45 minutes were spent on the hearing of evidence and consideration took five hours and 35 minutes.

Advice was received from the Department of Corrections.

This commentary sets out the details of our consideration of the bill and the SOP and the major issues we addressed.

Background

This bill amends the Penal Institutions Act 1954 (principal Act). The main aim of the bill is to reduce the use of drugs and alcohol by inmates in prisons. Measures contained in the bill are designed to:

- reduce the demand for drugs and alcohol in prisons
- facilitate the treatment of inmates with drug problems
- reduce the supply of drugs into prisons.

No. 201—2

The bill makes it a disciplinary offence for an inmate, or a person who is on temporary release from a penal institution, to use drugs or consume alcohol without the authority of a medical officer. The bill also authorises prison authorities to test inmates for drug and alcohol use.

Testing may be carried out in 3 situations:

- Where an inmate is believed to have used drugs or consumed alcohol, without authority, within a penal institution, or while on temporary release.
- Where the inmate's name has been selected at random to undergo testing for drugs. The results of tests will provide information about the extent of drug use in prisons and the types of drugs being used.
- Where an inmate is on a programme aimed at reducing drug and alcohol use and has agreed to undergo random testing on demand. The bill supports programmes for inmates by enabling participants to be monitored to ensure they are complying with the conditions of the programme.

Submissions

We received several submissions from organisations that have an ongoing relationship with inmates and experience with the treatment of drug and alcohol addiction. The Penal Officers Association, the New Zealand Prisoners Aid and Rehabilitation Society and the New Zealand Public Service Association all made oral submissions. These three groups, in particular, are closely related to those who will be most affected by the bill, the prison officers and the inmates themselves.

Most submissions supported the general thrust of the bill. However, many raised concerns about the effectiveness of drug testing and problems that may arise as a result of random testing being introduced. The four main concerns expressed in submissions were that:

- drug testing in itself is not the most effective use of resources
- testing should not be used for punitive purposes
- testing will result in inmates switching from cannabis to harder drugs which will decrease the likelihood of detection
- as a result of the switch to harder drugs, there will be an increase in the overall harm associated with drug use.

Regulations and operational standards specifying random testing procedure

Implementation of procedures by regulation and operational standard must be authorised

The bill as introduced contemplates that the procedures that will govern drug testing programmes will be contained in regulations and in operational standards issued by the Chief Executive of the Department of Corrections. However, there was no provision in the bill which allowed for regulations to be made relating to the general administration of drug testing programmes. We recommend that the new section 36BC (1) (as inserted by clause 5) be amended to provide a more general authority to make regulations regulating the procedures to be used to test inmates and providing for random testing programmes, including the general administration of such programmes.

Some matters relating to random selection of inmates should be set out in regulations, but other matters of detail should be able to be dealt with in operational standards. The bill as introduced might not allow operational standards to be made in relation to random selection where aspects of that

procedure are prescribed by regulation. We recommend an amendment to new section 36BC(1) (as inserted by clause 5) to clarify the point.

Supplementary Order Paper making general amendment necessary

During consideration of the bill we became aware that there might be a problem with the scope of the new general regulation-making power in section 45 of the principal Act. This new section was enacted by the Penal Institutions Amendment Act 1994, but is yet to come into force. We were informed that it might be desirable to use operational standards issued by the Chief Executive of the Department of Corrections, rather than regulations, to deal with a number of subsidiary matters relating to the administration of penal institutions. However, section 10A of the principal Act, which authorises the issuing of operational standards, is not framed broadly enough to enable this to be done. Further, the principal Act would not permit the use of a regulation-making power to make regulations that authorise the issuing of operational standards about matters contemplated by the regulation-making power.

The Minister of Corrections circulated the SOP containing a new clause 6 which amends section 45(1) of the principal Act to empower the making of regulations authorising the Chief Executive to issue operational standards in relation to any of the matters in respect of which regulations may be made. Amendments to the principal Act of a general nature, and which are not relevant to the subject-matter of the bill, are outside the scope of the bill. In order to be able to consider the amendments the SOP was referred to us by the House as described earlier. This is a measure to remedy a technical problem with the original legislation and we recommend that the amendments set out on the SOP be incorporated into the bill.

We note that operational standards, although not regulations for publication purposes, are deemed to be regulations for the purposes of the Regulations (Disallowance) Act 1989, and are therefore subject to the scrutiny of the Regulations Review Committee. The opportunity for parliamentary scrutiny of subordinate legislation made under the principal Act will therefore be preserved.

Appropriate for procedures to be contained in regulations and operational standards

Submissions were concerned whether the formulation of random testing procedures is an appropriate matter to be dealt with in regulations and operational standards.

We accept that circumstances require the setting up of procedures outside the bill. The Chief Executive needs to have the power to prescribe programmes in the operational standard so that programmes can be adapted to changing circumstances. We expect that the procedures that are developed within regulations and the operational standards will be monitored very carefully through the annual reporting process that we recommend be included in the bill, and the activities of the Regulations Review Committee.

Random tests to include tests for alcohol

The bill as introduced permits random testing for the use of drugs, not for the consumption of alcohol. The Penal Officers Association suggested that alcohol use is not always readily detectable and alcohol is likely to be resorted to increasingly if the supply of drugs is squeezed. We agree and recommend an amendment to new section 36B to allow testing for alcohol of samples collected under random testing programmes.

Concerns about the allocation of resources

Positive allocation of resources to all aspects of the drug strategy important

Some submitters hold the view that money would be better spent on more positive activities, such as drug programmes that address the causes of drug offending rather than on negative activities such as deterrence and punishment. John Challis, the General Manager of Odyssey House in Auckland, proposed in his submission the need for a simultaneous commitment to drug and alcohol surveillance on the one hand and effective in-prison treatment programmes on the other. We agree with submissions that resources should be appropriated in a positive way to help achieve the overall strategy of reducing the level of drug use in prisons. We consider that the resources currently allocated for the purposes of the bill are inadequate. We are concerned that the measure will fail unless adequate resources are available for the accompanying parts of the strategy.

Resources should be allocated to effective programmes

During the oral hearings we heard from a number of witnesses experienced in the drug rehabilitation field. Several commented on the different types of treatment programmes that are available and the quality of those programmes. We believe it is important that resources are made available to promote existing programmes that have proved effective, and put in place similar new programmes in the community and in prisons. We are concerned at the lack of empirical evaluations of existing programmes. We note that future programmes funded under the Crime Prevention Package will be evaluated. We consider it essential that treatment programmes are subject to rigorous scientific evaluation.

Government assurance of allocation

We were concerned to obtain an assurance from the Government that it is committed to the overall strategic measure of addressing the causes of drug use and rehabilitation of inmates. For this reason we invited the Minister in charge of the bill, Hon Paul East QC, to comment on the resources that will be made available to address the causes of drug offending and to treat addiction, both inside prison and after release. Unfortunately the Minister was unable to attend a meeting with the committee prior to the reporting deadline. We look forward to discussing with the Minister the Government's commitment to the drug strategy in the budget allocation during the Estimates examination.

Imposition of reporting and accountability regime

We recommend amendments to the bill to ensure that Parliament is regularly informed of the results of random testing for alcohol and drugs and the effects of other measures aimed at reducing alcohol and drug use.

Clause 5 has been amended by the inclusion of two new sections that impose requirements on the Chief Executive. New section 36BD requires the department to include in its annual report to the Minister a report on the results of random testing, and on the effectiveness of measures aimed at reducing drug and alcohol use in prisons. The Minister tables the department's annual report in the House of Representatives. This section places an obligation on the department to report on drug and alcohol related matters on an ongoing basis and means that we will be able to focus on the department's performance in this area during the financial review and Estimates examinations.

We also recommend the inclusion of new section 36BAA which will impose an additional obligation on the Chief Executive to issue a Drug Strategy at intervals of not more than three years. The strategy must outline the steps the department

proposes to take in dealing with drugs in prisons, and must address the following areas:

- the assessment of individual inmates
- measures to reduce the demand for drugs and alcohol among inmates
- measures to reduce the supply of drugs and alcohol to inmates
- treatment services and harm minimisation services
- staff training.

This will ensure that a balanced approach will be adopted in dealing with drugs and alcohol, by requiring essential aspects of the wider strategy to be regularly considered. We consider that this further obligation along with the annual reporting requirement will provide a rigorous monitoring regime.

Random testing of inmates returning from temporary release

Two submissions proposed a universal drug testing programme be set up for prisoners returning from temporary release to deter inmates from abusing the conditions of their release. We acknowledge that such a testing programme would be valuable. Inmates could be tested for alcohol use as well as drug use as there is also a common prohibition on using alcohol while on temporary release. Owing to the costs of implementing a universal testing regime we recommend that returning inmates be selected for testing on a random basis only. A random testing programme to provide for inmates returning from temporary release can be set up under the regulations and we recommend that a programme of this nature be implemented. No amendment to the bill is required to give effect to this recommendation.

Strip searching of inmates immediately before a sample is collected

Research in New Zealand and overseas has shown that inmates will attempt to find ways of substituting or corrupting urine samples taken for the purposes of testing. We acknowledge the concern in some submissions that the samples will be tampered with. The standard practice overseas is to routinely strip search inmates prior to taking a sample. Situations in which inmates may be strip searched are listed in subsections (4) and (5) of section 21K of the principal Act. Testing for drugs or alcohol is currently not one of those situations. Therefore, we recommend the inclusion of new clause 3A to insert a new subsection (5A) in section 21K authorising the strip searching of inmates immediately before a sample is collected for the purpose of drug and alcohol testing.

Definition of drug also to include prescription medicines

The Department of Corrections and the Institute of Environmental Science and Research Limited pointed out that the definition of “drug” to be inserted in the principal Act by clause 2 (1) should include a reference to prescription medicines and restricted medicines under the Medicines Act 1981. We agree that there are many drugs misused in prisons that are prescription medicines or restricted medicines. We recommend that the definition of “drug” be amended to include a reference to these types of medicines.

Problems with inmates switching to harder drugs as a result of drug testing regime

Several submissions are concerned that drug testing regimes tend to result in inmates switching to harder drugs which are harder to detect than cannabis.

There is also the concern that the use of harder drugs leads to more harmful health effects on inmates.

We make no recommendation for amendment to the bill on this matter. The evidence of switching is inconclusive and its occurrence can be minimised through three strategies:

- reducing access to supply
- modifying the tests
- increasing the use of “for cause” testing, which is when staff who become aware of symptoms of harder drug use follow through with testing.

We recommend that these measures be adopted in practice to help minimise the occurrence of switching.

KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

Struck Out (Unanimous)

Subject to this Act,

Text struck out unanimously

New (Unanimous)

Subject to this Act,

Text inserted unanimously

Struck Out (Majority)

Subject to this Act,

Text struck out by a majority

New (Majority)

Subject to this Act,

Text inserted by a majority

(Subject to this Act,)

Words struck out unanimously

<*Subject to this Act,*>

Words struck out by a majority

Subject to this Act,

Words inserted unanimously

<Subject to this Act,>

Words inserted by a majority

Hon. Paul East

PENAL INSTITUTIONS AMENDMENT

ANALYSIS

Title	
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<i>Testing for Drugs and Alcohol</i>	
36BAA. Secretary to issue drug and alcohol strategy	36BA. Inmates to be informed of result of procedure
36BAB. Random testing programmes	36BB. Restrictions on use of results of procedure
36B. Inmate may be required to submit to drug or alcohol test	36BC. Regulations relating to drug and alcohol testing
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	8. Amendments consequential on section 7 (2)
	Schedule
	Amendments to Principal Act Consequential on Amendments Made by Section 7 (2)

A BILL INTITULED

An Act to amend the Penal Institutions Act 1954

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

5 **1. Short Title and commencement**—(1) This Act may be cited as the Penal Institutions Amendment Act 1996, and is part of the Penal Institutions Act 1954* (“the principal Act”).

Struck Out (Unanimous)

10 (2) Except as provided in **section 5 (4)** of this Act, this Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

*R.S. Vol. 18, p. 557

Amendments: 1989, No. 126; 1993, Nos. 30, 44; 1994, No. 120

New (Unanimous)

(2) This Act (other than **sections 2B, 7, and 8**) comes into force on a date to be appointed by the Governor-General by Order in Council.

2. Interpretation—

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Struck Out (Unanimous)

(1) Section 2 of the principal Act (as substituted by section 2 (1) of the Penal Institutions Amendment Act 1994) is hereby amended by inserting in subsection (1), after the definition of the term “designated security monitor”, the following definition: 10

“ ‘Drug’ means a controlled drug within the meaning of section 2 of the Misuse of Drugs Act 1975:”.

New (Unanimous)

(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: 15

“ ‘Drug’ means— 20

“(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 36BAB**:” 25

(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: 30

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

New (Unanimous)

5 **2A. 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:

10 “(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.”

15 **2B. 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:

20 “(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:

25 “(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:

30 “(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.

35 “(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.

3. 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: 5

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

New (Unanimous)

3A. Search of inmates and cells—Section 21K of the principal Act (as so inserted) is amended by inserting, after subsection (5), the following subsection: 10

“(5A) Subject to **section 21G**, an inmate who is required under **section 36B** 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— 15

“(a) The nature of the prescribed procedure is such that there is a risk that the inmate may tamper with the sample; and 20

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

4. Offences relating to drugs and alcohol—(1) The principal Act is amended by inserting, after section 32, the following section: 25

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

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

“(b) Having been required (*pursuant to*) under **section 36B** to submit to a prescribed procedure, refuses to comply with that requirement; or 30

“(c) Tampers with any sample required to be supplied (whether by that inmate or any other inmate) in accordance with such a procedure. 35

“(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 40

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

Struck Out (Unanimous)

5 “(3) For the purposes of this Act, an offence against
subsection (1) or subsection (2) of this section is deemed to be an
offence against discipline under section 32 (1) of this Act
committed by an inmate, and the following provisions of this
Act shall apply accordingly:
10 “(a) Section 32 (3) (which relates to attempts, and aiding,
counselling, and procuring offences):
“(b) Section 33 (which relates to the powers of Visiting
Justices to hear disciplinary offences):
“(c) Section 34 (which relates to the powers of a
15 Superintendent to hear certain disciplinary
offences).

New (Unanimous)

“(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.
20 “(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.”
25 (2) Section 32 (2) (j) of the principal Act is consequentially
repealed.

5. 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 <1975>
30 <1979>), and substituting the following heading and sections:

*“Testing for Drugs and Alcohol**New (Majority)***“36BAA. 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. 5

“(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: 10

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

“(d) Treatment services and harm minimisation services:

“(e) Staff training. 15

“36BAB. 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 20

“(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 25

“(c) That is operated in accordance with any applicable regulations made under this Act and any applicable operational standards. 30

“36B. Inmate may be required to submit to drug or alcohol test—*Struck Out (Majority)*

(1) Subject to **subsection (3)** of this section, an officer may, in any of the situations referred to in **subsection (2)** of this section, require an inmate to submit to any prescribed procedure for the purpose of detecting— 35

Struck Out (Majority)

“(a) Whether or not the inmate has used drugs; or
“(b) Whether or not the inmate has consumed alcohol,—
or both.

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New (Majority)

(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.

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“(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)**:

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Struck Out (Majority)

“(b) In any case to which **subsection (1) (a)** of this section applies, where the inmate’s name has been selected at random in accordance with regulations made under this Act:

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New (Majority)

“(b) Where the inmate’s name has been selected under a random testing programme:

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“(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 *<pursuant to>* *<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. 5

“(4) On requiring an inmate to submit to a prescribed procedure *<pursuant to>* *<under>* this section, the officer must— 10

“(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 15

“(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,— 20

“(i) How the procedure will be carried out; and

“(ii) How any sample obtained from the procedure will be analysed.

“36BA. **Inmates to be informed of result of procedure—**

Where, *<pursuant to>* *<under>* section 36B, 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. 25

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

Neither the fact that an inmate has been required, *<pursuant to>* *<under>* section 36B, 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— 30

“(a) In any proceedings under this Act, other than proceedings for an offence against section 32A; or 35

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

“36BC. Regulations relating to drug and alcohol testing—

Struck Out (Majority)

5 (1) Without limiting the generality of section 45 of this Act, but subject to **subsection (2)** of this section, regulations may be made under that section for any of the following purposes:

10 “(a) Prescribing one or more types of procedure to which an inmate may be required to submit, pursuant to **section 36B** of this Act, for the purpose of detecting—
“*(i)* Whether or not the inmate has used drugs; or
“*(ii)* Whether or not the inmate has consumed alcohol,—
or both:

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

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

20 “*(d)* Prescribing procedures for preserving the chain of evidence, or authorising the Secretary to prescribe such procedures by operational standard:

25 “*(e)* Prescribing procedures for the random selection of inmates to be required to submit, pursuant to **section 36B** of this Act, to a prescribed procedure for the purpose of detecting whether or not the inmates have used drugs; or prescribing requirements that such random selection procedures must meet, and authorising the Secretary to prescribe such random selection procedures by operational standard:

30 “*(f)* Providing for the disposal of samples obtained from a prescribed procedure, and for the destruction of information obtained from the analysis of such samples.

New (Majority)

35 (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 36B**, for the purpose of detecting whether or not the

New (Majority)

- inmate has used drugs, or consumed alcohol, or both:
- “(b) Regulating such procedures, including (without limitation)— 5
- “(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: 10
- “(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: 15
- “(c) Providing for random testing programmes, including (without limitation)— 20
- “(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: 25
- “(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: 30
- “(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. 35

“(2) No procedure may be prescribed ~~⟨pursuant to⟩~~ ⟨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). 40

New (Majority)

“36BD. **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—

- 5 “(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.”

- 10 (2) The following enactments are consequentially repealed:
 (a) The Penal Institutions Amendment Act 1979:
 (b) Section 17 of the Penal Institutions Amendment Act 1994.

Struck Out (Majority)

- 15 (3) Section 45 of the principal Act (as substituted by section 26 (1) of the Penal Institutions Amendment Act 1994) is hereby amended by repealing paragraphs (22) and (23).
 (4) **Subsection (3)** of this section shall come into force on the date on which section 26 (1) of the Penal Institutions
20 Amendment Act 1994 comes into force.

New (Unanimous)

6. 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
25 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.”

30 **7. 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:

New (Unanimous)

“(22) Prescribing one or more types of procedure to which an inmate may be required to submit, under **section 36B**, for the purpose of detecting whether or not the inmate has used drugs, or consumed alcohol, or both: 5

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

“(a) Prescribing how any such procedure is to be carried out: 10

“(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: 15

“(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: 20

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

“(a) Prescribing the purposes for which random testing programmes may be established: 25

“(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: 30

“(e) Providing for the general administration of random testing programmes:” 35

(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:” 40

New (Unanimous)

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

5 “(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).”

10 (4) The principal Act is consequentially amended by repealing **section 36bc** (as substituted by **section 5** 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.

15 **8. Amendments consequential on section 7 (2)**—(1) The principal Act is consequentially amended in the manner set out in the Schedule.

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

New (Unanimous)

Section 8 (1)

SCHEDULE

AMENDMENTS TO PRINCIPAL ACT CONSEQUENTIAL ON AMENDMENTS MADE BY SECTION 7 (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".

