

Corrections Amendment Bill

Government Bill

Explanatory note

General policy statement

The Corrections Amendment Bill includes a suite of amendments to the Corrections Act 2004 (the **Act**) designed to—

- improve the ability of the Department of Corrections (the **department**) to safely and humanely manage prisoners:
- improve prisoner discipline and safety:
- ensure the fair treatment of prisoners.

Consequential amendments to the Corrections Regulations 2005 (the **regulations**) are included.

Overall, the Act and the regulations continue to provide a sound legislative framework for the corrections system. However, some areas need modernisation or greater clarity.

Segregation of prisoners at risk of self-harm

The Act currently provides for the management of prisoners who are, or may be, at risk of self-harm, under the segregation regime. However, this regime is not conducive to providing appropriate care and management of at-risk prisoners, or to responding quickly where a prisoner is at risk of self-harm.

The Bill introduces a comprehensive legislative framework, separate from the segregation regime, for the management of prisoners at risk of self-harm. It includes requirements relating to the assessment and observation of a prisoner, the development of an at-risk plan, and time for review of the prisoner's at-risk status.

Reviews of mother and baby placement decisions

The Chief Executive of the department has the statutory authority to approve a mother's request to have her child with her in prison. If that request is denied, or if the

decision is made to end a placement, the mother has no statutory right to appeal against the decision.

The Bill introduces a statutory review process regarding decisions on the placement of prisoners and their babies in Mothers with Babies Units.

Definition of drug

Although psychoactive substances have adverse effects, it is not an offence to use them in prisons.

The Bill amends the definition of a drug to include psychoactive substances, as defined by the Psychoactive Substances Act 2013, making it a disciplinary offence to use them in prisons and allowing testing procedures to be used to obtain evidence of their use.

Use of Police jails

The department can detain surplus prisoners in Police jails under the operation of the Police. However, Police have insufficient personnel to operate Police jails at their full capacity.

To respond to short-term muster pressures, the Bill provides an authority for the Minister of Corrections to declare a Police jail, or parts of a Police jail, to be temporarily included in a corrections prison, operated by the department. Safeguards are included to limit the circumstances in which this regime can be established, place limits on the regime's duration, and impose a maximum period of detention for affected prisoners.

Using imaging technology searches to detect contraband on prisoners, staff, and visitors

The department is empowered to search prisoners, staff, and visitors to detect contraband. Scanner searches, which involve devices such as metal detectors, are the most common type of search. Detection technology is continually developing, and some overseas jurisdictions use imaging technology searches, which locate items concealed under the clothing and within the body by displaying an image on a screen. However, the Act does not currently authorise the use of imaging technology searches.

The Bill allows the department to use imaging technology, subject to some privacy safeguards, to search prisoners, staff, and visitors for contraband. Imaging technology searches will also be able to be used as a replacement for mandated strip searches of prisoners.

Use of mechanical restraints on prisoners being treated in hospital

When a prisoner receives hospital treatment outside prison, the continuous use of mechanical restraints may be necessary to prevent escapes and maintain public safety. However, the use of mechanical restraints, such as handcuffs, for more than 24 hours during a hospital visit is not expressly permitted in legislation.

The Bill amends the 24-hour time limit on the application of mechanical restraints so it does not apply to prisoners who have been temporarily moved to hospital.

Tattooing in prison

The Act and the regulations prescribe a disciplinary process for dealing with prisoners who behave in ways that do not result in criminal prosecution but are nonetheless disruptive, unsafe, inappropriate, or inconsistent with the good order and security of the prison. The practice of tattooing does not expressly fall within any disciplinary offence provisions of the Act even though there are risks to prisoners' health, staff safety, gang management, and prisoner reintegration on release.

The Bill makes it a disciplinary offence for a prisoner to tattoo another prisoner or consent to receive a tattoo from another prisoner, or to tattoo themselves.

Writing letters in prison

Some prisoners are subject to court orders forbidding contact with certain persons, such as protection orders under the Domestic Violence Act 1995. If a prisoner's letter to a protected person is read by prison staff, it is withheld. However, there is an anomaly that such a letter would, if delivered, constitute a criminal offence, but when intercepted would only amount to a disciplinary offence if it was offensive, threatening, abusive, or intimidating. Without any consequences, prisoners could continually attempt to write to a person protected by an order, causing distress if any letters were not intercepted.

The Bill makes it a disciplinary offence for a prisoner to attempt to have contact with someone if that contact would breach an order or a direction of any court.

Prisoner communication

Every prisoner is entitled to make at least 1 outgoing telephone call of up to 5 minutes' duration per week, but they must meet the cost of all calls they make. Charging for phone calls can be administratively complex and costly, and can affect a prisoner's ability to maintain family and social relationships.

The Bill gives the department flexibility about whether, and how, it charges for calls. It enables prisoners who make calls to be required to pay a flat fee instead of being charged for each call.

Prisoners' knowledge of disciplinary offences

To help maintain the good order of a prison, prisoners need to be aware of disciplinary provisions to understand how to conduct themselves appropriately. The Act requires that recently received prisoners be given, in writing, relevant information on the operation and rules of the prison, rules about authorised property, and the entitlements of prisoners. However, there is no requirement to provide information about disciplinary offences and, in practice, the induction process for new prisoners does not typically include this information.

The Bill introduces an obligation on the manager of a prison to provide newly admitted prisoners with information about disciplinary offences.

Cell sharing

Although it is recognised that single-cell accommodation can be preferable, research has shown that cell sharing is acceptable if properly managed. The regulations provide rules for cell sharing under the regulation-making power of the Act, subject to some exceptions.

The Bill includes a stand-alone provision in the Act that addresses the use of shared cells. Consequential amendments to the regulations will remove the preference for single-cell accommodation and impose new privacy and comfort requirements for shared cells.

Delegation of health centre managers' powers and functions

Under the Act, the powers and functions of a prison's health centre manager must be exercised in person. This creates practical difficulties when there is an urgent matter but the health centre manager is off site or off duty.

The Bill would ensure that only suitably qualified staff members make the relevant decisions by enabling delegation of the health centre manager's powers and functions to an employee of the department who is a nurse or medical practitioner.

Contact between detector dogs and people being searched

Drug, cellphone, and tobacco detector dogs play an important role in keeping contraband out of prisons. The Act has a strict requirement that a dog handler must prevent the dog from coming into contact with the person being searched. In practice, there can be inadvertent, but inconsequential, contact.

The Bill amends the provisions relating to dog handlers so they must take reasonable precautions to prevent dogs from coming into physical contact with a person being searched.

Placement of limit on prisoners' legitimate expectations

Because a prisoner's conditions within prison, such as activity options or standard of accommodation, could change over time, the regulations state that a prisoner does not have any legitimate expectations of having similar conditions or opportunities throughout their period of detention. Since this principle applies across a wide range of circumstances within the prison system, it is more appropriately located in the Act than in the regulations.

The Bill amends the Act to state that a prisoner does not have any legitimate expectations of having similar conditions or opportunities throughout their period of detention.

Prisoner's management plan

The Act requires a management plan to be devised for every prisoner sentenced to more than 2 months' imprisonment, or remanded for over 2 months, and specifies what such plans must cover. It does not state what form a management plan should

take and whether a plan has to be a single document or may comprise information from a range of sources.

The Bill clarifies that a prisoner's management plan may comprise information recorded on 1 or more electronic or paper records, making clear it does not refer to a single record.

Use of chains and irons in prisons

The United Nations Standard Minimum Rules for the Treatment of Prisoners (the **Nelson Mandela Rules**) stipulate that chains and irons must not be used as restraints on prisoners. Although the department complies with the rule and does not use chains or irons on prisoners, the Act does not expressly exclude the use of chains and irons in prisons.

The Bill expressly prohibits the use of chains and irons on prisoners to align the law with the Nelson Mandela Rules.

Departmental disclosure statement

The Department of Corrections is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2018&no=35>

Regulatory impact assessment

The Department of Corrections produced a regulatory impact assessment on 31 May 2017 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found at—

- http://www.corrections.govt.nz/resources/policy_and_legislation.html
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides for the commencement of the Bill, once enacted. The provisions allowing a Police jail or part of a Police jail to temporarily become part of an established corrections prison come into force on the day after Royal assent. The rest of the provisions come into force by Order in Council or on the date that is 6 months after Royal assent, whichever occurs first.

The possible commencement of most of the provisions by Order in Council is necessary because a flexible lead-in time is required by the department. This will enable

the department to change manuals and IT systems and to provide staff training as necessary. In this respect, different needs may be identified in respect of different provisions of the Bill.

Clause 3 provides that the Bill amends the Corrections Act 2004.

Part 1

Amendments to principal Act

Clause 4 makes changes to definitions in section 3(1) as follows:

- the definition of drug is updated to include a psychoactive substance as defined in the Psychoactive Substances Act 2013:
- other definitions are changed or inserted to reflect new terms used in the Bill.

Clause 5 amends section 10 to give power to the chief executive to review decisions relating to the placement of babies with their mothers.

Clause 6 inserts *new section 19B* to clarify the persons to whom health centre managers may delegate their powers and functions. *New subsection (4)* refers to provisions that set out the effect of a delegation and how a delegation may be made.

Clause 7 inserts the following 2 new sections:

- *new section 32A*, which allows the Minister to declare that a Police jail or part of a Police jail is part of an established corrections prison. A declaration must be made by notice in the *Gazette* and may not last for longer than 3 months. A declaration may be extended, but a declaration and any extensions cannot extend beyond 12 months:
- *new section 32B*, which describes the effect of a declaration.

The effect of a declaration is that the Police jail or part of a Police jail concerned is part of the specified corrections prison. However, regulations may specify that certain facilities and items required in prison cells do not have to be provided. Persons under 18 years of age must not be detained in any of those facilities. Any resource consent or designation that applies to the land or building covered by the declaration continues to apply.

Clause 8 inserts *new section 34AA*. The provision sets a maximum period of detention for a prisoner in Police jails that are declared to be part of corrections prisons. The maximum period is 7 consecutive days and 21 days over a 12-month period.

Clause 9 amends section 42, which describes information that must be given to a prisoner on reception to a prison or reasonably promptly after reception. The amendment adds a requirement that a prisoner be given information about offences against discipline.

Clause 10 amends section 49 to provide that the assessment of a prisoner on reception to prison must include an assessment of the risk of self-harm.

Clause 11 amends section 51, which relates to management plans, to clarify that a management plan may comprise more than 1 document and that the documents may be in multiple locations.

Clause 12 replaces section 57, which relates to segregation, so that the effect of the provision is clearer. The opportunity of a prisoner to associate with other prisoners must not be denied or restricted, except in accordance with the Act. The redrafted provision does not extend prisoners' opportunities for association.

Clause 13 amends section 60 so that it covers segregation for the purposes of medical oversight, except where a prisoner is at risk of self-harm. Prisoners at risk of self-harm are now covered by a specific set of provisions. The change to section 60(1)(b) is to make it clear that the risk of self-harm is a risk to physical health, although, of course, it might be caused by a mental health issue. The number of visits required by a health centre manager is decreased because the provision no longer covers prisoners at risk of self-harm.

Clause 14 inserts 8 new sections relating to prisoners at risk of self-harm as follows:

- *new section 61A*, which provides for ongoing assessments of prisoners' risk of self-harm:
- *new section 61B*, which sets out the initial steps that must be taken in respect of a prisoner at risk of self-harm. In summary, the prison manager must ensure that the prisoner is placed in particular accommodation and is observed at intervals specified by the prison manager. The health centre manager must ensure that a registered health professional visits the prisoner at least twice a day unless the health centre manager is satisfied that it is not necessary:
- *new section 61C*, which provides that the prison manager must obtain advice from the health centre manager within 24 hours after an initial at-risk assessment. The prison manager must then either reverse or confirm the assessment:
- *new section 61D*, which requires the prison manager to ensure that an at-risk management plan is established for the prisoner as soon as practicable. The prison manager must consult the health centre manager and other persons with relevant expertise or knowledge when establishing the plan:
- *new section 61E*, which describes the required content of an at-risk management plan. The plan must specify any restrictions on the opportunity of the prisoner to associate with others and the steps to be taken to address the risk of self-harm. Restrictions on the opportunity to associate with others are allowed only to the extent necessary for the safety of the prisoner or other prisoners. Such restrictions and the reasons for the restrictions must be notified to both the prisoner and the chief executive in writing:
- *new section 61F*, which requires the prison manager to revoke an at-risk assessment if the prison manager is satisfied that the prisoner is no longer at risk of self-harm. The prison manager must obtain the advice of the health centre manager before revoking the assessment. The at-risk management plan for a prisoner ends when the at-risk assessment is revoked:

- *new section 61G*, which makes it clear that a health centre manager must consult a medical practitioner before giving advice under these new provisions that is outside the health centre manager's scope of practice:
- *new section 61H*, which provides for the prison manager to designate at-risk cells and confined at-risk areas. An at-risk cell must have the items and features prescribed in regulations.

Clause 15 amends section 69 to provide that a prisoner in a Police jail that is declared to be part of a corrections prison may be denied certain minimum entitlements only if, despite taking all reasonable steps, it is not practicable to provide those entitlements.

Clause 16 amends section 77, which provides that prisoners must pay for outgoing telephone calls. The effect of the change is that prisoners who make calls may be required to pay for the call or pay a fee. Prisoners continue not to be required to pay if the Act or regulations made under the Act provide otherwise.

Clause 17 amends section 81A to update a cross-reference.

Clause 18 inserts *new section 81AB* to provide a procedure for reconsideration of a decision refusing approval for a child's placement with the child's mother or ending a placement.

Clause 19 inserts 2 new sections as follows:

- *new section 82A*, which specifies the types of permitted accommodation in a prison:
- *new section 82B*, which provides that a prisoner does not have any legitimate expectation to the same or similar conditions or accommodation during the whole term of his or her sentence. This provision is the same as regulation 196 of the Corrections Regulations 2005, which will be revoked.

Clause 20 amends section 87, which relates to the restraint of prisoners, to explicitly allow extended use of a mechanical restraint if it is necessary to secure a prisoner who is being treated in a hospital outside a prison. Another amendment prohibits the use of chains or irons on a prisoner in any circumstances. It is made clear that handcuffs are not within the definition of chains or irons.

Clause 21 replaces sections 91 and 92 with the following provisions:

- *new section 91*, which changes the definition of scanner search to include the use of imaging technology:
- *new section 92*, which replaces the definition of X-ray search with a new definition of imaging technology search, which includes the use of X-ray machines and body scanners:
- *new section 92A*, which sets out restrictions relating to imaging technology searches. The person being searched may be required to remove outer clothing and to comply with other procedures necessary to carry out the search. As far as practicable, the image produced as a result of the search must avoid showing a clear image of the person's body beneath the clothing and genitals must be

obscured or made not easily distinguishable in the image. The person who conducts the search must not photograph, copy, or share an image produced:

- *new section 92B*, which sets out particular matters relating to the use of a body scanner instead of a strip search to search a prisoner. The requirements not to show a clear image of the body and to obscure genitals do not apply. However, the image produced may be viewed only by an officer or a constable of the same sex as the prisoner who is scanned and may not be viewed by another prisoner.

Clause 22 amends section 94 to provide that an imaging technology search undertaken instead of a strip search must be carried out by a person of the same sex as the person being searched.

Clause 23 consequentially amends section 96.

Clause 24 amends section 97, which relates to the use of dogs for searching. The effect of the amendment is that physical contact by a dog on a prisoner who is being searched is no longer prohibited, but the dog handler must take reasonable steps to prevent the dog from touching the prisoner.

Clause 25 amends section 98 to change the provisions about strip searching prisoners to reflect the new regime relating to prisoners at risk of self-harm. A scanner search (which includes an imaging technology search) may be used as an alternative to a strip search if the chief executive has approved the device as suitable for that purpose.

Clause 26 amends section 128, which specifies offences against discipline. Various offences relating to tattooing are added. It also becomes an offence to contact a person if that contact is in breach of an order or a direction of a court. Attempts to commit these offences are covered under section 131. That section provides that the attempted commission of an offence is liable to be dealt with and punished in the same manner as if the offence had actually been committed.

Clause 27 replaces section 146 to make it an offence for a person conducting an imaging technology search to copy, photograph, or share the image produced as a result of the search.

Clause 28 amends section 202 to allow regulations to prescribe certain accommodation, items, and facilities that are not required to be provided in a Police jail cell that is declared to be part of a corrections prison. Another amendment allows the making of regulations regulating all imaging technology searches.

Clause 29 amends section 203 to allow regulations to be made setting out matters that must be included in rehabilitative programmes.

Part 2

Consequential amendments to Corrections Regulations 2005

Clause 30 provides that Part 2 consequentially amends the Corrections Regulations 2005.

Clauses 31 to 38 amend the regulations to reflect the changes made to the principal Act relating to—

- prisoners at risk of self-harm; and
- shared cells.

Hon Kelvin Davis

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Corrections Amendment Act **2018**.

2 Commencement

- (1) **Sections 4(1), 7, 8, 15, and 28(1)** 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 a date appointed by the Governor-General by Order in Council, and 1 or more orders may be made bringing different provisions into force on different dates.
- (3) Any provision that has not earlier been brought into force under **subsection (2)** comes into force on the date that is 6 months after the date on which it receives the Royal assent. 10

3 Principal Act

This Act amends the Corrections Act 2004 (the **principal Act**).

Part 1 Amendments to principal Act

4 Section 3 amended (Interpretation)

- (1) In section 3(1), definition of **corrections prison**, replace paragraph (b) with:
- (b) does not include a Police jail (other than a Police jail or part of a Police jail that is declared to be part of a corrections prison under **section 32A**) 5
- (2) In section 3(1), definition of **drug**, after paragraph (b), insert:
- (c) a psychoactive substance within the meaning of section 9 of the Psychoactive Substances Act 2013 10
- (3) In section 3(1), insert in their appropriate alphabetical order:
- at-risk area** means a confined area of the prison that has been designated as an at-risk area under **section 61H**
- at-risk assessment** means, in relation to a prisoner, an assessment of the prisoner's risk of self-harm made under **section 49(2) or 61A** 15
- at-risk cell** means a cell that has been designated as an at-risk cell under **section 61H**
- at-risk management plan**, in relation to a prisoner, means the plan established for that prisoner under **section 61D**
- at-risk prisoner** means a prisoner who has received an at-risk assessment indicating that the prisoner is at risk of self-harm and the at-risk assessment has not been reversed or revoked 20
- imaging technology search** has the meaning given to that term in **section 92**
- rub-down search** has the meaning given to that term in section 89
- scanner search** has the meaning given to that term in **section 91** 25
- scope of practice** has the same meaning as in section 5(1) of the Health Practitioners Competence Assurance Act 2003
- self-care unit** means accommodation of a residential style
- shared cell** means a cell shared by a prisoner with 1 or more other prisoners
- strip search** has the meaning given to that term in section 90 30

5 Section 10 amended (Delegation of powers and functions of chief executive)

After section 10(g), insert:

- (gaa) the power under **section 81AB** to reconsider a decision refusing approval for a placement, or ending the placement, of a child; or 35

6 New section 19B inserted (Delegation of powers and functions of health centre managers)

After section 19A, insert:

19B Delegation of powers and functions of health centre managers

- (1) A health centre manager may, either generally or particularly, delegate any of the powers and functions of the health centre manager under this Act or regulations made under this Act to the persons specified in **subsection (2) or (3)**. 5
- (2) In the case of a health centre manager appointed to a corrections prison that is not a contract prison, the delegation may be made to a medical practitioner or nurse who is an employee of the department. 10
- (3) In the case of a health centre manager appointed to a contract prison, the delegation may be made to a medical practitioner or nurse who is an employee of the contractor (or subcontractor, within the meaning of section 199C) that manages the contract prison.
- (4) Section 13(2) and (5) to (7) applies to a delegation under this section, and any reference in those provisions to a prison manager is taken to be a reference to a health centre manager. 15

7 New sections 32A and 32B inserted

After section 32, insert:

32A Police jail or part of Police jail may be declared part of corrections prison 20

- (1) The Minister may, by notice in the *Gazette*, declare any land or building, or part of any land or building, that is a Police jail to be part of a particular established corrections prison.
- (2) A declaration may be made only if—
 - (a) the purpose of the declaration is to address an acute shortage of prison accommodation in the area; and 25
 - (b) all other practicable steps have been taken to address the shortage.
- (3) A declaration—
 - (a) comes into effect on the date specified by the Minister in the declaration; and 30
 - (b) continues in force until the date specified by the Minister in the declaration.
- (4) Despite **subsection (3)(b)**,—
 - (a) a declaration does not continue in force for more than 3 months unless the Minister, by notice in the *Gazette* before the expiry of the declaration, extends the period of the declaration; and 35

(b)	any extension does not continue in force for more than 3 months unless the Minister, by notice in the <i>Gazette</i> before the expiry of the extended period, further extends the period of the declaration.	
(5)	A declaration that has been extended may not continue in force for a continuous period of more than 12 months.	5
(6)	An extension to a declaration may be made only if the requirements in subsection (2) for making a declaration continue to be met.	
32B	Effect of declaration that Police jail or part of Police jail is part of corrections prison	
(1)	The land or building covered by a declaration that is in force under section 32A is part of the established corrections prison specified in the declaration.	10
(2)	Despite the land or building being part of a corrections prison,—	
(a)	cells within Police jails that are declared to be part of corrections prisons may be exempted by regulations made under this Act from complying with regulations that require certain facilities, items, and features to be provided in respect of cells; and	15
(b)	any resource consent or designation under the Resource Management Act 1991 that applies to the land or building continues to apply; and	
(c)	no person under 18 years of age may be detained in the land or building covered by the declaration.	20
8	New section 34AA inserted (Detention of prisoners in Police jails declared to be part of corrections prisons)	
	After section 34, insert:	
34AA	Detention of prisoners in Police jails declared to be part of corrections prisons	25
	The maximum period of detention for a prisoner in Police jails that are declared to be part of corrections prisons (<i>see section 32A</i>) is a period of detention not exceeding—	
(a)	7 consecutive days; and	
(b)	21 days over a 12-month period.	30
9	Section 42 amended (Certain information to be given to recently received prisoners)	
	Replace section 42(1) with:	
(1)	The manager of a prison must ensure that, on the reception of a prisoner, or reasonably promptly after the prisoner is received, the prisoner is given, in writing, relevant and sufficient information about—	35
(a)	the operation of the prison; and	

	(b) the rules of the prison made under section 33; and	
	(c) the rules about authorised property made under section 45A; and	
	(d) the entitlements of prisoners; and	
	(e) offences against discipline under sections 128 to 131.	
10	Section 49 amended (Prisoners must be assessed on reception and have needs addressed)	5
	In section 49, insert as subsection (2):	
(2)	The assessment under subsection (1)(a) must include an at-risk assessment to determine whether the prisoner is at risk of self-harm.	
11	Section 51 amended (Management plans)	10
	After section 51(3), insert:	
(3A)	A plan may comprise more than 1 document, and those documents may be kept in different physical or electronic locations.	
12	Section 57 replaced (Segregation)	
	Replace section 57 with:	15
57	Denial or restriction of prisoner’s opportunity to associate with other prisoners	
	The opportunity of a prisoner to associate with other prisoners must not be denied or restricted, except in accordance with this Act.	
13	Section 60 amended (Segregation for purpose of medical oversight)	20
(1)	In section 60(1)(a), after “health”, insert “,except against the risk of self-harm”.	
(2)	In section 60(1)(b), delete “(including, without limitation, the risk of self-harm)”.	
(3)	Replace section 60(5) and (6) with:	
(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 at least once a day.	25
14	New sections 61A to 61H and cross-heading inserted	
	After section 61, insert:	30
	<i>Prisoners at risk of self-harm</i>	
61A	Ongoing assessment for risk of self-harm	
	A prisoner who has been assessed, in accordance with section 49(2) , as not at risk of self-harm or whose at-risk assessment has been revoked must be re-	

assessed if there are material changes in the prisoner's circumstances that are relevant to the risk of self-harm.

61B Initial steps that prison manager and health centre manager must take in respect of at-risk prisoner

The initial steps that must be taken in respect of an at-risk prisoner are— 5

- (a) the prison manager must ensure that the prisoner is promptly placed in an at-risk cell or alternative accommodation that the prison manager considers adequate to protect the prisoner from self-harm; and
- (b) the prison manager must ensure that the prisoner is observed by an officer at the intervals that the prison manager specifies; and 10
- (c) the health centre manager must ensure that a registered health professional visits the prisoner at least twice per day (unless the health centre manager is satisfied that it is not necessary in the circumstances).

61C Confirmation of at-risk prisoner assessment

- (1) The prison manager must, in respect of an at-risk prisoner, obtain the advice of the health centre manager within 24 hours after the prisoner's at-risk assessment. 15
- (2) After considering the advice, the prison manager must—
 - (a) reverse the at-risk assessment, if the prison manager considers that the prisoner is not at risk of self-harm; or
 - (b) confirm the at-risk assessment, if the prison manager considers that the prisoner is at risk of self-harm. 20

61D At-risk management plan established

- (1) If a prison manager confirms a prisoner's at-risk assessment, the prison manager must ensure that an at-risk management plan is established for the prisoner as soon as practicable. 25
- (2) The plan must be established in consultation with—
 - (a) the health centre manager; and
 - (b) any other person within or outside the department that the prison manager considers has relevant expertise or knowledge. 30

61E Content of at-risk management plan

- (1) An at-risk management plan must specify—
 - (a) the restrictions (if any) on the opportunity of the prisoner to associate with other prisoners; and
 - (b) the steps to be taken to address the prisoner's risk of self-harm. 35

- (2) The plan may specify restrictions on the opportunity of the prisoner to associate with other prisoners only to the extent that those restrictions are necessary for the safety of the prisoner or the safety of other prisoners.
- (3) If the plan specifies restrictions on the opportunity of the prisoner to associate with other prisoners, the prison manager must ensure that— 5
 - (a) the prisoner is promptly informed in writing of the reasons for the restrictions; and
 - (b) the chief executive is promptly informed in writing of the restrictions and of the reasons for those restrictions.
- (4) The chief executive may, at any time, revoke or modify a restriction on the opportunity of a prisoner to associate with other prisoners and amend the plan accordingly. 10
- (5) The plan must be revised as necessary at regular intervals, in accordance with any requirements prescribed by regulations made under this Act and any relevant instructions issued under section 196. 15

61F Revocation of confirmed at-risk assessment

- (1) The prison manager must revoke the confirmed at-risk assessment of an at-risk prisoner if the prison manager is satisfied, after obtaining the advice of the health centre manager, that the prisoner is no longer at risk of self-harm.
- (2) On the revocation of a prisoner’s at-risk assessment by the prison manager, the at-risk management plan for that prisoner ends. 20

61G Health centre manager must consult medical practitioner if advice outside scope of practice

A health centre manager must not give advice under **section 61C or 61F** in relation to a matter that is outside his or her scope of practice, unless the health centre manager has first consulted a medical practitioner whose scope of practice includes the matter in question. 25

61H Designation of at-risk cell and at-risk area

- (1) The prison manager may designate— 30
 - (a) a cell as an at-risk cell;
 - (b) a confined area of the prison for the accommodation of at-risk prisoners as an at-risk area.
- (2) The designation must be in writing and may be revoked at any time.
- (3) An at-risk cell must have items and features, including items and features necessary for the safety of the prisoner, prescribed by regulations made under this Act and must meet prescribed standards. 35

15 Section 69 amended (Minimum entitlements)

After section 69(3), insert:

(3A) A prisoner who is detained in a Police jail that is declared to be part of a corrections prison may be denied 1 or more of the minimum entitlements in subsection (1) (other than the entitlements referred to in subsection (1)(b), (c), (f), and (g), and the entitlement under subsection (1)(e) of access to statutory visitors) only if, despite taking all reasonable steps, it is not practicable to provide those entitlements. 5

16 Section 77 amended (Outgoing telephone calls)

Replace section 77(6) with:

- (6) Every prisoner who makes an outgoing telephone call may be required to— 10
- (a) meet the cost of the call; or
 - (b) pay a fee.
- (7) Despite **subsection (6)**, a prisoner is not required to meet the cost of an outgoing telephone call or to pay a fee if this Act, or any regulations under this Act, provides otherwise.

17 Section 81A amended (Request and approval for placement of child with mother) 15

In section 81A(6), replace “sections 81B and 81C” with “sections **81AB** to 81C”.

18 New section 81AB inserted (Reconsideration of decision relating to child’s placement) 20

After section 81A, insert:

81AB Reconsideration of decision relating to child’s placement

- (1) At the request of the prisoner, the chief executive must reconsider a decision (the **decision**) under section 81A— 25
- (a) refusing approval for the child’s placement (*see* section 81A(2)); or
 - (b) ending the child’s placement (*see* section 81A(5)).
- (2) A request for reconsideration must be made within 14 days after the prisoner has been notified in writing of the decision.
- (3) The chief executive must reconsider the decision against the relevant criteria set out in section 81A, except that the chief executive is not required to repeat the steps set out in section 81A(4). 30
- (4) A decision is not suspended while it is being reconsidered.
- (5) On reconsideration of the decision, the chief executive may do any of the following: 35
- (a) affirm it:
 - (b) amend it:
 - (c) rescind it and substitute a different decision.

19 New sections 82A and 82B inserted

After section 82, insert:

82A Types of permitted accommodation

Subject to any restrictions set out in this Act or regulations made under this Act, a prisoner may be accommodated in an individual cell, a shared cell, or a self-care unit. 5

82B No legitimate expectation as to conditions, etc

- (1) To avoid doubt, a prisoner does not have any legitimate expectation of—
 - (a) being accommodated in, or of being provided with, the same or similar conditions during the whole term of his or her sentence, period of remand, or other period of detention; or 10
 - (b) being provided with the same or similar programmes or opportunities during the whole term of his or her sentence, period of remand, or other period of detention.
- (2) **Subsection (1)** does not affect any entitlement conferred on a prisoner by this Act or regulations made under it. 15

20 Section 87 amended (Restraint of prisoners)

- (1) Replace section 87(5) with:
- (5) A mechanical restraint must not be used on a prisoner for more than 24 hours at a time unless the use of the restraint for more than 24 hours— 20
 - (a) is authorised by the prison manager and is, in the opinion of a medical officer, necessary to protect the prisoner from self-harm; or
 - (b) is necessary to secure a prisoner who has been temporarily removed to a hospital outside the prison for treatment.
- (2) In section 87(5A), replace “(5)” with “(5)(a)”. 25
- (3) Replace section 87(6) with:
- (6) Despite subsections (1) to **(5)**, chains or irons must not be fitted or attached to a prisoner in any circumstances.
- (7) In **subsection (6), chains or irons** does not include handcuffs.

21 Sections 91 and 92 replaced 30

Replace sections 91 and 92 with:

91 Definition of scanner search

For the purposes of this Act, **scanner search** means a search of a person using an electronic device (whether or not the device uses imaging technology) designed to identify the presence of unauthorised items that are concealed beneath clothing or internally. 35

92 Definition of imaging technology search

For the purposes of this Act, **imaging technology search**—

- (a) means a scanner search that produces an image of the body or part of the body (whether external or internal) of the person being searched; and
- (b) includes, without limitation, a search using an X-ray machine or body scanner. 5

92A Particular matters relating to imaging technology searches

- (1) For the purpose of facilitating an imaging technology search, the person conducting the search may require the person being searched to—
 - (a) remove any item of outer clothing that needs to be removed in order to carry out the search, except where the person being searched has no other clothing, or only underclothing, under that outer clothing: 10
 - (b) comply with any other procedure that needs to be undertaken to carry out the search.
- (2) An image produced as a result of an imaging technology search must,— 15
 - (a) so far as practicable, avoid showing a clear image of the body beneath clothing; and
 - (b) obscure the genitals or make them not easily distinguishable if they are included in the image.
- (3) An image produced as a result of an imaging technology search must be retained only as long as is necessary to determine the presence of an unauthorised item. 20
- (4) Despite anything to the contrary in another enactment, a person who conducts an imaging technology search must not, without reasonable excuse, photograph or copy the image or provide the image to another person. 25
- (5) In this section, **outer clothing** includes, without limitation, any jacket, jumper, or sweatshirt.

92B Particular restrictions when imaging technology search used as alternative to strip search

- (1) The restrictions in **section 92A(2)** do not apply where an imaging technology search is used as an alternative to a strip search under **section 98(9)**. 30
- (2) However, an image that is produced using imaging technology—
 - (a) may be viewed only by an officer or a constable of the same sex as the person who is searched; and
 - (b) may not be viewed by another prisoner. 35

22 Section 94 amended (Restrictions on searches)

- (1) Replace section 94(1) with:

- (1) The following searches may be carried out only by a person of the same sex as the person to be searched:
- (a) a rub-down search:
 - (b) a strip search:
 - (c) an imaging technology search that is used as an alternative to a strip search under **section 98(9)**. 5
- (1A) A strip search must not be carried out in view of any person who is not of the same sex as the person to be searched.
- (2) In section 94(2), replace “strip search, or x-ray search”, with “or strip search”.
- 23 Section 96 amended (Authority to search property) 10**
- (1) In section 96(3), delete “or x-ray search”.
 - (2) In section 96(7), delete “or x-ray”.
- 24 Section 97 amended (Use of dogs for searching)**
- Replace section 97(3) with:
- (3) While any officer is using a dog for the purposes of searching any person, the officer who has control of the dog must take reasonable steps to prevent the dog from coming into physical contact with the person being searched. 15
- 25 Section 98 amended (Search of prisoners and cells)**
- (1) Replace section 98(7A) and (7B) with:
 - (7A) Every at-risk prisoner must be required to undergo a strip search conducted by an officer on each of the following occasions: 20
 - (a) when the prisoner is first placed in an at-risk cell:
 - (b) on each occasion when the prisoner is returned to the at-risk cell, unless—
 - (i) the prisoner had not left the at-risk area; or 25
 - (ii) the prisoner had undergone a strip search on returning to the at-risk area before being returned to the at-risk cell:
 - (c) on each occasion when the prisoner is returned to the at-risk area from another area.
 - (2) Replace section 98(9) with: 30
 - (9) If a prisoner is required to undergo a strip search under this section, a scanner search may be undertaken as an alternative if the chief executive has approved the device as suitable for the purpose of replacing a strip search.
- 26 Section 128 amended (Offences by prisoner)**
- After section 128(1)(n), insert: 35
- (o) tattoos another prisoner:

	(p) receives a tattoo with his or her consent:	
	(q) tattoos himself or herself:	
	(r) contacts a person in breach of a court order or direction of any court.	
27	Section 146 replaced (Contravention of section 110A or 118)	
	Replace section 146 with:	5
146	Offences in relation to mail, information, and images	
	Every person who contravenes section 92A(4) , 110A, or 118 commits an offence and is liable on conviction to a fine not exceeding \$2,000.	
28	Section 202 amended (Regulations relating to safe custody of prisoners)	
(1)	After section 202(e), insert:	10
	(ea) prescribing facilities, items, and features that are not required to be provided in respect of cells in a Police jail that is declared to be part of an established corrections prison:	
(2)	In section 202(g), delete “under section 58 or section 59 or section 60”.	
(3)	In section 202(k), replace “x-ray”, with “imaging technology”.	15
29	Section 203 amended (Regulations relating to treatment of prisoners)	
	After section 203(b), insert:	
	(ba) prescribing matters that must be included in rehabilitative programmes, and different matters may be prescribed for different rehabilitative programmes and different classes of prisoners:	20

Part 2

Consequential amendments to Corrections Regulations 2005

30	Amendments to Corrections Regulations 2005	
	This Part consequentially amends the Corrections Regulations 2005.	
31	Regulations 57 and 58 and cross-headings replaced	25
	Replace regulations 57 and 58 and the cross-heading above each regulation with:	
	<i>Prescribed segregation and at-risk facilities</i>	
57	Mandatory items, features, and standards for segregation accommodation and at-risk cells	30
(1)	Cells used to accommodate prisoners subject to a segregation direction must have the items and features specified in Part A of Schedule 2.	

- (2) At-risk cells must have the items and features specified in Part A of Schedule 2, other than a bed.
- (3) The prison manager must ensure that the items and features specified in Part A of Schedule 2 that are provided for use in, or form part of, a cell to which this regulation applies are maintained in good working order. 5

Additional segregation and at-risk facilities

58 Additional segregation and at-risk facilities

- (1) Natural lighting must be provided in the following cells:
 - (a) a cell used in a corrections prison for the accommodation of a prisoner subject to a segregation direction issued under section 58, 59, or 60 of the Act: 10
 - (b) an at-risk cell.
- (2) The requirement for natural lighting is in addition to the items or features referred to in **regulation 57(1) or 57(2)** that must be provided in respect of that cell. 15

32 Regulation 60 amended (Cells for prisoners at risk of self-harm)

Replace regulation 60(1) and (2) with:

- (1) An at-risk cell must, in addition to the items and features referred to in **regulations 57(2) and 58**,—
 - (a) have the features and contain the items specified in Part C of Schedule 2; 20
 - and
 - (b) so far as is practicable in the circumstances, have the feature specified in Part D of Schedule 2.
- (2) Despite **subclause (1)**, the chief executive may approve cells that do not comply with **subclause (1)** for designation as at-risk cells if the chief executive is satisfied that it is not practicable in the circumstances to avoid using those cells as at-risk cells. 25

33 Regulation 61 amended (Cells for the assessment of prisoners’ mental health)

In regulation 61(1) and (2), delete “for reasons other than the risk or possible risk of self-harm”. 30

34 Regulation 63 replaced (Prisoners at risk of self-harm)

Replace regulation 63 with:

63	Prisoners at risk of self-harm	
(1)	A suitable registered health professional must keep written notes of each visit to an at-risk prisoner and the notes must be entered on the prisoner's health record.	
(2)	Within 24 hours of a prisoner's assessment as an at-risk prisoner, the health centre manager must visit the prisoner and prepare a report on the prisoner, but this does not apply if the health centre manager has visited the prisoner and written a report when providing advice to the prison manager under section 61C of the Act.	5
(3)	The health centre manager must—	10
	(a) record any advice given under section 61C of the Act in relation to an at-risk prisoner in the health record of the prisoner concerned; and	
	(b) arrange for a copy of any report prepared to be put in the health record of the prisoner.	
(4)	After visiting a prisoner under subclause (2) , the health centre manager must recommend to the prison manager—	15
	(a) whether or not the prisoner should be denied access, under section 69(2)(c) of the Act, to all or any of the minimum entitlements referred to in section 69, or, if the prisoner has already been denied access to all or any of those entitlements under section 69(2)(c), whether the prisoner should continue to be denied access to those entitlements:	20
	(b) whether or not the prisoner should be denied access to any other item (such as clothing).	
(5)	The health centre manager must record a recommendation under subclause (4) on the prisoner's prison record.	25
(6)	Before the health centre manager makes a recommendation under subclause (4) 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.	
(7)	As far as practicable in the circumstances and consistent with maintaining the prisoner's safety, an at-risk prisoner must be detained under the same conditions as if he or she were not at risk of self-harm, including access to activities in accordance with his or her management plan and access to authorised property.	30
35	Regulation 66 replaced (Individual cells)	
	Replace regulation 66 with:	35
66	Individual cells and shared cells	
(1)	A prisoner may be accommodated in a shared cell unless the prison manager is satisfied that the prisoner is unsuited for the shared cell accommodation that is available.	

- (2) Before accommodating a prisoner in a shared cell, the prison manager must ensure that the prisoner is assessed to determine whether he or she is suited for the available shared cell accommodation.
- (3) A prisoner who is assessed as unsuited for the available shared cell accommodation must be accommodated in an individual cell.

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36 Regulation 196 revoked (No legitimate expectation as to conditions, etc)

Revoke regulation 196.

37 Schedule 2 amended

- (1) In the Schedule 2 heading, after “**prisoners**”, insert “**and prisoners at risk of self-harm**”.
- (2) In Schedule 2, Part A heading, replace “**the purposes of section 61 of the Act**” with “**cells for segregated prisoners**”.

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38 Schedule 3 amended

- (1) In Schedule 3, Part A, replace the item relating to heating with:
Heating appropriate to climatic conditions and suitable for the number of occupants and the daily regime
- (2) In Schedule 3, Part A, replace the item relating to privacy screening with:
Privacy screening consistent with safe custodial management (including, in the case of a shared cell, privacy screening of the toilet and shower from view by other cell occupants)
- (3) In Schedule 3, Part A, replace the item relating to fresh or conditioned air with:
Fresh or conditioned air suitable for the number of occupants and the daily regime
- (4) In Schedule 3, Part B, replace the item relating to heating with:
Heating appropriate to climatic conditions and suitable for the number of occupants and the daily regime
- (5) In Schedule 3, Part B, replace the item relating to fresh or conditioned air with:
Fresh or conditioned air suitable for the number of occupants and the daily regime
- (6) In Schedule 3, Part B, after the item relating to automatic fire detector, insert:
Intercom, alarm, or call button (in the case of a shared cell)
Privacy screening consistent with safe custodial management (including, in the case of a shared cell, privacy screening of the toilet and shower from view by other cell occupants)

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