



## PENAL INSTITUTIONS AMENDMENT BILL (NO. 2)

### EXPLANATORY NOTE

#### *General Policy Statement*

#### **Telephone Monitoring**

The main purpose of the Bill is to amend the Penal Institutions Act 1954 (“the principal Act”) to allow the monitoring of telephone conversations between inmates of a penal institution and people outside the institution.

The legislation reflects the Government’s desire to curtail misuse of prison telephones. There have been instances where inmates have used their telephone privileges to harass victims, arrange criminal activities, and engineer escapes.

Monitoring inmates’ calls will increase community safety by making it easier to detect crime, and will deter inmates from engaging in criminal activity. It will also protect victims from harassment, and help to prevent crime before it occurs.

Under the regime proposed, certain calls are exempt from monitoring. It is intended that all other calls be recorded, and some of them will be listened to, either while they are made or later.

As well as providing for certain calls to be exempted from monitoring, the legislation contains safeguards to provide a balance between inmates’ rights and the need for the legislation to be effective. These include—

- erecting signs near telephones used by inmates to inform users that calls may be monitored, and in addition providing for an automatic warning to be played at the start of telephone conversations made from telephones used by inmates;
- providing that monitoring will be conducted only by people authorised by the chief executive of the Department of Corrections (“the Secretary”);
- limiting knowledge of the substance of the conversation to specified persons. There will be a penalty of a fine of up to \$2,000 for unlawful disclosure;
- requiring recordings to be destroyed no later than 6 months after they are made, unless they are required for subsequent proceedings;
- preventing the use of recordings as evidence in proceedings, unless the party producing the recording gives notice of intention to do so, together with a transcript of the recording.

### Miscellaneous Amendments

Other amendments to the principal Act are largely technical.

#### *Clause by Clause Analysis*

*Clause 1* relates to the Bill's Short Title and commencement, and provides that it comes into force on assent.

### PART 1

#### AMENDMENTS TO PRINCIPAL ACT

*Clause 2* amends section 2 (1) of the principal Act (which contains definitions of terms used in the principal Act).

*Subclause (1)* replaces the definition of "escort duty" with an amended definition. The new definition makes clear that escort duty may extend to cover the custody, control, and supervision of persons in custody while they are at any place (other than a penal institution or police station) to or from which they are transported as part of escort duty. Thus, for example, if any escort duty involves escorting an inmate to a dentist, it may also extend to the custody, control, and supervision of the inmate while at the dentist's surgery.

The other amendments are consequential on amendments made by other provisions of the Bill.

*Clause 3* inserts into the principal Act a new *section 2A*, making express what has probably always been implicit—that the principal Act binds the Crown.

*Clause 4* inserts into the principal Act new *sections 21N to 21Z*, which provide for the monitoring of telephone calls made by or to prison inmates ("inmate calls").

#### *Telephone Calls May be Monitored*

*Section 21N* defines certain terms for the purposes of *sections 21O to 21Z*. Of particular significance are "device" and "telephone call" (which together extend "inmate call" to all kinds of communication using the telephone system).

*Section 21O* states the purposes for which the monitoring of inmate calls is to be carried out. The principal purpose is to increase the safety of the community, by making it easier to—

- Prevent and discourage the commission of offences by, for the benefit of, or with the help or encouragement of, prison inmates; and
- Detect and investigate offences committed by, for the benefit of, or with the help or encouragement of, prison inmates; and
- Prosecute, convict, and punish prison inmates who commit offences, or help or encourage other people to commit offences; and
- Prosecute, convict, and punish people who commit offences for the benefit of, or with the help or encouragement of, prison inmates; and
- Prevent and discourage escapes from prison.

Calls will also be monitored to maintain the security, good order, and discipline of prisons, and protect the safety of their inmates.

*Section 21P* states which calls may be monitored. Except for calls between inmates and people listed in *section 21Q*, all inmate calls may be monitored.

In addition, a call between an inmate and a person listed in *section 21Q* may be listened to, or recorded and listened to, if the person listening has no reason to believe that *section 21Q* applies to it. But as soon as the person listening forms the view that there are reasonable grounds to believe that it is a call between an inmate and a person listed in *section 21Q*, he or she must promptly stop listening, and steps must be taken to destroy any recordings of it.

*Section 21Q* lists calls that may not be monitored. These are calls between inmates and—

- their lawyers,

- Ombudsmen, and employees from the Office of the Ombudsmen,
- Inspectors of Penal Institutions,
- the Health and Disability Commissioner, and employees of the Health and Disability Commissioner,
- the Privacy Commissioner, and employees of the Privacy Commissioner,
- Human Rights Commissioners, and employees of the Human Rights Commission,
- the Police Complaints Authority, and employees of the Police Complaints Authority,
- Visiting Justices,
- individuals exempted from monitoring by the Secretary, and
- other kinds of people exempted from monitoring by Order in Council.

*Section 21r* prohibits the monitoring of inmate calls by any person other than a person authorised under *section 21s* (an “authorised person”). The section makes clear, however, that the prohibition does not affect the necessary activities of people employed by the Secretary or the manager of a private prison to transcribe or interpret calls, or people employed by the Secretary to administer systems for recording or storing inmate calls.

*Section 21s* empowers the Secretary to authorise people employed by the Secretary, or by the manager of a private prison, to monitor inmate calls.

*Section 21r* requires the Secretary to ensure that—

- On being admitted to an institution, inmates are given a written warning stating that some of their telephone calls may be monitored, which kinds of call are exempt from monitoring, and the purposes for which information obtained from monitoring may be used; and
- Prison telephones that inmates are allowed to use have written notices near them, warning inmates that their calls may be monitored; and
- Systems are in place so that an inmate making an outward call that is being monitored hears a message to the effect that the call may be being monitored, and the message is also transmitted to the device to which the call is made.

*Section 21v* allows authorised persons to disclose information derived from inmate calls—

- For a purpose specified in *section 21o* as a purpose of monitoring inmate calls; or
- If a matter specified in information privacy principle 11 of the Privacy Act 1993, applies to the information. In addition, information may be passed between authorised persons and people translating or transcribing inmate calls for them.

*Section 21v* contains a general prohibition on the disclosure of information derived from inmate calls by authorised persons, people undertaking translations or making transcripts for authorised persons, and people administering systems for recording or storing inmate calls. Information must not be disclosed except under *section 21v*. Disclosure in contravention of the prohibition is an offence, punishable by a fine of up to \$2,000.

*Section 21w* provides that the Privacy Act 1993 applies to personal information derived from the monitoring of inmate calls.

*Section 21x* relates to the destruction of recordings of inmate calls.

The Secretary must ensure that recordings of inmate calls held by the Secretary are destroyed or erased after 6 months unless they are needed for an investigation into an offence, or as evidence in a prosecution; and in any event are destroyed or erased once they are no longer needed for the investigation or as evidence.

The Commissioner of Police, and the chief executives of Government departments that initiate criminal or disciplinary proceedings, must ensure that

recordings of inmate calls held by them that were obtained by monitoring under the principal Act are destroyed or erased as soon as it appears that no proceedings will be taken in which any information contained in them would be likely to be required as evidence.

*Section 21Y*, which is based on section 312L of the Crimes Act 1961, provides that information derived from a recording of an inmate call must not be used in proceedings against any person unless the person has had reasonable notice, and been given—

- a transcript or particulars of the recording, and
- a statement of the time, place, and date of the call, and the names and addresses of the parties to it (if known).

*Section 21Z* requires the annual report for any year of the Department of Corrections to—

- describe the processes and systems in place to supervise and control the monitoring of inmate calls, and
- state, as an approximate proportion of the inmate calls monitored during the year before, the number of calls disclosed to external agencies, and
- state, as an approximate proportion of the inmate calls monitored during the year before, the number of calls disclosed to an employee or contractor of the Secretary and the number of resulting internal disciplinary proceedings.

*Clause 5* amends section 32A of the principal Act, which creates offences relating to the use of drugs and alcohol by inmates.

*Subclause (1)* amends section 32A (1), so that a failure without reasonable excuse to comply with a requirement to submit to a prescribed procedure (for example, a requirement to provide a urine sample) is an offence. At present only a refusal to submit to a prescribed procedure is an offence.

*Subclause (2)* amends section 32A (2) (a), so that it is an offence for an inmate to use drugs or alcohol while released to work under section 21A of the principal Act. At present section 32A (2) (a) applies only to inmates temporarily released under section 21 of the principal Act.

*Subclauses (3) and (4)* consequentially amend sections 21A (8) and 36BB (3) of the principal Act.

*Clause 6* amends section 35 (1) of the principal Act, which gives inmates a right to appeal to a Visiting Justice against certain disciplinary decisions of the Superintendent, so that an appeal must be requested within 14 days of the decision. At present there is no time limit.

*Clause 7* amends section 36Y of the principal Act (which relates to complaints by inmates relating to matters arising while they are in the custody of a security officer). At present, such complaints are dealt with by security monitors. The amendment has the effect that they will now be dealt with by Inspectors of Penal Institutions.

*Clause 8* amends section 36ZG of the principal Act so that security operational standards may be issued in respect of persons other than prisoners. At present, they may be issued in respect of prisoners only.

*Clause 9* amends section 44 of the principal Act so that where a security officer has a right to arrest a person because the person has some forbidden article, the officer can also seize the article. At present there is no right of seizure.

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PART 2

AMENDMENTS TO CRIMES ACT 1961

*Clause 10* makes consequential amendments to the Crimes Act 1961.

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Hon Clem Simich

**PENAL INSTITUTIONS AMENDMENT (NO. 2)**

ANALYSIS

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1. Short Title and commencement

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AMENDMENTS TO PRINCIPAL ACT

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3. Act binds the Crown  
4. New provisions inserted

*Telephone Calls May be Monitored*

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PART 2

AMENDMENTS TO CRIMES ACT 1961

10. Amendments to Crimes Act 1961

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 (No. 2) 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.

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

Amendments: 1989, No. 126; 1993, No. 44; 1994, No. 120; 1996, No. 140; 1997, No. 58

## 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: 5

“ ‘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 10

“(iii) To or from a residence (within the meaning of the Children, Young Persons, and Their Families Act 1989); or 15

“(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 20

“(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.”. 25

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

“ ‘Authorised person’ has the meaning given to it by section 21N: 30

“ ‘Completely erased’ has the meaning given to it by section 21N:

“ ‘Contracted provider’ has the meaning given to it by section 21N: 35

“ ‘Device’ has the meaning given to it by section 21N:

“ ‘Eligible employee’ has the meaning given to it by section 21N:

“ ‘Employee’ has the meaning given to it by section 21N:

“ ‘Exempted call’ has the meaning given to it by section 21N: 40

“ ‘To disclose a call’ has the meaning given to it by section 21N:



- “‘Inmate call’ has the meaning given to it by section 21N:
- “‘To monitor’ has the meaning given to it by section 21N:
- “‘Recording’ has the meaning given to it by section 21N:
- “‘Telephone call’ has the meaning given to it by section 21N:
- 5 “‘Telephone system’ has the meaning given to it by section 21N:
- “‘Transcript’ has the meaning given to it by section 21N:
- “‘Translate’ has the meaning given to it by section 21N.”

10 (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.”

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

*“Telephone Calls May be Monitored*

20 **21N. Interpretation of provisions**—In this section and sections 21O to 21Z, unless the context otherwise requires,—

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

25 “‘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:

30 “‘Device’ 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—

35 “(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:

40 “‘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 210 (2)** applies:
- “‘Inmate call’— 5
- “(a) Means any information transmitted by means of a telephone call to which an inmate of an institution is a party (being a call conducted while the inmate is in the institution); and
- “(b) Includes part of an inmate call: 10
- “‘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:
- “‘Recording’, in relation to an inmate call, means any means by which all or any part of the call has been captured; and includes— 15
- “(a) A copy of such a means:
- “(b) A transcript, written translation, or written translation of a transcript, of the call: 20
- “(c) A copy 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: 25
- “‘Telephone system’ includes a telephone network:
- “‘Translate’ includes decode and decrypt; and ‘translation’ has a corresponding meaning.
- “210. 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— 30
- “(a) Prevent and discourage the commission of offences by, for the benefit of, or with the help or encouragement of, inmates; and 35
- “(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— 40
- “(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—

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

“(b) Protect the safety of inmates.

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

10 “(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 15 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)**.

20 “21Q. **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—

25 “(a) 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 represents the inmate; or

30 “(ii) Whom the inmate has called to discuss the possibility of representing the inmate; or

“(b) A call between an inmate and a person who—

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

“(ii) Is acting in an official capacity in respect of the inmate; or

“(c) A call between an inmate and a person who—

40 “(i) Is for the time being appointed as an Inspector of Penal Institutions under section 5; and

“(ii) Is acting in an official capacity in respect of the inmate; or

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

- “(i) Is the Health and Disability Commissioner, or an employee of the Health and Disability Commissioner; and  
“(ii) Is acting in an official capacity in respect of the inmate; or 5
- “(e) A call between an inmate and a person who—  
“(i) Is the Privacy Commissioner, or an employee of the Privacy Commissioner; and  
“(ii) Is acting in an official capacity in respect of the inmate; or 10
- “(f) A call between an inmate and a person who—  
“(i) Is a Human Rights Commissioner, or an employee of the Human Rights Commission; and  
“(ii) Is acting in an official capacity in respect of the inmate; or 15
- “(g) A call between an inmate and a person who—  
“(i) Is the Police Complaints Authority, or an employee of the Police Complaints Authority; and  
“(ii) Is acting in an official capacity in respect of the inmate; or 20
- “(h) A call between an inmate and a person who—  
“(i) Is 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; and 25  
“(ii) Is acting in an official capacity in respect of the inmate; or
- “(i) 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; or 30
- “(j) 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 that specifies a purpose or purposes for which the exemption is being granted); and 35  
“(ii) Is acting for a purpose specified in the order.
- “21R. **Only certain persons to monitor**—(1) No person other than an authorised person may monitor an inmate call under this Act. 40
- “(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.

5 “(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.

10 “(4) **Subsection (1)** is subject to **subsection (2)** of this section, and to **subsections (2) to (4) of section 21U.**

“**21s. 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  
15 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.

20 “**21T. 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

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

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

30 “(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

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

40 “(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.

**“21U. Authorised disclosure of information—**(1) An authorised person may disclose an inmate call—

“(a) For a purpose specified in **section 210** as a purpose of monitoring inmate calls; or

“(b) If the authorised person believes, on reasonable grounds, that 1 or more of the exceptions specified in information privacy principle 11 of the Privacy Act 1993 apply to the information concerned. 5

“(2) 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. 10

“(3) 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.

“(4) An authorised person may allow any eligible employee to read a transcript of an inmate call, for the purpose of providing a written translation. 15

**“21V. Restrictions on disclosure of information—**(1) An authorised person must not knowingly disclose an inmate call otherwise than under **section 21U**. 20

“(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 21U (2)**.

“(3) An eligible employee (other than an authorised person) who under **section 21U** 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. 25

“(4) A person who under **section 21R (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. 30

“(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. 35

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

**“21W. Application of Privacy Act 1993—**The Privacy Act 1993 applies to the monitoring of inmate calls under this Act.

**“21X. 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,— 40

“(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 required—

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

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

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

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“(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.

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

“(4) If—

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“(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

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“(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.

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

“21y. **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 5

“(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. 10

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

“21z. **Annual report to cover monitoring system**—The Department's annual report under section 30 of the State Sector Act 1988 must— 15

“(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 20

“(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 to an external agency under **section 21U (1)**; and 25

“(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 to an employee of the Secretary or a contractor, under **section 21U (1)**; and 30

“(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.” 35

**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: 40

“(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”.

5 (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”.

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

15 “(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—

20 “(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  
25 “within 14 days of being dealt with”.

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

30 (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).

35 **8. Secretary may issue security operational standards**—Section 36ZG of the principal Act is amended by repealing subsections (2) and (3), and substituting the following subsections:

40 “(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.

“(3) So far as a security operational standard applies to any person, the person must comply with it.”

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

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## 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)”.

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

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

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