

Corrections Amendment Bill

Government Bill

Explanatory note

General policy statement

Overall, current legislation continues to provide a sound framework for the operation of the corrections system. However, certain provisions have been identified as barriers to managing prisoners in a manner that is safe, secure, humane, effective, and efficient. The purpose of this Bill is to remove these barriers.

The Bill amends the Corrections Act 2004 and makes a minor amendment to the Courts Security Act 1999.

Prison security

Making procedures relating to drug testing and strip searching more consistent and effective will help to reduce contraband in prisons. Some provisions relating to drug testing and strip searching are unclear, overly complex, or introduce unnecessary delays. Changes made by the Bill will reduce delays and improve effectiveness in eliminating contraband in prisons.

Enabling the Department of Corrections to respond quickly and flexibly to technological advances or policy changes will help to improve security and good order in prisons. Processes for the approval of authorised items of property that may be issued to or kept by prisoners are inhibited by legislative provisions and mean that the Department of Corrections cannot respond quickly and flexibly to changes.

Changes made by the Bill will reduce delays and improve effectiveness in maintaining prison security.

Prison health services

Appropriately recognising the organisation and operation of prison health services within legislation will help to improve the quality of prison health services. Legislative provisions currently place contracted medical officers at the forefront of the provision of health services to prisoners. However, in reality, prison health centre managers employed by the Department of Corrections have the central role in ensuring that the health care needs of prisoners are met and in overseeing the day-to-day delivery of quality health services to prisoners.

The Bill will place responsibility for ensuring the provision of health care and treatment to prisoners with prison health centre managers. This will contribute to more effective and efficient delivery of prison health services.

Contract management of prisons

To achieve the policy goals associated with contract management of prisons, the private provider contracted to manage a prison needs to be able to exercise a number of statutory powers and functions. Current legislation is unduly restrictive, in that powers and functions allocated to the chief executive may be delegated to Department of Corrections staff but not to a contractor.

The Bill will empower the chief executive to delegate powers and functions to prison contractors and their staff. Contractors will be directly empowered to approve temporary releases and removals from prison. The power to assign security classifications, currently allocated to the chief executive, will be allocated directly to prison managers, both in contract-managed prisons and prisons directly managed by the Department of Corrections.

Through these measures, the Bill will ensure that the legislative framework is just as effective for prisons managed under contract as it is for prisons operated by the Department of Corrections.

Prisoner self-employment

The Bill will improve the regulation of prisoner self-employment activities. Expressly providing for prisoners to be self-employed in prison in work and conditions approved by the chief executive will increase opportunities for prisoners to learn business skills that could lead to employment or continued self-employment on release from prison. Providing for deductions to be made from self-employed prisoners' earnings will enable them to contribute towards their board and other payments such as child support and reparation.

Regulatory impact statements

The Department of Corrections produced regulatory impact statements on 23 July 2010, 26 October 2010 (2), and 18 April 2011 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of these regulatory impact statements can be found at—

- <http://www.corrections.govt.nz/policy-and-legislation/regulatory-impact-statments/corrections-amendment-bill-2011>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Title clause, this clause, and *clauses 16 to 18* and *clauses 41 to 45* come into force on the day after the date on which the Bill receives the Royal assent. The rest of the Bill comes into force on the day that is 3 months after the date on which it receives the Royal assent.

Part 1

Amendments to Corrections Act 2004

Clause 3 states that the principal Act being amended in this Part is the Corrections Act 2004.

Clause 4 makes amendments to some definitions and inserts new definitions. A new definition of authorised property is substituted to replace a reference to regulations with a reference to rules. This is consequential on *clause 13* which inserts *new section 45A*. *New*

section 45A empowers and requires the chief executive of Corrections, or the Commissioner of Police in relation to Police jails, to make rules listing the items of property that may be issued or kept by prisoners. The definition of unauthorised item is amended to include the dilution or contamination of samples provided for alcohol and drug testing. This is consequential on the amendment to *section 129 (clause 36(2))*, which makes it an offence to use substances to dilute or contaminate samples for alcohol or drug testing. Two new definitions are inserted. The definitions of health centre manager and nurse relate to a new requirement to appoint health centre managers for prisons.

Clause 5 amends *section 10* to specify further powers that the chief executive cannot delegate. Those powers are—

- the power to grant approvals under *new section 66A(2)*, which requires the chief executive to approve the work of self-employed prisoners and conditions of work; and
- the power to approve employees under *section 48* or the regulations.

Clause 6 repeals *section 19(4)(f)*. This relates to replacing the power of Visiting Justices to extend the use of mechanical restraints for longer than 24 hours with a power for a prison manager to extend use on the advice of a medical officer (*new section 87(5)*).

Clause 7 inserts *new section 19A*. This section moves the responsibility for the provision of health services from medical officers to health centre managers employed by the Department of Corrections (the **department**) or a contractor in the case of a contract prison. The section requires the appointment of a health centre manager for each prison. A health centre manager must be either a medical practitioner or a nurse.

Clause 8 repeals *section 20* and substitutes a *new section 20*. *New section 20* provides that, instead of the appointment of at least 1 medical officer for each prison (other than a Police jail), every prison must have a sufficient number of medical officers.

Clause 9 amends *section 33*, which relates to rules that may be made by a manager of a corrections prison or Police jail, in respect of that prison or Police jail. The amendment clarifies that no rules may be made under this section that relate to matters to which *new section 45A* applies (relating to authorised property).

Clause 10 amends section 42 to ensure that recently received prisoners are also given information about the rules of the prison made under *new section 45A* (relating to authorised property).

Clauses 11 and 12 make consequential amendments to sections 43 and 44 to reflect that authorised property will now be declared by rules made under *new section 45A* instead of regulations.

Clause 13 inserts *new section 45A*, which requires the chief executive (in respect of corrections prisons) or the Police Commissioner (in respect of Police jails) to make rules declaring the items of property that prisoners may be issued with or may keep (**authorised property**). The chief executive or the Commissioner may also make rules imposing conditions that attach to authorised property. *New section 45A* includes requirements relating to the publication of the rules, and such rules are deemed to be regulations for the purposes of the Regulations Disallowance Act 1989 but not for the purposes of the Acts and Regulations Publications Act 1989.

Clause 14 amends section 48, which relates to the reconsideration of security classifications of prisoners. Currently only the chief executive or his or her delegates can reconsider a prisoner's security classification. This amendment enables an approved employee of the department or a contractor in the case of a contract prison to reconsider a security classification. An approved employee is a person who is not a staff member of a prison and who is approved by the chief executive to reconsider security classifications of prisoners.

Clause 15 amends section 60, which relates to the segregation of prisoners for the purposes of medical oversight. The effect of the amendments is that the recommendation for a direction to segregate a prisoner must now be made by a health centre manager. If the recommendation relates to matters outside the health centre manager's scope of practice, he or she must consult a medical practitioner whose scope of practice includes those matters before making the recommendation. There continues to be a requirement in *new subsection (5)* for a registered health professional to visit the segregated prisoner, except that the health centre manager (instead of the prison manager) must now arrange for these visits. In current subsection (5), the prison manager must arrange for the visits unless the medical officer directs otherwise. In *new subsection (5)*, the health centre manager does not have to arrange these visits if satisfied that it is not necessary in the circumstances.

Clause 16 amends section 62 to provide that, in the case of a contract prison, the contractor may make decisions about the temporary release or removal of a prisoner from a contract prison.

Clause 17 amends section 63 to allow the contractor of a contract prison to make decisions relating to the period for which a prisoner is temporarily released and to impose conditions on the release.

Clause 18 amends section 64 to allow the contractor of a contract prison to fix the period of the temporary removal of a prisoner and the conditions of that removal.

Clause 19 inserts a *new section 66A*. This section allows prisoners to be self-employed while in custody. The type of work is restricted to work that is intended to provide the prisoner with work experience or work that assists in the prisoner's rehabilitation or reintegration into the community. The prison manager must approve the work to be undertaken. This is similar to a restriction imposed on the employment of prisoners generally in section 66.

Clause 20 amends section 67, which deals with earnings of a prisoner. This section is amended to provide for payments in relation to the earnings of a self-employed prisoner. *Section 67(2)* is repealed and substituted to require prisoners' earnings to be paid to the chief executive to the credit of the prisoner. *Section 67(3)* requires a person who receives money on behalf of a self-employed prisoner to pay the earnings to the chief executive after deducting any commission. This section applies to both prisoners who engage in self-employment while on temporary release and prisoners who engage in self-employment while in custody.

Clause 21 amends section 68. The amendment enables money paid to the chief executive in respect of a self-employed prisoner to be applied to the cost of the prisoner's detention. The amount applied toward detention costs must not exceed the weekly rate fixed by the Minister.

Clause 22 amends section 69 to provide that the minimum entitlement to physical exercise may be denied where a prisoner has been outside the prison under section 62 (temporary release from custody or temporary removal from prison) or section 65 (removal for judicial purposes) and it is not practicable to provide the prisoner with the hour of physical exercise during the times the prisoner is inside the prison.

Clauses 23 and 24 make consequential amendments to section 72(3) and section 83(3).

Clause 25 amends section 87 by repealing subsection (5) and inserting 2 new subsections. The amendment substitutes the provision for Visiting Justices to approve the extended use of mechanical restraints with a provision that allows a prison manager to authorise the continued use of a mechanical restraint on a prisoner for more than 24 hours if, in the opinion of a medical officer, continued restraint is necessary to protect the prisoner from self-harm. An authorisation must be in writing, specify the type of restraint used and the length of time during which the prisoner may be kept under restraint, and include a record of the medical officer's opinion that the restraint is necessary to protect the prisoner from self-harm.

Clause 26 amends section 90, which relates to strip searches. For the purpose of facilitating a strip search, section 90(2)(f) currently allows the person conducting the search to require the person being searched to, with his or her legs spread apart, bend his or her knees. Section 90(2)(f) is repealed and replaced by a provision that allows the person conducting the search to require the person being searched to, with his or her legs spread apart, bend his or her knees until his or her buttocks are adjacent to his or her heels. Section 90(3) and (4) are repealed and replaced with *new section 90(3)*. The authority to conduct a strip 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, ears, and anal and genital areas; but
- does not authorise the insertion of any instrument, device, or thing into any orifice of those kinds.

Section 90(3) currently forbids the use of those instruments and devices when conducting visual examinations of the anal and genital areas. *New section 90(3)* allows the use of an instrument or device designed to illuminate or magnify when conducting a visual examination of any bodily orifice.

Clause 27 amends section 98, which relates to searches of prisoners and cells. The amendments—

- remove the requirement that an officer must obtain the manager's approval to conduct a strip search of a prisoner whom

the officer believes on reasonable grounds possesses an unauthorised item (*new section 98(3)(a)*):

- clarify the situation in section 98(6)(b) in which an officer may conduct a strip search of a prisoner:
- require a prisoner to undergo a strip search on returning to the prison after being outside the prison in the control of an officer unless the prisoner is returning from work:
- make further clarifications on how the prisoner may tamper with a sample in section 98(8)(a).

Clause 28 makes a consequential amendment to section 102(2) as a result of the changes to section 98(3)(a).

Clause 29 amends the definition of authorised officer to omit the reference to an officer opening mail. This is a consequential amendment relating to extending the authority to open prisoners' mail to all staff members.

Clauses 30 to 33 amend sections 104, 106, 109, and 110 so that any staff member may open prisoner mail but only authorised officers may read prisoner mail.

Clause 34 amends section 124 so that a prison manager need only suspect on reasonable grounds that a prisoner has committed an offence relating to drugs and alcohol. This is less rigid than the current requirement that a prison manager must believe on reasonable grounds that a prisoner has committed such an offence.

Clause 35 amends section 125(a)(iii). This is a consequential amendment relating to dilution or contamination of samples for alcohol and drug testing of prisoners.

Clause 36 amends section 129 to replace a reference to a medical officer with a reference to a health centre manager. This is a consequential amendment relating to the transfer of medical officers' statutory responsibilities for providing health care to prisoners to health centre managers employed by the Department of Corrections. This clause also amends section 129 to make it an offence against discipline for a prisoner to consume, administer, or supply any substance with the intention of diluting or contaminating any sample required to be supplied by that prisoner or any other prisoner for drug or alcohol testing.

Clause 37 amends section 130(1) to include a reference to a health centre manager.

Clause 38 amends section 133 to enable the hearing adjudicator to choose the privileges that a prisoner may lose when imposing a penalty of forfeiture or postponement of privileges under subsection (3)(a) and to require the hearing adjudicator to take into account a prisoner's circumstances before imposing any forfeiture or postponement of those privileges.

Clause 39 amends section 137 to enable the Visiting Justice to choose the privileges that a prisoner may lose when imposing a penalty of forfeiture or postponement of privileges under subsection (3)(a) and to require the Visiting Justice to take into account a prisoner's circumstances before imposing any forfeiture or postponement of those privileges.

Clause 40 inserts a new heading and substitutes *new section 165*. The amendment requires a health centre manager—

- to maintain an adequate record of the health care and treatment provided to prisoners in prison; and
- to keep full health records (including dental records) secure; and
- to ensure that the health record of a prisoner or former prisoner is not treated as part of the prison record of that prisoner.

Medical officers are under similar obligations but are only required to maintain and keep secure records relating to the health care and treatment they personally provide.

Clause 41 amends section 190(3)(a)(i) by inserting a reference to *new section 199D(1A)* (*clause 43*). The amendment requires the department's annual report to include a summary of any reports forwarded to the chief executive under *new section 199D(1A)* (which requires a contractor to report on any exercise of any functions or powers delegated to the contractor or an employee of the contractor who is not a staff member of the prison).

Clause 42 inserts *new section 199AA*. This section expressly provides for the delegation of the powers and functions of the chief executive to a contractor or an employee of a contractor in relation to a contract prison. A delegation under this section does not act to limit the operation of sections 41 and 42 of the State Sector Act 1988 and is subject to section 10 of the principal Act.

Clause 43 amends section 199D to require a contractor to report on the exercise of any functions and powers delegated to an employee of the contractor who is not a staff member of a prison.

Clause 44 amends section 199F to include a right of access to employees of a contractor who are not staff members of a prison and who are exercising delegated functions and powers of the contractor.

Clause 45 amends section 199G(1)(i) to provide that a monitor of a contract prison appointed under section 199E(1)(a) must, for the purposes of the report under section 199E(3)(b), review the exercise of functions and powers delegated from the chief executive to the contractor and the contractor's employees.

Part 2

Amendments to other enactments

Amendment to Courts Security Act 1999

Clause 46 amends section 25 of the Courts Security Act 1999 to limit the powers of court security officers over accused persons in court who are in the custody of officers within the meaning of the Corrections Act 2004.

Hon Judith Collins

Corrections Amendment Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Corrections Amendment Act **2011**.

- 2 Commencement**
 - (1) **Section 1**, this section, and **sections 16 to 18** and **41 to 45** come into force on the day after the date on which this Act receives the Royal assent. 5
 - (2) The rest of this Act comes into force on the day that is 3 months after the date on which it receives the Royal assent.

- Part 1**
- Amendments to Corrections Act 2004** 10

- 3 Principal Act amended**
This **Part** amends the Corrections Act 2004.

- 4 Interpretation**
 - (1) Section 3(1) is amended by repealing the definition of **authorised property** and substituting the following definition: 15
“**authorised property** means any property that is—
“(a) specified in this Act or in rules made under **section 45A** as property that may be issued to a prisoner; and
“(b) kept by, or retained on behalf of, the prisoner in accordance with this Act and any rules made under **section 45A** and any regulations made under this Act”. 20
 - (2) Paragraph (fa) of the definition of **unauthorised item** in section 3(1) is amended by inserting “or dilute or contaminate” after “tamper with”.
 - (3) Section 3(1) is amended by inserting the following definitions 25
in their appropriate alphabetical order:

“**health centre manager** means a person appointed as a health centre manager under **section 19A** and who is a medical practitioner or a nurse

“**nurse** means a health practitioner who is, or is deemed to be, registered with the Nursing Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of nursing whose scope of practice permits the performance of general nursing functions”.

5 Delegation of powers and functions of chief executive 10

Section 10 is amended by repealing paragraph (g) and substituting the following paragraphs:

“(g) the power to grant approvals under sections 66(5)(a) and **66A(2)** (which relate to the types and conditions of work in which prisoners will be employed); or 15

“(ga) the power to approve an employee for the purposes of section 48 or any regulations made under this Act; or”.

6 Visiting Justices

Section 19(4)(f) is repealed.

7 New section 19A inserted 20

The following section is inserted after section 19:

“**19A Health centre managers**

“(1) For every prison (not being a contract prison or Police jail), the chief executive must appoint, under the State Sector Act 1988, a health centre manager. 25

“(2) For every contract prison, the contractor must appoint a health centre manager.

“(3) Each health centre manager must be a medical practitioner or a nurse.

“(4) Every health centre manager is responsible for ensuring the provision of health care and treatment to prisoners.” 30

8 New section 20 substituted

Section 20 is repealed and the following section substituted:

- “20 Medical officers**
- “(1) For every prison (other than a Police jail) there must be a sufficient number of medical officers to meet prisoners’ needs for medical care and medical treatment.
- “(2) Each medical officer must be a medical practitioner.” 5
- 9 Manager may make rules for prison**
- (1) Section 33(1) and (2) are amended by inserting “, subject to **subsection (6)**,” after “may”.
- (2) Section 33 is amended by adding the following subsection:
- “(6) No rules may be made under this section that relate to matters for which rules must or may be made under **section 45A**.” 10
- 10 Certain information to be given to recently received prisoners**
- Section 42(1) is amended by inserting “, rules about authorised property made under **section 45A**,” after “section 33”. 15
- 11 Authorised property**
- (1) Section 43 is amended by repealing subsection (1) and substituting the following subsection:
- “(1) A prisoner may be issued with, or allowed to keep, any property declared to be authorised property by rules made under **section 45A** subject to—
- “(a) any condition set out in those rules; and
- “(b) any special conditions imposed by the prison manager relating to the use of the property; and
- “(c) the condition described in section 44(1); and 25
- “(d) any condition set out in regulations made under this Act.”
- (2) Section 43(3)(c) is amended by adding “or rules made under **section 45A**”.
- 12 Standard conditions of issue and transfer of issued items** 30
- (1) Section 44(1) is amended by omitting “section 43(1)(a)” and substituting “**section 43(1)(c)**”.

- (2) Section 44(2)(a) is amended by omitting “regulations made under this Act” and substituting “rules made under **section 45A**”.
- (3) Section 44(2)(c) is amended by inserting “or rules made under **section 45A**” after “Act”. 5

13 New section 45A inserted

The following section is inserted after section 45:

“45A Rules about authorised property

- “(1) The chief executive—
- “(a) must, in respect of all corrections prisons, make rules 10
declaring the items of property that prisoners may be
issued with or allowed to keep; and
 - “(b) may make rules imposing conditions that attach to an
item of property so declared; and
 - “(c) must publish the rules on an Internet site; and 15
 - “(d) must make the rules available for public inspection free
of charge and for purchase at a reasonable price; and
 - “(e) must give notice in the *Gazette* whenever rules are made
or amended under this section, stating—
 - “(i) the Internet site on which the rules are published; 20
and
 - “(ii) the place where the rules can be inspected; and
 - “(iii) the place where the rules can be purchased.
- “(2) The Commissioner of Police—
- “(a) must, in respect of all Police jails, make rules declaring 25
the items of property that prisoners may be issued with
or allowed to keep; and
 - “(b) may make rules specifying conditions that attach to an
item of property so declared; and
 - “(c) must arrange for the rules to be made available and pub- 30
lished in accordance with **subsection (1)(c) to (e)**.
- “(3) Rules made under **subsection (1) or (2)** are deemed to be
regulations for the purposes of the Regulations Disallowance
Act 1989 but not for the purposes of the Acts and Regulations
Publication Act 1989.” 35

14 Further provisions relating to security classifications

(1) Section 48 is amended by repealing subsection (2) and substituting the following subsection:

“(2) A prisoner who is dissatisfied with the security classification for the time being assigned to that prisoner may apply to the chief executive or an approved employee for a reconsideration of that classification, and the chief executive or approved employee must ensure that the security classification is reconsidered promptly in the prescribed manner.”

(2) Section 48 is amended by adding the following subsection:

“(5) In this section, **approved employee** means a person (other than a staff member of a prison) who is an employee of the department or contractor and who is approved by the chief executive for the purposes of this section.”

15 Segregation for purpose of medical oversight

(1) Section 60(1) is amended by omitting “a medical officer” and substituting “the health centre manager”.

(2) Section 60 is amended by inserting the following subsection after subsection (1):

“(1A) Before a health centre manager makes a recommendation under subsection (1) that relates to a matter outside his or her scope of practice, he or she must consult a medical practitioner whose scope of practice includes that matter.”

(3) Section 60(4) is amended by omitting “medical officer” and substituting “health centre manager”.

(4) Section 60(5) is repealed and the following subsections are substituted:

“(5) While a direction under this section is in force, the health centre manager must, unless he or she is satisfied that it is not necessary in the circumstances, ensure that a registered health professional visits the prisoner concerned—

“(a) at least once per day; or

“(b) if the prisoner is assessed to be at risk of self-harm, at least twice per day.

“(6) In this section, **scope of practice** has the same meaning as in section 5(1) of the Health Practitioners Competence Assurance Act 2003.”

16 Temporary release from custody or temporary removal from prison

Section 62 is amended by adding the following subsection:

- “(4) The powers of the chief executive conferred by subsection (2) may be exercised by a contractor in the case of the temporary release or removal of a prisoner from a contract prison and for that purpose every reference to the chief executive in subsections (2) and (3) must be read as if the reference were to a contractor.” 5

17 Temporary release from custody

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Section 63 is amended by repealing subsection (1) and substituting the following subsection:

- “(1) Any temporary release from custody under section 62 is for a period fixed by the chief executive or, in the case of a contract prison, by the contractor, and may be subject to conditions imposed by the chief executive or, in the case of a contract prison, by the contractor.” 15

18 Temporary removal from prison

Section 64 is amended by inserting “or, in the case of a contract prison, the contractor” after “chief executive” in each place where it appears. 20

19 New section 66A inserted

The following section is inserted after section 66:

“66A Self-employment

- “(1) Every prisoner (other than a prisoner who is only awaiting trial or on remand or who is detained under the Immigration Act 2009) may, subject to the prison manager’s approval, be self-employed while in custody and be employed in that work within the prison or outside the prison in which he or she is detained. 25 30
- “(2) The prison manager must not approve a prisoner to be self-employed under this section unless the work—
- “(a) is of a kind described in **subsection (3)** that is approved by the chief executive; and

“(b) is done under the conditions approved by the chief executive.

“(3) The work referred to in **subsection (2)** is work that is intended to provide the prisoner with work experience or to assist his or her rehabilitation or reintegration into the community. 5

“(4) Any work in which a prisoner is employed under this section must be carried out in accordance with any prescribed requirements.”

20 Earnings of employed prisoner 10

Section 67(2) is repealed and the following subsections are substituted:

“(2) Every prisoner described in **subsection (4)** must pay to the chief executive to the credit of the prisoner, at the times that the chief executive directs, those sums on account of his or her earnings in that employment that the chief executive determines. 15

“(3) A person who receives money on behalf of a prisoner engaged in self-employment must, after deducting any commission, pay to the chief executive to the credit of the prisoner, those sums on account of the prisoner’s earnings in that employment that the chief executive determines. 20

“(4) **Subsection (2)** applies to a prisoner who is—
 “(a) temporarily released from custody under section 62 to engage in self-employment; or 25
 “(b) engaged in self-employment at the prison.”

21 Application of money

Section 68 is amended by inserting the following paragraph after paragraph (b):

“(ba) the cost of the prisoner’s detention for each week during which he or she is allowed, at any time, to engage in self-employment while in the custody of the chief executive, but not exceeding the weekly rate fixed by the Minister.”. 30

22 Minimum entitlements

Section 69(4) is amended by inserting the following paragraph before paragraph (a):

“(aa) may be denied the minimum entitlement referred to in subsection (1)(a) if the prisoner has been temporarily released from custody or temporarily removed from prison under section 62 or removed for judicial purposes under section 65 and, in the opinion of the prison manager, it is not practicable to provide the entitlement during the times the prisoner is in the prison.”

23 Diet

Section 72(3) is amended by omitting “medical officer” and substituting “health centre manager”.

24 Use of force

Section 83(3) is amended by omitting “prescribed” and substituting “authorised”.

25 Restraint of prisoners

Section 87(5) is repealed and the following subsections are substituted:

“(5) A prison manager may authorise the use of a mechanical restraint on a prisoner for more than 24 hours only if, in the opinion of a medical officer, continued restraint is necessary to protect the prisoner from self-harm.

“(5A) An authorisation under **subsection (5)** must—

- “(a) be in writing; and
- “(b) specify the type of restraint to be used; and
- “(c) specify the time during which the prisoner is to be kept under restraint; and
- “(d) include a record of the medical officer’s opinion that the restraint is necessary to protect the prisoner from self-harm.”

26 Definition of strip search

(1) Section 90(2) is amended by repealing paragraph (f) and substituting the following paragraph:

- “(f) with his or her legs spread apart, bend his or her knees until his or her buttocks are adjacent to his or her heels.”.
- (2) Section 90 is amended by repealing subsections (3) and (4) and substituting the following subsection:
- “(3) Authority to conduct a strip search— 5
- “(a) 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, ears, and anal and genital areas; but
- “(b) does not authorise the insertion of any instrument, device, or thing into any orifice of those kinds.” 10
- 27 Search of prisoners and cells**
- (1) Section 98(3) is amended by repealing paragraph (a) and substituting the following paragraph:
- “(a) if the officer has reasonable grounds for believing that the prisoner has in his or her possession an unauthorised item; or”.
- (2) Section 98(4) is repealed.
- (3) Section 98(6)(b) is amended by adding “after the prisoner is temporarily released from custody”.
- (4) Section 98(7) is amended by repealing paragraph (b) and substituting the following paragraph:
- “(b) on the return of the prisoner to the prison after the prisoner has been outside the prison in the control of an officer, unless the prisoner is returning from work; and”.
- (5) Section 98(8)(a) is amended by inserting “dilute, contaminate, or otherwise” after “may”.
- (6) Section 98(8)(b) is amended by inserting “dilution, contamination, or” after “such”.
- 28 Reporting of unauthorised items discovered, certain searches, and placement in dry cells** 30
- Section 102(2) is amended by omitting “(whether or not the approval of a prison manager is required to undertake that search)”.

- 29 Interpretation**
The definition of **authorised officer** in section 103A is amended by omitting “open and”.
- 30 General considerations relating to mail**
Section 104 is amended by omitting “authorised officers” and substituting “staff members”. 5
- 31 Opening of mail**
Section 106 is amended by repealing subsection (2) and substituting the following subsection:
“(2) Any mail to or from a prisoner that is to be opened or examined must be opened and examined by a staff member in the presence of 1 other staff member.” 10
- 32 New section 109 substituted**
Section 109 is repealed and the following section substituted:
“**109 Mail between prisoners, official agencies, and members of Parliament** 15
A staff member must not open any mail and an authorised officer must not read any correspondence or withhold any mail that—
“(a) is from a prisoner to an official agency; or 20
“(b) is from a prisoner to a member of Parliament and is addressed to that member at Parliament; or
“(c) is from an official agency or member of Parliament to a prisoner, and accompanied by a covering letter addressed to the prison manager stating that the agency or member of Parliament is acting in an official capacity in respect of the prisoner.” 25
- 33 Mail between prisoners and legal advisers**
(1) Section 110 is amended by repealing subsection (1) and substituting the following subsection: 30
“(1) A staff member must not open any mail and an authorised officer must not read any correspondence or withhold any mail between a prisoner and his or her legal adviser, unless authorised to do so under any of subsections (2) to (6).”

- (2) Section 110(2) is amended by omitting “An authorised officer” and substituting “A staff member”.
- 34 Prisoner may be required to submit to drug or alcohol test**
 Section 124(2)(a) is amended by omitting “believes” and substituting “suspects”. 5
- 35 Obligations of persons carrying out procedure**
 Section 125(a)(iii) is amended by inserting “dilute, contaminate, or otherwise” after “offence to”.
- 36 Offences by prisoners relating to drugs and alcohol**
- (1) Section 129(a) is amended by inserting “or health centre manager” after “medical officer”. 10
- (2) Section 129 is amended by repealing paragraph (c) and substituting the following paragraph:
 “(c) does any of the following in respect of any sample required to be supplied (whether by that prisoner or any other prisoner) in accordance with a prescribed procedure: 15
 “(i) consumes, administers, or supplies any substance with intent to dilute or contaminate the sample:
 “(ii) otherwise tampers with the sample.” 20
- 37 Offences committed by persons while on temporary release from custody under section 62**
 Section 130(1) is amended by inserting “or health centre manager” after “medical officer”.
- 38 Powers of hearing adjudicator in relation to offences against discipline** 25
- (1) Section 133(3)(a) is amended by inserting “all or any” before “privileges”.
 (2) Section 133 is amended by inserting the following subsection after subsection (3): 30
 “(3A) The hearing adjudicator must take into account the prisoner’s circumstances before imposing any forfeiture or postponement of privileges under subsection (3)(a).”

39 Powers of Visiting Justice in relation to offences by prisoners

- (1) Section 137(3)(a) is amended by inserting “all or any” before “privileges”.
- (2) Section 137 is amended by inserting the following subsection 5 after subsection (3):
- “(3A) The Visiting Justice must take into account the prisoner’s circumstances before imposing any forfeiture or postponement of privileges under subsection (3)(a).”

40 New heading and section 165 substituted 10

The heading above section 165 and section 165 are repealed and the following heading and section substituted:

“Health records

“165 Health records

- “(1) Every medical officer must ensure that an adequate record of 15 the health care or treatment provided by that officer to a prisoner at a prison is maintained and kept securely and not treated as part of the prison records for that prisoner or former prisoner, as the case may be.
- “(2) Every health centre manager must ensure that— 20
- “(a) an adequate record of the health care or treatment provided to a prisoner at a prison is maintained; and
- “(b) full health records (including dental records of prisoners or former prisoners at the prison) are kept securely; and
- “(c) the health record of any prisoner or former prisoner at 25 the prison is not treated as part of the prison records of that prisoner or former prisoner, as the case may be.”

41 Matters to be included in annual report

Section 190(3)(a)(i) is amended by omitting “section 199D(2) and (3)” and substituting “**section 199D(1A)**, (2), and (3)”. 30

42 New section 199AA inserted

The following section is inserted after section 199:

“199AA Delegation of powers and functions of chief executive to contractor

- “(1) Without limiting sections 41 and 42 of the State Sector Act 1988, but subject to section 10 of this Act, the chief executive may delegate to a contractor or an employee of a contractor, either generally or particularly, any of the functions or powers of the chief executive under this Act. 5
- “(2) Subject to any general or special directions given or conditions imposed by the chief executive, the contractor to whom any functions or powers are delegated may perform those functions or exercise those powers in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation. 10
- “(3) A contractor who appears to act under a delegation is presumed to be acting in accordance with its terms and conditions in the absence of evidence to the contrary. 15
- “(4) A delegation made under this section is revocable at any time in writing and until it is revoked continues in force according to its tenor, despite the fact that the chief executive by whom it was made may have ceased to hold office, and continues to have effect as if made by the successor in office of that chief executive. 20
- “(5) A delegation under this section does not affect the exercise of any function or power by the chief executive or the responsibility of the chief executive for the actions of any person acting under the delegation.” 25

43 Reporting responsibilities

Section 199D is amended by inserting the following subsection after subsection (1):

- “(1A) A contractor must, at any intervals (not exceeding 4 months) that are determined by the chief executive, report in writing to the chief executive on— 30
 - “(a) the exercise of any functions, duties, or powers delegated under sections **199AA** and 199A to the contractor or an employee of the contractor; and 35
 - “(b) the exercise of any functions, powers, or duties—

- “(i) by an employee of the contractor who is an approved employee within the meaning of **section 48(5)**; and
- “(ii) by an employee of the contractor who is an approved employee within the meaning of any regulations made under this Act.” 5

44 Accommodation and access

Section 199F is amended by inserting the following subsection after subsection (2).

- “(2A) Every contractor must ensure that any monitor has free and unfettered access to the following persons but only during their work hours: 10
 - “(a) all employees of the contractor who—
 - “(i) are not a staff members of the contract prison managed by that contractor; and 15
 - “(ii) are exercising, in respect of that prison, the functions and powers of the chief executive or the contractor under a delegation; and
 - “(b) all employees of the contractor who are approved employees (within the meaning of **section 48(5)** or any regulations made under this Act) and whose work relates to that prison.” 20

45 Monitors to report on certain matters

Section 199G(1)(i) is amended by omitting “section 199D(2) or (3)” and substituting “**section 199D(1A)**, (2), or (3)”. 25

Part 2

Amendment to Courts Security Act 1999

46 Amendment to Courts Security Act 1999

- (1) This section amends the Courts Security Act 1999.
 - (2) Section 25(1)(b) is amended by inserting “or officers” after “security officers”.
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