

PENAL INSTITUTIONS AMENDMENT BILL (NO. 3)

EXPLANATORY NOTE

THIS Bill amends the Penal Institutions Act 1954. The principal purpose of the Bill is to authorise the contracting out of the management of penal institutions to the private sector.

Clause 1 relates to the Short Title and commencement. The Bill is to come into force on 1 September 1993.

Clause 2 amends the principal Act by repealing sections 2 and 3, and substituting *new sections 2, 3, and 3A*.

New section 2 relates to interpretation.

New section 3 essentially re-enacts the existing section 3 (which relates to the general administration of the principal Act). However, the provisions relating to the exercise or performance of the powers, duties, and functions of the Secretary for Justice by other officers of the Department of Justice have been omitted. That matter is now dealt with in section 41 of the State Sector Act 1988.

New section 3A: Subsection (1) empowers the Secretary for Justice to exercise the powers of delegation conferred by section 41 of the State Sector Act 1988 in respect of officers of contract penal institutions as if those officers were employees of the Department of Justice. However, *subsection (2)* prohibits the Secretary from delegating to any officer of a penal institution (whether managed by the Department of Justice or a private contractor) certain specified powers, functions, and duties relating to offenders and inmates.

Clause 3 inserts *new sections 4A to 4I* into the principal Act.

New section 4A authorises the Secretary for Justice to enter into contracts (in the Bill referred to as “management contracts”), in the name and on behalf of the Crown, for the management, by any person (in the Bill referred to as “contractors”), of any penal institution. The section also prohibits any person (other than the Crown) from managing a penal institution except under a management contract.

New section 4B sets out certain matters that must be dealt with in a management contract. These are as follows:

- (a) The term for which the contractor is to manage the penal institution, which may not exceed 5 years. However, the contract may provide for an extension of that term of up to 2 years.
- (b) Objectives and performance standards for the contractor:

- (c) The employment of staff for the penal institution:
- (d) The training to be provided to staff of the penal institution:
- (e) The types and conditions of work that inmates in the penal institution may be required to undertake:
- (f) The co-ordination of services and processes of the penal institution with those of other institutions:
- (g) Insurance cover in respect of the contractor's liability for claims arising out of or in connection with the contract:
- (h) The avoidance of conflicts of interest arising in relation to the contractor and the contractor's staff.

Contracts must also impose on contractors a duty to comply with certain statutory requirements and international standards as if the penal institution were managed by the Crown. These include the requirements of the New Zealand Bill of Rights Act 1990, the United Nations Standard Minimum Rules for the Treatment of Prisoners, and the good employer provisions of the State Sector Act 1988.

New section 4c provides an indemnity for the Crown against claims arising out of a contractor's activities and against damage caused by a contractor to property of the Crown.

New section 4D provides that the State Sector Act 1988 and the Government Superannuation Fund Act 1956 do not apply to contractors.

New section 4E relates to the sub-contracting, by contractors, of their management responsibilities under a management contract.

New section 4F imposes obligations on contractors to provide reports on certain matters.

A contractor must notify the Secretary for Justice and the monitor of any variation of the controlling interests in the contractor.

The Superintendent of a contract penal institution must provide periodic reports to the Secretary and the monitor on certain matters. These include reports on officer training; inmate complaints; incidents in the institution involving violence against inmates or staff, or involving self-inflicted injuries to inmates; rehabilitative programmes provided for inmates; and the financial management of the institution.

The Superintendent of a contract penal institution must also provide reports on any escape or attempted escape by an inmate, and on the death of an inmate.

New section 4G requires the Secretary for Justice to appoint a monitor for each contract penal institution. Monitors are to be responsible to the Secretary for the assessment and review of the management of the penal institution in respect of which they are appointed, and shall provide periodic reports on the management of the institution and on compliance, by the contractor, with the management contract and the provisions of the principal Act and regulations made under it.

Contractors are to provide monitors with suitable office accommodation in the penal institution, and are to ensure that monitors have free and unfettered access at all times to the institution, inmates, officers, and the contractor's records. Medical records relating to inmates and officers will not be made available without the subject's consent.

New section 4H requires monitors of contract penal institutions to carry out periodic reviews of certain matters and report to the Secretary for Justice. Those matters include the exercise, by officers of a contract penal institution, of various powers under the Criminal Justice Act 1985 relating to an inmate's release date; decisions of officers of a contract penal institution to grant an inmate work

release, or temporary release; certain disciplinary matters; and decisions to apply for a psychiatric assessment of an inmate.

New section 41 requires the Secretary for Justice to include in his or her annual report to the Minister of Justice a report on the management of each contract penal institution.

Clause 4 repeals section 6 of the principal Act, and substitutes *new sections 6 and 6A*.

New section 6 provides for the appointment of the staff of penal institutions, and for the appointment of independent contractors to provide chaplaincy, counselling, and educational services to such institutions. The new section updates the existing provision, as well as making provision for the staff of contract penal institutions.

New section 6A requires the appointment of medical officers for each penal institution, to be responsible for providing medical care and medical treatment to inmates in the institution. The new section replaces existing section 6 (3) of the principal Act.

Clause 5 repeals subsection (2) of section 7 of the principal Act, and substitutes a *new subsection (2)*. The existing subsection (2) provides for the exercise of the powers of the Superintendent of a penal institution by other officers. The *new subsection (2)* extends that provision to the duties and functions of a Superintendent.

Clause 6 repeals section 9 of the principal Act, which provides for the appointment of classification committees to advise the Secretary for Justice on the training and treatment needed by inmates. This system is to be replaced with the system provided for in *new section 17A* (as inserted by *clause 7*).

Clause 7 inserts *new sections 17A to 17C* into the principal Act.

New section 17A requires the Secretary for Justice to issue instructions providing for—

- (a) A security classification system for inmates, and the assignment of such classifications to inmates; and
- (b) The identification of the needs of individual inmates in relation to rehabilitative programmes, and the addressing of those needs.

New sections 17B and 17C impose restrictions on the use of physical force by officers against inmates, and prohibit officers from acting or speaking in a manner likely to provoke an inmate. These matters are at present dealt with in regulation 64 of the Penal Institutions Regulations 1961.

Clause 8 inserts *new sections 21D to 21J* into the principal Act. The new sections relate to the search of inmates, visitors to penal institutions, and vehicles and other things brought into such institutions. These matters are at present dealt with in the Penal Institutions Regulations 1961.

Three specific types of search are contemplated by the new provisions:

- (a) A scanner search, which is defined in the *new section 2* as a search of a person by means of equipment that does not require the touching of that person:
- (b) A rub-down search, which is defined in *new section 21D*:
- (c) A strip search, which is defined in *new section 21E*.

New section 21D defines a rub-down search. This involves the searcher rubbing or patting his or her hands over the body of a clothed person, but may involve putting the hand inside the outer clothing of the person. The searcher may also require the person being searched—

- (a) To permit a visual inspection of the mouth, hands, and hair:
- (b) To raise, lower, or open outer clothing:

- (c) To remove any head covering, gloves, or footwear (including socks and stockings).

New section 21E defines a strip search. This involves the removal of all or any of the clothing of the person being searched. That person may also be required to permit a visual inspection of certain parts of his or her body, including body orifices.

New section 21F provides that the principal Act does not permit any internal examination of the genitals or anus of any person without his or her consent.

New section 21G imposes certain restrictions on searches authorised by the principal Act (as amended by the Bill). These include—

- (a) A requirement that rub-down searches and strip searches be conducted only by a person of the same sex as the person being searched;
- (b) A requirement that rub-down searches and strip searches be conducted with decency and sensitivity and in a manner that affords the person being searched the greatest degree of privacy and dignity consistent with the purpose of the search.

New section 21H provides for the searching of inmates and cells for the purpose of detecting any unauthorised item (as defined in *new section 2*). Scanner searches and rub-down searches may be carried out at any time. Strip searches may be carried out only in certain specified circumstances (such as on admission to the institution, or before or after receiving visitors), and only if such a search is necessary in the circumstances for the purposes of detecting an unauthorised item.

New section 21I provides for the searching of persons other than inmates.

Persons entering penal institutions may be required to submit to a scanner search before admission, and at any time while in the institution.

Where an officer has reasonable grounds to suspect that a person who wishes to enter a penal institution, or who is in an institution, is in possession of an unauthorised item, that officer may, with the person's consent, conduct a rub-down search of that person.

Admission to an institution may be refused if a person refuses to submit to a scanner search or a rub-down search.

A person who is in an institution and who refuses to submit to a rub-down search when suspected of possessing an unauthorised item may, with the approval of the Superintendent, be required to undergo such a search, by force if necessary.

New section 21J provides for the search of vehicles and property brought into a penal institution.

Clauses 9 and 10 amend sections 37 and 38 respectively of the principal Act. The amendments remove obsolete references to the death penalty.

Clause 11 amends section 41B of the principal Act, which relates to compensation for property damage caused by escaping inmates. The effect of the amendment is that a contractor, and not the Crown, will be responsible for the payment of such compensation where the escaping inmates were in the legal custody of the Superintendent of the contract penal institution at the time of the escape.

Clause 12 inserts *new sections 41C to 41F* into the principal Act. Those new sections—

- (a) Provide for the Ombudsmen Act 1975 and the Official Information Act 1982 to apply to contract penal institutions as if they were part of the Department of Justice (*new section 41C*):

- (b) Make it clear that the construction, management, operation, and maintenance of a penal institution, including the acquisition of land and buildings for that purpose, is covered by the public work and Government work provisions of the Public Works Act 1981, whether or not the institution or proposed institution is, or is to be, constructed, managed, operated, or maintained by the Crown (*new section 41D*):
- (c) Provide that the New Zealand Bill of Rights Act 1990 applies to contract penal institutions (*new section 41E*):
- (d) Make it clear that the designation provisions of the Resource Management Act 1991 apply to the construction, management, operation, and maintenance of a penal institution (other than a police jail), whether or not the institution or proposed institution is, or is to be, constructed, managed, operated, or maintained by the Crown (*new section 41F*).

Clause 13 makes a consequential amendment to the Summary Offences Act 1981.

PENAL INSTITUTIONS AMENDMENT (NO. 3)

ANALYSIS

Title	8. New heading and sections inserted
1. Short Title and commencement	<i>Powers of Search</i>
2. New sections substituted	21D. Definition of rub-down search
2. Interpretation	21E. Definition of strip search
3. Administration of Act	21F. Restriction on internal examinations
3A. Delegations	21G. Restrictions on searches
3. New sections inserted	21H. Search of inmates and cells
4A. Management of penal institutions under contract	21I. Search of persons other than inmates
4B. Requirements of management contracts	21J. Search of vehicles and property
4C. Liability of contractor	9. Right of members of Parliament to visit institutions
4D. Application of certain Acts to contractors	10. Right of Justice to visit institution
4E. Sub-contractors	11. Compensation for property damage by escapers
4F. Reporting responsibilities	12. New sections inserted
4G. Monitors	41C. Application of Ombudsmen Act 1975 and Official Information Act 1982 to contract penal institutions
4H. Monitors to report on certain matters	41D. Application of Public Works Act 1981
4I. Annual report of Secretary	41E. Application of New Zealand Bill of Rights Act 1990 to contract penal institutions
4. New sections substituted	41F. Application of Resource Management Act 1991
6. Superintendent and other officers of penal institutions	13. Amendment to Summary Offences Act 1981
6A. Medical officers	
5. Superintendent to be charged with general administration of institution	
6. Classification committees	
7. New sections inserted	
17A. Security classification and inmate programmes	
17B. Use of force	
17C. Provoking inmates	

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. 3) 1993, and shall be read together with and deemed part of the Penal

Institutions Act 1954* (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the **1st day of September 1993**.

2. New sections substituted—(1) The principal Act is hereby amended by repealing sections 2 and 3, and substituting the following sections:

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

“‘Contract penal institution’ means a penal institution that is for the time being managed under a management contract: 10

“‘Contractor’ means a person who is a party to a management contract under which that person is to manage a penal institution: 15

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

“‘Management contract’ means a contract entered into with the Secretary pursuant to **section 4A** of this Act: 20

“‘Minister’ means the Minister of Justice:

“‘Monitor’, in relation to a penal institution, means a person appointed under **section 4G** of this Act in respect of that institution:

“‘Officer’— 25

“(a) Means—

“(i) The Superintendent of a penal institution:

“(ii) Any person appointed pursuant to **subsection (1) or subsection (2) of section 6** of this Act in respect of a penal institution; but 30

“(b) Does not include an independent contractor engaged to provide services in respect of a penal institution:

“‘Penal institution’ or ‘institution’ means any prison, corrective training institution, or police jail established under this Act: 35

“‘Programme’ means any course or group of a medical, social, cultural, therapeutic, educational, or rehabilitative nature:

“‘Rub-down search’ has the meaning given to it in **section 21D** of this Act: 40

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

Amendments: 1989, No. 126; 1991, No. 128

“ ‘Scanner search’ means a search of any person by means of any equipment that does not require the touching of that person:

“ ‘Secretary’ means the Secretary for Justice:

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

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

“ (b) Disobedience of a Court order; or

10 “ (c) Contempt of Court:

“ ‘Strip search’ has the meaning given to it in **section 21E** of this Act:

“ ‘Unauthorised item’ means—

15 “ (a) Any article or thing that is in the possession of any person in contravention or intended contravention of **section 44** of this Act:

“ (b) Any offensive weapon within the meaning of **section 202A** of the Crimes Act 1961:

20 “ (c) Any disabling substance within the meaning of that section of that Act.

“**3. Administration of Act**—(1) Subject to the control of the Minister, the Secretary shall be responsible for the general administration of this Act.

25 “(2) The Secretary shall have and may exercise the powers of a Visiting Justice under **section 10 (3)** of this Act.

“(3) Nothing in **subsection (2)** of this section shall be construed to confer on the Secretary any of the powers of a Visiting Justice to deal with offences against discipline.

30 “**3A. Delegations**—(1) Without limiting **sections 41 and 42** of the State Sector Act 1988, but subject to **subsection (2)** of this section, those sections of that Act shall apply in relation to any officer who is employed in any contract penal institution as if that officer were an employee of the Department of Justice.

35 “(2) Notwithstanding anything in **subsection (1)** of this section or in any other provision of this Act or of any other enactment, the Secretary shall not delegate to any officer of a penal institution—

40 “(a) The power to make an application under **section 106** of the Criminal Justice Act 1985 (which relates to the recall of certain offenders released on parole); or

“(b) The power to make an application under **section 107A** of the Criminal Justice Act 1985 (which relates to the service by certain inmates of their full sentence); or

- “(c) The power to appoint Inspectors of Penal Institutions under section 5 of this Act; or
- “(d) The power to appoint monitors for contract penal institutions under **section 4G** of this Act; or
- “(e) The duties conferred on the Secretary by **section 17A** of this Act; or 5
- “(f) The power to issue a direction under section 22 or section 23 of this Act that an inmate be transferred from any institution to any other institution; or
- “(g) Any power, function, or duty conferred or imposed on the Secretary by or under this enactment or any other enactment where the power, function, or duty relates to— 10
- “(i) The review of any act or omission of any officer of a contract penal institution; or 15
- “(ii) The issuing of any instruction relating to the administration of institutions.”
- (2) The following enactments are hereby consequentially repealed:
- (a) The Penal Institutions Amendment Act 1983: 20
- (b) Sections 2 and 3 of the Penal Institutions Amendment Act 1985.

3. New sections inserted—The principal Act is hereby amended by inserting, after section 4, the following sections:

“4A. Management of penal institutions under contract—(1) Subject to this Act, the Secretary may from time to time, in the name and on behalf of the Crown, enter into any contract with any other person for the management, by that other person, of any penal institution. 25

“(2) No penal institution shall be managed by any person (other than the Crown) except under a management contract. 30

“4B. Requirements of management contracts—(1) Every management contract shall specify the term for which the contractor is to manage the penal institution to which the contract relates, which term may not exceed 5 years. 35

“(2) A management contract may provide that, with the agreement of the Secretary and the contractor, the term for which the contractor is to manage the penal institution under the contract may be extended for 1 further period not exceeding 2 years. 40

“(3) Every management contract shall provide for—

- 5 “(a) Objectives and performance standards for the contractor in relation to the management of the penal institution to which the contract relates; and
- “(b) The employment by the contractor, for the penal institution to which the contract relates, of—
- “(i) A suitable person as Superintendent of the institution, which appointment shall be subject to approval by the Secretary; and
- 10 “(ii) Sufficient suitable officers and other staff to enable the contractor to carry out the contractor’s statutory and contractual obligations in relation to the institution; and
- 15 “(c) The training to be provided to officers of the institution to which the contract relates, which training must be to a standard no lower than the standard of training received by officers employed in institutions managed by the Department of Justice; and
- 20 “(d) The types and conditions of work to be provided, in accordance with section 20 of this Act, for inmates in the institution to which the contract relates; and
- “(e) The co-ordination of services and processes of the institution to which the contract relates with those of institutions managed by the Department of Justice or by other contractors, including any co-ordination necessary for the operation of any systems established pursuant to section 17A of this Act by the Secretary; and
- 25 “(f) The arranging and maintenance, by the contractor, of adequate insurance against the contractor’s liability for any claims arising out of or in connection with the contract; and
- 30 “(g) The avoidance of conflicts of interest that might arise in relation to the exercise or performance, by the contractor or any officer employed in any contract penal institution, of any power, duty, or function conferred or imposed by or under the contract or by or under this Act or any regulations made under this Act.
- 35 “(4) Every management contract shall impose on the contractor, in relation to the management of the institution to which the contract relates, a duty to comply with—
- 40 “(a) The requirements of this Act and of any regulations made under this Act, in so far as those requirements are applicable to contract penal institutions; and

“(b) The requirements of the New Zealand Bill of Rights Act 1990, as if the institution were an institution managed by the Department of Justice; and

“(c) The requirements of the United Nations Standard Minimum Rules for the Treatment of Prisoners, as if the institution were an institution managed by the Department of Justice; and 5

“(d) The requirements of sections 56 and 58 (1) of the State Sector Act 1988 (which relate to personnel and equal employment policies), as if the contractor were the chief executive of a Department within the meaning of that Act. 10

“(5) A management contract may make such other provision, not inconsistent with this Act or any regulations made under this Act, as may be agreed between the Secretary and the contractor. 15

“4C. **Liability of contractor**—(1) The Crown shall be entitled to be indemnified by a contractor—

“(a) Against any claim arising out of any act or omission of the contractor and for which the Crown is held liable (in whole or in part); and 20

“(b) For any act or omission of the contractor that results in damage to, or loss of, any property of the Crown.

“(2) For the purposes of determining the liability of the Crown or the contractor for any act or omission of a contractor, the contractor shall not be an agent of the Crown. 25

“4D. **Application of certain Acts to contractors**—No person shall be deemed to be employed in the service of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason only that the person has entered into a management contract with the Secretary. 30

“4E. **Sub-contractors**—(1) A contractor may sub-contract any of its management responsibilities under a management contract only with the prior written approval of the Secretary and only to the extent permitted by any such approval, which approval may be granted subject to such conditions as the Secretary thinks fit. 35

“(2) Where, with the approval of the Secretary, any management responsibility of a contractor under a management contract is sub-contracted to any person, the provisions of this Act and of any regulations made under this Act, in so far as those provisions relate to that management 40

responsibility, shall apply to that sub-contractor as if that sub-contractor were the contractor.

5 “4F. **Reporting responsibilities**—(1) Every contractor shall, as soon as practicable, notify the Secretary and the monitor holding office in respect of the contract penal institution managed by that contractor of any variation of the controlling interests in the contractor.

10 “(2) The Superintendent of a contract penal institution shall, at such intervals as are from time to time determined by the Secretary, arrange for written reports on the following matters to be prepared and forwarded to the Secretary and to the monitor holding office in respect of that penal institution:

15 “(a) The training provided to officers of the institution (including the amount and quality of that training), and the level of training achieved by such officers:

“(b) The number and nature of complaints made by inmates of the institution, and how those complaints were resolved:

20 “(c) The number and nature of any incidents in the institution involving—

“*(i)* Violence against inmates or officers of the institution; or

“*(ii)* Self-inflicted injuries to inmates of the institution:

25 “(d) The programmes provided for inmates of the institution, and the extent of attendance at, and completion of, such programmes by inmates:

30 “(e) The number and nature of any disciplinary actions taken against inmates or officers of the institution, and the reasons for, and outcomes of, such actions:

35 “(f) The number and nature of any tests or other procedures to which inmates of the institution have been required to submit pursuant to section 36B or section 36C of this Act, and the reasons for requiring those inmates to submit to those tests or procedures:

“*(g)* Such matters relating to the financial management of the institution as the Secretary may from time to time determine, which may include the provision of financial forecasts and audited accounts:

40 “*(h)* Such other matters in respect of which the Secretary reasonably considers that information is necessary to enable the Secretary to carry out his or her responsibilities under this Act or any other enactment.

“(3) The Superintendent of a contract penal institution shall, as soon as practicable after the occurrence in that institution of any of the following, namely,—

“(a) Any escape or attempted escape by an inmate:

“(b) The death of any inmate,—

arrange for a written report on that occurrence to be prepared and forwarded to the Secretary and to the monitor holding office in respect of that penal institution.

“(4) Nothing in **subsection (2) or subsection (3)** of this section limits any other duty to report that is imposed by or under any management contract or by or under any other provision of this Act or of any other enactment.

“4c. **Monitors**—(1) For each contract penal institution there shall be a monitor, who shall be appointed under the State Sector Act 1988 by the Secretary.

“(2) The monitor of a contract penal institution—

“(a) Shall be responsible to the Secretary for the assessment and review of the management of the contract penal institution in respect of which that monitor is appointed; and

“(b) Shall report to the Secretary, at such intervals as the Secretary from time to time determines, on the management of the institution and on whether or not the contractor is complying with the management contract and with the provisions of this Act and of any regulations made under this Act.

“(3) Every contractor shall ensure that there is available in the contract penal institution managed by that contractor suitable office accommodation for the use of the monitor for that institution.

“(4) Every contractor shall ensure that the monitor for the contract penal institution managed by that contractor has free and unfettered access at all times to—

“(a) Every part of that institution; and

“(b) All inmates in that institution; and

“(c) All persons who work in that institution, but only when they are actually in the institution; and

“(d) All records held by the contractor and that relate to—

“(i) The institution; or

“(ii) Any inmate in the institution; or

“(iii) Any officer of the institution,—

but not including any medical records relating to any such inmate or officer, unless the inmate or officer concerned consents to such access.

“4H. **Monitors to report on certain matters**—Without limiting section 4G (2) of this Act, the monitor for a contract penal institution shall,—

5 “(a) At such intervals as the Secretary from time to time determines or, in the absence of any such determination, as the monitor considers appropriate, review and report to the Secretary on the following matters:

10 “(i) Calculations and determinations made by officers of the institution for the purposes of supplying any court with information pursuant to section 81 (3) of the Criminal Justice Act 1985 (which provides for time spent on remand to be taken into account in determining the term of a sentence of imprisonment):

15 “(ii) Calculations and determinations of officers of the institution, made under delegated authority, for the purposes of section 90 of the Criminal Justice Act 1985 (which relates to the determination of the date on which an offender will become eligible for remission of sentence):

20 “(iii) Decisions of officers of the institution, made under delegated authority, directing the release of an inmate under section 91 of the Criminal Justice Act 1985:

25 “(iv) Calculations and determinations of officers of the institution for the purposes of section 93 of the Criminal Justice Act 1985 (which relates to the eligibility for parole):

30 “(v) Reports made by the Superintendent of the institution for the purposes of section 96 (1) (e) of the Criminal Justice Act 1985:

35 “(vi) Decisions of the Superintendent of the institution, made under delegated authority, to authorise the temporary release of an inmate pursuant to section 21 of this Act, and decisions of the Superintendent to direct the return to the institution of any person so released:

40 “(vii) Decisions of the Superintendent of the institution to direct that an inmate be released under section 21A of this Act to engage in employment, and decisions of the Superintendent to revoke any such directions:

“(viii) Decisions of the Superintendent of the institution to impose on any inmate the penalty referred to in section 34 (3) (a) of this Act:

“(ix) Decisions of the Superintendent of the institution to refer a case to a Visiting Justice under section 34 (4) (a) of this Act: 5

“(x) Decisions of officers of the institution to apply, under section 45 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 for an assessment of an inmate: 10

“(xi) Work undertaken by inmates at the direction of the Superintendent of the institution given under section 20 of this Act:

“(xii) Any matter in respect of which the monitor is entitled to receive a report under **subsection (2) or subsection (3) of section 4F** of this Act: 15

“(b) At the request of the Secretary, investigate any matter relating to the institution or any inmate in the institution, and report to the Secretary the results of that examination. 20

“4I. **Annual report of Secretary**—The Secretary shall include in his or her annual report to the Minister under section 30 of the State Sector Act 1988 a report on the management of every contract penal institution.”

4. New sections substituted—(1) The principal Act is hereby amended by repealing section 6 (as substituted by section 5 (1) of the Penal Institutions Amendment Act 1985), and substituting the following sections: 25

“**6. Superintendent and other officers of penal institutions**—(1) For every penal institution (not being a contract penal institution or a police jail) the Secretary shall from time to time appoint under the State Sector Act 1988 a Superintendent and such other employees as may be required. 30

“(2) For each contract penal institution the contractor responsible for managing that institution shall, subject to the terms of the management contract relating to that institution, from time to time appoint a Superintendent and such other employees as may be required. 35

“(3) The Secretary (in the case of a penal institution that is not a contract penal institution) or a contractor (in the case of a contract penal institution) may from time to time engage any independent contractor to provide chaplaincy, counselling, or educational services in respect of a penal institution. 40

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

5 “(5) Every penal institution shall have such number of officers of each gender as is sufficient to ensure that all duties required by this Act or by any regulations made under this Act to be carried out in the institution by officers are able to be carried out in that institution.

10 “(6) No person shall be deemed to be employed in the service of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason only of that person’s appointment pursuant to **subsection (2)** or **subsection (3)** of this section.

15 “**6A. Medical officers**—(1) For every penal institution there shall be appointed pursuant to **subsection (1)** or, as the case requires, **subsection (2)** of **section 6** of this Act one or more medical officers, each of whom shall be a medical practitioner, to be responsible for providing medical care and medical treatment to inmates in the institution.

20 “(2) Every medical officer, and every medical practitioner, who provides medical care or medical treatment to any inmate in any institution shall ensure that there is entered in the records of that institution an adequate record of the care or treatment so provided.”

25 (2) Section 5 (1) of the Penal Institutions Amendment Act 1985 is hereby consequentially repealed.

30 (3) Every person who, immediately before the commencement of this section, was holding office pursuant to an appointment made or deemed to have been made by the Secretary under the former section 6 (2) of the principal Act (as repealed by **subsection (1)** of this section) shall continue in office, on terms and conditions of employment that are the same as the terms and conditions of employment applying to that person immediately before the commencement of this section in that person’s position as such an appointee, as if **subsection (1)** of this section had not been enacted.

35 (4) **Subsection (3)** of this section shall continue to apply to the terms and conditions of employment of each person to whom that subsection applies until such time as any of the terms and conditions of employment that apply under the employment contract applying to that person at the date of the commencement of this section are varied.

40 (5) Nothing in **subsection (3)** of this section shall continue to apply to any person who receives any subsequent appointment

under **subsection (1) or subsection (2) or subsection (3) of section 6** of the principal Act (as substituted by **subsection (1) of this section**), whether within the institution in respect of which that person was appointed under section 6 (2) of the principal Act (as repealed by **subsection (1) of this section**) or within any other institution. 5

5. Superintendent to be charged with general administration of institution—Section 7 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection: 10

“(2) The powers, duties, and functions conferred or imposed on Superintendents by this Act may, to the extent authorised by any regulations made under this Act, and subject to the provisions of any such regulations, be exercised or performed by any other officer.” 15

6. Classification committees—(1) Section 9 of the principal Act is hereby repealed.

(2) Section 7 of the Penal Institutions Amendment Act 1985 is hereby consequentially repealed.

7. New sections inserted—The principal Act is hereby amended by inserting, after section 17, the following sections: 20

“17A. **Security classification and inmate programmes**— (1) The Secretary shall from time to time issue instructions providing for one or more security classification systems for inmates, and for determining the appropriate security classification to be assigned to individual inmates. 25

“(2) The Secretary shall from time to time issue instructions providing for the identification of the needs of individual inmates in relation to programmes, and for the addressing of those needs. 30

“(3) Every instruction issued pursuant to this section shall, while it remains in force, be observed by every officer.

“17B. **Use of force**—(1) Except as expressly provided by this Act or any other enactment, no officer of a penal institution shall use physical force in dealing with any inmate unless the officer has reasonable grounds for believing that the use of physical force is reasonably necessary— 35

“(a) In self-defence, or in the defence of another person, or to protect the inmate from injury:

“(b) To prevent the inmate from damaging any property: 40

“(c) In the case of escape or attempted escape:

“(d) In the case of active or passive resistance to a lawful order.

“(2) Any officer who uses physical force for any of the purposes or in any of the circumstances referred to in subsection (1) of this section shall use no more physical force than is reasonably necessary in the circumstances, and shall report the incident to the Superintendent as soon as possible.

“17c. **Provoking inmates**—No officer shall deliberately act or speak in a manner likely to provoke an inmate.”

10 **8. New heading and sections inserted**—The principal Act is hereby amended by inserting, after section 21c (as inserted by section 2 of the Penal Institutions Amendment Act 1961), the following heading and sections:

“Powers of Search

15 “21D. **Definition of rub-down search**—(1) For the purposes of this Act, a rub-down search means a search of a clothed person in which the person conducting the search may do all or any of the following:

20 “(a) Run or pat his or her hand over the body of the person being searched, whether outside or inside the clothing (other than inside any underclothing) of that person:

“(b) Insert his or her hand inside any pocket or pouch in the clothing of the person being searched:

25 “(c) Require the person being searched to do all or any of the following, namely,—

“(i) Open his or her mouth:

“(ii) Display the palms of his or her hands:

“(iii) Lift or rub his or her hair,—

30 for the purpose of permitting a visual inspection.

“(2) For the purpose of facilitating any of the actions referred to in any of paragraphs (a) to (c) of subsection (1) of this section, the person conducting a rub-down search may require the person being searched—

35 “(a) To raise, lower, or open any clothing (not being underclothing) being worn by the person being searched; and

“(b) To remove any head covering, gloves, or footwear (including socks or stockings) being worn by that person.

40 “(3) Authority to conduct a rub-down search includes the authority to conduct a visual examination (whether or not

facilitated by any instrument or device) of the mouth, nose, and ears, but does not authorise the insertion of any instrument, device, or thing into any such orifice.

“21E. **Definition of strip search**—(1) For the purposes of this Act, a strip search means a search where the person conducting the search may require the person being searched to remove all or any of that latter person’s clothing. 5

“(2) For the purpose of facilitating a strip search, the person conducting the search may require the person being searched to do all or any of the following: 10

“(a) Open his or her mouth:

“(b) Display the palms of his or her hands:

“(c) Lift or rub his or her hair:

“(d) Display the soles of his or her feet:

“(e) Raise his or her arms so as to expose his or her armpits: 15

“(f) Spread his or her legs so as to expose his or her pubic area:

“(g) Bend forward so as to expose his or her anal area.

“(3) Subject to **section 21E** of this Act, authority to conduct a strip search includes the authority to conduct a visual examination (whether or not facilitated by any instrument or device) of any body orifice, but does not authorise the insertion of any instrument, device, or thing into any such orifice. 20

“21F. **Restriction on internal examinations**—Nothing in this Act authorises or permits the internal examination of the genitals or anus of any person without the consent of that person. 25

“21G. **Restrictions on searches**—(1) A rub-down search or strip search shall be carried out only by a person of the same sex as the person to be searched, and no strip search shall be carried out in view of any person who is not of the same sex as the person to be searched. 30

“(2) A person who carries out a rub-down search or a strip search shall conduct the search with decency and sensitivity and in a manner that affords to the person being searched the greatest degree of privacy and dignity consistent with the purpose of the search. 35

“(3) No officer shall conduct a strip search unless another officer is present.

“(4) A strip search of an inmate shall not be carried out in the presence of, or in view of, another inmate. 40

“(5) No officer shall conduct a rub-down search of any person (other than an inmate) unless another officer is present.

“21H. **Search of inmates and cells**—(1) Subject to **section 21G** of this Act, an officer of an institution may, at any time, for the purpose of detecting any unauthorised item, conduct—

- “(a) A scanner search of any inmate in that institution:
- 5 “(b) A rub-down search of any inmate in that institution:
- “(c) A search of any cell in that institution.

“2) Subject to **section 21G** of this Act, an officer may, in any of the circumstances referred to in **subsection (3)** of this section, conduct a strip search of an inmate for the purposes of
10 detecting any unauthorised item, but only if a strip search is necessary in the circumstances for the purposes of detecting such an item.

“3) The circumstances referred to in **subsection (2)** of this section are as follows:

- 15 “(a) Where the officer has reasonable grounds for believing that the inmate has in his or her possession an unauthorised item:
- “2) Immediately before the inmate is locked in a cell under report or punishment:
- 20 “(c) On the admission or return of the inmate to the institution:
- “3) On the return of the inmate from work or from a part of the institution that is not supervised:
- 25 “(e) Immediately before the inmate is to be transferred to another institution, and at any time while the inmate is being so transferred:
- “4) While the inmate is on temporary leave from the institution in the custody of an officer:
- 30 “(g) Immediately before any person visits the inmate:
- “5) Immediately after any person has visited the inmate.

“21I. **Search of persons other than inmates**—(1) Any person who wishes to enter an institution may, before being admitted to the institution, be required to undergo a scanner search conducted by an officer.

35 “2) Any person who enters an institution may, at any time while that person is in the institution, be required to undergo a scanner search conducted by an officer.

40 “3) Subject to **section 21G** of this Act, where any officer has reasonable grounds to suspect that any person who wishes to enter an institution, or who is in an institution, has in his or her possession any unauthorised item, the officer may, with that person’s consent, conduct a rub-down search of that person.

“(4) Any person who refuses to submit to a scanner search or a rub-down search before being admitted to an institution shall be refused admission to the institution.

“(5) Any person who is in an institution and who refuses to consent to a rub-down search in accordance with **subsection (3)** of this section may, with the approval of the Superintendent of the institution, be required to undergo such a search, and reasonable force may be used for the purposes of carrying out that search. 5

“(6) Where any unauthorised item is discovered as a result of any search conducted pursuant to this section, the Superintendent of the institution concerned shall cause a record of the details of that search to be made and kept, and shall forthwith send a report on the matter to the Secretary. 10

“(7) Nothing in this section applies to any inmate. 15

“**21j. Search of vehicles and property**—(1) Any vehicle brought into an institution may, while that vehicle is in the institution, be searched by any officer at any time.

“(2) Authority conferred by this Act to conduct a scanner search or a rub-down search of any person includes the authority to search— 20

“(a) Any article carried by that person:

“(b) In the case of a rub-down search, any head covering, gloves, or footwear (including socks or stockings) removed by the person for the purposes of the search. 25

“(3) Authority conferred by this Act to conduct a strip search of any person includes the authority to search—

“(a) Any item of clothing removed by the person for the purposes of the search: 30

“(b) Any article carried by that person.”

9. Right of members of Parliament to visit institutions—Section 37 of the principal Act is hereby amended by omitting from the proviso the words “to visit any inmate under sentence of death, or”. 35

10. Right of Justice to visit institution—Section 38 of the principal Act is hereby amended by omitting from the proviso the words “to visit any inmate under sentence of death, or”.

11. Compensation for property damage by escapers—Section 41b of the principal Act (as inserted by section 18 (1) of the Penal Institutions Amendment Act 1975) is hereby 40

amended by repealing subsections (9) and (10), and substituting the following subsections:

5 “(9) Where any compensation is awarded under this section, any right of action the applicant may have against the escaper shall be subrogated—

“(a) Where, at the time the escaper escaped, the escaper was in the legal custody of the Superintendent of a contract penal institution, to the contractor responsible for managing that institution:

10 “(b) In any other case, to the Crown.

“(10) The amount of any compensation awarded by any Court under this section shall be paid—

15 “(a) Where, at the time the escaper escaped, the escaper was in the legal custody of the Superintendent of a contract penal institution, by the contractor responsible for managing that institution:

“ (b) In any other case, out of the Crown Bank Account from money appropriated by Parliament for the purpose.”

20 **12. New sections inserted**—The principal Act is hereby amended by inserting, after section 41B (as inserted by section 18(1) of the Penal Institutions Amendment Act 1975), the following sections:

25 “**41C. Application of Ombudsmen Act 1975 and Official Information Act 1982 to contract penal institutions**—For the purposes of the Ombudsmen Act 1975 and the Official Information Act 1982, every contract penal institution shall be deemed to be part of the Department of Justice.

30 “**41D. Application of Public Works Act 1981**—For the purposes of the Public Works Act 1981, the construction, management, operation, and maintenance of a penal institution, including the acquisition of land and buildings or an estate or interest in land for that purpose, shall be a Government work and a public work within the meaning of that Act, whether or not the penal institution or proposed penal institution is, or is to be, constructed, managed, operated, or maintained by the Crown.

35 “**41E. Application of New Zealand Bill of Rights Act 1990 to contract penal institutions**—For the purposes of section 3 of the New Zealand Bill of Rights Act 1990, acts done by officers of a contract penal institution shall be deemed to be acts done by the executive branch of the government of New Zealand.

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“41F. Application of Resource Management Act 1991—
For the purposes of Part VIII of the Resource Management Act 1991, the construction, management, operation, and maintenance of a penal institution (other than a police jail) shall be deemed to be a public work for which the Minister has financial responsibility, whether or not the penal institution or proposed penal institution is, or is to be, constructed, managed, operated, or maintained by the Crown.”

13. Amendment to Summary Offences Act 1981—
(1) Section 2 (1) of the Summary Offences Act 1981 is hereby amended by repealing the definition of the term “prison officer” (as amended by section 23 (3) of the Penal Institutions Amendment Act 1985), and substituting the following definition:

“ ‘Prison officer’ means an officer within the meaning of section 2 of the Penal Institutions Act 1954:”.

(2) Section 23 (3) of the Penal Institutions Amendment Act 1985 is hereby consequentially repealed.