

PENAL INSTITUTIONS AMENDMENT BILL (NO. 2)

EXPLANATORY NOTE

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

Many of the provisions of this Bill are consequential upon changes proposed in the Criminal Justice Bill (No. 2). 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 8*):
- (b) The strict separation of the sexes is no longer considered essential (*clause 9*):
- (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 (*clauses 10 and 11*):
- (d) The maximum amount that may be deducted from the earnings of an inmate who is released to work and breaches any conditions of release, or fails to work satisfactorily or to return to the institution on time, is increased from \$20 to \$100 (*clause 12*):
- (e) Better provision is made for the production of inmates who are required to attend, whether as parties or witnesses, for any judicial purposes (*clause 15*):
- (f) Provision for separate pre-release hostels is abolished (*clause 22*).

The Bill in substance is not very different from that introduced by the Hon. J. K. McLay in December 1983 and re-introduced in September 1984. However, *clauses 7 and 23* were not in Mr McLay's Bill.

Clause 7 transfers from the Minister of Justice to the Secretary for Justice the power to appoint classification committees under section 9 of the principal Act. The function of these committees is to advise the Secretary on the training and treatment required for any particular inmate of an institution whose case is referred to the committee by the Superintendent of the institution.

Clause 23 is of a consequential nature only.

Hon. Geoffrey Palmer

PENAL INSTITUTIONS AMENDMENT (NO. 2)

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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 follows:

- 1. Short Title and commencement**—(1) This Act may be cited as the Penal Institutions Amendment Act (No. 2) 1984, and shall be read together with and deemed part of the Penal Institutions Act 1954* (hereinafter referred to as the principal Act).
- (2) This Act shall come into force on the 1st day of October 1985.

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

Amendments: 1980, No. 77; 1981, No. 85; 1982, No. 91; 1983, No. 84

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:

“‘Sentence of imprisonment’ does not include imprisonment imposed, whether by committal, 15 sentence, or order, for—

“(a) Non-payment of a sum of money; or

“(b) Disobedience of a Court order; or

“(c) Contempt of Court.”

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

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

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

3. Administration of Act—(1) Section 3 (3) of the principal 25 Act (as substituted by section 2 (1) of the Penal Institutions Amendment Act 1983) is hereby amended by omitting the words “control of the Minister and to the general”.

(2) Section 3 of the principal Act (as amended by section 2 30 of the Penal Institutions Amendment Act 1983) is hereby further amended by adding the following 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 35

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 repealing subsection (1) (b).

5 (2) Where, at the commencement of this Act, 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.

5. Superintendent and other officers of penal institutions—(1) The principal Act is hereby amended by
10 repealing section 6, and substituting the following section:

“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
15 and employees as may be required.

“(2) The Secretary for Justice 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.

20 “(3) For every institution there shall be one or more medical officers, each of whom 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
25 under **subsection (2)** of this section, the following provisions shall apply:

“(a) The person shall not by virtue of that appointment or employment become an officer or employee of the Public Service, and nothing in the State Services Act
30 1962 or the Government Superannuation Fund Act 1956 shall apply to the appointment or employment:

“(b) The person 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
35 be determined by the Minister, with the concurrence of the Minister of Finance:

“(c) The appointment or employment may be held in conjunction with any office, appointment, or employment if the Secretary for Justice is satisfied
40 that the duties of that office, appointment, or position are not inconsistent with those of an officer or employee engaged in a penal institution.

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

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

(2) Every person who, immediately before the commencement of this Act, was holding office as a chaplain, a welfare officer, an education officer, or other officer pursuant to an appointment made by the Minister under section 6 (2) of the principal Act (as originally enacted) shall be deemed to have been appointed, and shall continue in office as if that person had been appointed, by the Secretary for Justice under section 6 (2) of the principal Act (as substituted by **subsection (1)** of this section), and as if, in the case of a person who was appointed as a welfare officer, that person had been appointed as a counsellor.

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.

(2) The following enactments are hereby consequentially repealed:

- (a) Section 4 of the Penal Institutions Amendment Act 1980:
- (b) Section 3 (1) of the Penal Institutions Amendment Act 1983.

7. Classification committees—(1) Section 9 of the principal Act is hereby amended by omitting from subsection (1) the word “Minister”, and substituting the words “Secretary for Justice”.

(2) Every person who, immediately before the commencement of this Act, was holding office as a member of a classification committee pursuant to an appointment made by the Minister under section 9 (1) of the principal Act (as originally enacted) shall be deemed to have been appointed, and shall continue in office as if that person had been appointed, by the Secretary for Justice under section 9 (1) of the principal Act (as amended by **subsection (1)** of this section).

8. 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 73 and 138** of the Criminal Justice Act 1984”.

(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:

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

(3) Section 12 of the principal Act (as so substituted) is hereby further amended by repealing subsection (2), and substituting
10 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

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

(4) Section 3 (2) of the Penal Institutions Amendment Act 1983 is hereby consequentially repealed.

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

20 **10. 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
25 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
30 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
35 given subject to any conditions imposed by any committee established under section 21B of this Act, and to such other conditions as the Secretary for Justice may impose.

“(2A) Without limiting **subsection (1)** of this section, the Secretary for Justice may direct that any specified inmate who
40 is serving a sentence of imprisonment for a term not exceeding 2 years and who wishes to be released under this section shall be released from day to day to engage in such employment (including self-employment) as the Secretary may from time to time specify. Any such direction may be given subject to such
45 conditions as the Secretary may impose.

“(2B) Any direction given under **subsection (1)** or **subsection (2A)** of this section 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—

(a) By omitting from subsection (4) the words “given by the Secretary” (as inserted by section 3 (3) (c) of the Penal Institutions Amendment Act 1963):

(b) By omitting from that subsection the word “Secretary’s”.

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

“(9) In this section references to persons sentenced to imprisonment include references to persons on whom imprisonment is imposed (whether by committal, sentence, or order) for non-payment of a sum of money or for disobedience of a Court order or for contempt of Court.”

(4) The following enactments are hereby consequentially repealed:

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

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

(c) Section 22 of the Penal Institutions Amendment Act 1978:

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

11. 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:

“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) 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:

“(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.

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

“(a) A District Court Judge or a retired District Court Judge who shall be the chairman of the committee and who shall be appointed by the Minister:

“(b) An officer of the Department of Justice appointed from time to time by the Secretary for Justice:

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

“(4) Every member of a committee who is appointed under 5 **paragraph (a) or paragraph (c) of subsection (3)** of this section shall be appointed for a term of 3 years, but may from time to time be reappointed, or may at any time resign by writing addressed to the Minister.

“(5) Any member of a committee who is appointed under 10 **paragraph (c) of subsection (3)** of this section, and any deputy to any such member, may at any time be removed from office by the Minister for disability, neglect of duty, bankruptcy, or misconduct proved to the satisfaction of the Minister.

“(6) Notwithstanding **subsection (4)** of this section, every 15 member of a committee, and every deputy appointed under **subsection (7)** of this section, shall, unless the member or deputy sooner dies, or resigns, or is removed from office under any of the foregoing provisions of this section, continue in office until his or her successor is appointed notwithstanding the 20 expiry of his or her term of office.

“(7) The Minister may appoint any person to be the deputy of the member of a committee appointed under **subsection (3) (c)** of this section, and such deputy may act for that member during any period when that member is incapacitated by illness, 25 absence from New Zealand, or other sufficient cause from performing the duties of office, or during the absence of that member from any place at which a meeting of the committee is to be held.

“(8) Every deputy appointed under **subsection (7)** of this section 30 shall be appointed for a term not exceeding 3 years, but may from time to time be reappointed, and may at any time resign by writing addressed to the Minister.

“(9) Any deputy appointed under **subsection (7)** of this section shall, while he or she acts as such, be deemed to be a member 35 of the committee.

“(10) In any case where the chairman of a committee does not attend any meeting of the committee, any District Court Judge or retired District Court Judge may attend the meeting in his place and, while attending that meeting and in respect 40 of any matter arising from that meeting, the Judge shall be deemed for all purposes to be the chairman of the committee.

“(11) In the absence of the officer appointed under **subsection (3) (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 place, and, while any such officer or former officer is attending any meeting under this subsection, he or she shall be deemed for all purposes to be a member of the committee. 5

“(12) No acts done by a deputy (which term in this subsection includes any District Court Judge or retired District Court Judge who attends any meeting pursuant to **subsection (10)** of this section and any officer or former officer of the Department of Justice authorised by the Secretary under **subsection (11)** of this section to attend any meeting) as such, and no acts done by a committee while any deputy is acting as such, shall in any proceedings be questioned on the ground that the occasion for the deputy to act had not arisen or had ceased. 10

“(13) The functions and powers of any such committee shall not be affected by any vacancy in its membership. 15

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

“(15) 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 and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly. 20 25

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

“(17) At any meeting of any such committee, 2 members shall form a quorum. 30

“(18) 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.”

(2) Section 3 (3) (d) of the Penal Institutions Amendment Act 1963 is hereby consequentially repealed. 35

12. 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”. 40

(2) Section 21C of the principal Act (as so inserted) is hereby further amended by repealing subsections (5) and (6), and substituting the following subsections:

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

- “(a) Has failed to observe any condition imposed on the inmate’s release under **section 21A** of this Act; or
- 5 “(b) Has failed to work satisfactorily for any period during which the inmate is released under that section; or
- “(c) Has failed, without lawful excuse, to return before or at the expiry of any period for which the inmate was released,—

10 the Superintendent 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 the inmate and that has been paid to the Secretary under subsection (1) or subsection (2) or subsection (3) of this section, and that sum shall be forfeited

15 to the Crown and shall not be applied or paid under subsection (4) or subsection (6) of this section:

“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

20 has been given an opportunity to make an explanation to the Superintendent or to an Inspector of Penal Institutions.

“(6) Any sum held to the credit of an inmate and not applied or forfeited in accordance with subsection (4) or **subsection (5)** of this section shall be paid by the Secretary to the inmate on

25 his or her release, or, if the inmate is released on conditions under **Part VI** of the Criminal Justice Act **1984**, by such instalments and at such times as shall be determined by the probation officer under whose supervision the inmate then is.”

(3) Section 3 (3) (e) of the Penal Institutions Amendment Act

30 1963 is hereby consequentially repealed.

13. 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).

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

14. 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

40 amended by omitting from subsection (1) the word “medically”, 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 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 “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”.

15. Removal of inmate for judicial purposes—(1) The principal Act is hereby amended by repealing section 26, and substituting the following section:

“26. (1) An inmate may be brought up for trial, summary hearing, or sentence (or for any bail application, remand, adjournment, or other ancillary proceeding), and may be removed by or under the 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 sentence.

“(2) Where—

“(a) An inmate is charged with an offence, not being the offence for which the inmate is in custody; or

“(b) In any other case the interests of justice require the attendance for judicial purposes of an inmate,—
any Court or Judge or Registrar may, by order in writing, direct the Superintendent of the institution in which the inmate is detained to bring the inmate or cause the inmate to be brought before the Court or, as the case may require, to arrange the attendance of the inmate for those judicial purposes, as often as may be necessary; and the Superintendent shall obey the order.

“(3) For the purposes of producing an inmate in accordance with an order given under **subsection (2)** of this section, the inmate may be held in custody in any institution (other than one of the kind in which the inmate is required or permitted by law to be detained) or a police station for not more than 7 days or such longer period as the Court or Judge or Registrar thinks necessary or expedient and directs in the order.

“(4) The Court or Judge or Registrar making any order under **subsection (2)** of this section shall, if the order is made in a civil proceeding, and may, if it is made in any other proceeding,

require any person applying for the order to deposit a sum sufficient to pay the expenses of bringing the inmate before the Court or, as the case may require, arranging the attendance of the inmate for judicial purposes and returning the inmate
5 to the institution in which he or she is required by law to be detained, including the expenses of the inmate's maintenance and custody from the time the inmate leaves the institution until the time he or she is so returned.

“(5) In this section ‘attendance for judicial purposes’, in
10 relation to an inmate, means the attendance of that inmate, whether as a party or as a witness,—

“(a) Before any Court; or

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

15 “(c) At any meeting or examination convened or conducted under the authority of any enactment.”

(2) Section 11 of the Penal Institutions Amendment Act 1975 is hereby consequentially repealed.

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

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

(b) Section 30 of the principal Act:

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

(2) The following enactments are hereby consequentially repealed:

30 (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:

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

17. Powers of Visiting Justice in relation to offences by

(3) Section 33 (5) of the principal Act (as added by section 15 (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 90** of the Criminal Justice Act **1984**”;
- (b) By omitting the words “the said section 31”, and substituting the words “the said **section 90**”.

18. 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”, and substituting the words “remission of sentence in accordance with **section 90** of the Criminal Justice Act **1984** 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 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 90** of the Criminal Justice Act **1984**”;
- (b) By omitting the words “the said section 31”, and substituting the words “the said **section 90**”.

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

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

21. Regulations—(1) Section 45 (2) of the principal Act is hereby amended by inserting, after paragraph (c), the following paragraph:

- “(ca) Without limiting anything in **paragraph (c)** of this subsection, requiring the separation of accused persons and convicted persons who are under the age of 20 years and such persons who are of or over that age, except in circumstances specified in the regulations.”.

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

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

(2) Section 14 of the Penal Institutions Amendment Act 1980 is hereby consequentially repealed.

23. Consequential amendments and repeal—(1) Section 2 of the Juries Act 1981 is hereby amended by repealing the definition of the term “pre-release hostel”.

(2) Section 8 (h) (iii) of the Juries Act 1981 is hereby amended by omitting the words “or pre-release hostel”.

(3) Section 2 (1) of the Summary Offences Act 1981 is hereby amended by omitting from the definition of the term “prison officer” the words “; and includes any Warden, officer, or employee of a pre-release hostel appointed under section 4 of the Penal Institutions Amendment Act 1978”.

(4) The Penal Institutions Amendment Act 1981 is hereby consequentially repealed.