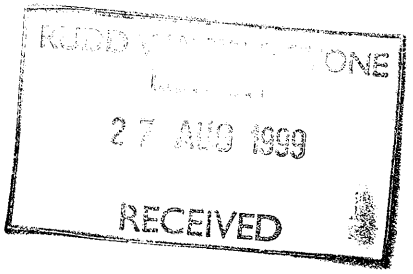


# PENAL INSTITUTIONS AMENDMENT BILL (NO. 2)

AS REPORTED FROM THE JUSTICE AND LAW REFORM COMMITTEE

## COMMENTARY

### Recommendation

The Justice and Law Reform Committee has examined the Penal Institutions Amendment Bill (No. 2) and recommends that it be passed with the amendments shown in the bill.

### Conduct of the examination

The Penal Institutions Amendment Bill (No. 2) was referred to the Justice and Law Reform Committee on 20 July 1999. The closing date for submissions was 9 August 1999. We received and considered eleven submissions from interested groups and individuals, including a copy of a report from the Privacy Commissioner to the Minister of Justice on the bill. The Regulations Review Committee reported to the committee on the powers contained in clause 8 of the bill. We heard two submissions orally. Hearing evidence took one hour and consideration took two hours and 49 minutes.

We received advice from the Department of Corrections (the department).

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

### Background

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. This aims to address concern that inmates were using the prison telephone system to harass victims, arrange criminal activities, make unauthorised calls to the media and arrange escapes.

There have been past attempts to prevent this type of activity. In 1996 a system was introduced into prisons, which was designed to regulate the use of telephones by inmates. Under this system inmates are allowed a maximum of ten personal



*Price Code: J*

telephone numbers they can call. However, ways have been found to defeat this system, most notably by use of call diversion.

This bill aims to establish the statutory authority for monitoring inmates' telephone calls along with an associated legislative regime to establish safeguards. The way in which the monitoring regime is implemented will be up to the department. It is intended that a system will be put in place whereby all inmates' calls will be recorded and a proportion of them listened to, either concurrently or subsequently. The department believes that monitoring around 15 percent of calls should be sufficient to act as a deterrent and also allow a reasonable amount of intelligence to be gathered. Calls will be monitored on both a targeted basis and on a routine basis.

The regime applies in situations where an answering machine, a computer, a fax, a printer, a tape recorder or a telephone are involved. In all these situations monitoring can occur. The intention is to capture so far as is possible expanding telecommunications technology. The bill as introduced does not cover cell phones being used by inmates.

The bill also provides for the following miscellaneous amendments to the principal Act:

- An amendment to section 32A (1) (b) of the principal Act to make it clear that a failure without reasonable excuse to submit to a prescribed procedure for drug and alcohol testing is an offence against discipline.
- An amendment to section 32A (2) of the principal Act so that it is an offence for an inmate to use drugs or alcohol at work while released to work under section 21A of the principal Act.
- An amendment to section 35 (1) of the principal Act so that an appeal to a Visiting Justice against certain disciplinary decisions of the Superintendent must be requested within 14 days of the decision.
- An amendment to section 36Y of the principal Act, which relates to complaints by inmates about matters arising while they are in the custody of a security officer. The amendment has the effect of making such complaints dealt with by Inspectors of penal institutions.
- An amendment to section 36ZG of the principal Act so that security operational standards may be issued in respect of persons other than prisoners.
- An amendment to section 44 of the principal Act to provide that where a security officer has the right to arrest a person because that person has a forbidden article, the officer can also seize the article.

## Targeted versus routine monitoring

A major issue raised in submissions was the question whether monitoring of telephone calls should take place on a targeted or routine basis.

In his report on the bill, the Privacy Commissioner expresses unease about the notion of random monitoring of inmates' telephone calls. He believes that the case for targeted monitoring of calls by inmates known to have been involved in organised crime is much stronger. The New Zealand Prisoners' Aid & Rehabilitation Society (NZPARS) believes that only certain categories of inmates such as maximum security and identified drug users should have their calls monitored. The New Zealand Council for Civil Liberties states that, in providing for the monitoring of all telephone calls, the bill constitutes a wide-ranging attack on inmates and private citizens' rights which is not sustainable in a free and democratic society.

The Dunedin Community Law Centre submits monitoring should only be allowed where inmates are suspected of offending, rather than being able to listen to any call. An appropriate test would provide a threshold test along the lines of that provided in relation to applications for search warrants. A warrant from an independent party would be required to monitor calls.

We consider that an element of routine monitoring will be a very good means of deterring inmates from abusing telephone privileges. If inmates know that their calls can be checked at any time, they are less likely to engage in the type of behaviour that this bill is aimed at preventing. In addition, we believe that through routine monitoring of telephone calls, information may be obtained which may prevent a range of incidents either within the prison or the general community. Therefore, we prefer to allow the department to have the power to monitor all calls, allowing it to use discretion when deciding which calls will be monitored.

**Regime to apply to remand inmates**

Some submitters note that the bill provides for the monitoring of calls made by remand inmates, who have not yet been convicted of an offence. The New Zealand Council for Civil Liberties considers this is totally unacceptable. The Grey Lynn Neighbourhood Law Office notes that remand inmates have lost many of their rights and further erosions of their rights should be avoided if possible. The Privacy Commissioner also notes that the bill does not make special provision for remand inmates. He suggests that this issue could be addressed by way of a class exemption under proposed new section 21Q(2).

Remand inmates, while not convicted, are persons charged with a more serious crime, or persons who have been deemed by the Court to be too great a risk to be granted bail. While not yet convicted, the possibility remains that they may use telephones to intimidate witnesses or attempt to pervert the course of justice. Therefore, we do not consider any special exemption should be provided for remand inmates.

## Effectiveness of the telephone monitoring regime

NZPARS considers that the current restrictions on inmates' telephone calls, including provision for pre-approved numbers, are sufficient. It submits that the bill will do little to deter or prevent a determined inmate from harassing victims, arranging criminal activities or engineering escapes. In its view, such inmates will use codes to impart information, or will write letters, or pass information to visitors or to other inmates who are on day parole for further dissemination. Others, it argues, will risk the 15 percent chance that the call will be monitored.

We acknowledge that the telephone is not the only avenue for inmates to facilitate unlawful activities. However, there has been a real problem in recent times with abuse of telephone privileges by inmates. We note that the restriction to pre-approved numbers is useful in preventing inmates abusing their telephone privileges. However, there are methods by which inmates have bypassed this system in order to harass victims or plan crimes or escapes, including the use of call diversion.

## Impact of bill on human rights of inmates and other persons

Some submissions express concern about the impact of this bill on human rights, including implications in relation to the New Zealand Bill of Rights Act 1990 (the Bill of Rights) and the International Covenant on Civil and Political Rights, to which New Zealand is a signatory.

The New Zealand Council for Civil Liberties quotes extensively from international case law and states that the bill offends against the principles of the Bill of Rights and principles of international jurisprudence. The Grey Lynn Community Law Centre believes that this bill breaches sections 9, 23 (1), 23 (5) and 24 (c) of the Bill of Rights and that the breaches cannot be reasonably justified.

The Privacy Commissioner notes that in rare circumstances New Zealand society has found it appropriate to place limits on private communications, but in such cases, careful statutory controls and protections are applied. The Privacy Commissioner states that while the response to the abuse of telephone privileges must be kept proportionate, and the intrusion upon rights minimised, it is nonetheless accepted that convicted inmates must reasonably have lower expectations of privacy than the rest of the community. The New Zealand Council for Civil Liberties submits that the means taken in the bill are disproportionate to the problem.

The Law Commission submits that inmates' human rights remain unaffected save to the extent that it is necessary to abate or remove them in order to achieve essential public policies. While the Law Commission considers the mischief at which the bill is aimed is a legitimate one, it states that measures are required to ensure that there is no abuse of what is an invasive intrusion upon the privacy of inmates.

All legislation which is introduced into the New Zealand Parliament is vetted for consistency with the Bill of Rights. If legislation is found to be inconsistent, the Attorney-General is required to present a certificate to the House informing it of this fact. No such certificate was presented to the House when this bill was introduced.

We note that the cases referred to in the New Zealand Council for Civil Liberties' submission in relation to international jurisprudence are not directly relevant to the subject matter of this bill. They are concerned either with the interception of private citizens' telephone communications in the course of criminal investigations or the censorship of inmates' legal mail. We consider it is not directly relevant to compare the interception of private citizens' calls with the interception of inmates' calls. It is well established under human rights law that inmates have a lower expectation to privacy than do ordinary citizens.

**Impact of monitoring on persons outside the institution**

The Privacy Commissioner notes that the monitoring regime will significantly impact on persons outside prison, whose expectations of privacy remain high. Their expectations of privacy remain as high as all of us who are not in prison. The Grey Lynn Community Law Centre expresses concern that persons having conversations with inmates will effectively be punished for the past alleged misconduct of a small number of inmates.

We note that the bill makes provision for the interests of persons outside the prison who might be affected by the monitoring. This includes a requirement that a warning that the call might be monitored must be played to the recipient at the commencement of every inmate call from the prison. In addition, the department will draw the monitoring regime to the attention of people when it first approaches them to determine whether they are willing to allow their number to be one of the ten approved numbers for a particular inmate. People who do not wish to risk their calls being monitored may decline to allow the inmate to call them. The provisions relating to authorised monitors, destruction of records and disclosure provide further safeguards for persons outside the institution.

## Use of alternative controls over the use of inmate telephones

One of the problems this bill aims to address is the use of call diversion, which has been used to bypass the current scheme for limiting inmates' telephone calls. NZPARS and the Privacy Commissioner suggest that an alternative approach to the bill could be to prevent the use of this technology, either by gathering information from Telecom New Zealand to ascertain whether calls have been diverted, or by imposing a condition on approved recipients that no call diversion facility be activated. Failure to comply could lead to suspension of calling privileges.

There is no practical way of controlling the use of call diversion by those persons whose numbers are on an inmate's approved number list. Any such controls would need to be manually operated, and with the number of calls that are involved this would be quite unrealistic. We consider that forbidding persons with approved numbers to have the call diversion facility would be intrusive.

## Oversight of the monitoring regime

The Privacy Commissioner and the Grey Lynn Neighbourhood Law Office both submit there should be some form of oversight of the monitoring regime. The Privacy Commissioner notes that existing interception laws generally contain a strong independent authorisation and oversight element. For example, the Police must obtain authority from a High Court Judge before intercepting private communications and must later report back to the Judge. The Grey Lynn Neighbourhood Law Office suggests the Privacy Commission appears the logical body for such a role, but states it has budgetary and other constraints.

We believe it is important to distinguish between the regime proposed in this bill and a regime relating to the interception of private citizens' communications. It is entirely appropriate in the latter case for there to be judicial oversight of the interception power. In the case of inmates whose expectation of privacy is limited, it is not applicable. Moreover, an oversight facility would only be required where there was a need to show good cause before monitoring could occur. Where there is a general power to monitor, as in the bill, oversight of that power has no meaningful function.

## Relationship between the monitoring regime and the use of interception warrants

Submissions from NZPARS and the Privacy Commissioner raise the issue of the relationship between this telephone monitoring regime and interception warrants obtained under the Crimes Act 1961. NZPARS considers that the Police should operate their own interception system if they obtain such a warrant. The Privacy Commissioner expresses concern that there might be a temptation in a Police interception to avoid going to a Judge for a warrant because a Police officer could instead ask the department to monitor particular calls without that authority or being subject to the same safeguards.

We note that this bill cannot become a de facto interception regime for the Police, thereby allowing them to avoid using the interception warrant provisions in the Crimes Act. It is up to authorised monitors to judge whether a call should be disclosed to the Police under new section 21U. If their judgement is that the call should not be disclosed, the Police will have no right to it unless they have obtained a search warrant. To listen to a call at the time it is made, the Police will have to obtain an interception warrant. Such a warrant would not apply retrospectively to calls already recorded.

## Certain calls exempt from monitoring regime

Proposed new section 21Q sets down the categories of calls that may not be monitored. This includes calls to a legal representative, an Ombudsman, an Inspector, the Health and Disability Commissioner, the Privacy Commissioner, the Human Rights Commissioner, the Police Complaints Authority, or a Visiting Justice acting in an official capacity. These categories may be extended by Order in Council. In addition, the Chief Executive of the department may exempt particular persons from having their telephone conversations with inmates monitored.

### Extent of exemption in relation to lawyers

The Dunedin Community Law Centre and the Grey Lynn Neighbourhood Law Office note that an inmate could be seeking advice from a community law centre in which case the conversation may be with a volunteer who does not hold a practising certificate. They ask that the exemption be extended to apply to conversations between inmates and community law centres, or between inmates and employees of legal firms. The Police Association, on the other hand considers this exemption could be abused and suggests that exempt calls to lawyers should be restricted to legal matters currently before the judiciary.

We believe that extending the exemption to community law centres, or employees of law firms other than lawyers, would extend the concept of legal professional privilege as it currently exists. We do not support making such an exemption. Where a person at a community law centre who is being spoken to holds a practising certificate then the exemption would apply so long as that person is acting for the inmate in a professional capacity.

We wish to clarify that the term "represent" does not limit the exemption only to cover lawyers who are representing clients in anticipated legal proceedings, as suggested by the Dunedin Community Law Centre. Therefore, we recommend that term be substituted with "acting on behalf of the inmate". In addition, we recommend that new section 21Q(2)(a) be amended to make it clear that the first call to a lawyer is exempt.

### Exemptions apply only when recipient is acting in an official capacity

Under proposed new section 21Q(2), the exemptions only apply if the recipient of the call is acting in an official capacity. The Dunedin Community Law Centre considers that the proviso introduces an element of discretion to the person who is listening to the call and determining whether monitoring should cease. It submits that anyone contacted who comes within an exempted category should be exempt from monitoring regardless of his or her perceived role.

We believe it is important to limit the exemption to the situations where the recipient of the call is acting in an official capacity, or for lawyers acting in a professional capacity. There may be the odd occasion where the exemption could be abused.

### Certain categories of persons not included in list of exemptions

Some submitters note there are categories of persons who are not included in the list of exempt calls set out in new section 21Q, and submit these persons should also be exempt from the monitoring regime. These include priests and other spiritual advisers, the International Human Rights Committee, members of Parliament, health practitioners, civil liberties organisations, prisoners' aid societies and potential or actual witnesses for criminal appeals or civil actions against the department.

The Police Association believes that inmates should be able to communicate with serving Police officers without being monitored. Information communicated freely with a serving Police officer investigating a crime could be invaluable but, it argues, would probably be withheld by an inmate if the call was subject to monitoring.

The categories of persons that are included in proposed new section 21Q are those agencies that have a special status under the Penal Institutions Regulations 1999 in respect of inmates' correspondence. Provision is made for further categories of persons to be made exempt by Order in Council. In addition, the bill provides a mechanism to allow for the Chief Executive of the department to exempt particular persons or organisations on a one-off basis from the monitoring regime if this is considered appropriate. We do consider that calls to members of Parliament should be exempt from the monitoring regime. Therefore, we recommend an amendment to proposed new section 21Q(2) to include calls to members of Parliament in the list of calls that may not be monitored.

## Warnings that telephone calls are being monitored

New section 21T provides that all practicable steps are taken to ensure that warning is given to inmates that their telephone calls may be monitored. This new section provides for the ways in which this must be done, including by way of written notices placed near telephones. In addition, at the start of every outward telephone call, there is a message to the effect that the call may be monitored.

The Privacy Commissioner supports the approach taken in this section. However, he considers that the steps outlined may not be so effective with respect to the recipients of telephone calls. It will be the person who answers the telephone who hears the message rather than the person for whom the call is intended. In addition, the inmate may talk to a number of people in the duration of a single telephone call. Therefore, he recommends that amendments be made to require the department to advise approved recipients of telephone calls of the monitoring arrangements, and require an occasional audible tone to be transmitted at intervals to indicate the continued fact of recording.

As a matter of policy, the department will inform recipients of inmates' telephone calls of the monitoring system as part of the approval system. There is no need to amend the bill to effect this. We do not believe the bill should be amended to provide for an audible tone to be sounded throughout the call. While adding nothing in the way of a warning, this could not only interfere with the inmates's communication, but also serve to annoy the parties to the communication.

## Authorised disclosure of information

New section 21U allows authorised persons to disclose information derived from inmate calls, either for the purposes set out in new section 21O, or if it falls within one or more of the exceptions in information privacy principle 11 of the Privacy Act 1993.

The Privacy Commissioner expresses concern that the reference to the exceptions in information privacy principle 11 will not satisfactorily protect privacy or ensure that the controls on recordings will be sufficient given their sensitivity and character. He also notes that many of the exceptions to information privacy principle 11 are inappropriate in this context. Therefore he recommends that the general reference to the exceptions in information privacy principle 11 be replaced by a more specific provision listing authorised disclosures which go beyond the purposes specified in proposed section 21O. In his view, inclusion should be express so that this provision contains a transparent code as to the only permitted purposes of disclosure.

We agree that not all the exceptions contained in information privacy principle 11 are relevant to the telephone monitoring regime, and concur with the Privacy Commissioner's view that the more relevant ones be directly inserted into this legislation. Accordingly we recommend section 21U be amended to refer expressly to the relevant grounds for disclosure set out in privacy principle 11.

## Penalty for unauthorised disclosure of information

New section 21V provides for a fine of up to $2000 to apply where an authorised person discloses information other than in accordance with the principal Act. The $2000 fine also applies to interpreters, translators, transcribers and technicians who disclose any information they may have obtained while carrying out their duties. The Grey Lynn Neighbourhood Law Office considers that the fine is inadequate given that large sums of money could be gained by selling a story to the media.

We consider that this penalty is in line with other penalties provided for in the Crimes Act and the principal Act. It should also be noted that a person prosecuted for such an offence would almost certainly lose his or her job and would be liable for a civil penalty under the Privacy Act.

## Destruction of recordings

New section 21X requires that recordings of telephone calls held by the department must be destroyed no later than six months after they have been made except where the information is required for the purposes of an investigation or for evidence in proceedings.

Subclause (3) of this new section provides that the destruction requirements do not apply in respect of any record of information adduced in proceedings in any Court or disciplinary tribunal. The Privacy Commissioner considers that the term "disciplinary tribunal" is too restrictive as a recording might need to be adduced in evidence before the Complaints Review Tribunal following a complaint under the Privacy Act. He recommends that subclause (3) be extended to apply to the Complaints Review Tribunal.

The Privacy Commissioner also suggests that the obligation to destroy the recordings may interfere with the investigation of a complaint under the Privacy Act, for example in relation to a refusal to give access to a recording. He submits that this might also arise in relation to an investigation by the Ombudsman, or the Police Complaints Authority, or in relation to a disciplinary matter involving a prison officer rather than an inmate.

We agree that the bill should be amended to clarify the fact that tapes can be kept beyond the six-month period where they are required for evidence in proceedings before disciplinary tribunals and other types of tribunals, including the Complaints Review Tribunal.

We also recommend an amendment be made to this section to enable recordings to be kept beyond the six-month time period where a request for access for a recording has been made and declined, to allow a complaint to be made in relation to this. This should cover complaints to Inspectors, Visiting Justices, the Ombudsman and the Privacy Commissioner.

## Normal rules of evidence apply in respect of privileged communications

The Grey Lynn Neighbourhood Law Office notes that social workers, counsellors and religious advisers are not exempt from the proposed monitoring regime. However, any evidence obtained from these calls will be privileged under the rules

of evidence set out in the Evidence Act 1908 and the common law. Therefore, a provision similar to section 312O of the Crimes Act, which applies to privileged evidence gained as a result of an interception warrant, should be inserted.

We agree it would be appropriate to include such a provision in the bill. This is intended to make it clear the usual rules of evidence apply to inmates' calls monitored under this bill.

## Reporting requirements

New section 21z requires specified information concerning the telephone monitoring regime to be included in the annual report of the Department of Corrections. One matter which must be reported on is the number of calls disclosed to an external agency.

We agree with the submission of the Legislation Advisory Committee that the reference to "external agency" in new section 21z is not sufficiently clear. We recommend an amendment to provide that the first subparagraph will cover information disclosed to an employee of the Chief Executive of the department, or of a contractor, while the second subparagraph will cover disclosure to any other person.

## Amendments recommended to cover mobile telephones

The bill as introduced was not intended to cover the monitoring of mobile telephones. The first reason for this was because inmates are not permitted to have mobile telephones in prison. In this regard, the main focus of prison staff is to locate and confiscate them. Secondly, the scheme in the bill could not be applied to mobile telephones. For example, it would not be possible to comply with the requirements relating to signs and warning messages.

However, smuggling of mobile telephones into prisons has become increasingly common. There is some concern that monitoring inmates' legitimate telephone calls may increase the desire of inmates to smuggle mobile telephones into prisons.

Scanners which intercept mobile telephones would be a very useful tool for helping to expedite the search for these devices. Scanners can both intercept the conversation that is being conducted if an analogue cell phone as opposed to a digital mobile telephone is being used and give out an electronic signal to help track the device.

At present it is unlawful for the department to intercept the actual conversation. However, the department believes there is good reason for it to have the power to intercept mobile telephone conversations in order to locate the mobile telephone. The scanners work only so long as a mobile telephone is being used. If the mobile telephone is switched off before the electronic tracker is able to pinpoint it, a staff member, if able to listen to the conversation, may nevertheless have recognised the voice of the inmate and be able to target the culprit. Having the ability to do this would make the process of locating the mobile telephone more efficient.

Accordingly, we recommend an amendment to the bill to allow staff members to intercept calls from mobile telephones when it is done for the purposes of locating them. For the purposes of this scheme, "mobile telephone device" has a wide definition, which is intended to cover not only cell phones, but also other similar communication devices. This scheme is separate from the general monitoring regime applying to regular prison telephones because it has a different purpose. The main features of the proposed amendment are:

- Any staff member may intercept a mobile telephone for the purposes of locating it.

- No calls made from a mobile telephone by an inmate will be exempt from being intercepted. Because the purpose of this amendment is to locate the phone while the inmate is using it, it would defeat the purpose if the scanning had to stop because the inmate was for instance talking to his or her lawyer.
- The calls will not be able to be recorded. Staff members would only be able to intercept, listen, and take notes from the call. However, if in the process of locating the mobile telephone, intelligence information were obtained, it could be passed to enforcement agencies for investigation purposes.
- If the staff member determines that the call is not an inmate call then he or she must immediately stop listening to the call and destroy any notes taken.

We recognise that it is possible that calls made by persons outside the prison may be intercepted. However, requirements that staff members cease listening as soon as it becomes apparent that the call is not an inmate call will mitigate this concern. If staff members continue to listen, they would be in breach of their duty as a good employee to comply with the law and be subject to disciplinary proceedings, possibly resulting in loss of employment.

## Power to issue security operational standards

Clause 8 of the bill amends section 36ZG of the principal Act so that security operational standards may be issued in respect of persons other than prisoners. At present, security operational standards may be issued in respect of prisoners only, and only two such standards have been issued.

We received a report from the Regulations Review Committee relating to this clause. The Regulations Review Committee noted that security operational standards issued under section 36ZG of the principal Act are deemed to be regulations for the purposes of the Regulations (Disallowance) Act 1989. It considers that regulatory requirements intended to apply to the public at large should not be issued through instruments deemed to be regulations. This is because such instruments as security operational standards are not subject to the same pre-promulgation processes as traditional regulations. Therefore, the Regulations Review Committee believes that security operational standards should not be extended to cover persons other than prisoners and security officers, and traditional regulations on the subject would be more appropriate.

We agree with the concerns expressed by the Regulations Review Committee. Therefore, we recommend an amendment to clause 8 of the bill to ensure that security operational standards can be issued only in respect of the actions of security officers.

# KEY TO SYMBOLS USED IN REPRINTED BILL

## AS REPORTED FROM A SELECT COMMITTEE

| | |
|---|---|
| *Struck Out (Unanimous)*<br>Subject to this Act, | Text struck out unanimously |
| *New (Unanimous)*<br>Subject to this Act, | Text inserted unanimously |
| *(Subject to this Act,)* | Words struck out unanimously |
| Subject to this Act, | Words inserted unanimously |

*Hon Clem Simich*

# PENAL INSTITUTIONS AMENDMENT (NO. 2)

ANALYSIS



A BILL INTITULED

**An Act to amend the Penal Institutions Act 1954**

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

**1. Short Title and commencement**—(1) This Act may be cited as the Penal Institutions Amendment Act **(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:

" 'Escort duty'—

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

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

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

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

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

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

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

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

*Struck Out (Unanimous)*

" 'Authorised person' has the meaning given to it by **section 21N:**

" 'Completely erased' has the meaning given to it by **section 21N:**

" 'Contracted provider' has the meaning given to it by **section 21N:**

" 'Device' has the meaning given to it by **section 21N:**

" 'Eligible employee' has the meaning given to it by **section 21N:**

*Struck Out (Unanimous)*

" 'Employee' has the meaning given to it by **section 21N:**
" 'Exempted call' has the meaning given to it by **section 21N:**
" '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:**
" '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:**".

*New (Unanimous)*

" 'Authorised person' means a person for the time being authorised under **section 21s (1)** to monitor inmate calls; and includes the Secretary:
" 'Completely erased' means erased so that it is not retrievable:
" 'Contracted provider' means a person engaged by the Secretary or a contractor to provide services in connection with telephone monitoring:
" 'Device', in relation to a telephone call, includes any answering machine, computer, fax, printer, tape recorder, or telephone:
" 'To disclose an inmate call' means to disclose the substance, meaning, or purport of an inmate call, or of any part of it; and includes—
"(a) To allow any person to listen to or read a recording of an inmate call; and
"(b) To give or lend to any person a recording of an inmate call:
" 'Eligible employee' means a person who is an employee of the Secretary, an employee of a contractor, an employee of a contracted provider, or a contracted provider:
" 'Employee' includes a person engaged under a contract for services:

*New (Unanimous)*

" 'Exempt call' means an inmate call to which **section 21Q (2)** applies:
" 'Information' includes data in digital form:
" 'Inmate call'—
"(a) Means any information transmitted by means of a telephone call to which an inmate of an institution is a party, conducted while the inmate—
"(i) Is in the institution; and
"(ii) Is using a device that is not a mobile telephone device; and
"(b) Includes part of an inmate call:
" 'Mobile telephone device' means a device capable of sending or receiving information to or from a telephone system otherwise than by means of wires or fibre-optic cables (or a combination of both) connecting it to the system:
" 'To monitor' means to do any or all of the following:
"(a) Listen to, record, and take notes from:
"(b) Listen to, read, and take notes from a recording of:
" 'Privacy Commissioner' means the Privacy Commissioner appointed under section 12 of the Privacy Act 1993:
" 'Recording', in relation to an inmate call, means any means by which all or any part of the call has been captured; and includes—
"(a) A copy or print-out of such a means:
"(b) A transcript, written translation, or written translation of a transcript, of the call:
"(c) A copy of a recording of a transcript, written translation, or written translation of a transcript, of the call:
" 'Telephone call' means a call made, using any part or parts of 1 or more telephone systems, between a device and any other device or devices:
" 'Telephone system' includes a telephone network:
" 'Translate' includes decode and decrypt; and 'translation' has a corresponding meaning."

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

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

"2A. This Act binds the Crown."

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

"*Telephone Calls May be Monitored*

*Struck Out (Unanimous)*

"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:

" 'Completely erased' means erased so that it is not retrievable:

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

" 'Device' includes any answering machine, computer, fax, printer, tape recorder, or telephone:

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

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

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

" 'Eligible employee' means a person who is an employee of the Secretary, an employee of a contractor, an employee of a contracted provider, or a contracted provider:

" 'Employee' includes a person engaged under a contract for services:

" 'Exempt call' means an inmate call to which **section 21Q (2)** applies:

" 'Inmate call'—

"(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

*Struck Out (Unanimous)*

"(b) Includes part of an inmate call:

" 'To monitor' means to do any or all of the following:

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

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

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

"(a) A copy of such a means:

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

"(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:

" '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—

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

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

"(c) Prosecute, convict, and punish—

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

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

"(d) Prevent and discourage escapes from institutions.

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

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

"(b) Protect the safety of inmates.

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

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

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

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

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

"(4) **Subsection (2)** is subject to **subsection (3)**.

"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—

*Struck Out (Unanimous)*

"(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

"(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—

"(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—

"(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—

*Struck Out (Unanimous)*

"(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

"(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

"(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

"(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

"(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

"(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

"(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

"(ii) Is acting for a purpose specified in the order.

*New (Unanimous)*

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

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

"(i) Who acts for the inmate; or

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

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

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

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

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

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

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

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

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

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

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

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

*New (Unanimous)*

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

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

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

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

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

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

"(4) **Subsection (1)** is subject to **subsection (2)** of this section, and to **subsections (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 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.

"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

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

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

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

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

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

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

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

"21U. **Authorised disclosure of information—**

*Struck Out (Unanimous)*

(1) An authorised person may disclose an inmate call—

"(a) For a purpose specified in **section 21O** 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.

*New (Unanimous)*

(1) An authorised person may disclose an inmate call for a purpose specified in **section 21O** as a purpose of monitoring inmate calls.

"(1A) An authorised person may disclose an inmate call if the authorised person believes on reasonable grounds that the disclosure—

"(a) Is necessary to avoid prejudice to the maintenance of the law by a public sector agency (within the meaning of the Privacy Act 1993), including the prevention, detection, investigation, prosecution, and punishment of offences; or

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

*New (Unanimous)*

"(c) Is necessary to prevent or lessen a serious and imminent threat to public health, public safety, or the life or health of any person; or

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

"(1B) An authorised person may disclose an inmate call to the inmate concerned.

"(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.

"(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.

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

"(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.

"(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.

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

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

"21W. **Application of Privacy Act 1993**—(1) The Privacy Act 1993 applies to the monitoring of inmate calls under (*this Act*) **sections 21N to 21Z.**

*New (Unanimous)*

"(2) **Subsection (1)** overrides **section 21v (1)**.

"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,—

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

*Struck Out (Unanimous)*

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

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

"(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.

*New (Unanimous)*

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

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

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

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

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

*New (Unanimous)*

"(c) If the Privacy Commissioner has notified the Secretary in writing that a complaint has been made under the Privacy Act 1993 in relation to the recording, until the Privacy Commissioner has notified the Secretary in writing that the complaint has not been proceeded with, or has been finally disposed of.

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

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

"(4) If—

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

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

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

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

"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

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

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

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

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

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

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

"(c) State,—

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

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

*New (Unanimous)*

"*Detecting and Locating Mobile Telephone Devices*

"21ZA. **Detecting and locating mobile telephone devices**—(1) For the purpose of detecting or locating mobile telephone devices within institutions, any eligible employee may intercept, listen to, or take notes from any telephone call, if the eligible employee—

"(a) Believes on reasonable grounds that it is being made to or from a mobile telephone device within an institution; and

"(b) Does not have reasonable grounds to believe that it is not an inmate call.

"(2) **Subsection (3)** applies to an eligible employee listening to a telephone call under **subsection (1)** who forms the view that there are reasonable grounds to believe that—

"(a) The device concerned is not a mobile telephone device, or is not within the institution concerned; or

"(b) The call is not an inmate call.

"(3) An eligible employee to whom **subsection (2)** applies—

"(a) Must promptly stop listening to the call concerned; and

"(b) Must take all practicable steps to ensure that all notes taken from it are destroyed, or completely erased.

"(4) **Subsection (1)** is subject to **subsection (3)**.

"(5) The Privacy Act 1993 applies to intercepting, listening to, and taking notes from telephone calls under this section.

*Privileged Evidence*

"21ZB. **Privileged evidence**—(1) This subsection applies to evidence that—

"(a) Has been obtained by—

"(i) The monitoring of an inmate call under **sections 21N to 21Z**; or

"(ii) The interception of a telephone call under **section 21ZA**; and

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

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

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

*New (Unanimous)*

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

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

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

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

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

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

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

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

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

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

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

"(a) Released under section 21; or

"(b) Released under section 21A."

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

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

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

(b) Omitting from subsection (2) the words "security monitor" in the 3 places they occur, and substituting in each case the words "an Inspector"; and

(c) Repealing subsection (3).

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

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

*Struck Out (Unanimous)*

"(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,".

PART 2

AMENDMENTS TO CRIMES ACT 1961

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

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

*Struck Out (Unanimous)*

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

*New (Unanimous)*

"(4) Subsection (1) does not apply to monitoring an inmate call under **section 21P** of the Penal Institutions Act 1954 or intercepting or listening to a telephone call under **section 21ZA** of that Act."

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