

[AS REPORTED FROM THE JUSTICE AND LAW REFORM
COMMITTEE]

House of Representatives, 21 September 1993.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Hon. D. A. M. Graham

PENAL INSTITUTIONS AMENDMENT (NO. 3)

ANALYSIS

Title	8. New heading and sections inserted
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2. New sections substituted	<i>Powers of Search</i>
2. Interpretation	21D. Definition of rub-down search
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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. 3) 1993, and shall be read together with and deemed part of the Penal Institutions Act 1954* (hereinafter referred to as the principal Act). 5

Struck Out

(2) This Act shall come into force on the **1st day of September 1993.** 10

New

(2) Except as provided in **subsections (3) and (4)** of this section, this Act shall come into force on the **1st day of October 1993.**
 (3) **Section 8** of this Act shall come into force on the **1st day of November 1993.** 15
 (4) **Section 8D** of this Act shall come into force on the **1st day of April 1994.**

2. New sections substituted—(1) The principal Act is hereby amended by repealing sections 2 and 3, and substituting the following sections: 20

“2. Interpretation—(1) In this Act, unless the context otherwise requires,—

New

“ ‘Attendance for judicial purposes’, in relation to any person, includes the attendance of that person, whether as a party or as a witness, before any of the following tribunals: 25

“(a) Any Court of Justice:

“(b) The House of Representatives or any Committee of that House: 30

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

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

New

- 5 “(c) Any arbitrator or umpire, or any person or body of persons authorised by law to make an inquiry and take evidence therein on oath:
- “ (d) Any legal tribunal by which any legal right or liability can be established:
- “ (e) Any person acting as a Court or tribunal having the power to hold a judicial proceeding:
- 10 “ (f) Any court-martial under the Armed Forces Discipline Act 1971:
- “ (g) Any other person or body of persons the proceedings, or any part of the proceedings, of whom or of which are deemed to be a judicial proceeding for the purposes of section 108 of the Crimes Act 1961 (which relates to perjury):
- 15

- “ ‘Contract penal institution’ means a penal institution that is for the time being managed under a management contract:
- 20 “ ‘Contractor’ means a person who is a party to a management contract under which that person is to manage a penal institution:

New

- 25 “ ‘Courtroom custodial duty’ means undertaking the custody, control, and supervision of a person while he or she is at any place at which the attendance of that person is required for judicial purposes:
- “ ‘Courtroom custodial services’ means the provision of persons to undertake courtroom custodial duties:
- 30 “ ‘Designated monitor’, in respect of any contractor or any contract penal institution or any matter, means the monitor for the time being designated pursuant to **section 4G (3)** of this Act in respect of that contractor or, as the case requires, that contract penal institution or that matter:
- 35 “ ‘Designated security monitor’, in respect of any security contractor or any security contract or any matter, means the security monitor for the time being designated pursuant to **section 36zc (3)** of this Act in

New

respect of that security contractor or, as the case requires, that security contract or that matter:

“ ‘Escort duty’ means undertaking the transportation of persons in custody—

“(a) To or from—

“(i) A penal institution or police station; or

“(ii) Any place at which the attendance of that person is or has been required for judicial purposes; or

“(iii) A residence within the meaning of section 2 of the Children, Young Persons, and Their Families Act 1989:

“(b) For any purpose authorised by section 27 or section 28 of this Act:

“(c) For the purposes of the Mental Health (Compulsory Assessment and Treatment) Act 1992,— and includes the undertaking of responsibility for the custody, control, and supervision of such persons while they are being so transported:

“ ‘Escort services’ means the provision of persons to undertake escort duties:

“ ‘Firearm’ has the same meaning as in section 2 of the Arms Act 1983:

“ ‘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:

“ ‘Minister’ means the Minister of Justice:

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

New

“ ‘Monitor’ means a person appointed pursuant to section 4G (1) of this Act:

“ ‘Officer’—

5

“(a) Means—

“(i) The Superintendent of a penal institution:

“(ii) Any person appointed pursuant to subsection (1) or subsection (2) or subsection (4) of section 6 of this Act in respect of a penal institution; but

10

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

New

“ ‘Operational standard’ means an operational standard issued pursuant to section 10A of this Act:

15

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

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New

“ ‘Prisoner’ means any person (including an inmate) who is in the custody of a security officer for the purposes of the carrying out, by that security officer, of escort duties or courtroom custodial duties or both:

25

“ ‘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 21b of this Act:

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“ ‘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:

New

“‘Security contract’ means a contract entered into with the Secretary pursuant to **section 36g** of this Act:

“‘Security contractor’ means a person who is a party to a security contract under which that person is to provide escort services or courtroom custodial services, or both: 5

“‘Security monitor’ means a person appointed pursuant to **section 36zc** of this Act:

“‘Security officer’ means any person employed pursuant to **section 36i** of this Act: 10

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

“‘(a) Non-payment of a sum of money; or 15

“‘(b) Disobedience of a Court order; or

“‘(c) Contempt of Court:

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

Struck Out

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“‘Unauthorised item’ means—

“‘(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: 25

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

New

“‘Unauthorised item’ means— 30

“‘(a) Any article which could, while in the possession of any inmate or prisoner, be harmful to that inmate or prisoner or to any other person:

“‘(b) Any intoxicating drug or substance:

“‘(c) Any controlled drug within the meaning of the Misuse of Drugs Act 1975: 35

New

“(d) Any prescription medicine or restricted medicine within the meaning of the Medicines Act 1981:

5 “(e) Any thing that could be used for the purpose of facilitating the escape from lawful custody of any person:

“(f) In relation to any person, any thing that may not lawfully be retained in the person’s possession:

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

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

15 “(i) Any disabling substance within the meaning of that section.

“(2) Where any provision of this Act requires that any person employed or engaged for any position be suitable for that position, and that position involves dealing with inmates or prisoners or both, that person’s suitability shall be determined in accordance with whether or not that person is, by reason of—

“(a) His or her character and personality; and

25 “(b) His or her training, skills, qualifications, or work experience; and

“(c) Other relevant experience,—
competent to exercise or perform his or her powers, duties, and functions under this Act, or any regulations made under this Act, in a fair and humane manner.

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

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

35 “(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.

40 “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.

“(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— 5

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“(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 10

“(b) The power to make an application under (*section 107A*) section 105 of the Criminal Justice Act 1985 (which relates to the service by certain inmates of their full sentence); or

New 15

“(ba) The power to make an application under section 107¹ of the Criminal Justice Act 1985 (which relates to the recall of certain offenders to a penal institution to continue serving their sentence); or

“(c) The power to appoint Inspectors of Penal Institutions under section 5 of this Act; or 20

“(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 25

Struck Out

“(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

New 30

“(f) The power to grant approvals under **subsection (5)** or **subsection (6)** of section 20 of this Act (which relate to the types and conditions of work to be provided for

New

5 inmates and the accounting methods to be adopted in relation to prison industries); or
“(fa) The power to appoint security monitors under section 36zc of this Act; 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

Struck Out

“(ii) The issuing of any instruction relating to the administration of institutions.”

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New

“(ii) The issuing of any operational standards under section 10A of this Act.

(2) The following enactments are hereby consequentially repealed:

- 20 (a) The Penal Institutions Amendment Act 1983:
(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:

25 “**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.

New

“(1A) The Secretary shall not enter into any management contract without the prior written consent of the Minister in each case.

“(2) No penal institution shall be managed by any person (other than the Crown) except under a management contract. 5

“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. 10

“(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. 15

New

“(2A) Nothing in **subsection (1)** or **subsection (2)** of this section prevents any person who is or has been a contractor responsible for the management of a penal institution from entering into another management contract, whether or not in relation to the same penal institution. 20

“(3) Every management contract shall provide for—

“(a) Objectives and performance standards for the contractor in relation to the management of the penal institution to which the contract relates and in relation to the management and care of inmates in that institution; and 25

“(b) The employment or engagement by the contractor, for the penal institution to which the contract relates, of— 30

“(i) A suitable person as Superintendent of the institution, which appointment shall be subject to approval by the Secretary; and

“(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 35

Struck Out

- 5 “(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
- “(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

10 *New*

- 15 “(c) The training to be provided, at the expense of the contractor, to officers and other staff of the institution to which the contract relates, which training shall be—
- “*(i)* To the standard appropriate for the particular position; and
- “*(ii)* To a standard no lower than the standard of training received by officers and staff employed or engaged in institutions managed by the Department of Justice; and
- 25 “(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
- 30 “(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
- 35 “(g) The avoidance of conflicts of interest that might arise in relation to the exercise or performance, by the contractor or any officer (*employed*) or other staff member employed or engaged 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(.); and

New

- “(h) The provision by the contractor of programmes designed—
- “(i) To ascertain and address the causes of inmates’ offending; or 5
 - “(ii) To assist the re-integration of inmates into society; and
- “(i) The respective obligations (including financial obligations) of the parties to the contract in relation to any voluntary organisations that undertake work in the institution to which the contract relates; and 10
- “(j) The obligations of the contractor to co-operate with the Secretary in the event of the termination or expiry of the contract, in order to ensure the orderly and efficient transfer of the management of the institution to which the contract relates. 15
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- “(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—
- “(a) The requirements of this Act (*and of any regulations made under this Act,*) of any regulations made under this Act, and of any operational standards issued under this Act, in so far as those requirements are applicable to contract penal institutions; and 20
 - “(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 25
 - “(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 30
 - “(d) The requirements of (*sections 56 and 58 (1)*) sections 56 (1), 56 (2), 58 (1), and 58 (3) 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. 35
- “(5) A management contract may make such other provision, not inconsistent with this Act or any regulations made under this Act or any operational standards issued under this Act, as may be agreed between the Secretary and the contractor. 40

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

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

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

10 “(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* or a contractor’s employees or agents, neither the contractor nor the contractor’s employees or agents shall be agents of the Crown.

15 “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
20 the Secretary.

“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
25 approval may be granted subject to such conditions as the Secretary thinks fit.

“(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
30 provisions of this Act *(and of any regulations made under this Act)*, of any regulations made under this Act, and of any operational standards issued under this Act, in so far as those provisions relate to that management responsibility, shall apply to that sub-contractor as if that sub-contractor were the contractor.

35 “4F. **Reporting responsibilities**—

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(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
40 interests in the contractor.

New

(1) Where there is any variation of the controlling interests in a contractor, that contractor shall, as soon as practicable, give notice of that variation to the Secretary and to the designated monitor.

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“(2) The Superintendent of a contract penal institution shall, at such intervals (not exceeding 3 months) 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*) designated monitor:

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

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

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

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

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

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

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Struck Out

“(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:

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New

“(e) The compliance, by officers of the institution, with the requirements of **sections 17B** and **17C** of this Act:

“(ea) The exercise, by officers of the institution, of the powers conferred by **sections 21H** to **21J** of this Act:

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New

“(eb) The number and nature of—
 “(i) Any disciplinary proceedings taken against
 inmates of the institution; and
 5 “(ii) Any disciplinary actions taken against officers
 of the institution,—
 and the reasons for, and the outcomes of, such
 proceedings or actions, including any penalties
 imposed:

10 “(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:

15 “(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:

20 “(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.

25 “(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,—

30 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*) designated monitor.

35 “(4) Nothing in subsection (1) or 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.

Struck Out

“4G. **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.

Struck Out

- “(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 5
- “(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. 10
- “(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. 15
- “(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 20
- “(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— 25
- “(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. 30
- “4H. **Monitors to report on certain matters**—Without limiting section 4G(2) of this Act, the monitor for a contract penal institution shall,—
- “(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: 35
- “(i) Calculations and determinations made by officers of the institution for the purposes of supplying any court with information pursuant to 40

Struck Out

5 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):

“(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
10 date on which an offender will become eligible for
remission of sentence):

“(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:

“(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):

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

“(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:

“(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:

“(x) Decisions of officers of the institution to
apply, under section 45 of the Mental Health

Struck Out

(Compulsory Assessment and Treatment) Act 1992
for an assessment of an inmate:

“(xi) Work undertaken by inmates at the direction
of the Superintendent of the institution given under 5
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:

“(b) At the request of the Secretary, investigate any matter 10
relating to the institution or any inmate in the
institution, and report to the Secretary the results of
that examination.

New

“4G. **Monitors**—(1) The Secretary shall from time to time 15
appoint under the State Sector Act 1988 such number of
persons to be monitors as are required for the purposes of this
Act.

“(2) Every monitor—

“(a) Shall be responsible to the Secretary for the assessment 20
and review of the management of such contract
penal institutions as the Secretary from time to time
determines; and

“(b) Shall report to the Secretary, at such intervals (not
exceeding 3 months) as the Secretary from time to 25
time determines, and at any other time that the
monitor considers appropriate, on—

“(i) The management of such contract penal
institutions as the Secretary from time to time 30
determines; and

“(ii) Whether or not the contractors responsible
for the management of those institutions are
complying with their management contracts and
with the provisions of this Act, of any regulations 35
made under this Act, and of any operational
standards issued under this Act; and

“(c) May, at any time the monitor considers appropriate,
make recommendations to the Secretary on any

New

matter relating to contract penal institutions as the monitor thinks fit.

5 “(3) The Secretary shall from time to time designate monitors—

“(a) To whom notices and reports under **section 4F** of this Act are to be given or forwarded:

“(b) Who are to perform the duties imposed on monitors by **section 4H** of this Act,—

10 and different monitors may be so designated in respect of different contractors and different contract penal institutions.

“(4) The Secretary shall regularly alter the designations under **subsection (3)** of this section.

15 “(5) The office of monitor may be combined with any other office, appointment, or position if the Secretary is satisfied that the duties of that other office, appointment, or position are not incompatible with the duties of a monitor.

20 “**4GA. Accommodation and access**—(1) Every contractor shall ensure that there is available in the contract penal institution managed by that contractor suitable office accommodation for use by a monitor.

“(2) Every contractor shall ensure that any monitor has free and unfettered access at all times to—

25 “(a) Every part of the contract penal institution managed by that contractor; 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

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

“**(i)** That institution; or

“**(ii)** Any inmate or former inmate; or

“**(iii)** Any officer or former officer of that institution,—

35 but not including any medical records relating to any such person, unless the person concerned consents to such access.

40 “**4H. Monitors to report on certain matters**—(1) Without limiting **subsection (2)** of **section 4G** of this Act, for the purposes of each report to the Secretary pursuant to **paragraph (b)** of that subsection the designated monitor for a contract penal institution shall review the following matters:

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|--|----|
| “(a) Calculations and determinations made by or at the direction of the Superintendent of the institution for the purposes of section 81 of the Criminal Justice Act 1985 (which provides for any period detained in a penal institution on remand to be taken as time served): | 5 |
| “(b) Calculations and determinations of officers of the institution for the purposes of section 89 of the Criminal Justice Act 1985 (which relates to eligibility for parole): | 10 |
| “(c) Calculations and determinations of officers of the institution, made under delegated authority, for the purposes of section 91 of the Criminal Justice Act 1985 (which relates to the determination of an inmate’s final release date): | 15 |
| “(d) Decisions of officers of the institution, made under delegated authority, directing the release of an inmate under section 94 of the Criminal Justice Act 1985: | 20 |
| “(e) Reports made by the Superintendent of the institution for the purposes of section 106 (b) of the Criminal Justice Act 1985: | |
| “(f) Work undertaken by inmates at the direction of the Superintendent of the institution given under section 20 of this Act: | 25 |
| “(g) 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, conditions imposed by the Superintendent in respect of any such release, and decisions of the Superintendent to direct the return to the institution of any person so released: | 30 |
| “(h) Decisions of the Superintendent of the institution to direct that an inmate be released under section 21A of this Act to engage in employment, conditions imposed by the Superintendent in respect of any such release, and decisions of the Superintendent to revoke any such direction: | 35 |
| “(i) Decisions of officers of the institution, made under delegated authority, directing under section 22 or | 40 |

New

section 23 of this Act that an inmate be transferred from the institution to any other institution:

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

10 “(k) 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:

15 “(l) The procedures in place to assess—

“(i) The suitability of persons for employment or engagement pursuant to **subsection (2)** or **subsection (3)** of **section 6** of this Act in the institution; and

“(ii) The ongoing suitability of persons so employed or engaged:

20 “(m) The matters in respect of which the monitor is entitled to receive a report under **subsection (2)** or **subsection (3)** of **section 4F** of this Act.

25 “(2) Without limiting **section 4G (2)** of this Act, the designated monitor for a contract penal institution may, at the request of the Secretary or on the monitor’s own initiative, investigate any matter relating to that institution or any inmate in that institution, and report to the Secretary the results of that examination.

“**4HA. Control of contract penal institution in emergency**—(1) This section applies where the Secretary believes, on reasonable grounds,—

30 “(a) That either—

“(i) There exists in respect of any contract penal institution an emergency affecting the safety or health of the inmates or any class or group of inmates, or the security of the institution; or

35 “(ii) There is an imminent threat of such an emergency; and

“(b) That the contractor responsible for the management of that institution is unwilling or unable to immediately deal with that emergency or, as the case requires, that threat to the satisfaction of the Secretary.

40 “(2) Where this section applies, the Secretary may take over the management of the contract penal institution from the

New

contractor for such period as the Secretary considers necessary in order to deal with the emergency or threatened emergency, and for that purpose the Secretary—

“(a) Shall have and may exercise and perform, in respect of that institution, all the powers, functions, and duties that would otherwise be exercisable or performed by the contractor: 5

“(b) Shall have all such other powers as are necessary or desirable. 10

“(3) Where the Secretary takes over the management of a contract penal institution pursuant to this section, the Secretary shall forthwith give written notice to the contractor of that action, and of the reasons for that action.

“(4) Without limiting any other remedy available to the Secretary (whether under the management contract or otherwise), where the Secretary acts under **subsection (2)** of this section, then, unless it would be unreasonable or unfair in the circumstances, the Secretary shall be entitled to be reimbursed by the contractor for any costs and expenses incurred in the taking of that action, and any such costs and expenses shall be recoverable as a debt due to the Crown. 15 20

“(5) This section applies notwithstanding anything in any management contract, and nothing in this section limits or affects— 25

“(a) Any other right or remedy available to the Secretary or the Crown, whether under any management contract or otherwise; or

“(b) Any liability of the contractor under the management contract or otherwise. 30

“(6) Neither the Secretary, nor the Crown, nor any other person acting by or under the authority of the Secretary shall be under any civil or criminal liability for anything the Secretary or any such person may do or fail to do in the course of the exercise or performance or intended exercise or performance of any powers, functions, or duties under this section, unless it is shown that the Secretary or that other person acted, or failed to act, in bad faith. 35

“41. **Annual report of Secretary**—(1) The Secretary shall include in his or her annual report to the Minister under section 40

30 of the State Sector Act 1988 a report on the management of every contract penal institution.

New

5 “(2) Without limiting subsection (1) of this section, every such report included in the Secretary’s annual report shall include—

“(a) A summary of—

“(i) The reports forwarded to the Secretary pursuant to subsection (2) or subsection (3) of section 4F of this Act; and

10 “(ii) The reports made to the Secretary pursuant to section 4G (2) (b) of this Act,— during the year to which the annual report relates; and

15 “(b) A summary of any actions taken, during that year, in relation to the management of contract penal institutions as a result of any matters raised in any report so forwarded or made, whether during that year or any previous year.

20 **“4j. Management contracts to be laid before House of Representatives—**(1) Within 12 sitting days after a management contract is entered into pursuant to section 4A of this Act, the Minister shall lay a copy of that contract before the House of Representatives.

25 “(2) Within 12 sitting days after a management contract is varied or renewed, the Minister shall lay a copy of the terms of that variation or renewal before the House of Representatives.

30 **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:

“6. Superintendent and other officers of penal institutions—

Struck Out

35 (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.

Struck Out

“(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. 5

“(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. 10

New

(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— 15

“(a) A suitable person as Superintendent; and

“(b) Such other suitable persons as may be required as employees.

“(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— 20

“(a) A suitable person as Superintendent; and

“(b) Such other suitable persons as may be required as employees. 25

“(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 suitable person as an independent contractor to provide non-custodial services in respect of a penal institution (other than a police jail). 30

“(3A) For the purposes of subsection (3) of this section, the term ‘non-custodial services’ includes (without limitation)—

“(a) Chaplaincy, counselling, educational, dental, or other specialist services for the inmates in the institution; 35
or

“(b) Laundry, cleaning, catering, or other services in relation to the institution.

“(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.

“6A. **Medical officers—**

15 *Struck Out*

[(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.]

New

25 [(1) For every penal institution (other than a police jail) there shall be 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.

“**(1A)** Every medical officer shall be appointed or engaged—

30 “**(a)** Under **subsection (1)** or, as the case requires, **subsection (2)** of **section 6** of this Act; or

“**(b)** Under **subsection (3)** of that section.

35 “**(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.”

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

(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 or appointment that are the same as the terms and conditions of employment or appointment 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.

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

(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. 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:

“(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)~~ specified officer or officers of any specified class, or by any officer or officers for the time being holding any specified office or specified class of offices.”

New

5A. Protection of members of Armed Forces—The principal Act is hereby amended by inserting, after section 8, the following section:

New

5 “8A. Where, in accordance with the written authority of the
Minister of Defence (or any other Minister of the Crown for the
time being lawfully exercising the powers of the Minister of
Defence) given under section 9 (2) of the Defence Act 1990, any
part of the Armed Forces (within the meaning of section 2 of
that Act) is performing any public service in or in connection
with any institution, every member of any such part of the
Armed Forces shall, while performing any such service, have all
10 the powers, duties, functions, protections, and privileges of an
officer.”

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

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

New

6A. New sections inserted—The principal Act is hereby
amended by inserting, after section 10, the following sections:

20 “10A. **Secretary may issue operational standards**—
(1) The Secretary may from time to time issue instruments (in
this Act referred to as operational standards), not inconsistent
with this Act or any regulations made under this Act,
concerning—

25 “(a) Policies and objectives for the management of
institutions and the care of inmates:

“(b) Practices and procedures through which those policies or
objectives are to be implemented or achieved:

30 “(c) Appropriate standards to be met in the implementation
of those practices and procedures, and the
procedures for evaluating whether or not those
standards are attained in each institution.

35 “(2) Subject to **subsection (5)** of this section, any operational
standards issued under this section may be made to apply
generally in respect of all institutions or in respect of any
specified institution or of institutions of any specified class or
classes; and may be made to apply generally in respect of all
inmates or of inmates of any specified class or classes.

New

“(3) Every Superintendent and every officer shall observe every operational standard issued by the Secretary under this section, so far as that standard is applicable to that Superintendent or officer, until that standard is revoked by the Secretary. 5

“(4) All operational standards issued under this section shall be deemed to be regulations for the purposes of the Regulations (Disallowance) Act 1989, but shall not be regulations for the purposes of the Acts and Regulations Publication Act 1989. 10

“(5) Nothing in this section applies in respect of any police jail.

“10B. Notification and availability of operational standards—(1) Where any operational standards are issued under section 10A of this Act,— 15

“(a) The Secretary shall, as soon as practicable after the standards are issued, arrange for the publication in the *Gazette* of a notice—

“(i) Indicating that the standards have been issued; and 20

“(ii) Showing a place at which copies of the standards are available for inspection free of charge and for purchase; and

“(b) The Secretary shall make copies of the standards available— 25

“(i) For inspection by members of the public free of charge; and

“(ii) For purchase by members of the public at a reasonable price. 30

“(2) On the revocation of any operational standards issued under section 10A of this Act, subsection (1) (b) of this section shall cease to apply in relation to those standards.

“(3) Every operational standard shall come into force on such day as may be specified in the standard.” 35

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

Struck Out

“17A. Security classification and inmate programmes—

5 (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.

10 “(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.

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

New

15 **“17A. Security classifications and inmate programmes—**(1) Without limiting section 10A of this Act, the Secretary shall from time to time issue operational standards under that section—

20 “(a) Providing for one or more security classification systems for inmates; and

“(b) For determining the appropriate security classification to be assigned to individual inmates; and

“(c) Providing for the review of the security classification assigned to individual inmates.

25 “(2) Without limiting section 10A of this Act, the Secretary shall from time to time issue operational standards under that section providing for the identification of the needs of individual inmates in relation to programmes, and for the addressing of those needs.

30 **“17AA. Further provisions relating to security classifications—**(1) Where, in accordance with any operational standards issued pursuant to section 17A (1) of this Act, a security classification is assigned to an inmate, or the security classification assigned to an inmate is changed, the Superintendent shall as soon as practicable cause the inmate to be informed in writing of—

35 “(a) That classification or, as the case may be, that new classification; and

New

“(b) The reasons for the assignment of that classification or, as the case may be, that new classification.

“(2) Subject to **subsection (3)** of this section, any inmate in an institution (other than a police jail) who is dissatisfied with the security classification for the time being assigned to that inmate may apply to the Superintendent of the institution for a review of that classification, and the Superintendent shall as soon as practicable cause that security classification to be reviewed in accordance with any operational standards issued for the purpose pursuant to **section 17A (1)** of this Act.

“(3) An inmate may not make an application pursuant to **subsection (2)** of this section if that security classification was reviewed, pursuant to such an application, within the previous 6 months.

“**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—

“(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:

“(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.

New

“(3) Nothing in this section limits or affects any provision of the Crimes Act 1961, or any rule of law, which renders any circumstances—

“(a) A justification or excuse for the use of force; or

“(b) A defence to a charge involving the use of force.

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

New

5 **7A. Restraint of inmates**—(1) Section 19 (1) of the principal Act is hereby amended by inserting, after the word “Justice”, the words “and, in the case of an inmate in a contract penal institution, to the designated monitor for that institution”.

10 (2) Section 19 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsections:

 “(3) Nothing in subsection (1) or subsection (2) of this section shall apply to any inmate who is being escorted to or from an institution.

15 “(4) Notwithstanding anything in subsection (1) or subsection (2) of this section, nothing in this Act authorises the use of any of the following for the purposes of restraining any inmate:

 “(a) Any restraint that is fitted around an inmate’s waist or ankle:

20 “(b) Any substance designed to disable temporarily.”

7B. New sections inserted—The principal Act is hereby amended by inserting, after section 19, the following sections:

“19A. Use of teargas prohibited—Nothing in this Act authorises—

25 “(a) Any officer; or

 “(b) Any independent contractor engaged pursuant to section 6 (3) of this Act—
to use teargas in dealing with any inmate.

30 **“19B. Carriage and use of firearms prohibited**—Nothing in this Act authorises—

 “(a) Any officer; or

 “(b) Any independent contractor engaged pursuant to section 6 (3) of this Act—
to possess, carry, or use any firearm.”

35 **7c. Work and earnings**—Section 20 of the principal Act is hereby amended by adding the following subsections:

 “(5) Inmates of an institution may be employed under this section only in work of such types and under such conditions as

New

are from time to time approved by the Secretary on the application of the Superintendent of the institution.

“(6) The Superintendent of an institution in which any industry provides work under this section to inmates of the institution shall ensure that in the operation of that industry there are adopted only such accounting methods as are from time to time approved by the Secretary on the application of the Superintendent.”

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

“**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:

“(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 (other than any underclothing) of the person being searched:

“(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,—

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—

Struck Out

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

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New

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“(a) To remove any outer clothing (including (without limitation) any coat, jacket, jumper, or cardigan) being worn by the person being searched, except where that person has no other clothing, or only underclothing, under that outer clothing; and

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

15

“(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 designed to illuminate or magnify) of the mouth, nose, and ears, but does not authorise the insertion of any instrument, device, or thing into any such orifice.

20

“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, raise, lower, or open all or any of that latter person’s clothing.

25

“(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:

30

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

35

“(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) device designed to illuminate or magnify) of the mouth, nose, and ears, but does not authorise the insertion of any instrument, device, or thing into any such orifice.

Struck Out

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“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.

New

10

“21F. **Restrictions on internal examinations**—Except as provided by sections 21D (3) and 21E (3) of this Act, nothing in this Act authorises or permits the internal examination of any body orifice of any person by any officer or any security officer.

“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.

15

“(2) A person who carries out a scanner search or 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.

20

Struck Out

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“(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.

New

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“(3) No officer shall conduct a strip search unless one of the following persons is also present:

New

“(a) Another officer:
 “(b) A security officer:
 “(c) A constable.
 5 “(4) A strip search of an inmate shall not be carried out in
 view of another inmate.

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

New

10 “21GA. **Authority to search property**—(1) Authority conferred by this Act to conduct a scanner search of any person includes the authority to search any article carried by, or in the possession of, the person.

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

“(a) Any article carried by, or in the possession of, the person:

“(b) Any outer clothing removed for the purposes of the search:

20 “(c) Any head covering, gloves, or footwear (including socks or stockings) removed for the purposes of the search.

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

25 “(a) Any item of clothing removed for the purposes of the search:

“(b) Any article carried by, or in the possession of, the inmate or prisoner.

30 “21GB. **Use of dogs for searching**—(1) In exercising any power of search conferred by this Act, any officer or security officer may have with him or her, and use for the purposes of searching, any dog.

35 “(2) While any officer or security officer is using a dog for the purposes of searching any person, that officer or security officer shall not allow that dog to come into physical contact with the person being searched.

“(3) Any officer or security officer who uses a dog for the purposes of searching any person shall conduct the search with

New

decency and sensitivity and in a manner that affords to the person being searched the greatest degree of dignity consistent with the purpose of the search.

“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:

“(b) A rub-down search of any inmate in that institution:

“(c) A search of any cell in that institution.

5

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Struck Out

“(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 detecting any unauthorised item, but only if a strip search is necessary in the circumstances for the purposes of detecting such an item.

15

New

“(2) Subject to **section 21G** of this Act, an officer may, in any of the situations referred to in **subsection (3)** of this section, conduct a strip search of an inmate, but only—

20

“(a) For the purposes of detecting any unauthorised item; and

“(b) If a strip search, rather than a scanner search or a rub-down search, is necessary in the circumstances for the purposes of detecting any such item.

25

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

“(a) Where the officer has reasonable grounds for believing that the inmate has in his or her possession an unauthorised item:

30

“(b) Immediately before the inmate is locked in a cell under report or punishment, or for observation:

“(c) On the *(admission or)* return of the inmate to the institution:

35

“(d) On the return of the inmate from work or from a part of the institution that is not supervised:

Struck Out

5 “(e) Immediately before the inmate is to be transferred to another institution, and at any time while the inmate is being so transferred:

New

“(e) At any time while the inmate is being transferred to another institution:

10 “(f) While the inmate is (*on temporary leave from*) outside the institution in the custody of an officer:

“(g) Immediately before any person visits the inmate:

“(h) Immediately after any person has visited the inmate.

New

15 “(4) Subject to **section 21G** of this Act, every inmate shall—

“(a) On first being admitted to an institution in respect of a particular offence or matter; and

“(b) Immediately before being transferred to another institution; and

20 “(c) On being received in an institution on transfer from another institution—

be required to undergo a strip search conducted by an officer.

25 “(5) Every officer who conducts a strip search of any inmate in the situation referred to in **subsection (3) (a)** of this section shall, as soon as practicable after the search, report the details of the search to the Superintendent, which report shall contain the reasons for the search, and the details of any item discovered as a result of the search.

30 “21I. **Search of persons other than inmates**—(1) Subject to section 21G of this Act, 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) Subject to section 21G of this Act, 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, and, if that person refuses to submit to such a search, reasonable force may be used for the purposes of carrying out the search.

“(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. 5

“(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. 10

“(5) Subject to **section 21G** of this Act, 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 or any other officer authorised for the purpose by that Superintendent, be required to undergo such a search, and reasonable force may be used for the purposes of carrying out that search. 15

New

“(5A) The Superintendent of an institution may confer the authority to grant an approval under **subsection (5)** of this section on any specified officer or on officers of any specified class, or on any officer or officers for the time being holding any specified office or specified class of offices. 20

“(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). 25

“(7) Nothing in this section applies to any inmate. 30

Struck Out

“**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— 35

“(a) Any article carried by that person:

Struck Out

- 5 “(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.
- “ (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:
- 10 “ (b) Any article carried by that person.”

New

- 15 “21J. **Search of vehicles**—(1) Any vehicle brought into an institution may, while that vehicle is in the institution, be searched by any officer at any time for the purposes of detecting any unauthorised item or any inmate attempting to escape.
- “ (2) For the purposes of any search of a vehicle pursuant to **subsection (1)** of this section, any officer who is in uniform or is wearing any badge or other article that identifies him or her as an officer may, by direction given to the driver or person in charge of the vehicle,—
- 20 “ (a) Direct, if necessary, that the vehicle be stopped:
- “ (b) Direct that the vehicle be kept stopped until the search is completed:
- 25 “ (c) Require that the officer be given access to any part of the vehicle,—
- and reasonable force may be used for the purposes of carrying out that search.
- “ (3) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who, without reasonable excuse, fails to comply with any direction or requirement given or made by an officer under **subsection (2)** of this section.”
- 30
- 8A. Removal of inmate for judicial purposes**—
- 35 (1) Section 26 of the principal Act (as substituted by section 15 (1) of the Penal Institutions Amendment Act 1985) is hereby amended by repealing subsection (5).

New

(2) Section 15 of the Penal Institutions Amendment Act 1985 is hereby consequentially repealed.

8b. Powers of Visiting Justices in relation to offences by inmates—(1) Section 33 of the principal Act is hereby amended by repealing subsection (6) (as added by section 15 (3) of the Penal Institutions Amendment Act 1975), and substituting the following subsection:

“(6) For the purposes of subsection (3) (a) of this section, terms of imprisonment under cumulative sentences shall be treated as one term in accordance with section 92 of the Criminal Justice Act 1985.”

(2) Section 15 of the Penal Institutions Amendment Act 1975 is hereby consequentially repealed.

8c. Powers of Superintendent in relation to certain offences by inmates—(1) Section 34 of the principal Act is hereby amended by repealing subsection (6) (as added by section 16 (3) of the Penal Institutions Amendment Act 1975), and substituting the following subsection:

“(6) For the purposes of subsection (3) (a) of this section, terms of imprisonment under cumulative sentences shall be treated as one term in accordance with section 92 of the Criminal Justice Act 1985.”

(2) Section 16 of the Penal Institutions Amendment Act 1975 is hereby consequentially repealed.

8d. New heading and sections inserted—The principal Act is hereby amended by inserting, after section 36F (as substituted by section 2 of the Penal Institutions Amendment Act 1993), the following heading and sections:

“Escort Services and Courtroom Custodial Services 30

“36G. Provision of escort services or courtroom custodial services 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 provision, by that other person, of escort services, or courtroom custodial services, or both. 35

“(2) Nothing in this section limits or affects the power of the Secretary—

New

- 5 “(a) To enter into arrangements with other Government agencies for the provision, by those agencies, of escort services, or courtroom custodial services, or both; or
- “ (b) To employ persons to undertake escort duties, or courtroom custodial duties, or both.
- 10 **“36H. Requirements of security contracts—**(1) Every security contract shall specify the particular escort duties or courtroom custodial duties that are to be carried out by security officers pursuant to the contract.
- “ (2) Every security contract shall provide for—
- 15 “ (a) Objectives and performance standards for the security contractor in relation to—
- “ (i) The carrying out of the obligations of the security contractor under the contract; and
- “ (ii) The treatment of the persons in respect of whom escort duties or courtroom custodial duties are carried out under the contract; and
- 20 “ (b) The employment by the security contractor of sufficient suitable persons to carry out the security contractor’s statutory and contractual obligations in respect of the security contract; and
- 25 “ (c) The training to be provided, at the expense of the security contractor, to security officers employed by the security contractor, which training shall be—
- “ (i) To the standard appropriate for the particular position; and
- “ (ii) To a standard no lower than the standard of training received by any security officers employed by the Secretary; and
- 30 “ (d) The co-ordination of services and processes of the security contractor with those of the Department of Justice, the Police, other Government agencies, and other security contractors; and
- 35 “ (e) The arranging and maintenance, by the security contractor, of adequate insurance against the security contractor’s liability for claims arising out of or in connection with the security contract; and
- 40 “ (f) The avoidance of conflicts of interest that might arise in relation to the exercise or performance, by the

New

security contractor or any security officer employed by the security contractor, of any power, duty, or function conferred or imposed by or under the security contract or by or under this Act or any regulations made under this Act. 5

“(3) Every security contract shall impose on the security contractor, in relation to the provision of services under the contract, a duty to comply with—

“(a) The requirements of this Act and of any regulations made under this Act, in so far as those requirements are applicable to the services to be provided by the security contractor under the contract; and 10

“(b) The requirements of the New Zealand Bill of Rights Act 1990, as if the security contractor and any security officers employed by the security contractor were employees of the Secretary; and 15

“(c) The requirements of the United Nations Standard Minimum Rules for the Treatment of Prisoners, as if the security contractor and any security officers employed by the security contractor were employees of the Secretary. 20

“(4) A security 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 security contractor. 25

“36I. **Appointment of security officers**—(1) The Secretary may from time to time appoint under the State Sector Act 1988 such suitable persons as may be required as security officers.

“(2) Every security contractor shall, subject to the terms of the security contract, appoint such suitable persons as may be required as employees to carry out the obligations of the security contractor under the contract to undertake escort duties or courtroom custodial duties, or both. 30

“(3) 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) of this section. 35

New

“36J. **Duties of security officers**—Every security officer shall have the following duties in respect of every prisoner who is in that security officer’s custody:

- 5 “(a) To prevent that prisoner’s escape from lawful custody:
- “(b) To prevent, or detect and report on, the commission or attempted commission by that prisoner of unlawful acts:
- 10 “(c) To ensure good order and discipline on that prisoner’s part:
- “(d) To attend to that prisoner’s wellbeing:
- “(e) To attend to the security of any property of that prisoner that is in that prisoner’s possession.

15 “36K. **Protection of security officers**—Every security officer, while carrying out escort duties or courtroom custodial duties, shall have all the protection and privileges of a constable.

20 “36L. **Responsibilities under warrant may be entrusted to security officers**—Where any warrant imposes an obligation to deliver any person to any place or to any person, that obligation shall be deemed to have been discharged if that first-mentioned person is received into the custody of a security officer for the purposes of delivering that person in accordance with the terms of the warrant.

25 “36M. **Authority of security officers to detain prisoners**—The fact that a person is entrusted to the custody of a security officer for the purposes of the carrying out, by that security officer, of escort duties or courtroom custodial duties or both in relation to that person shall be sufficient authority
30 for that security officer to detain that person in custody for those purposes.

35 “36N. **When person entrusted to security officer becomes inmate**—Where any person is received into the custody of a security officer for the purposes of the delivery of that person to an institution, then, for the purposes of determining, in accordance with subsection (2) of section 16 of this Act, when that person comes into the legal custody of the Superintendent of that institution, that security officer shall be deemed to be an officer of that institution.

New

“36o. **Lawful orders**—Where any prisoner is in the custody of a security officer, that security officer shall, for the purposes of the carrying out, by that security officer, of courtroom custodial duties or escort duties or both in relation to that prisoner, have the powers of an officer to give any lawful order to that prisoner. 5

“36p. **Security officers deemed to be officers for purposes of offences against discipline by inmates**—Every security officer shall be deemed to be an officer for the purposes of section 32 of this Act (which relates to offences against discipline by inmates). 10

“36q. **Use of force**—(1) Except as expressly provided by this Act or any other enactment, no security officer shall use physical force in dealing with any prisoner unless that security officer has reasonable grounds for believing that the use of physical force is reasonably necessary— 15

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

“(b) To prevent the prisoner from damaging any property: 20

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

“(d) In the case of any person who is fleeing after having escaped from the custody of a security officer, to recapture that person:

“(e) In the case of active or passive resistance on the part of a prisoner to a lawful order. 25

“(2) Any security 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 as soon as practicable report the incident to,— 30

“(a) In the case of a security officer employed by the Secretary, the Secretary:

“(b) In any other case, to the security contractor by whom that security officer is employed. 35

“(3) Nothing in this section limits or affects any provision of the Crimes Act 1961, or any rule of law, which renders any circumstances—

“(a) A justification or excuse for the use of force; or

“(b) A defence to a charge involving the use of force. 40

New

“36R. **Provoking prisoners**—No security officer shall deliberately act or speak in a manner likely to provoke a prisoner.

5 “36S. **Use of restraints, teargas, and firearms**—
(1) Nothing in this Act authorises the use of any of the following for the purpose of restraining any prisoner:

“(a) Any restraint that is fitted around a prisoner’s waist or ankle:

10 “(b) Any substance designed to disable temporarily.

“(2) Nothing in this Act authorises any security officer to use teargas in dealing with any prisoner.

“(3) Nothing in this Act authorises any security officer to possess, carry, or use any firearm.

15 “36T. **Search of prisoners**—(1) Subject to sections 21G and 36v of this Act, a security officer may, at any time, for the purposes of detecting any unauthorised item, conduct—

“(a) A scanner search of any prisoner:

“(b) A rub-down search of any prisoner.

20 “(2) Subject to sections 21G and 36v of this Act, a security officer may, in any of the situations referred to in subsection (3) of this section, conduct a strip search of any prisoner, but only—

25 “(a) For the purposes of detecting any unauthorised item; and

“(b) If a strip search, rather than a scanner search or a rub-down search, is necessary in the circumstances for the purposes of detecting any such item.

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

“(a) Where the security officer has reasonable grounds for believing that the prisoner has in his or her possession any unauthorised item:

35 “(b) Immediately before the prisoner is locked in a cell:

“(c) Immediately before the prisoner appears before any court or other body:

“(d) Immediately before any person visits the prisoner:

“(e) Immediately after any person visits the prisoner:

40 “(f) Immediately before, or immediately after, the prisoner is placed in or on any vehicle or other means of conveyance:

New

“(g) Immediately before, or immediately after, the prisoner is removed from any vehicle or other means of conveyance:

“(h) Immediately before custody of the prisoner is transferred to any other person. 5

“(4) Every security officer who conducts a strip search in the situation referred to in **subsection (3) (a)** of this section shall, as soon as practicable after the search, report the details of the search to,— 10

“(a) In the case of a security officer employed by the Secretary, the Secretary:

“(b) In any other case, to the security contractor by whom that security officer is employed,—

which report shall contain the reasons for the search, and the details of any thing discovered as a result of the search. 15

“**36u. Search of persons other than prisoners**—(1) Any person who wishes to visit a prisoner may, before being allowed access to that prisoner, be required to undergo a scanner search conducted by a security officer. 20

“(2) Any person who is visiting a prisoner may, at any time while that person is so visiting, be required to undergo a scanner search conducted by a security officer, and, if that person refuses to submit to such a search, reasonable force may be used for the purposes of carrying out the search. 25

“(3) Subject to **sections 21g** and **36v** of this Act, where any security officer has reasonable grounds to suspect that any person who wishes to visit a prisoner, or who is visiting a prisoner, has in his or her possession any unauthorised item, the security officer may, with that person’s consent, conduct a rub-down search of that person. 30

“(4) Any person who refuses to submit to a scanner search or a rub-down search before being allowed access to a prisoner shall be refused access to that prisoner.

“(5) Any person who is visiting any prisoner and who refuses to consent to a rub-down search in accordance with **subsection (3)** of this section may, with the prior oral or written approval of a security monitor or a commissioned officer of the Police, be required to undergo such a search, and reasonable force may be used for the purposes of carrying out that search. 40

New

5 “(6) Where any unauthorised item is discovered as a result of any search conducted pursuant to this section, the security officer who conducted the search shall cause a record of the details of the search to be made and kept, and shall forthwith send a report on the matter to—

“(a) In the case of a security officer employed by the Secretary, the Secretary:

10 “(b) In any other case, the security contractor by whom that security officer is employed.

“36v. **Restrictions on searches by security officers—**

(1) No security officer shall conduct a strip search unless—

“(a) Another security officer; or

15 “(b) An officer; or

“(c) A constable—
is present.

“(2) A strip search of a prisoner shall not be carried out by a security officer in the view of another prisoner.

20 “(3) No security officer shall conduct a rub-down search of any person (other than a prisoner) unless—

“(a) Another security officer; or

“(b) An officer; or

“(c) A constable—
is present.

25 “(4) Nothing in this section limits **subsection (1)** or **subsection (2)** of **section 21G** of this Act, so far as those provisions apply in respect of any search carried out by any security officer.

“36w. **Security officers to be readily identifiable—**For the purposes of this Act and any other enactment,—

30 “(a) A security officer shall not be entitled to exercise or perform any power, function, or duty conferred or imposed, by or under this Act, on a security officer; and

35 “(b) A security officer shall not be regarded as acting in the execution of his or her duty; and

“(c) **Section 36k** of this Act shall not apply to a security officer—

40 at any time when he or she is not readily identifiable as a security officer (whether by means of any uniform or badge which he or she is wearing or otherwise).

New

“**36x. Complaints by prisoners**—(1) Any person may make a complaint to a security monitor relating to any matter arising out of or in connection with that person’s detention in the custody of a security officer. 5

“(2) Any security monitor may investigate any complaint made under **subsection (1)** of this section, and for that purpose shall have the following powers:

“(a) To enter any institution and to interview any inmate, and every Superintendent shall afford any security monitor reasonable access to inmates for that purpose: 10

“(b) To take evidence on oath or otherwise:

“(c) To report in writing to the Secretary on the result of the investigation. 15

“(3) Nothing in **subsection (2)** of this section limits **section 36zd** of this Act.

“(4) Notwithstanding any provision in any enactment, where any letter appearing to be written by any person in custody on a charge or after conviction of any offence is addressed to a security monitor, it shall be immediately forwarded, unopened, to the security monitor by the person for the time being in charge of the place or institution where the writer of the letter is detained. 20

“**36y. Liability of security contractors**—(1) The Crown shall be entitled to be indemnified by a security contractor— 25

“(a) Against any claim arising out of any act or omission of the security contractor or the security contractor’s employees or agents and for which the Crown is held liable (in whole or in part); and 30

“(b) For any act or omission of the security contractor or the security contractor’s employees or agents 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 security contractor for any act or omission of a security contractor or a security contractor’s employees or agents, neither the security contractor nor the security contractor’s employees or agents shall be agents of the Crown. 35

“**36z. Application of certain Acts to security contractors**—No person shall be deemed to be employed in 40

New

5 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 security contract with the Secretary.

“36ZA. **Sub-contractors**—(1) A security contractor may sub-contract any of the security contractor’s responsibilities under a security 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.

10 “(2) Where, with the approval of the Secretary, any responsibility of a security contractor 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 responsibility, shall apply to that sub-contractor as if that sub-contractor were the security contractor.

15 “36ZB. **Reporting responsibilities**—(1) Where there is any variation of the controlling interests in a security contractor, that security contractor shall, as soon as practicable, give notice of that variation to the Secretary and to the designated security monitor.

20 “(2) A security contractor shall, at such intervals (not exceeding 3 months) as are from time to time determined by the Secretary, arrange for written reports on the following matters to be forwarded to the Secretary and to the designated security monitor:

25 “(a) The training provided to security officers employed by the security contractor (including the amount and quality of that training), and the level of training achieved by such security officers:

30 “(b) The number and nature of complaints made by persons in relation to the carrying out, by security officers employed by that security contractor, of escort duties or courtroom custodial duties in respect of those persons:

35 “(c) The number and nature of any incidents involving—
 “(i) Violence against prisoners while in the custody of security officers employed by that security contractor:

40

New

- “(ii) Violence against security officers employed by that security contractor, while carrying out escort duties or courtroom custodial duties:
- “(iii) Self-inflicted injuries to prisoners while in the custody of security officers employed by that security contractor: 5
- “(d) The compliance, by security officers employed by that security contractor, with the requirements of **sections 36a** and **36r** of this Act: 10
- “(e) The exercise, by security officers employed by that security contractor, of the powers conferred by **sections 36t** and **36u** of this Act:
- “(f) The number and nature of any disciplinary actions taken against security officers employed by that security contractor, and the reasons for, and the outcomes of, such actions, including any penalties imposed: 15
- “(g) 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. 20
- “(3) A security contractor shall, as soon as practicable after the occurrence of any of the following, namely,—
- “(a) Any escape or attempted escape by any prisoner while that prisoner was in the custody of any security officer employed by that security contractor: 25
- “(b) The death of any prisoner while in the custody of any security officer employed by that security contractor,— 30
- arrange for a written report on that occurrence to be prepared and forwarded to the Secretary and to the designated security monitor.
- “(4) Nothing in **subsection (1)** or **subsection (2)** or **subsection (3)** of this section limits any other duty to report that is imposed by or under any security contract or by or under any other provision of this Act or any other enactment. 35
- “**36zc. Security monitors**—(1) The Secretary shall from time to time appoint under the State Sector Act 1988 such number of persons to be security monitors as are required for the purposes of this Act. 40

New

- 5 “(2) Every security monitor—
- “ (a) Shall be responsible to the Secretary for the assessment and review of the carrying out, by such security contractors as the Secretary from time to time determines, of those security contractors’ obligations under the relevant security contracts; and
- 10 “ (b) Shall report to the Secretary, at such intervals (not exceeding 3 months) as the Secretary from time to time determines, and at any other time that the monitor considers appropriate, on—
- 15 “ (i) The carrying out, by such security contractors as the Secretary from time to time determines, of those security contractors’ obligations under the relevant security contracts; and
- “ (ii) Whether or not those security contractors are complying with their security contracts and with the provisions of this Act and of any regulations made under this Act; and
- 20 “ (c) May, at any time the security monitor considers appropriate, make recommendations to the Secretary on any matter relating to security contracts as the monitor thinks fit.
- 25 “(3) The Secretary shall from time to time designate security monitors—
- “ (a) To whom notices and reports under **section 36zb** of this Act are to be given or forwarded:
- “ (b) Who are to perform the duties imposed on security monitors by **section 36ze** of this Act:
- 30 “ (c) Who are to investigate complaints made under **section 36x** of this Act,—
- and different security monitors may be so designated in respect of different security contractors.
- 35 “(4) The Secretary shall regularly alter the designations under **subsection (3)** of this section.
- 40 “(5) The office of security monitor may be combined with any other office, appointment, or position if the Secretary is satisfied that the duties of that other office, appointment, or position are not incompatible with the duties of a security monitor.

New

“36ZD. **Access to be given**—Every security contractor shall ensure that any security monitor has free and unfettered access at all times to—

- “(a) All prisoners who are in the custody of security officers employed by that contractor; and 5
- “(b) All security officers employed by that security contractor, but only when they are actually on duty; and
- “(c) All records held by the security contractor and that relate to— 10
 - “(i) Any person who is or has been in the custody of any security officer employed by that security contractor; or
 - “(ii) Any person who is or has been employed by that security contractor as a security officer,— 15
 - but not including any medical records relating to any such person, unless the person concerned consents to such access.

“36ZE. **Security monitors to report on certain matters**— 20
 (1) Without limiting subsection (2) of section 36zc of this Act, for the purposes of each report to the Secretary pursuant to paragraph (b) of that subsection the designated security monitor for a security contractor shall review the following matters:

- “(a) The procedures in place to assess— 25
 - “(i) The suitability of persons for employment pursuant to section 36i of this Act by the security contractor; and
 - “(ii) The ongoing suitability of persons so employed: 30
- “(b) The matters in respect of which the security monitor is entitled to receive a report under subsection (2) or subsection (3) of section 36zb of this Act.

“(2) Without limiting section 36zc (2) of this Act, the designated security monitor for a security contractor may, at the request of the Secretary or on the security monitor’s own initiative, investigate any matter relating to the carrying out, by that security contractor, of that security contractor’s obligations under the relevant security contract, and report to the Secretary the results of that examination. 40

New

5 “36ZF. **Annual report of Secretary**—(1) 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 operation of every security contract that was in force for the whole or any part of the year to which the annual report relates.

“(2) Without limiting subsection (1) of this section, every such report included in the Secretary’s annual report shall include—

10 “(a) A summary of—

“(i) The reports forwarded to the Secretary pursuant to subsection (2) or subsection (3) of section 36zB of this Act; and

15 “(ii) The reports made to the Secretary pursuant to section 36zc (2) (b) of this Act,— during the year to which the annual report relates; and

20 “(b) A summary of any actions taken, during that year, in relation to the operation of security contracts as a result of any matters raised in any report so forwarded or made, whether during that year or any previous year.

25 “36zG. **Security contracts to be laid before House of Representatives**—(1) Within 12 sitting days after a security contract is entered into pursuant to section 36G of this Act, the Minister shall lay a copy of that contract before the House of Representatives.

30 “(2) Within 12 sitting days after a security contract is varied or renewed, the Minister shall lay a copy of the terms of that variation or renewal before the House of Representatives.”

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”.

Struck Out

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
 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: 20

“(b) In any other case, out of the Crown Bank Account from
 money appropriated by Parliament for the
 purpose.” 20

New

11. Compensation for property damage by escapers— 25
 (1) Section 41A of the principal Act (as inserted by section 18 (1)
 of the Penal Institutions Amendment Act 1975) is hereby
 amended by omitting from subsection (4) the expression
 “\$5,000”, and substituting the expression “\$30,000”.

(2) Section 41A of the principal Act (as so inserted) is hereby
 amended by repealing subsections (9) to (11), and substituting
 the following subsections: 30

“(9) Where any compensation is awarded under this section,
 any right of action the applicant may have against the escaper
 shall be subrogated— 35

“(a) Subject to **paragraph (b)** of this subsection, where, at the
 time the escaper escaped, the escaper was in the
 legal custody of the Superintendent of a contract

New

- penal institution, to the contractor responsible for managing that institution:
- 5 “(b) Notwithstanding anything in paragraph (a) of this subsection, where, at the time the escaper escaped, the escaper was in the custody of a security officer, to the security contractor by whom that security officer was employed at the time:
- “ (c) In any other case, to the Crown.
- 10 “(10) The amount of any compensation awarded by any Court under this section shall be paid—
- “ (a) Subject to paragraph (b) of this subsection, where, at the time the escaper escaped, the escaper was in the legal custody of the Superintendent of a contract
- 15 penal institution, by the contractor responsible for managing that institution:
- “ (b) Notwithstanding anything in paragraph (a) of this subsection, where, at the time the escaper escaped, the escaper was in the custody of a security officer, by the security contractor by whom that security
- 20 officer was employed at the time:
- “ (c) In any other case, out of the Crown Bank Account from money appropriated by Parliament for the purpose.
- 25 “(11) For the purposes of this section, the term ‘escaper’ means—
- “ (a) Any inmate of a penal institution who escapes or attempts to escape from legal custody:
- “ (b) Any prisoner who escapes or attempts to escape from custody.”

- 30 **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:

Struck Out

- 35 “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

Struck Out

Information Act 1982, every contract penal institution shall be deemed to be part of the Department of Justice.

New

“41c. Application of Ombudsmen Act 1975 and Official Information Act 1982 to contract penal institutions, security contractors, and security officers—(1) 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. 5
10

“(2) In relation to the carrying out of escort duties and courtroom custodial duties under this Act, every security contractor, and every security officer employed by a security contractor, shall be deemed, for the purposes of the Ombudsmen Act 1975 and the Official Information Act 1982, to be an employee of the Department of Justice. 15

“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. 20
25

Struck Out

“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. 30

New

5 “41E. **Application of New Zealand Bill of Rights Act 1990 to contract penal institutions, security contractors, and security officers**—(1) 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.

10 “(2) In relation to the carrying out of escort duties and courtroom custodial duties under this Act, acts done by security contractors, or security officers employed by security contractors, shall be deemed, for the purposes of section 3 of the New Zealand Bill of Rights Act 1990, to be acts done by the executive branch of the government of New Zealand.

15 “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
20 proposed penal institution is, or is to be, constructed, managed, operated, or maintained by the Crown.

New

25 “41G. **Release of inmate information to contract penal institutions**—For the purposes of enabling any officer of a contract penal institution to exercise or perform any of his or her powers, duties, or functions, any such officer may have access to any information that is held (or deemed for the purposes of the Official Information Act 1982 to be held) by the Department of Justice and that relates to any inmate.”

30 **12A. Offences**—(1) Section 44 of the principal Act is hereby amended—

(a) By omitting from subsection (1) the expression “\$500” (as substituted by section 12 (a) of the Penal Institutions Amendment Act 1980), and substituting the
35 expression “\$2,000”:

(b) By omitting from subsection (2) the expression “\$1,000” (as substituted by section 12 (b) of the Penal

New

Institutions Amendment Act 1980), and substituting the expression "\$5,000":

(c) By omitting from subsection (2A) (as inserted by section 2 of the Penal Institutions Amendment Act 1965) the expression "\$500" (as substituted by section 12 (c) of the Penal Institutions Amendment Act 1980), and substituting the expression "\$2,000".

(2) Section 44 (2) of the principal Act is hereby amended by inserting, after the word "institution", the words ", or any security officer,".

(3) Section 44 of the principal Act is hereby amended by inserting, after subsection (2A) (as inserted by section 2 of the Penal Institutions Amendment Act 1965), the following subsection:

"(2B) Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$2,000 who—

"(a) Holds or attempts to hold any communication with any prisoner in the custody of any security officer; or

"(b) Delivers or attempts to deliver or causes to be delivered to any such prisoner any article or thing whatsoever—

without the permission of that security officer or a constable or an officer."

(4) Section 44 (3) of the principal Act is hereby amended by inserting, after the word "institution," the words "or any security officer,".

(5) Section 12 of the Penal Institutions Amendment Act 1980 is hereby consequentially repealed.

12B. Regulations—(1) Section 45 (2) of the principal Act is hereby amended by inserting, after paragraph (ca) (as inserted by section 21 (1) of the Penal Institutions Amendment Act 1985), the following paragraph:

"(cb) Regulating the seizure of—

"(i) Property found in the possession of an inmate on his or her admission to an institution:

"(ii) Anything discovered as a result of any search conducted pursuant to this Act,—

and providing for the disposal or return of any such property or thing:".

New

(2) Section 45 (2) of the principal Act is hereby amended by adding the following paragraphs:

- 5 “(ha) Prescribing the powers and duties of security officers:
 “(hb) Ensuring the safe custody of prisoners, and regulating their treatment.”

12c. Amendments to Crimes Act 1961—

(1) Section 121 (2) of the Crimes Act 1961 is hereby amended by inserting, after paragraph (a), the following paragraph:

- 10 “(ab) Being a security officer (within the meaning of **section 2** of the Penal Institutions Act 1954) in whose custody any person is lawfully detained, voluntarily and intentionally permits that person to escape from such custody.”

- 15 (2) Section 122 (b) of the Crimes Act 1961 is hereby amended by inserting, after the word “institution,” the words “a security officer within the meaning of **section 2** of the Penal Institutions Act 1954,”.

13. Amendment to Summary Offences Act 1981—

- 20 (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:

- 25 “ ‘Prison officer’ means an officer within the meaning of **section 2** of the Penal Institutions Act 1954; and includes a security officer within the meaning of that section.”

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

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14. Amendments to Criminal Justice Act 1985—

- 35 (1) Section 2 (1) of the Criminal Justice Act 1985 (as substituted by section 2 of the Criminal Justice Amendment Act 1993) is hereby amended by inserting, after the definition of the term “periodic detention centre”, the following definition:

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- “ ‘Prison officer’ means an officer within the meaning of section 2 of the Penal Institutions Act 1954:”.
- (2) Section 18 (1) (c) of the Criminal Justice Act 1985 is hereby amended by inserting, after the word “Justice”, the words “, or a prison officer,”. 5
- (3) Section 123 (1) (d) of the Criminal Justice Act 1985 is hereby amended by inserting, after the word “Health”, the words “, or a prison officer,”.
- (4) Section 130 of the Criminal Justice Act 1985 is hereby amended— 10
- (a) By inserting in subsection (8), after the word “Justice”, the words “, or any prison officer,”:
- (b) By inserting in subsection (8), after the words “former officer” where they appear for the second time, the words “or prison officer”:
- (c) By inserting in subsection (9), after the words “former officer”, the words “or prison officer”:
- (d) By inserting in subsection (10), after the word “Justice”, the words “, or any prison officer,”. 20
- (5) Section 132 of the Criminal Justice Act 1985 is hereby amended—
- (a) By inserting in subsection (9), after the word “Justice”, the words “, or any prison officer,”:
- (b) By inserting in subsection (9), after the words “former officer” where they appear for the second time, the words “or prison officer”:
- (c) By inserting in subsection (10), after the word “Justice”, the words “, or any prison officer,”. 25
- (6) Section 136 of the Criminal Justice Act 1985 is hereby amended— 30
- (a) By inserting in subsection (2) (b), after the word “Department”, the words “, and any prison officer,”:
- (b) By inserting in subsection (3), after the word “Department”, the words “, or any prison officer,”: 35
- (c) By inserting in subsection (3), after the word “employee’s”, the words “or prison officer’s”:
- (d) By inserting in subsection (4), after the word “employee”, the words “or prison officer”.
- (7) Section 141 (b) (ii) of the Criminal Justice Act 1985 is hereby amended by inserting, after the word “Justice”, the words “or any prison officer,”. 40

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15. Amendment to Coroners Act 1988—Section 4 (1) of the Coroners Act 1988 is hereby amended by inserting, after paragraph (i), the following paragraph:

5 “(ia) The death of any person in the custody of a security officer (within the meaning of the Penal Institutions Act 1954):”.

16. Amendment to Crimes of Torture Act 1989—Section 2 (1) of the Crimes of Torture Act 1989 is hereby amended by inserting in the definition of the term “public official”, after subparagraph (iii) of paragraph (a), the following subparagraph:

10 “(iia) A security officer within the meaning of the Penal Institutions Act 1954; and”.